

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM DORCHESTER COUNTY

MAY 20 2016

Maite Murphy, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MICHAEL GENTILE,

APPELLANT

APPELLATE CASE NO. 2015-001370

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE'S EXHIBIT NO. 3 (DVD OF FORENSIC INTERVIEW)

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
_____) 2015-GS-18-00598

THE STATE,)
)
 vs.) TRANSCRIPT OF RECORD
)
 MICHAEL GENTILE,)
 DEFENDANT)
 _____)

JUNE 15, 2015
ST. GEORGE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE MAITE MURPHY

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

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I N D E X

Motions 3

* * * P R O C E E D I N G S * * *

THE COURT: Do you need Mr. Loy present for any stipulations that we make -- go ahead and take care of?

MR. WEHMAN: No, Your Honor, we can do that.

THE COURT: Okay. You may proceed.

MR. WARD: May it please the court, Your Honor?

THE COURT: Yes, sir.

MR. WARD: We're here for pretrial motions for the State vs. Michael Edward Gentile. He is charged with two true bill indictments 2012-GS-18-1480 for one count of criminal sexual conduct with a minor first degree, as well as 2015-GS-18-0598 for lewd act upon a child under 16.

The first matter, Your Honor, is back on May 14th of this year, the State filed a motion with the Clerk of Court for admission of an out-of-court statement of a child pursuant to the S. C. Code section 17-23-175.

After speaking with the defense, we have come to an agreement. We are going to stipulate that the forensic interview that was conducted on the victim in this case, Minor , at the Dorchester Children's Center back on September 26th of 2012, does fit and meet all the criteria specified in that section

1 as the law is set out; that it is admissible.

2 THE COURT: Mr. Wehman?

3 MR. WEHMAN: Thank you, Your Honor. May it please
4 the court?

5 THE COURT: Yes, sir.

6 MR. WEHMAN: Yes. I've reviewed the forensic
7 interview as well as the elements required to be shown
8 by the State, I believe all those elements have been
9 met. We, frankly, would like the video in as well, and
10 would stipulate to that.

11 THE COURT: All right, sir. Thank you. So the
12 video will then be admissible. Anything else we can
13 take care of before Mr. Loy gets here?

14 MR. WEHMAN: No, Your Honor, if I can run down --

15 THE COURT: Sure.

16 MR. WEHMAN: I might be able to find him real
17 quick.

18 (Pause.)

19 THE COURT: Are you ready to proceed?

20 MR. WARD: Yes, Your Honor. The State's motion,
21 Your Honor -- there are allegations in this case that
22 the victim, Minor, at some point before
23 the forensic interview was conducted back in 2012, that
24 she was at a friend's house and had the opportunity to
25 see pornographic pictures.

1 The way this came out was a statement collected
2 by Lieutenant Williams from the Summerville Police
3 Department. She was speaking with the mother, Amanda
4 Holsapple, on the day of the forensic interview. And
5 asked her if she had spoken to the victim about what
6 had been going on.

7 And she stated -- the mother states in her
8 statement -- she gave a written statement -- says "what
9 opened up the conversation between Minor and I was
10 that Mike told me that Minor saw pornographic
11 pictures at a friend's house" -- "a friend of her's
12 house. I asked about that, and then proceeded to ask
13 other questions. What was Minor 's response? She
14 said, yes, but only once referring to the pornographic
15 picture."

16 It would be the State's intention -- we would
17 ask the court to preclude the defense from asking the
18 victim about seeing this pornographic picture. Under
19 State V. Williams, which the -- I provided the court
20 with earlier, basically in that case they lay out that
21 there are rights -- and it's a criminal sexual conduct
22 case -- the defense can't ask whether the prior sexual
23 experience of a child victim are admissible, despite
24 the Rape Shield Statute. Basically it approved the
25 source of the victim's sexual knowledge. But in

1 Williams, it says "nevertheless, you still have to --
2 the admission is still -- still subject to the
3 determination under Rule 403". And they said, "the
4 evidence could have confused the issues at trial or
5 misled the jury as to the sexual misconduct in
6 question".

7 Here, in the forensic interview, the allegations
8 are that the defendant, during a period of two years on
9 different occasions, blindfolded the victim -- and she
10 states specifically with a blue and white blindfold --
11 and had her lay on the bed. And she describes specific
12 positions she was on the bed.

13 The statement given by the mother only says
14 "pornographic pictures". We have no idea what a nine
15 year old believes a pornographic picture is. That
16 could be -- it could be anything.

17 And I believe it would just go to misleading and
18 confuse the jury if the defense can get up there and
19 start asking the victim numerous questions about what
20 she may have seen pornographic wise, and it's not
21 relevant to whether or not these allegations actually
22 happened or not.

23 THE COURT: Mr. Wehman.

24 MR. WEHMAN: Thank you, Your Honor. May it please
25 the court?

1 THE COURT: Yes, sir.

2 MR. WEHMAN: I have had an opportunity to read the
3 Solicitor's case. And -- and I think the factual
4 allegations in that case are important when making a
5 determination on whether to follow this case or the
6 case I have provided the Court, which I think
7 differentiates it.

8 But first as to the case they have provided. In
9 that case, there were allegations of prior sexual
10 conduct by this -- by this victim that were disallowed.
11 In that case, the accused -- the actions that were
12 admitted to be done by the children that were kept out,
13 were so not similar to those that were on trial, the
14 judge said, no, that they are not similar enough. Even
15 if you introduce this evidence, there's no way that
16 that shows that this child would be able to come up
17 with these new allegations. They're not the same
18 allegations.

19 Specifically from the case, the allegations
20 against Williams were not similar to the stepbrother's
21 prior sexual abuse of what's called victim one.
22 Williams was accused of digitally penetrating victims,
23 whereas the stepbrother allegedly forced victim one to
24 perform oral sex. So one of those cases involved oral
25 sex, the other one involved digital penetration. And,

1 therefore, someone who is experienced -- they're both
2 horrible. Someone who has experienced one of those
3 things would not then have the knowledge to make up the
4 other act.

5 The case that we have before us does involve
6 a -- a pornographic picture. I would argue that
7 pornography wouldn't apply to the Rape Shield Statute
8 first. If the court does feel that this is enough to
9 merit sexual activity, which isn't further described --
10 it just says "sexual activity". So if the court does
11 find that seeing pornography is enough to account to
12 sexual activity, we -- we would argue that based on the
13 Solicitor's own concession, that the defense is allowed
14 under certain circumstances to raise these issues in
15 order to show how a child would have knowledge of
16 certain things, that it should be allowed.

17 We don't know what the child saw. The child was
18 never asked. She was -- the information came from her
19 mother to a detective. The detective never asked what
20 she saw. All the detective said was how many pictures
21 did you see? One. And, you know, did it -- did it
22 happen again? No.

23 I -- I don't -- I believe the State is trying to
24 hide behind a poor investigative effort of that
25 detective. If the detective had found out that the

1 child saw oral sex, I believe they would have an
2 argument based on what they provided. But because we
3 don't know what they've seen, they can ask the child on
4 the stand -- we can bring the child in and ask her what
5 she saw, and that might clear up exactly what she saw;
6 and, you know, maybe help the court make this
7 determination.

8 But based on the fact that we do have clear
9 evidence by the own admission of the child's mother
10 that she had seen pornographic material that was made
11 directly after she gave a forensic interview, which
12 alleged Mr. Gentile of sexual abuse on her two years
13 after it happened, I believe that it's admissible to
14 show how she would have knowledge of -- of that
15 assault.

16 In the Grovenstein case that I provided you, it
17 goes through the argument that I've just laid out, that
18 the Rape Shield Statute does not bar evidence of a
19 victim's sexual conduct if the evidence was offered for
20 a purpose other than to attack the victim's morality.

21 Essentially, I'm not allowed to -- if -- if
22 someone is accusing someone else of a sexual assault,
23 I'm not allowed to go into that person's sexual history
24 to say, well, you agreed to these other acts, but now
25 you're claiming that you've been rape. That's

1 inappropriate. I can't do that. That is attacking her
2 sexual activity as an attack on her character. That's
3 not the intent of what I'm seeking to do.

4 This child is nine years old. She will be -- or
5 was nine years old when she disclosed. I believe she's
6 around 12 years old now. But there will be a forensic
7 interview from when she was nine, disclosing these
8 allegations that she's made.

9 The jury will see that and will properly put
10 upon her their view of a nine year old, i.e., that she
11 would not have real experience with sexuality. I don't
12 think that a jury will think that a nine year old has
13 seen pornography before. And I -- I consent -- I
14 agree, we don't know what she saw. But I think it's
15 relevant to show how she would have knowledge of sexual
16 activity as talked about in the Grovenstein case.

17 In that case, it also cites another case out of
18 a different state, but -- but it cites it and says that
19 "we believe that if an accused raises the defense of
20 fabrication, and if the minor victim is such of tender
21 years that a jury might infer that the only way the
22 victim could testify in detail about the alleged
23 molestation is because the defendant had in fact
24 sexually abused the victim, that evidence of the
25 victim's prior sexual history is relevant to rebut such

1 an inference".

2 In this case, we have no physical evidence of
3 abuse which -- which is often the case in -- in these
4 issues. This is not a case of this child was
5 definitely abused and who is the one who did it. That
6 is not our defense.

7 Our defense is fabrication as cited in this
8 case, that it just didn't happen. And, therefore, as
9 the victim is going to be presenting testimony as to
10 what happened to her, I believe based on this case,
11 that we are allowed to go into how she might have
12 knowledge of this, but not to attack her character in
13 any way. That's not the intent.

14 THE COURT: Thank you, Mr. Wehman. Any reply?

15 MR. WARD: Nothing, Your Honor.

16 THE COURT: And, Mr. Wehman, in looking at both
17 the Williams and the Grovenstein case, I think
18 certainly this case can be distinguished in the fact
19 that (a) first of all the picture -- you don't know
20 what was on the picture. It's speculative as to what
21 knowledge, if any, she has of sexual activity not
22 knowing what was in the picture as to -- for her to
23 have any kind of prior sexual knowledge or activity.

24 Her seeing a picture certainly is
25 distinguishable from the Rape Shield Statute in that

1 it's not sexual conduct or activity on her part. She
2 may have seen something, but we don't know what it is.
3 So, certainly, I think the probative value would be
4 outweighed by any prejudicial effect. That -- that
5 that type of testimony could come in.

6 There's no indication that a picture shows an
7 on-going activity. We don't know what it is. It could
8 certainly just be a still shot of something, but it's
9 too speculative, and I think the probative value is
10 outweighed by the prejudicial effect.

11 It's not a sexual experience per se, that she
12 saw a picture. She didn't actively participate in any
13 kind of conduct, so I think you can distinguish that.
14 And I think the speculative nature of it, it's too far
15 from this current activity to be admissible. Now, if
16 somehow the door is open, then we'll have to revisit
17 that. But at this point, I don't think it's -- it's
18 relevant, and the probative value is outweighed by the
19 prejudicial effect.

20 All right. Next motion.

21 MR. WARD: That's it from the State, Your Honor.

22 MR. WEHMAN: Your Honor, at this point, I would
23 like the right to proffer the child's testimony to find
24 out exactly what she saw.

25 THE COURT: Is she here?

1 MR. WARD: She'll be here tomorrow morning at 9:00
2 before the jury comes in.

3 THE COURT: What time is the jury coming in?

4 MR. WARD: 9:30 or 10:00 -- 10:00.

5 THE COURT: Well, we should have done that this
6 afternoon, Mr. Wehman. I think you knew this motion
7 was here. I'll -- I'll allow you the opportunity to do
8 that, but we should have taken care of that this
9 afternoon.

10 MR. WEHMAN: Thank you, Your Honor.

11 THE COURT: All right. Next motion, Mr. Wehman.

12 MR. WEHMAN: Thank you, Your Honor. At this
13 point, I would make a motion to suppress prejudicial
14 terms, namely the use of "victim" in this trial.

15 This -- this case involves allegations of sexual
16 conduct which have -- the sole evidence is testimony of
17 the child. The determination by the jury is to be
18 whether or not this happened. This is not a case where
19 there was physical evidence of sexual conduct and we're
20 trying to determine who did it; but the jury, by their
21 very decision in this Court, will determine whether or
22 not the conduct happened. And it's the defense's
23 motion to prevent the term "victim" being used to
24 describe Minor because that is, in effect,
25 what is being determined by the jury, whether or not

1 she is the victim or not.

2 I have -- I have drawn up a physical copy of the
3 motion for the court. I filed it with the clerk. But
4 we would ask that because the determination by the jury
5 in this trial will be whether or not they believe

6 Minor is the victim, that she not be
7 called victim by the Solicitor's Office or by any other
8 witnesses during the course of the trial.

9 THE COURT: Mr. -- Mr. Ward.

10 MR. WARD: Your Honor, it would be our position
11 that there is no leading authority that precludes us
12 from using the term "victim". It's the State's
13 intention -- we don't intend to constantly over use the
14 word "victim". If it's used once or twice, I don't
15 think that's harmful or in error for the jury to hear
16 the term the alleged victim in this case, being
17 referred to as victim.

18 THE COURT: And, certainly, the jury is certainly
19 instructed multiple times regarding the burden of proof
20 as to what the State's burden is, and that is beyond a
21 reasonable doubt. And certainly I don't think the term
22 "victim" is prejudicial. Your motion is denied.

23 MR. WEHMAN: Thank you, Your Honor.

24 THE COURT: Next motion.

25 MR. WEHMAN: Your Honor, at this point, the

1 defense would make a motion to quash the indictments in
2 this case. And this is -- this is a dual motion, I
3 guess. I'm making a federal argument as well as a
4 state argument. I think I can do both of them at the
5 same time or whatever the Court would like -- would
6 like for purposes of the record.

7 THE COURT: However you're comfortable proceeding
8 is fine.

9 MR. WEHMAN: Okay. Your Honor, first, I make a
10 motion under state law vs. -- or in reference to the
11 case I presented to you, State vs. Baker.

12 Specifically that case deals with similar
13 circumstances in that there was a criminal sexual
14 conduct allegation in that the State, in their
15 indictment itself, put the period where this could
16 happen -- or that the alleged timeframe -- in a six
17 year window, essentially a six year window.

18 What the court found in Baker is that this --
19 this constituted vagueness in the -- in the indictment.
20 And it essentially created a complete inability to
21 investigate and provide for a complete defense.

22 Specifically, that the six year window
23 essentially stripped the defendant of any alibi offense
24 that he could have, and that it was improper for him to
25 be -- or it was impossible for him to come up with

1 where he had been for the entire six year window of
2 that indictment. And that conviction was overturned.

3 The Supreme Court has given no further guidance
4 or definition on what constitutes vagueness for the
5 purposes of an indictment of this nature. I know there
6 is some -- there is considerable leeway given based on
7 when these things happened. However, the State or the
8 Supreme Court has said that six years is too much.

9 In this case, Your Honor, the original
10 indictment was for a one day period. The indictment
11 was true billed by the grand jury on March 7, 2013.
12 And it said that on or about January 1, 2010 -- oh, I'm
13 sorry. That's the incorrect indictment:

14 On or about January 1, 2009, the defendant did
15 the things that he's accused of doing. The --
16 second -- the one that we're proceeding with today,
17 that indictment was sworn out, I believe on March 7,
18 2013 -- yes. That they -- I think they used the same
19 date. I think it was actually sworn out this past week
20 or sometime recently.

21 That in Dorchester County on or about January 1,
22 2010 until September 1, 2012, this activity occurred.
23 That is over a two and a half year period of time when
24 this incident allegedly took place.

25 It, I would argue, doesn't narrow down the

1 timeframe wherein this happens, to a degree to give Mr.
2 Gentile the ability to avail himself of the alibi
3 defense or to investigate his case to the point where
4 he would have a complete defense.

5 I will not stand before the court and say that I
6 did not know that -- the timeframe. I'm not arguing
7 that the time period that I knew about, the timeframe
8 expansion is the basis for my motion. The Solicitor
9 and I had candid conversations, and I knew that it was
10 going to be a timeframe extended.

11 What I'm saying is that no amount of time is
12 enough to prepare two years and nine months to
13 determine whether he had an alibi defense. Mr. Gentile
14 is a truck driver. He's on the road for long periods
15 of time. If, as in the first indictment, there was a
16 one day or a two day or a week or some sort of narrowed
17 frame, it -- it might be that he would have an alibi in
18 this case. But due to the length of the timeframe in
19 the indictment itself, he's essentially stripped of
20 that defense, Your Honor.

21 THE COURT: All right. Mr. Ward.

22 MR. WARD: Thank you, Your Honor. In reference to
23 the defense's case, State v. Baker, the State would use
24 State v. Tumbleston. The defendant in that case was
25 indicted on four counts of criminal sexual conduct with

1 a minor, and also one count of committing a lewd act on
2 a minor.

3 In that case, the defendant moved to quash the
4 indictments because of an overbroad timeframe from 2001
5 to 2004. And on appeal, the court stated "the State is
6 not required to denote the precise day or even year of
7 the accused conduct in an indictment charging criminal
8 sexual conduct. Indictments for a sex crime, where
9 allege offenses occurred during a specified time
10 period, are sufficient when circumstances of the case
11 warrant considering extended timeframe".

12 In this case, Your Honor, given the young age of
13 the victim, the State would argue that when kids are
14 that young for them -- the concept of time is different
15 for them when they are that young, for her to be able
16 to give a specific date, or within two days of when
17 these alleged occurrences would have happened, is also
18 almost impossible.

19 Also, the timeframe alleged is from the time
20 that the -- the mother has told us she started dating
21 the defendant, to when these allegations were finally
22 brought to light in the forensic interview.

23 The defendant would obviously have to know that
24 these would be the only timeframe that it could have
25 happened. Also, in the forensic interview, at that

1 time the child was nine. She disclosed in the forensic
2 interview these occurrences with the defendant
3 happening when she was either seven or eight years old,
4 which fits the timeframe of right when they would have
5 started -- he would have come into her life and when
6 the allegation finally came to light, Your Honor.

7 THE COURT: All right. Thank you. Anything
8 further, Mr. Wehman?

9 MR. WEHMAN: Nothing further, Your Honor.

10 THE COURT: Based upon the case law, it -- and
11 certainly the Court does not find that it's an overly
12 broad time period. The indictments in this case do
13 give the defendant sufficient certainty and
14 particularly -- it apprises him of the elements of the
15 offense to be charged, and gives him the opportunity
16 to -- to review that time period.

17 And, basically, he's called to know what he's
18 called upon to answer and may plead accordingly. And
19 it certainly, based upon the review of the actual
20 indictments, it -- the offenses are stated with
21 sufficient particularity to enable the court to know
22 which judgment to pronounce, so the Court is -- your
23 motion is denied.

24 MR. WEHMAN: Thank you, Your Honor. And I -- I --
25 I failed to remember, I did have a federal argument on

1 that same -- would I be permitted to make it now?

2 THE COURT: Sure.

3 MR. WEHMAN: Your Honor, I would just simply say
4 that based under the constitution, the -- again, the --
5 what we are claiming is the vagueness in the indictment
6 is a violation of Mr. Gentile's due process, in that it
7 prohibits him from taking advantage of his protection
8 against double jeopardy in that it's a vague -- a large
9 period of time he is not -- no -- our argument is that
10 he does not know the time, the exact incident for which
11 he is being called for trial. And, therefore, if he is
12 convicted, he cannot -- he is not sufficiently able to
13 protect himself from further prosecution from another
14 incident that could be raised in the same timeframe.

15 THE COURT: All right, sir. Mr. Ward.

16 MR. WARD: I would just basically repeat my
17 previous argument, Your Honor. That it's -- the
18 indictment is sufficient on all counts. And that it is
19 not an overbroad timeframe for the defendant to have
20 knowledge of what he's being accused of.

21 THE COURT: And, again, in reviewing each of the
22 indictments, the Court does find that the indictments
23 do meet the sufficiency standard as required, and your
24 motion is denied, Mr. Wehman.

25 MR. WEHMAN: Thank you, Your Honor.

1 THE COURT: Any other motions?

2 MR. WEHMAN: Your Honor, I would have one more
3 motion. It's -- if I can get with the Solicitor real
4 quickly, it's a matter of making this maybe quicker,
5 more streamlined.

6 (Pause.)

7 MR. WEHMAN: May it please the Court?

8 THE COURT: Yes, sir.

9 MR. WEHMAN: And, Your Honor, I have a -- the
10 State has told me that you have a copy of kind of an
11 overview of these text messages.

12 THE COURT: Yes, sir. I have been provided with
13 them.

14 MR. WEHMAN: For the purposes of the record, would
15 you like to make one of these a court's exhibit? I --

16 THE COURT: Sure.

17 (WHEREUPON, Court's Exhibit No. 1 was marked and
18 made a part of the record.)

19 MR. WEHMAN: Thank you, Your Honor. Your Honor,
20 this would be the defense's motion to suppress the
21 contents of the cell phone that was seized in this
22 case, and the subsequent messages that were provided
23 based on a search warrant. I'm not saying the search
24 warrant wasn't valid, I'm just making a motion to
25 suppress all contents of that phone and any official

1 record provided by Verizon or whatever cell phone
2 carrier it was that came up with that record.

3 Your Honor, first -- and, again, this is another
4 multi prong argument, I -- if the Court would allow me,
5 I'd like to just do them just individually and get a
6 ruling on each one.

7 THE COURT: Sure.

8 MR. WEHMAN: Your Honor, first I would make a
9 motion to suppress this information on the grounds that
10 the cell phone communication constitutes hearsay. The
11 State seeks to introduce a text conversation between
12 Mr. Gentile and Minor . We would argue
13 that these communications are hearsay, and also that
14 the State would improperly be able to authenticate
15 whether Mr. Gentile is the one who is responding.

16 I know the State intends to provide the court
17 with carrier information to determine who owns each
18 number. And I believe Mr. Gentile actually owns the
19 number for both of these phones. But we would make the
20 argument, Your Honor, that they cannot properly
21 authenticate who was texting on that phone at the time
22 these messages were sent. And because of that, this
23 constitutes hearsay that should be excluded from the
24 trial in this case.

25 THE COURT: All right. Mr. Ward.

1 MR. WARD: With these text messages, Your Honor,
2 it's the State's intention, as the defense stated, that
3 we will have someone from Verizon come and testify to
4 the subscriber information.

5 At the time, the phone number is
6 under Michael Gentile's name. Also, after the police
7 are called in this case, the defendant speaks with a
8 police officer from the victim's mother's phone --
9 because he's calling her while she's speaking with
10 police.

11 And at that point, Mr. Gentile gives the officer
12 this same phone number to call him back at. So -- and
13 this would have been a few hours after these text
14 messages were sent. And I think for the defense to say
15 that Mr. Gentile didn't have the phone, and someone
16 else was using it at that point, is just -- they can
17 argue that for the jury, but I don't think it goes to
18 the admissibility of the text messages under that
19 argument.

20 THE COURT: Anything further, Mr. Wehman?

21 MR. WEHMAN: Nothing in addition, Your Honor.

22 THE COURT: All right. Go ahead with your next
23 argument.

24 MR. WEHMAN: Your Honor, assuming that the Court
25 is to rule that they are admissible under the hearsay

1 rule, we would argue that these text messages are
2 irrelevant under Rule 401.

3 The text messages come around two years later
4 than the alleged conduct, so I'm sure the Solicitor
5 apprised you of the facts of the case. However, for
6 the record, this sexual conduct is alleged to have
7 occurred, I believe in 2009 -- between 2009 and 2010 --
8 maybe it's 2010, 2011 -- the two years before she makes
9 the assertion that it did happen. So there's a two
10 year window between the text messages and the sexual
11 conduct.

12 The conversation itself -- and while it does
13 involve the sending of a picture which -- if you look
14 at Court's Exhibit No. 4, the conversation is between
15 two people in addition to Mr. Gentile, in that he's
16 talking to two different people on the same cell phone
17 at the same time.

18 He begins conversating with Minor
19 And then at some point, the phone is switched on -- you
20 can see in the record, that he finds out that he's
21 talking to K.S. -- K.S. , which is his other
22 daughter. And he asked her for a picture. And then
23 you see the text messages come in. And a message -- or
24 an image is sent which turns out, after looking at
25 Minor 's phone, to be an image of herself

1 with her shirt pulled up, exposing a nine year old's
2 breasts.

3 Your Honor, that information -- our argument
4 does not have any tendency to make the existence of any
5 facts that's of consequence in this trial more or less
6 possible. Whether or not Minor decided on
7 her own volition to send this image, doesn't have any
8 tendency to prove that Mr. Gentile sexually assaulted
9 her two years prior.

10 There's no allegation that this was any type of
11 continuing conduct. In fact, in a forensic interview
12 she gave, she states that she did it this one time.

13 Additionally, she told officers when
14 confronted -- Officer Sullivan, who will be here to
15 testify tomorrow, she told him that she did it to be
16 funny. It wasn't forced. It wasn't asked for. She
17 saw, would you send me an updated picture from a
18 previous conversation, decided to take this picture and
19 she sent it.

20 I would argue that based on the conversation
21 that led up to the action and the action itself, it
22 doesn't have any tendency to prove whether or not Mr.
23 Gentile engaged in sexual conduct with her two years
24 prior.

25 THE COURT: All right. Mr. Ward.

1 MR. WARD: It's relevant -- when the court is
2 looking for relevant -- whether evidence is relevant,
3 it's whether evidence having any tendency to make the
4 existence of any fact that is of consequence to the
5 determination of the action more or less probable than
6 it would be.

7 The State's intention that these text messages
8 along with Court's Exhibit 1 -- I'll approach --
9 Court's Exhibit 1 is the photo that the victim in this
10 case sent to Michael Gentile's phone on the night of
11 October 31, 2012. After that picture was received --
12 the State would contend was received, the defendant
13 sends -- sends a message back to the victim saying
14 "make sure you get rid of the evidence".

15 Also, "Okay, LOL", that's from the defendant. A
16 little later on he says, "you know, before you did
17 that, I was thinking about that, LOL". It would be the
18 State's contention he was referring to that picture
19 that she sent to him.

20 This conversation is -- shows a direct
21 relationship between the defendant and the victim,
22 which evidence would be -- show the -- the -- I'm
23 sorry, Your Honor -- tends to prove the issue in this
24 case, whether there was some type of inappropriate
25 relationship and this sexual assault could have

1 occurred; a nine year old that hasn't had this
2 inappropriate relationship with the defendant wouldn't
3 be sending these -- this photo, as well as the text
4 message that he sends back to her, talking about the
5 photo.

6 It goes to show direct contact with the
7 defendant and the victim, as well as the fact that --
8 as the Court is well aware in cases of this nature --
9 there's grooming that goes on between the victim and
10 the defendant. And this just goes to -- give weight to
11 the sexual assault that occurred years before that, it
12 was still ongoing. And the victim did state it
13 happened on more than one occasion. It wasn't a one
14 time thing that happened.

15 THE COURT: Mr. Wehman, any response?

16 MR. WEHMAN: Briefly, Your Honor. As to showing
17 direct contact, the jury will know that this was his
18 stepdaughter. Whether they were married or common law
19 married, they -- they will be able to show that they
20 had a connection without the introduction of any of
21 this.

22 As to the rest of the argument, I -- I know
23 there's a more eloquent way to say what I want to say.
24 At one -- at one hand, they want to keep out sexual
25 conduct that she has seen; but at the same time, they

1 want to admit essentially the creation of child
2 pornography in this case. And I would be remiss
3 without at least pointing that out. But on the one
4 hand, they want to keep something out because it shows
5 that she has seen pornography; but at the same time,
6 would like to admit something that shows her creating
7 that pornography.

8 And I understand the State's arguments. I would
9 just say that they don't need this to -- to show any
10 type of direct connection between the two. They lived
11 together and that will be out in front of the jury.
12 She can testify to their relationship. Her mother will
13 be able to testify to the fact that Mr. Gentile lived
14 there for long periods of time, that would have -- that
15 -- for a long period of time -- sorry -- and that he
16 would have had access to her. He babysat her. They
17 don't need this text conversation for any of that to be
18 shown.

19 The -- we would argue that this is -- is
20 irrelevant. It doesn't tend to prove the act at trial,
21 and there's a -- there's a danger in admitting it in
22 the confusion of the issues, but that's another basis
23 that I'll get to, Your Honor.

24 THE COURT: All right. Mr. Ward, what is the
25 purpose for the intended introduction of these text

1 messages?

2 MR. WARD: The intended introduction would be --
3 first off, these text messages were found by the mother
4 on the 31st. Up in -- and then she calls the police on
5 this night after she sees these. And that's what leads
6 to the investigation, which leads to the forensic
7 interview being done a few weeks later where
8 allegations are disclosed, that the defendant did
9 sexually assault the victim.

10 Without putting in the photo with these text
11 messages, the jury has no idea why this investigation
12 even started; why there was a forensic interview. And
13 it's relevant to show how this case came to light. The
14 jury has the right to know why there was a forensic
15 interview. And without these text messages, there is
16 no case, basically.

17 There was no disclosure without these being --
18 without these photos -- without these text messages
19 being found by the mother, there would be no disclosure
20 and no forensic interview.

21 THE COURT: All right. Mr. Wehman, what is your
22 next point?

23 MR. WEHMAN: Thank you, Your Honor. The next --
24 the next basis would be that under Rule 404 (b), this
25 constitutes improper character evidence. This --

1 what -- what they are trying to put into evidence -- I
2 understand that they are saying that their
3 investigation needs to show the complete picture of
4 their investigation, that these pictures need to be put
5 in -- or these conversations, or whatever that they
6 would like to put in. However, there are other ways
7 for that information to be presented to the jury.

8 If that's the main concern that they have,
9 they -- they can state that an investigation -- based
10 on a concerned call from the mother in this case, led
11 to a forensic interview being scheduled. If the
12 forensic interview itself -- which is at this point the
13 only allegations that are made in this case -- there's
14 no statement from the victim -- or the alleged
15 victim -- in which she details the events that she is
16 saying happened.

17 The only pieces of evidence that we will have
18 directly pointing toward the sexual assault that's
19 alleged in this case, is the forensic interview and the
20 testimony of Minor when she -- when she
21 takes the stand.

22 If that forensic interview is insufficient to
23 convince the jury, we would argue that that -- that's
24 the case, that the -- we had these text messages and
25 that's how a forensic interview is scheduled. Yes, it

1 would be nice, but if it's inadmissible, that's not
2 enough to take over the fact that it's inadmissible.
3 We would argue that this is character evidence of a
4 subsequent bad act, that the State is introducing
5 this -- we would argue, it has the potential to -- it
6 does have the ability to show that -- or they are
7 trying to show that the defendant is acting in
8 conformity with this behavior rather -- rather than
9 anything else, which is what is directly contemplated
10 by law. You cannot show character evidence which shows
11 -- which attempts to prove that the defendant is acting
12 in conformity with some other bad action, which is what
13 this is.

14 This -- this is a -- and it is a disturbing
15 image of a child sending a picture of herself to my
16 client. However, if the jury sees that, there is a
17 substantial risk, one, that I would argue is clearly
18 more prejudicial than probative. That they will see
19 that picture; and at that moment, make up their mind
20 that because she did that, and because he said things
21 afterwards that they find inappropriate, they would
22 take that -- this image and say, well, he did that; he
23 must have done this other thing involving a sexual
24 nature with Minor , which is what 404 (b)
25 was intended to stop. That you cannot have subsequent

1 bad acts that show conformity with what is being
2 alleged at trial.

3 There must be a Lyle exception for this to come
4 in based on that, and I don't believe the State can
5 present one. It's clearly not a common scheme or plan.
6 There's nothing common about this action, and the
7 action on trial. And there's definitely a very large
8 possibility that the jury takes one look at this and
9 makes up their mind on allegations that -- that are
10 going to be determined based on the video and the
11 testimony of the child.

12 THE COURT: Mr. Ward.

13 MR. WARD: The State would argue under *res getea*
14 that other bad acts may be admitted if they're needed
15 to aid the fact finder to understand the context in
16 which the crime occurred, in order for the fact finder,
17 the jury, to be able to understand how this crime
18 occurred. They have to know kind of how it started.
19 And it all started because the mother saw these text
20 messages and saw this picture.

21 We are not using it to show common scheme or
22 plan. And I believe -- my understanding of reading
23 some of those cases involving prior bad acts, usually
24 involves something that happened with someone other
25 than the alleged victim at the crime at trial.

1 In this case, these text messages are addressed
2 -- are a conversation between the defendant and the
3 victim, and not some other person trying to show his
4 propensity that he has done this before. But this goes
5 to show the type of relationship he had with the
6 victim, that was still ongoing through this entire time
7 period.

8 And because the victim alleges that the sexual
9 assaults occurred more than once, the jury should
10 know -- should be able to say that the defendant is
11 text messaging this nine year old these type of things,
12 and she -- in her relationship with him, where she
13 believes she can send this picture to him, is all
14 because of what has occurred up until this point, and
15 what is alleged in the indictment for this two year
16 period.

17 THE COURT: Let me ask you this: This is really
18 not very -- and this is obviously -- I'm computer
19 challenged a bit, but I see these text messages going
20 back and forth with the time period. And it just says
21 "MMS message", how can y'all authenticate when and
22 where this picture came from, and -- and that it was
23 opened or how -- how do you connect those dots?

24 MR. WARD: Correct, Your Honor. First, I would
25 say so what you're seeing here is basically a summary

1 of some of the text messages, when this -- Detective
2 Weaver from Summerville got this case, he called up
3 Verizon and filled out a preservation of records form
4 which you have to do within five days for Verizon, so
5 you can get actual contents of the text messages. He
6 did that. Unbeknownst to him at the time, I suppose,
7 you also have to separately request pictures to be
8 saved. So these messages you're seeing are preserved
9 from the defendant's cell phone.

10 When I talked to Verizon, and we plan on having
11 this Verizon person testify to this, the MMS messages
12 are just multimedia messages. And since he didn't get
13 the other preservation of pictures, we can't know for
14 sure from his records whether he actually opened up
15 this photo or not.

16 But as you can see, marked on Exhibit 2 and 3,
17 the detective did get the victim's cell phone and he
18 wasn't able to specifically download each thing from
19 the phone. But what he did was -- and I'll hand these
20 up in a second -- took pictures of the text messages of
21 the cell phone to preserve that.

22 And you can see here on Exhibits 2 and 3, as
23 stated from his records, right after the "send me an
24 updated pic", there are three messages being sent. Two
25 of them -- the first two looking -- there's an (x) by

1 them, presumably showing that it didn't go through.
2 And then a third one with a green check mark by it,
3 which we would contend was the picture that was sent.
4 And the picture that I provided to you was taken from
5 this cell phone, and it was shown to be taken at
6 approximately the same -- just a minute or two before,
7 we would contend, it was sent and received from our
8 records of the victim's cell phone at 7:00.

9 THE COURT: Anything further on that, Mr. Wehman?

10 MR. WEHMAN: Yes, Your Honor. If it please the
11 court. I believe the Solicitor told you himself, the
12 detective in charge of preserving these text messages
13 and these picture messages, did accurately -- or did
14 appropriately file what he needed to, to get the actual
15 text messages. And I have a binder full of hundreds of
16 pages of the text messages.

17 What he failed to do was preserve what he needed
18 to show what was actually opened and what was sent.
19 The Solicitor said himself that he can't show that it
20 was opened by my client, which I think is crucial in
21 this determination that the court is going to make.

22 He can't show that it was opened. All he can
23 show that it was sent. Obviously, there were two
24 failed sent message that didn't go through. And now
25 there's a third one, which he contends presumably went

1 through because of the check. He cannot show that my
2 client opened it.

3 And -- and if we are still on -- if we're still
4 on res gestea, I would, for the record, point out that
5 not only does it -- does it say that it's allowed to
6 supply the full context of the crime, first I would
7 argue this has nothing to do with the crime. He is not
8 charged with it. He couldn't -- I don't believe at
9 this time he could have been charged with it, but it's
10 certainly not in the indictment. It's not what he's
11 charged with. It's not what he's facing trial for.

12 It must be logically connected to the crime
13 charged and closely related in time to the crime
14 charged. This is two years subsequent to the crime
15 charged. It has nothing to do with that crime. It's a
16 separate crime. Whether or not the Solicitor can bring
17 an indictment for that crime, I believe is a different
18 determination for him to make.

19 And, again, as to -- I would just reiterate,
20 that presumably that it was sent and they contend it
21 was opened, is in no way authenticating that my client
22 even received this text message, which I believe
23 enhances the prejudicial nature of this evidence, and
24 dwindles the probative effect it could have if all they
25 can say to the jury is that we contend he saw it. We

1 presume that he saw it, but we can't prove that he saw
2 it. And I believe it should be excluded.

3 THE COURT: Anything further, Mr. Ward?

4 MR. WARD: Yes, briefly, Your Honor. First off, I
5 agree. We can't see from his cell phone records
6 whether he actually opened the picture or not. But
7 from these messages that are sent subsequent, I think
8 the jury can infer and it would go to the weight of the
9 evidence, not the admissibility, whether he ever saw
10 this photo or not -- photo or not, "make sure you get
11 rid of the evidence". And "all y'all need to let me
12 know who I'm talking to and nice pic". Before -- you
13 know, "before you did that, I was thinking about that".
14 That would tend to prove he saw a picture. He opened
15 up a picture. There is on those -- I can't remember
16 exactly what Court Exhibit it was, but you saw the
17 green check mark from the victim's cell phone.

18 Also, prior bad act, at this point back in 2012,
19 the defendant receiving or being in possession of a
20 photo of an underaged girl just showing her breasts,
21 was not a crime. It didn't fit under any of the sexual
22 exploitations of a minor statute. So, technically, it
23 wasn't a crime at the time. And it may be a bad act
24 under the eyes of the jury, but under the law there was
25 no crime committed when he received that picture

1 message. It was just what began the investigation into
2 this crime.

3 MR. WEHMAN: And, Your Honor, just briefly. I
4 promise it will be brief, if you'll hear one more.
5 That in direct relation to what he said, he did mention
6 messages that my client sent allegedly to this -- to
7 the victim's number in this case. He also said, "Omg,
8 you broke my phone. LOL. Really, I didn't even
9 receive anything". So, I mean, just so the court knows
10 exactly what was said, it wasn't just nice pic, we all
11 know that text messages you can't infer whether someone
12 is joking as in, nice pic, haha, I didn't really get
13 it, but nice try. I was just making the court aware of
14 that.

15 THE COURT: And did you have any other arguments?

16 MR. WEHMAN: Your Honor, I do have a catch-all.
17 It will be brief. Based on -- we can just make an
18 overall argument, that the entirety of this is more
19 prejudicial than probative. Certainly, there is
20 increased danger based on all the arguments I've made
21 before, that the jury will see this. This is clearly a
22 bad act. That's why in the actual rules, it says
23 "crimes or bad acts". The jury will infer this to be a
24 bad act. And there is an enhanced opportunity for
25 them -- or the enhanced probability that they will see

1 this, and will say that he acted in conformity, which
2 as I've laid out for the court, I believe is what these
3 rules contemplate and it's why they exist to keep these
4 types of things out.

5 We would say that this is far more prejudicial
6 than probative. The things they are relying on to keep
7 this in can be shown in other ways, and is not
8 necessary for those things to be shown, and any other
9 use of it would be conformity, Your Honor.

10 THE COURT: Mr. Ward.

11 MR. WARD: Basically, from previous arguments, the
12 State would contend that it is definitely more
13 probative than prejudicial, given the fact that this is
14 what launches the investigation into this case, and
15 ultimately leads to the forensic interview. Without
16 this evidence, there is no investigation; there is no
17 forensic interview. And we believe that it is more
18 probative than prejudicial.

19 THE COURT: Considering the text messages and
20 looking at them along with your arguments, it appears
21 that the defendant didn't ask her to send a nude photo.
22 I think we're all speculating as to why she would have
23 sent this particular photo. We don't know if the
24 defendant even opened this particular photo. I think
25 the probative value of this is outweighed by the

1 prejudicial effect on this. I think we can limit -- I
2 think you are entitled to go into that they had text
3 communications. I think the content of those, though,
4 can be excluded.

5 I think you can then tell the jury -- and we may
6 want to tweak this in the morning a little bit. On
7 further reflecting, however, you can say that the mom
8 knew that there was text communications. And based
9 upon text communications, she contacted law
10 enforcement, but don't go into the content or the
11 picture of -- of those text communications as (a),
12 they're speculative, irrelevant. And in weighing the
13 balancing factors, I think that the probative value is
14 outweighed by the prejudicial effect.

15 MR. WEHMAN: Thank you, Your Honor.

16 MR. WARD: Just -- so -- with the mother -- just
17 so I can inform her what not to say, she can't say she
18 found inappropriate text messages or anything like
19 that, just she saw text messages, and then called
20 police?

21 THE COURT: She said text messages gave her some
22 pause for concern, and she called the police. I think
23 that's about as far as you can take that without
24 opening the door to -- to something that would be more
25 prejudicial.

1 MR. WARD: Okay. Thank you, Your Honor.

2 THE COURT: Anything further at this time?

3 MR. WEHMAN: Nothing from the defense, Your Honor.

4 MR. WARD: Nothing from the State.

5 THE COURT: All right. So the jury will be here
6 at what time?

7 MR. WARD: Ten a.m.

8 THE COURT: Ten a.m. So if we -- what we can do
9 is go ahead and do the jury selection is -- I'm just
10 trying to -- schedule purposes wise obviously, we will
11 have people coming in at some point. I don't want to
12 proffer the victim's testimony while there's any chance
13 of the jury being present.

14 So what we can do is go ahead and do the jury
15 selection, opening whatever. And then if it's around
16 lunchtime before we bring the jury back, at that point
17 then we can proffer the victim's testimony, if need be
18 at that point. That way there won't be a chance that
19 any jurors would be present for that.

20 It's my understanding we're going to pick two
21 juries tomorrow?

22 MR. WARD: If we have enough jurors, I think we
23 would like to try and pick two juries.

24 THE COURT: Okay. All right. So, anything
25 further at this time?

1 MR. WARD: Nothing from the State.

2 MR. WEHMAN: Nothing, Your Honor.

3 THE COURT: Okay. We'll be at ease.

4 (WHEREUPON, the hearing was concluded.)

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1 CERTIFICATE OF REPORTER

2

3 I, SHARON D. JONES, CERTIFIED COURT REPORTER, DO
4 HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
5 AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS
6 HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE
7 CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF
8 GENERAL SESSIONS FOR DORCHESTER COUNTY, SOUTH CAROLINA,
9 ON THE 15TH DAY OF JUNE, 2015.

10 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
11 COUNSEL NOR INTEREST TO ANY PARTY HERETO.

12

13

8.30.15

14

Sharon D. Jones

15

16

SHARON D. JONES,
CERTIFIED COURT REPORTER

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1 STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
2 COUNTY OF DORCHESTER 2012-GS-18-1480,
3 2015-GS-18-0598

4 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
5 VS.)
6) JUNE 16, 2015
7 MICHAEL GENTILE) ST. GEORGE, SC

8
9 B E F O R E:

10 HONORABLE MAITÉ MURPHY, JUDGE, AND A JURY.

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

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17 Ruth L. Mott, RPR, CRR
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E X H I B I T S

NO.	DESCRIPTION	ID	EVD
STATE'S EXHIBITS			
1	PHOTOGRAPH	4	56
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1 (Judge and attorneys confer.)

2 (Lunch recess held.)

3 (States 1 through 3 and Defendant's 1 and 2 premarked
4 for identification.)

5 (State's Exhibits 4-5 premarked for identification.)

6 THE COURT: Parties ready to proceed?

7 MR. WARD: Yes, Your Honor, I think we just have a
8 couple quick things.

9 THE COURT: Sure.

10 MR. WARD: First off, on -- for the State, we wanted to
11 clarify about the text messages. We had written down
12 yesterday you said we can say text messages gave her cause
13 for concern, so she called police; is that correct?

14 THE COURT: Right.

15 MR. WARD: Okay.

16 THE COURT: And just not the content of them.

17 MR. WARD: Right. We just want to make sure we weren't
18 overstepping anything. Just want to clarify.

19 THE COURT: I appreciate that. Anything else?

20 MR. WEHMAN: Your Honor, I would have two things. At
21 this point I would make a motion to sequester the State's
22 witnesses. I understand the people that can remain in the
23 courtroom, but we would ask that the others be excused until
24 they're called to testify.

25 THE COURT: All right. Solicitor, can you take care of

1 that?

2 MR. WARD: I think, Your Honor, we have the victim in
3 here. The grandmother is not on the witness -- or she is,
4 but we're not going to be calling her, if that's okay,
5 Pierce.

6 MR. WEHMAN: If solicitor tells me she's not calling
7 her.

8 MR. WARD: Okay. And then the mother of --
9 Amanda Holsapple, she's testifying first.

10 THE COURT: And the mother of the victim would be
11 allowed to stay under the Victims' Rights Act anyway, so she
12 would be fine.

13 MR. WARD: That's all we'd have right now. And our lead
14 investigator.

15 MR. WEHMAN: Your Honor, one more thing, just a
16 clarification on when the forensic interviewer's called, I
17 would have a KROMA motion, essentially, asking you to limit
18 her going into the RATAAC or whatever procedure they have.

19 I believe, based on KROMA, they list what the forensic
20 interviewer can testify to, and I believe that -- we would
21 ask that it just be held to the time, date and circumstances
22 of the interview, essentially what she needs to do to
23 authenticate that interview to play it and any personal
24 observations that she might have had. But any mention of
25 RATAAC or the procedures that they use, we would ask that

1 those be excluded.

2 THE COURT: Solicitor?

3 MR. WARD: It would be the State's position that we're
4 not planning on qualifying the forensic interviewer as an
5 expert. The testimony she would use for RATAC is just to
6 basically give a procedural knowledge so the jury has a
7 working knowledge of how a forensic interview is conducted.

8 And I'd assume that the Defense's -- after we play the
9 forensic video, they're going to ask the forensic interviewer
10 about leading questions and why she's doing that and she's
11 not supposed to. So we should be allowed to ask or have her
12 tell the jury what procedure she is supposed to follow.

13 THE COURT: Right. And it was my understanding when we
14 discussed this in chambers that that was the agreement
15 basically that she could discuss how she conducted the
16 interview. She's not going to be qualified as an expert and
17 you would agree to redact the actual interview so it doesn't
18 show like you can -- you have to tell the truth, that type of
19 thing at the beginning; is that correct?

20 MR. WARD: That's correct. We already worked out the
21 time. And there's a few other parts in the interview -- to
22 go ahead and let the Court know -- where she does talk about
23 text messages and photos of people without clothes on that we
24 have the time frames. So we were thinking if we could start
25 the video and then the next time we have to break would be 33

1 minutes in, if we could just let the jury take a quick break
2 and we can fast-forward to where we need to go.

3 And then there's just one other break right at the very
4 end about another 30 minutes in where there's another. We'd
5 just have to fast-forward a little bit and let them finish up
6 the video.

7 THE COURT: All right. So just in case I lose track of
8 the time on the video, make sure you stop it and just give
9 me -- so I'll know.

10 MR. WARD: The Defense and I have agreed that we'll
11 start the video at 4 minutes and 35 seconds, and then it will
12 go until 33 minutes and 8 seconds or, you know, 33 minutes.
13 That's when we'll have to stop it and we will then pick up at
14 46 minutes and 10 seconds, because they take a break in
15 there, so we don't need to sit through all that.

16 And then at the very end at 1 hour 16 minutes and 15
17 seconds is the next time we'll have to take a break and just
18 skip ahead a little forward.

19 THE COURT: All right. Does that take care of
20 everything, Mr. Wehman?

21 MR. WEHMAN: And, Your Honor, just so I'm clear. I know
22 that you ruled on the RATAC. Is the forensic interviewer
23 allowed to go into the actual RATAC -- I agree that she
24 can -- I would agree that she can say that she doesn't --
25 tries not to ask leading questions. It's just based on my

1 reading of KROMA, we would argue that calling it RATAC with
2 the R stands for this, I would argue that is bolstering her
3 as following a scientific method, which that case
4 specifically precludes her from doing. It's bolstering her
5 and giving her testimony more credibility than a normal --
6 additionally, any training she might have done, I believe
7 that's expert-type material.

8 THE COURT: What's your position on that?

9 MR. WARD: We won't ask her any of her trainings or
10 certifications, just ask her where she works, ask her what
11 the time and date was for this and what the procedure she
12 follows. And she will say, "We follow the RATAC method," and
13 ask her what that stands for.

14 THE COURT: And I don't see how that's scientific,
15 Mr. Wehman. Do you have something specifically in that case
16 that says the actual protocol is scientific? I mean,
17 basically she's saying she develops rapport with the child,
18 you know, those types of things, which are the basis of how
19 she conducts the interview, not necessarily that she's an
20 expert in it.

21 MR. WARD: And the difference in this case, we don't
22 plan on have her giving any opinion to credibility or
23 anything that would bolster that testimony.

24 THE COURT: Right.

25 MR. WARD: We're just having her testify to the

1 procedure she followed, how they conducted the interview, not
2 to bolster her opinion of the witness's credibility.

3 MR. WEHMAN: And just for the record, you know, if you'd
4 like, I can read this to you or pass it up to you.

5 THE COURT: Either way.

6 MR. WEHMAN: And this is from KROMA. This is from
7 footnote 4 from that KROMA case. And in that the court says
8 that "The RATAC style of interviewing is not scientific. It
9 merely represents the objectives and topics of discussion
10 between the interviewer and the child."

11 And then the court goes on: "Somehow RATAC" -- which is
12 RATAC -- "is supposed to convert the interviewer into a human
13 truth detector, who's opinions of the truth are valuable and
14 suitable for the jury's consumption."

15 The court goes on later on in their opinion, and it
16 says, "Part of the RATAC method, which is not without its
17 critics, involves evaluating whether the victim understands
18 the importance of telling the truth and whether the victim
19 has told the truth as well as the forensic interviewer's
20 judgment in determining what actually transpired," which I
21 believe those are inappropriate.

22 I'm fine with the interviewer going over that she
23 instructs the child not to -- or she doesn't ask leading
24 questions, but any of the -- the rest of it, I believe, is
25 inappropriate and I believe that's what the court considered.

1 THE COURT: Well, I think what it's saying there is you
2 don't give it a terminology as a scientific method of
3 conducting an interview, but I think she can go into the --
4 and that states that she can go into the objectives of the
5 interview is to not ask leading questions. And so basically
6 it's the same thing. She's just not calling it a RATAAC. Is
7 that what you're asking?

8 MR. WEHMAN: Yes, Your Honor, I would just -- my
9 objection would be to the method itself being identified. I
10 believe the court is basically saying what you are saying,
11 that the naming it RATAAC and R stands for this and that, that
12 gives it some sort of scientific credibility. If she just
13 goes into yes, I don't ask leading questions, that's fine.

14 THE COURT: I think that's the basis of how she conducts
15 her interview. So, Solicitor, maybe you can just have her
16 not name it RATAAC, just go "How do you conduct your
17 interviews?"

18 MS. MIMS: Thank you, Your Honor.

19 THE COURT: It has to be objective of the interviews,
20 you know, obviously to access information and gain
21 information but not label it as a specific method.

22 MS. MIMS: Yes, Your Honor.

23 MR. WARD: We'll let her know real quick.

24 THE COURT: Okay.

25 MS. MIMS: Do you mind, Your Honor?

1 THE COURT: No, that's fine.

2 (Brief pause.)

3 MS. MIMS: Thank you, Your Honor.

4 THE COURT: All right. Anything else before we bring
5 our jury in?

6 MR. WARD: Your Honor, just the Defense's witnesses
7 aren't sequestered. I don't know if we made a reciprocal
8 request. Besides that, we're ready.

9 THE COURT: Any witnesses?

10 MR. WEHMAN: And, Your Honor, at this point, based on
11 the pretrial ruling that you made, the only potential witness
12 is Mr. Gentile's mother. And based on your pretrial ruling,
13 we would not intend to call her in this case.

14 THE COURT: Well, if she remains, obviously she would be
15 subject not to being called, so that's your call. If she
16 wants to stay she can stay.

17 MR. WEHMAN: Yes, Your Honor. We would intend to take
18 her off the list.

19 THE COURT: All right. Anything further?

20 MR. WARD: We're ready, Your Honor.

21 THE COURT: Let's have our jury, please.

22 (The jury enters the courtroom at 2:21 p.m.)

23 THE COURT: Welcome back, ladies and gentlemen of the
24 jury. We're now about to begin the trial of the case of the
25 State of South Carolina versus Michael Edward Gentile. I

And while living in this small apartment, sometimes

1 Minor and her brother were left alone with Michael Gentile
2 when mom had to go to work or when mom had to run errands or
3 when mom had to go to the grocery store. And sometimes
4 during those moments when she was left alone, bad things
5 would happen.

6 You see, this apartment was set up with two bedrooms and
7 one bathroom, and the bathroom was located in the master
8 bedroom. That's where Michael Gentile slept. So did Amanda,
9 Minor 's mother.

10 So sometimes when Minor was home alone with
11 Michael Gentile and she needed to take a shower or she had to
12 go to the bathroom, she would be in Michael's bedroom. And
13 sometimes when she came out, she was sexually assaulted by
14 Michael Gentile.

15 Finally on September the 1st of 2012, her mom, Amanda,
16 is up late and she's cleaning the house and she notices her
17 daughter's phone and she picks it up and looks at it like all
18 mothers sometimes do and she sees some things that give her
19 cause for concern and she calls the police.

20 Within a couple of weeks, Minor goes through a
21 forensic interview, and during that forensic interview she
22 discloses that she has been sexually assaulted by
23 Michael Gentile. The police charge him and that's why we're
24 all here today.

25 Ladies and gentlemen, my name is Sheila Mims. I'm an

1 assistant solicitor here in Dorchester County. Myself along
2 with assistant solicitor Kyle Ward are here today on behalf
3 of the State of South Carolina in our case against
4 Mr. Michael Gentile. He's been charged with two counts. And
5 I'm going to go over this very briefly with you, but he's
6 been charged first with criminal sexual conduct with a minor
7 in the first degree.

8 Criminal sexual conduct is when a person engages in
9 sexual battery with a victim and that victim is less than 11
10 years old. A sexual battery is sexual intercourse or any
11 intrusion, however slight, of any part of a person's body or
12 any object into the genital or anal openings of another
13 person's body.

14 Again, Minor was between the ages of 7 and
15 9 years old when Michael lived in her home. A lewd act upon
16 a child under the age of 16 is when a person committed or
17 attempted a lewd or lascivious act on a child under the age
18 of 16 with the intent to arouse, appeal or gratify their
19 lust, passions or sexual desires of the defendant or of the
20 child.

21 Now, the State has the burden of proving to you beyond a
22 reasonable doubt that Michael Gentile committed these
23 offenses, and I submit to you that's a burden we gladly
24 accept. We're going to prove our case to you mainly from
25 right here, from the witness stand. You're going to hear

1 from Minor herself. She's now a 12-year-old
2 little girl. She's going to get up and talk to you about
3 what happened when she was living with Mr. Gentile.

4 Please keep in mind that Minor is now 12, but this
5 happened between the years of 2010 and 2012 when she was
6 between the ages of 7 and 9. Thanks to technology, you're
7 going to be able to see 9-year-old Minor as well. We have
8 the forensic interview that was conducted and you're going to
9 be able to see what Minor had to say when she was 9 years
10 old.

11 Also please keep in mind that unlike maybe some other
12 cases or something else you may have heard of on TV, in this
13 case, when you're dealing with a child sexual abuse charge,
14 you don't have to have corroboration of what the victim tells
15 you. If you believe what Minor tells you on this witness
16 stand, if you believe the forensic examination, that alone --
17 if you believe that beyond a reasonable doubt, that alone
18 would be enough for you to find Michael Gentile guilty.

19 You're also going to be able to hear from Minor's
20 mother, Amanda. You're going to hear from her brother.
21 They're going to talk to you about what they saw or what they
22 observed during the time of 2010 to 2012.

23 So I ask that you pay close attention to everything you
24 hear and everything you see, and I think the evidence will
25 show you that Michael Gentile is guilty of these offenses.

1 Thank you.

2 THE COURT: Counsel.

3 MR. WEHMAN: Thank you, Your Honor. May it please the
4 Court.

5 THE COURT: Yes, sir.

6 MR. WEHMAN: Solicitors. Sounds bad, doesn't it?
7 Sounds very, very bad. Ms. Mims just delivered a very clear,
8 articulate, concise summary of the facts that she has just
9 promised you she'll present to you.

10 She made you a lot of promises. She promised that she
11 would prove beyond a reasonable doubt a couple of things:
12 One, this indictment for criminal sexual conduct with a minor
13 in the first degree, and she briefly went over the elements
14 of that crime. She also has promised you that she will prove
15 beyond a reasonable doubt lewd acts upon a minor, which she
16 went over the elements of with you.

17 I'm only going to make you one promise, just one. By
18 the end of this case, you are going to be firmly convinced
19 that the State has not met its burden. And they've already
20 started to tell you right now.

21 On March 7th, 2013, this indictment for criminal sexual
22 conduct with a minor in the first degree was true billed by
23 the grand jury of Dorchester County. Detectives in this case
24 identified the correct charge. And since that day, the
25 solicitor's office, with detectives, have been preparing for

1 trial for criminal sexual conduct first degree. And as the
2 solicitor said, that charge involves penetration of a minor
3 under an appropriate age.

4 But on the eve of trial, June 4th, 2015, just a few days
5 ago, the solicitor and detectives took another indictment to
6 the grand jury, and that indictment, as she said, is lewd
7 acts on a child, which basically amounts to we can prove
8 beyond a reasonable doubt that Michael Gentile assaulted
9 Minor by means of penetration, but in the same
10 breath, if we can't, we can prove that he didn't do that,
11 that there was nonconsensual touching. They're telling you
12 right away they don't know what happened.

13 Now, I know the situation you find yourselves in. This
14 is an uncomfortable case. I'm not going to hide from it.
15 The subject matter is very uncomfortable. And you took an
16 oath, took an oath to be fair, to listen to the law as
17 applied to you.

18 And I'm confident that you're going to achieve that.
19 I'm confident that once you hear the evidence in this case,
20 you will deliver a verdict based on the law. You will be
21 fair and impartial and you will come up with the appropriate
22 decision in this case, but I can't say that I expect you at
23 this moment not to be uncomfortable, because it's a fact.
24 It's a fact.

25 You're going to hear from Minor , as the solicitor

1 said, and you're going to see the interview she gave. And I
2 agree with the solicitor. If you believe the interview that
3 she gives around three years ago, you have an action that you
4 can take. You can find Mr. Gentile guilty. But pay
5 attention. Pay attention to the interview.

6 I agree; three years is a long time to remember exactly
7 what happened, but pay attention to that interview. That
8 interview is the first time Minor tells
9 detectives, tells law enforcement, tells the solicitor's
10 office exactly what happens. Pay attention. At the end of
11 that, I can guarantee that you will come back with a verdict
12 of not guilty.

13 Ladies and gentlemen, I'll be brief. You're going to
14 hear from all the witnesses. You're going to see all the
15 evidence. The State has promised to leave you convinced
16 beyond a reasonable doubt, when instead I believe you will
17 leave this case, leave this room, come back with a verdict
18 finding yourselves utterly and completely confused. Thank
19 you.

20 THE COURT: Solicitor, you may call your first witness.

21 MR. WARD: State calls Amanda Holsapple.

22 AMANDA MARIE HOLSAPPLE,
23 being first duly sworn, was examined and testified as
24 follows:

25 DIRECT EXAMINATION BY MR. WARD:

1 Q. Good afternoon, Ms. Holsapple. How are you?

2 A. I'm good, I guess.

3 Q. If you don't mind me asking, how old are you?

4 A. 34.

5 Q. And where are you currently living?

6 A. Tennessee.

7 Q. Are you currently married?

8 A. No.

9 Q. Do you have any children?

10 A. Yes.

11 Q. How many?

12 A. Four.

13 Q. And what are their names and ages?

14 A. Minor , 12; A.H. , 9; Al.H. , 4; and C.H. , 1.

15 Q. And you said you're living in Tennessee?

16 A. Yes.

17 Q. And are you employed?

18 A. Yes.

19 Q. Where are you working currently?

20 A. Southwestern Advantage. I think that's what it's
21 called.

22 Q. And what do you do there?

23 A. Customer service.

24 Q. Have you lived anywhere -- where did you live before
25 Tennessee?

1 A. In Summerville, South Carolina.

2 Q. And do you remember the address you lived at?

3 A. . I think it was apartment .

4 Q. And what county is that in?

5 A. Dorchester.

6 Q. How did you originally meet the defendant in this case?

7 A. Through mutual friends on Facebook.

8 Q. Okay.

9 A. Because we went to school together.

10 Q. When did you two go to school together?

11 A. Well, I went to school at Stratford between '95 and '99,
12 so I guess the same years. I don't know.

13 Q. Okay. And once you guys connected through Facebook, did
14 you guys start dating right away or kind of how did that
15 progress?

16 A. Just talking and then started dating.

17 Q. And about what time -- do you remember the year you guys
18 started dating?

19 A. It was May of 2010.

20 Q. Did he ever live with you?

21 A. Yes.

22 Q. Do you remember approximately when he moved in with you?

23 A. Not specifically. May or June maybe of that same year,
24 I don't know.

25 Q. So sometime in the summer of 2010?

1 A. Yes.

2 Q. Okay. And that was at the apartment you stated?

3 A. Yes.

4 Q. And at that time, who was all living with you in the
5 apartment?

6 A. Before or after?

7 Q. Once he moved in.

8 A. It was myself, him, and my daughter Minor and my son

9 A.H.

10 Q. Could you describe the apartment a little bit?

11 A. It was just a two-bedroom/one-bath apartment.

12 Q. And where was the bathroom located?

13 A. Like right outside of the -- the -- like towards the end
14 where the master bedroom was.

15 Q. Okay. At that time were you employed? About when
16 Mr. Gentile moved in, were you working at that time?

17 A. Yes.

18 Q. Where were you working then?

19 A. At Fast Phones.

20 Q. What is that?

21 A. It was a home landline telephone service place.

22 Q. And what were your hours you worked?

23 A. 9 a.m. to 6 p.m.

24 Q. And during those hours, was the defendant at home?

25 A. Yes.

1 Q. So he was in charge of watching Minor and A.H. ?

2 A. Yes.

3 Q. Was he working at the time?

4 A. Yes.

5 Q. Do you remember where he was working?

6 A. He worked through a company called Barton Security or
7 Barton Allied Security, something like that.

8 Q. And when did he go to work?

9 A. 6 p.m. to 6 a.m.

10 Q. So you two would switch?

11 A. Yes.

12 Q. When the defendant moved in, how did he get along with
13 Minor ?

14 A. It looked fine to me.

15 Q. Okay. Let's turn your attention to August 31st of 2012.

16 A. Okay.

17 Q. Do you remember what you were doing that early evening?

18 A. I had went out to dinner with my mom and her husband.

19 Q. Where was the defendant at the time?

20 A. He was driving a truck, so he was on the road.

21 Q. Who was at your apartment at the time?

22 A. My oldest daughter, Minor ; my son, A.H. ; and my
23 daughter, A.H. . And they were all being watched by the
24 defendant's mom and the defendant's oldest daughter.

25 Q. And back in 2012, how old would Minor have been?

1 A. I don't know.

2 Q. Okay. You were out to dinner. What -- do you remember
3 about what time you got home?

4 A. 10 or 11.

5 Q. And when you got home, was Minor and A.H. asleep?

6 A. I don't remember.

7 Q. Did you stay up after they eventually went to bed?

8 A. Yes.

9 Q. And at that point did you see Minor 's phone laying
10 around?

11 A. It was on the couch next to me.

12 Q. And you went through the phone that night?

13 A. Yes.

14 Q. Her phone?

15 A. Yes.

16 Q. And once you went through it, you saw some things that
17 concerned you, correct?

18 A. Yes.

19 Q. And after you saw that, you called police?

20 A. Yes.

21 Q. So the police came out that night. About what time did
22 they arrive that evening or morning?

23 A. 2 a.m.

24 Q. So this would have been 2 a.m. September 1st?

25 A. Yes. By that time, yes.

1 Q. Okay. And you spoke with a police officer at that
2 point?

3 A. Yes.

4 Q. Do you remember did Minor speak with the officer that
5 night as well?

6 A. Yes. I actually waited for the officer to get there
7 before I even woke her up.

8 Q. Okay. And then after you spoke with the police officer
9 that night, did a detective ever come and speak with you?

10 A. Yes. I don't remember when, but yes.

11 Q. Sometime after that initial contact with law
12 enforcement?

13 A. Yes. Maybe a week later.

14 Q. Okay. And what did he advise that you do or -- when you
15 spoke with the detective?

16 A. They were going to set up a forensic interview for her
17 to have.

18 Q. And that was for Minor ?

19 A. Yes.

20 Q. And did you end up taking Minor to a forensic
21 interview?

22 A. Yes.

23 Q. And that was at the Dorchester Children's Center?

24 A. Yes.

25 Q. At the Dorchester Children's Center, after Minor

1 spoke with people at the children's center, was there
2 anything that you had to do with her, with Minor ?

3 A. Right after we got done, we had -- I had to either take
4 her to this inpatient place or she had to go by ambulance,
5 but she had to go right then and there.

6 Q. Do you remember the reason for that?

7 A. Suicidal thoughts and tendencies.

8 Q. During your relationship with the defendant, were you
9 two sexually active?

10 A. Yes.

11 Q. I'm showing you what's been marked Exhibits 1 and 2. Do
12 you recognize those?

13 A. Yes.

14 Q. And what are they pictures of?

15 A. Of myself.

16 Q. Okay. And are these pictures a fair and accurate
17 representation of when these were taken, when these were
18 taken?

19 A. Yes.

20 MR. WARD: At this time, Your Honor, we'd ask for
21 State's Exhibits 1 and 2 to be admitted into evidence.

22 THE COURT: Any objection?

23 MR. WEHMAN: No objection, Your Honor.

24 THE COURT: They're in.

25 (State's Exhibits 1-2 admitted into evidence.)

1 MR. WARD: May I publish?

2 THE COURT: You may.

3 Q. Showing you State's Exhibit 1, this is a picture of you?

4 A. Yes.

5 Q. And who took this picture?

6 A. The defendant did.

7 Q. What did he -- what did he use to take the picture?

8 A. A digital camera.

9 Q. Okay. Did he ask to put the blindfold on you?

10 MR. WEHMAN: Objection, Your Honor. May we approach?

11 THE COURT: Sure.

12 (Judge and attorneys confer off the record out of the
13 presence of the jury.)

14 Q. Was it his idea for you to put the blindfold on?

15 A. I believe so.

16 Q. And was it his idea for you to have your hair in
17 pigtails?

18 A. Yes.

19 Q. And you stated he took these photographs on his camera?

20 A. Yes.

21 Q. Where did he keep that camera?

22 A. I don't remember.

23 Q. He didn't just leave it --

24 MR. WEHMAN: Objection, Your Honor. Leading.

25 THE COURT: Please rephrase.

1 Q. You can't remember where he left it? Did he ever just
2 leave it sitting out?

3 MR. WEHMAN: Objection, Your Honor. Leading.

4 THE COURT: Please rephrase.

5 Q. Are you aware -- did you ever see Minor with his
6 camera?

7 A. No.

8 MR. WARD: No further questions. Please answer any the
9 Defense may have.

10 THE COURT: Cross-examination.

11 MR. WEHMAN: Your Honor, I have no questions for this
12 witness.

13 THE COURT: Ma'am, you may step down. Thank you.

14 You may call your next witness.

15 MS. MIMS: State would call Minor

16 Minor

17 being first duly sworn, was examined and testified as
18 follows:

19 DIRECT EXAMINATION BY MS. MIMS:

20 Q. Minor, could you please tell the jury how old you
21 are.

22 A. I am 12.

23 Q. And what grade are you going into?

24 A. Seventh.

25 Q. And do you have any brothers or sisters?

- 1 A. Yes.
- 2 Q. How old are they?
- 3 A. 9, 4 and 1.
- 4 Q. Okay. And who -- can you tell me where you live right
5 now?
- 6 A. I live in Tennessee.
- 7 Q. And who do you live with in Tennessee?
- 8 A. My mother and my brothers and my sister.
- 9 Q. Okay. Now, do you remember where you might have lived
10 before you went to Tennessee?
- 11 A. Yes.
- 12 Q. Where did you live before that?
- 13 A. In Summerville, South Carolina.
- 14 Q. Do you remember how old you were when you lived in
15 Summerville?
- 16 A. 8.
- 17 Q. Okay. Was it just one year or was it a couple of years?
- 18 A. I think it was a couple.
- 19 Q. Okay. And do you remember who was living with you when
20 you lived in South Carolina?
- 21 A. Yes.
- 22 Q. Who?
- 23 A. The defendant and my mom and my brothers -- I mean my
24 brother and my sister.
- 25 Q. Okay. And can you tell me the defendant's name?

1 A. Michael.

2 Q. Okay. And did you like Michael?

3 A. Yes.

4 Q. Okay. Did you get along with Michael okay?

5 A. Yes.

6 Q. Okay. Was there ever a time when you didn't like
7 Michael?

8 A. Kind of.

9 Q. Okay. Can you tell the jury why you didn't like Michael
10 sometimes?

11 A. Because I just knew there was something wrong. I just
12 didn't feel right.

13 Q. Okay. Were there ever times that you were alone with
14 Michael?

15 A. Yes.

16 Q. Okay. Can you tell me about some of those times?

17 A. Well, we were in the bedroom and it was locked.

18 Q. Okay. Were you in the bedroom with Michael?

19 A. Yes, ma'am.

20 Q. Okay. Were the two of you alone?

21 A. Yes.

22 Q. Okay. Was anybody else in the house?

23 A. Yes, my brother, but he was playing Wii.

24 Q. Okay. And he wasn't inside the bedroom?

25 A. No.

1 Q. And I'm sorry. You probably said this. Was the bedroom
2 door locked?

3 A. Yes.

4 Q. Okay. Did you lock it?

5 A. No.

6 Q. Did he lock it?

7 A. Yes, ma'am.

8 Q. Okay. Can you tell me what happened when you were
9 locked in the bedroom?

10 A. He touched me in my places and did a lot of things.

11 Q. Okay. In places?

12 A. Yes.

13 Q. Minor , I'd like to show you what's been marked as
14 State's Exhibit No. 4.

15 MS. MIMS: Just for demonstration purposes, Your Honor.

16 Q. Minor can you see that on your screen?

17 A. Kind of, yes.

18 Q. Can you tell me what that's a picture of?

19 A. Of a little girl.

20 Q. Does she have her clothes on?

21 A. No.

22 Q. You were just talking to the jury about what happened
23 when you were locked -- when you were in the room with
24 Michael alone. Can you tell the jury whether he touched you?
25 Can you point on that screen with your finger where he

1 touched you or maybe circle it?

2 A. Right there and right there, right there (indicating).

3 Q. Okay. So did he -- you're indicating -- did he touch
4 you on your vagina?

5 A. Yes.

6 Q. Okay. And did he touch you on your breast?

7 A. Yes.

8 Q. Were your clothes on?

9 A. Sometimes.

10 Q. Okay. Were your clothes ever off?

11 A. Yes.

12 Q. Okay. So sometimes when your clothes were off, did he
13 touch you in those two places?

14 A. Yes, ma'am.

15 Q. Okay. I'm going to show you what's been marked as
16 State's Exhibit No. 5. Can you tell me what this is a
17 picture of, Minor ?

18 A. A boy.

19 Q. Okay. And does he have his clothes on or off?

20 A. Off.

21 Q. Okay. And can you tell me or tell the jury when you
22 were in the room with Michael and he touched you in those
23 places, can you tell the jury, if he touched you, what he
24 touched you with?

25 A. With his hands and his other.

1 Q. Can you circle the other?

2 A. Yes (indicating).

3 Q. Did you circle his penis?

4 A. Yes, ma'am.

5 Q. Minor , when that happened, were your eyes open? Were

6 you able to see what was happening?

7 A. Sometimes.

8 Q. Were your eyes ever closed?

9 A. Yes.

10 Q. Okay. Was anything on your eyes?

11 A. A blindfold.

12 Q. A blindfold? Did you put it on your eyes?

13 A. Uh-uh.

14 Q. Who put it on your eyes?

15 A. The defendant.

16 Q. Okay. Mr. -- did Michael Gentile put it on your eyes?

17 A. Yes, ma'am.

18 Q. Do you remember the color of the blindfold?

19 A. I think it might have been blue.

20 Q. Okay. Did he always put a blindfold on?

21 A. Sometimes.

22 Q. Okay. Sometimes not?

23 A. Yes.

24 Q. Okay. Minor , did you ever -- do you remember ever

25 going through Michael's camera?

1 A. No, ma'am.

2 Q. Do you remember anything like that?

3 A. (Shaking head.)

4 Q. Do you remember ever going through his phone or anything
5 that belonged to him like that?

6 A. No, ma'am.

7 Q. Okay. Minor , do you see Michael Gentile in the
8 courtroom?

9 A. Yes, ma'am.

10 Q. Okay. Can you point to him?

11 A. (Indicating.)

12 Q. Can the record please reflect that

13 Minor has identified the defendant as
14 Michael Gentile.

15 Is Michael Gentile the person who touched you?

16 A. Yes, ma'am.

17 MS. MIMS: I have no further questions, Your Honor.

18 Please answer any questions for Mr. Wehman, okay?

19 CROSS-EXAMINATION BY MR. WEHMAN:

20 Q. Hi, Minor . My name is Pierce, okay? And I'll make
21 you a promise. I'm going to try to ask you simple questions,
22 okay? If you don't understand me, just say you don't
23 understand and I'll try again, okay?

24 A. Okay.

25 Q. And you answer my questions and we'll get through this

1 as quickly as we can. Is that a deal?

2 A. Deal.

3 Q. All right. So how old are you?

4 A. 12.

5 Q. 12. Okay. And where did you say you lived again?

6 A. Tennessee.

7 Q. What part of Tennessee?

8 A. Hermitage.

9 Q. Do you like it in Tennessee?

10 A. Yes, sir.

11 Q. Okay. And how old were you in 2012? Do you remember?

12 A. No.

13 Q. Okay. Do you think you were 9 years old back then?

14 A. Maybe.

15 Q. Maybe. Okay. Do you remember going to the Dorchester

16 County Children's Center in 2012?

17 A. Kind of.

18 Q. Kind of, okay. Do you remember talking to them a little

19 bit?

20 A. Kind of, yes.

21 Q. Okay. And when you talked to them, they asked you a lot

22 of questions, didn't they?

23 A. Yes, sir.

24 Q. You even told them that, when they were asking, that

25 "You're asking me a lot of questions," didn't you?

1 A. Yes.

2 Q. When they asked you all those questions, did you try to
3 be truthful with them?

4 A. Yes.

5 Q. You didn't have any reason to lie to them?

6 A. No, I did not.

7 Q. Okay. Now, you just described some things to the jury.
8 When the things that you described happened, did Mike ever
9 talk to you?

10 A. No.

11 Q. He didn't? He didn't say things to you?

12 A. (Shaking head.)

13 Q. No? Okay.

14 But you said he put a blindfold on you, right?

15 A. Yes.

16 Q. Okay. You said it was blue?

17 A. Yes.

18 Q. Did you ever try to take it off?

19 A. No.

20 Q. No? Okay.

21 Do you remember having A.H. try to take it off at any
22 time?

23 A. No.

24 Q. You don't remember that? Okay.

25 So there wasn't a time when you were scared and tried to

1 get out the door and A.H. tried to take it off for you?

2 You don't remember that? You don't remember talking to

3 the --

4 A. I don't remember.

5 Q. I'm sorry. Go ahead.

6 A. I don't remember.

7 Q. You don't remember? Okay. That's okay.

8 Now, when you were talking to Ms. Sheila, you said that

9 sometimes your clothes were on when this happened?

10 A. Yes, sir.

11 Q. And sometimes they were off, right?

12 A. Yes, sir.

13 Q. Okay. Now, since 2012 a long time has passed, hasn't
14 it?

15 A. Yes, sir.

16 Q. And you've had to talk of this with a bunch of people?

17 A. Yes.

18 Q. Did you have to talk to the solicitors over there?

19 A. Yes, sir.

20 Q. And you had to talk to police officers?

21 A. Yes, sir.

22 Q. And every time someone asked you about it, you tried to
23 tell them the truth as best you could remember it, right?

24 A. Yes.

25 Q. Because it's been a long time. What grade are you in

1 now?

2 A. Seventh.

3 Q. Seventh grade? And what's your favorite subject in
4 school?

5 A. P.E.

6 Q. I agree. My favorite subject was P.E.

7 MR. WEHMAN: I'm sorry, Your Honor. That wasn't a
8 question.

9 Q. Now, you said that sometimes when this happened your
10 brother would be home, but he was locked out, right?

11 A. Yes, sir.

12 Q. Okay. And you said he was playing the Wii?

13 A. Yes, sir.

14 Q. Did you play the Wii a lot at home?

15 A. Kind of.

16 Q. Did you like playing it? Was it fun?

17 A. Yes.

18 Q. And you said when you were talking to Ms. Sheila that he
19 touched you in the upper region, right?

20 A. Yes, sir.

21 Q. And what -- did you call it something? What did you
22 call it?

23 A. I don't remember.

24 Q. That's fine. That's what I want to know. If you don't
25 remember, that's okay.

1 But you said he touched you on your breasts at that
2 time?

3 A. Yes, sir.

4 Q. Okay. Okay. Now, let me ask you about your old house,
5 okay? There was only one bathroom, right?

6 A. Yes, sir.

7 Q. Now, where was that bathroom? Was it -- you tell me.

8 A. It was like right beside the master bedroom.

9 Q. Okay. So you didn't have to go in the bedroom to get to
10 the bathroom?

11 A. No, sir.

12 Q. Okay. But you told the forensic interviewer that your
13 clothes were in your mom's bedroom?

14 A. Yes, sir.

15 Q. And where did you sleep?

16 A. I slept in the bedroom right beside them.

17 Q. Okay. Did A.H. share that bedroom.

18 A. Yes, sir.

19 Q. And you had a younger sister at the time, correct?

20 A. Yes.

21 Q. What was her name?

22 A. A.H.

23 Q. Now, when -- at that time when you were in fourth grade,
24 did you need help to take baths?

25 A. No.

1 Q. No one ever had to wash your hair? No? You did it
2 yourself?

3 A. Yes.

4 Q. Okay. What about your brother, did he need help?

5 A. No.

6 Q. How old's your brother now?

7 A. 9.

8 Q. 9? Does your brother get in trouble?

9 A. No.

10 Q. No.

11 MR. WEHMAN: Court's indulgence, Your Honor.

12 (Defendant and attorney confer.)

13 Q. All right, Minor. I just have a few more questions
14 for you, okay, and then I'll be finished.

15 A. Okay.

16 Q. Now, when this happened, okay, you said that sometimes
17 your clothes came off, right?

18 A. Yes, sir.

19 Q. Okay. How did it happen? What happened?

20 A. Like he used to touch me and blindfold me and I don't
21 exactly remember details. That's all I remember.

22 Q. Okay. So you don't remember the details anymore?

23 A. No, sir.

24 Q. Because it was a long time ago, right?

25 A. Yes, it was a long time ago.

1 Q. Do you think you remembered the details better when you
2 were talking to the people at the children's center?

3 A. Yes.

4 Q. Because it was closer to the time that you said it
5 happened, right?

6 A. Yes.

7 Q. Okay. Now, the times that he wouldn't blindfold you, do
8 you remember how his clothes got off?

9 A. I don't know.

10 Q. You don't know? Okay. So you don't remember much about
11 all that, do you?

12 A. No.

13 MR. WEHMAN: Thank you, Your Honor. I have no further
14 questions.

15 THE COURT: Any redirect?

16 MS. MIMS: Very quickly, Your Honor.

17 REDIRECT EXAMINATION BY MS. MIMS:

18 Q. Very, very quickly, Minor. You just mentioned that
19 when the defendant touched you, sometimes you were
20 blindfolded, right?

21 A. Yes, ma'am.

22 Q. Okay. When he touched you, did it ever hurt?

23 A. Sometimes.

24 Q. Okay. And Minor, you mentioned that you've talked to
25 a lot of people about this, but is this really the first time

1 you've opened up today about everything?

2 A. Well, kind of.

3 Q. Okay. That you remember?

4 A. Yes.

5 MS. MIMS: Okay. I have no further questions. Thank
6 you, Your Honor.

7 THE COURT: Minor, you may step down, honey.

8 You may call your next witness.

9 MR. WARD: One moment, Your Honor. Sorry, Your Honor,

10 A.H.

11 A.H.

12 being first duly sworn, was examined and testified as
13 follows:

14 DIRECT EXAMINATION BY MR. WARD:

15 Q. Hi, A.H. How you doing?

16 A. Good.

17 Q. Nervous? Remember, this nice lady right here, she has
18 to type down everything that's said, so you can't just shake
19 your head. You've got to say "yes" or "no," okay?

20 A. Yes.

21 Q. Okay. A.H., how old are you?

22 A. 9.

23 Q. And where do you live right now?

24 A. Tennessee.

25 Q. And who do you live with?

1 A. My mom.

2 Q. Does anyone else live with you?

3 A. (Shaking head.)

4 Q. Minor doesn't live with you?

5 A. She does.

6 Q. Okay. What grade are you in in school?

7 A. Fourth.

8 Q. What's your favorite subject?

9 A. Math.

10 Q. Math? Have you lived anywhere else besides Tennessee?

11 A. South Carolina.

12 Q. And did anyone else live with you when you were here in

13 South Carolina?

14 A. No.

15 Q. Mr. Michael Gentile never lived with you here in South

16 Carolina?

17 MR. WEHMAN: Objection, Your Honor. Leading.

18 THE COURT: If you can just rephrase as to whether or

19 not.

20 MR. WARD: Yes, Your Honor.

21 Q. Do you remember whether or not Michael ever lived with
22 you?

23 A. He did.

24 Q. Okay. And were there times where -- do you remember

25 whether or not Michael would ever be home with just you and

1 Minor ?

2 A. Yes.

3 Q. Yes? Was it because your mom was at work?

4 A. Yes.

5 Q. Do you remember if there were any times where you were
6 not in the same room as Michael and Minor ?

7 A. Yes.

8 Q. Yes? Do you remember what room they were in?

9 A. No.

10 Q. Were you able to go into the room they were in?

11 A. No.

12 Q. Why not?

13 A. I don't know.

14 Q. Don't know? Okay. Did you ever try going into the
15 room?

16 A. No.

17 Q. Were you told you couldn't go in the room?

18 A. No.

19 MR. WARD: Thank you, A.H. . No further questions.

20 THE COURT: Any questions?

21 MR. WARD: Hold on. You may have to answer a couple for
22 the Defense real quick. Sorry, buddy.

23 MR. WEHMAN: No, Your Honor, I have no questions for
24 this witness:

25 THE COURT: You may step down, A.H. . Thank you.

1 Call your next witness.

2 MS. MIMS: Thank you, Your Honor. The State would call
3 Helen Usher.

4 HELEN USHER BOYLE,
5 being first duly sworn, was examined and testified as
6 follows:

7 DIRECT EXAMINATION BY MS. MIMS:

8 Q. Good afternoon, Ms. Usher.

9 A. Hi. It's actually Mrs. Boyle.

10 Q. I'm so sorry.

11 A. That's okay. I got married in between.

12 Q. I'm so sorry. Ms. Boyle, can you please tell the jury
13 where you're employed?

14 A. I work for Dorchester Children's Center in Summerville,
15 South Carolina.

16 Q. And how long have you worked there?

17 A. Three and a half years.

18 Q. And what do you do at the Dorchester County Children's
19 Center? What's your job?

20 A. I am a forensic interviewer and I'm also a child and
21 family therapist.

22 Q. Okay. And what does a forensic interviewer do?

23 A. Forensic interviewer conducts interviews when there have
24 been allegations of abuse or neglect with children.

25 Q. And exactly what is a forensic interview?

1 A. It is a fact-finding interview process. We ask
2 non-leading questions to assess if there has been abuse or
3 neglect.

4 Q. And so you ask, you don't ask point-blank questions; am
5 I right about that, or do you just --

6 A. Right. We're not to bring in outside information.
7 We're supposed to give this child an opportunity to tell if
8 something has or hasn't happened in their own words.

9 Q. Okay. I got you. So what you mean by leading
10 questions -- can you explain leading questions?

11 A. If I had outside information and I said, "I read
12 somewhere that this -- something happened to you; is that
13 true?" That would be -- that would be bringing in outside
14 information or leading them.

15 Q. Okay. So you do not do that?

16 A. No.

17 Q. Okay. And can you tell me about these examinations?
18 How are they performed? What, where are you when they're
19 performed?

20 A. We are -- we have forensic interview rooms and it's just
21 a small room with two comfortable chairs. There's a flip
22 chart in the middle so that I can write things as we're
23 talking. And there are no decorations or toys or anything in
24 the room. It's very nondescript so that the child will --
25 you know, that you and the child can talk. It's audio --

1 there's audio and video.

2 I have papers by my side with anatomical diagrams that
3 may be used in the interview, and there's also a crate that's
4 sealed that has anatomical dolls if they need to be used for
5 the interview.

6 Q. Now, just to be clear, do you work for law enforcement?

7 A. No.

8 Q. Let me ask you this: As you're interviewing children --

9 MS. MIMS: May I approach the witness, Your Honor?

10 THE COURT: You may.

11 Q. I'd like to show you what's been marked as State's
12 Exhibit No. 4 and 5.

13 MS. MIMS: I've shown them to Defense counsel, Your
14 Honor.

15 Q. Do you recognize those?

16 A. Yes.

17 Q. Can you explain to the jury what these are?

18 A. Yes. These are what we call anatomical diagrams, and
19 when we are asking children so that we're non-leading about
20 sexual abuse, we ask them to label the body parts so that we
21 could have a common language of what they call the body parts
22 and so I'm not introducing a name that they don't know or
23 something they don't know.

24 And then I can ask them with these drawings if someone
25 has touched a place that they've identified as not okay. And

1 if they can, then I can ask them to tell me about it.

2 Q. I guess would that be without leading?

3 A. Yes.

4 Q. Okay.

5 A. So it's just -- you know, once we have labeled the
6 diagram, then we talk about okay touches and not-okay touches
7 to see if they know the difference. And then if they do know
8 the difference, then -- and they can identify those not-okay
9 places to touch, then you can ask. And it's non-leading to
10 say, "Has anyone ever touched you in one of those places?"

11 Q. Okay. So you use these anatomical drawings?

12 A. Yes.

13 Q. When you conduct these interviews?

14 A. We use these for children under ten. And then
15 dependently, if a child is developmentally delayed or has
16 some issues or is really unclear when asking the questions,
17 then we can pull out the diagrams to make sure we know
18 exactly what they're talking about.

19 Q. And these accurately reflect exactly what you work with
20 at the Dorchester County Children's Center?

21 A. Yes, they do.

22 MS. MIMS: Your Honor, I'd ask to introduce them into
23 evidence at this time.

24 THE COURT: Any objection?

25 MR. WEHMAN: No objection, Your Honor.

1 THE COURT: 4 and 5 are in.

2 MS. MIMS: Thank you, Your Honor.

3 (State's Exhibits 4-5 admitted into evidence.)

4 Q. Did you conduct a forensic examination of
5 Minor ?

6 A. I did.

7 Q. Okay. Do you remember what day you did that?

8 A. September 26, 2012.

9 Q. Where was that interview conducted?

10 A. At Dorchester Children's Center.

11 Q. Did you record that interview?

12 A. Yes, it's audio and video recorded.

13 Q. Okay. I'd like to show you what's been marked as
14 State's Exhibit No. 3.

15 MS. MIMS: May I approach, Your Honor?

16 THE COURT: You may.

17 Q. Ma'am, do you recognize this?

18 A. Yes. This looks like the DVD that was audio and video
19 recorded.

20 Q. And do you recognize the writing on this disc.

21 A. Yes, I do.

22 Q. Okay. Is this Minor 's disc?

23 A. Yes.

24 MS. MIMS: Okay. Your Honor, at this time I'd ask to
25 publish the video for the jury.

1 THE COURT: You've moved it into evidence?

2 MS. MIMS: Yes, first I'd like to introduce it into
3 evidence, and then I'd ask if I can publish this for the
4 jury.

5 THE COURT: Any objection?

6 MR. WEHMAN: No objection, Your Honor, subject to the
7 stipulations.

8 THE COURT: That's correct. It's in.

9 MS. MIMS: Thank you, Your Honor.

10 (State's Exhibit 3 admitted into evidence.)

11 (Video played.)

12 THE COURT: Ladies and gentlemen, it's about 3:45 and
13 we've kind of gone through a little bit of time with the
14 opening statements and whatnot. Why don't we take a brief
15 afternoon recess to use the restroom and whatnot. If you'd
16 take about 15 minutes and let us know when you're ready.

17 And before we go, sir, on the end, what is your name,
18 sir?

19 THE JUROR: Jeff.

20 THE COURT: Jeff, since you're sitting in that chair,
21 I'm going to appoint you as the foreman. And your last name?

22 THE JUROR: Daugherty.

23 THE COURT: Thank you, Mr. Daugherty.

24 You all let us know when you're ready, but take about 15
25 minutes. Again, please do not discuss this case with anyone

1 or allow anyone to discuss this case with you.

2 (The jury retires to the jury room at 3:48 p.m.)

3 THE COURT: Anything at this time before we take a brief
4 recess?

5 MR. WARD: Nothing from the State.

6 MR. WEHMAN: No, Your Honor.

7 THE COURT: We'll take about 15 minutes. When the
8 jury's ready, and then did you have more to play or was that
9 the conclusion of what was going to be played?

10 MR. WARD: No, there's more. We've just got to skip
11 ahead a little bit.

12 THE COURT: All right. Thank you.

13 All right. Please be at ease.

14 Mrs. Boyle, you're not allowed to discuss your testimony
15 with anybody at this time.

16 (Recess held.)

17 THE COURT: It's my understanding for scheduling
18 purposes we have about 45 minutes left on the video; is that
19 correct?

20 MR. WARD: That's correct.

21 THE COURT: Why don't we do this, since it's already
22 after 4:00, we'll finish the video and then finish with the
23 direct and the cross-examination in the morning. That way we
24 don't keep the jury too late.

25 MR. WARD: That sounds great.

1 THE COURT: Anything further before we bring the jury
2 in?

3 MR. WARD: No. I already fast-forwarded to the spot, so
4 we're good.

5 THE COURT: Okay.

6 (The jury enters the courtroom at 4:08 p.m.)

7 THE COURT: Welcome back, ladies and gentlemen of the
8 jury. We'll now continue with watching the rest of the
9 video. You may proceed.

10 (Video played.)

11 MR. WARD: May we approach briefly, Your Honor?

12 THE COURT: Certainly.

13 MR. WARD: We're at a part we have to skip a little bit.
14 Not exactly sure. Can't remember. We hadn't totally agreed
15 on the very last few minutes. If we could just break now,
16 finish up the last four or five minutes tomorrow morning.

17 THE COURT: That's fine.

18 Ladies and gentlemen of the jury, it's about 20 until
19 5:00. I know many of you don't live right close to the
20 courthouse, so we're going to go ahead and break for the
21 evening. That way everybody can get home on time. Certainly
22 I want to make sure everybody gets to where they need to be
23 this evening.

24 Again, please do not discuss this case with anybody or
25 do any type of independent research as you were instructed

1 before or allow anyone to discuss the case with you. If you
2 would please be back in your jury room tomorrow morning at
3 9:30, then we'll begin finishing up the trial of this case.
4 We'll continue with the testimony of this trial. Again, have
5 a good night and we will see you in the morning.

6 (The jury retires to the jury room at 4:41 p.m.)

7 THE COURT: Anything further from the State or the
8 Defense at this time?

9 MR. WARD: Nothing, Your Honor.

10 MR. WEHMAN: No, Judge.

11 THE COURT: We'll be at ease until 9:30 in the morning.

12 MR. WEHMAN: Mr. Gentile's prepared to be taken into
13 custody. Is this the Court's intention at this time?

14 THE COURT: Yes, his bond is extinguished at this time
15 since the case has been called for trial, so he will be in
16 custody.

17 MR. WEHMAN: Thank you, Your Honor.

18 (Trial of the case adjourned for the day at 4:45 p.m.)

19 - - -

20 (Trial of the case resumed on June 16, 2015 at
21 9:48 a.m.)

22 THE COURT: Anything we need to address before we bring
23 the jury out?

24 MR. WARD: Nothing from the State.

25 MR. WEHMAN: No, Your Honor.

1 MR. WARD: Your Honor, should we have Ms. Boyle up on
2 the stand?

3 THE COURT: Yes.

4 Let's have our jury, please. Thank you.

5 (The jury enters the courtroom at 9:50 a.m.)

6 THE COURT: Good morning, ladies and gentlemen of the
7 jury. Welcome back, we're now ready to proceed with the
8 trial of this case.

9 You may continue, Solicitor.

10 MS. MIMS: Thank you, Your Honor. I think we'll just
11 continue with the video.

12 THE COURT: Correct.

13 MS. MIMS: Please the Court, Your Honor.

14 THE COURT: Yes, ma'am.

15 Q. Good morning, Ms. Boyle.

16 A. Good morning.

17 Q. I just want to ask you a couple of questions about the
18 interview that we just saw. How would you describe

19 Minor 's demeanor during that interview?

20 A. It changed a couple times. At first I would describe
21 her demeanor as relaxed and open and she was verbal.

22 MR. WEHMAN: Objection, Your Honor.

23 THE COURT: Basis of your objection?

24 MR. WEHMAN: It's outside what we agreed to of the
25 KROMA, I believe.

1 THE COURT: Will you approach?

2 (The following was held at the bench out of the hearing
3 of the jury.)

4 MS. MIMS: Any lay witness can do that.

5 MR. WEHMAN: Talking about demeanor.

6 THE COURT: That's what cross-examination is for.

7 MR. WEHMAN: The KROMA case specifically lays out
8 there's things you can talk about, demeanor.

9 THE COURT: She can testify as to demeanor.

10 MR. WEHMAN: As long as she doesn't go into interpreting
11 what the demeanor is or anything.

12 MS. MIMS: I'm not asking that.

13 (The following was held in open court.)

14 THE COURT: You may proceed.

15 Q. I'm sorry, Ms. Boyle. Could you finish your answer?

16 A. In the beginning she presented as open, willing to
17 answer my questions, verbal, relaxed. When I started asking
18 questions about -- to assess if there had been any sexual
19 abuse, she crossed her arms. She was -- her voice was quiet.
20 She seemed a little more hesitant to talk, and then as we got
21 through that, afterwards, as we were talking about other
22 things, she seemed to relax more again, sitting back in her
23 chair, answering my questions without any hesitation.

24 Q. Okay. Thank you.

25 And let me ask you this. We saw it a few times. Why do

1 you repeat what she says?

2 A. So that I make sure I understand what she says.

3 Communication's an interesting thing. I think we hear -- I
4 want to make sure I'm hearing exactly what she's saying

5 because my purpose is really to give her the opportunity to
6 say it in her words, and I want to make sure I understand.

7 Q. Okay. We had talked yesterday about these anatomical
8 drawings that you use?

9 A. Yes.

10 Q. When you interview?

11 A. Yes.

12 Q. And then we saw you use them during your interview here
13 with Minor . Do you have those drawings that you actually
14 used with Minor ?

15 A. I do.

16 MS. MIMS: May I approach the witness, Your Honor?

17 THE COURT: Yes, ma'am.

18 MS. MIMS: May I see those drawings?

19 May I show counsel, Your Honor?

20 Q. Ms. Boyle, are these the exact drawings that you used?

21 A. Yes. Yes, they are.

22 Q. In that interview?

23 A. Yes.

24 Q. And this is the drawing that you used on September 26th
25 of 2012?

1 A. Yes.

2 Q. Okay. And are these the words that Minor used for
3 body parts?

4 A. Yes, they are.

5 Q. But is this your handwriting?

6 A. Yes, it is.

7 MS. MIMS: Your Honor, at this time I'd ask to introduce
8 the pictures of the anatomical drawings into evidence.

9 (State's Exhibits 6-7 marked for identification.)

10 THE COURT: That would be 6 and 7. Any objection?

11 MR. WEHMAN: I think it's admissible, Your Honor.

12 THE COURT: They're in.

13 (State's Exhibits 6-7 admitted into evidence.)

14 Q. What did Minor refer to her breasts as?

15 A. Coconuts.

16 Q. Or any woman's breasts, I guess.

17 And what did she refer to the vagina as?

18 A. She called that her "my stuff."

19 Q. When she was looking at the boys' drawings, what did she
20 refer to the penis as?

21 A. Private part.

22 Q. Private part. Okay.

23 There were also some times, just for clarification, when
24 you were talking to Minor and then you would leave the
25 room?

1 A. Yes.

2 Q. And during that time, we would see her drawing. What
3 were you doing? Why did you leave the room?

4 A. In the room with closed-circuit TV, I have a note taker
5 taking notes, so it would be -- I would go back and I would
6 ask them "Is there anything that she said that I need to
7 clarify that I can ask a clarifying question? Is there
8 anything that's confusing."

9 There's also -- law enforcement was also here for this
10 interview, so it would be if there were any questions that
11 they had that I could ask without presenting new information,
12 and I would ask them if there's anything that I can clarify
13 so that -- because the purpose is for this child to be only
14 interviewed one time.

15 Q. I understand. When you would go back and talk to those
16 people behind the scenes and if they asked you to ask or to
17 get more information, did you go back in there asking leading
18 questions?

19 A. No, I did not. And that was part of what we would
20 discuss when I would talk with them is, is that information
21 she's already told me and I can ask a clarifying question or
22 is that information that I can't introduce.

23 Q. Okay. So you mentioned earlier when I spoke to you
24 before yesterday that you stated you do not work for law
25 enforcement, but do you work with law enforcement?

1 A. We do in conjunction with them when they're
2 investigating allegations.

3 MS. MIMS: Okay. Beg the Court's indulgence, Your
4 Honor.

5 I have no further questions. Please answer any
6 questions from Mr. Wehman.

7 THE COURT: Cross-examination.

8 MR. WEHMAN: Thank you, Your Honor, may it please the
9 Court.

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION BY MR. WEHMAN:

12 Q. Good morning, Ms. Boyle.

13 A. Good morning.

14 Q. How are you doing?

15 A. I'm good.

16 Q. Now, you testified you've been at the children's center
17 for three and a half years?

18 A. Yes.

19 Q. You've done a lot of interviews in that time?

20 A. Yes, I have.

21 Q. And you told the jury that you don't ask leading
22 questions, correct?

23 A. The purpose of the interview is not to ask leading
24 questions.

25 Q. Okay. So that's what you are told to do and that's what

1 you try to do?

2 A. That is exactly what I try to do because that's my job.

3 Q. Okay. And the purpose you said, candidly, was to give
4 the child an opportunity to tell you what happened?

5 A. Correct.

6 Q. Because you don't want to tell them what happened in an
7 interview like that?

8 A. I just wanted her to have the opportunity in her words
9 to tell me if something happened, if something didn't happen.

10 Q. Okay. So in an interview, if the child was to tell you
11 that something didn't happen, that would be okay?

12 A. Yes, it would.

13 Q. And the interview would stop at that point?

14 A. Yes, it would. There would be no further questions.
15 There's no need to clarify.

16 Q. Okay. And you told the solicitor law enforcement's
17 there watching on that closed-circuit TV?

18 A. Yes, they are.

19 Q. Do you remember who was there that day?

20 A. Detective Cassandra Williams from Summerville Police
21 Department.

22 Q. And so when you take those breaks, and the jury kind of
23 saw. We kind of cut out the breaks. They can last some
24 time. But when you take those breaks, you go and you talk to
25 your note taker?

1 A. I do.

2 Q. And you go and talk to, in this case,

3 Detective Williams?

4 A. No. In this case it was -- yes, Detective Williams,
5 correct.

6 Q. Okay. Because I know there were multiple detectives
7 involved in the case, but this was Detective Williams on this
8 day?

9 A. Yes. She was the one who was present for the interview.

10 Q. Okay. And they suggest things that you might need to
11 clarify?

12 A. Yes. It's their opportunity, if there's something that
13 seems unclear to them, if it's a question I can ask, to
14 clarify, I will. If it's new information, then I will tell
15 them that I can't ask that question.

16 Q. Okay. But to be -- to be clear, when you go through
17 your questions, you have kind of a set procedure that you
18 follow? You go through your questions, correct?

19 A. Yes.

20 Q. And then when you think you're finished, you leave the
21 room? When you think you're done, that you've done
22 everything that you normally do, you go out?

23 A. Or sometimes I will leave the room if the child needs a
24 break.

25 Q. Okay.

1 A. Depending on what kind of questions that we're asking.

2 Q. Okay.

3 A. So it's pretty flexible. It's not always at the end.

4 There's not a set number of breaks. That's left up to the
5 interviewer.

6 Q. Okay. And now does the interviewer have to ask to have
7 a break for you to do that that way where you think she needs
8 a break, or is that kind of --

9 A. No, I've not had a child ask for a break.

10 Q. Okay. All right. But sometimes you're finished and
11 they tell you what they think you need to ask or what you
12 need to clarify that you might not have picked up on because
13 you're asking so many questions?

14 I'm sorry. That was a long question.

15 A. Yes, yes. Give me that one again, please.

16 Q. I'm sorry. That's my fault. I didn't do my job that
17 time.

18 But sometimes you have finished all of your questions
19 and you leave the room?

20 A. Yes.

21 Q. And that's when they might tell you that you need to ask
22 more questions?

23 A. They might say something needs to be clarified,
24 depending on, you know, what the child has already told me.

25 Q. Because you do ask a lot of questions in these

1 interviews?

2 A. A lot of questions. We --

3 Q. It's hard to keep -- I'm sorry.

4 A. We assess for all kinds of neglect and abuse, so the
5 interviews are long.

6 Q. And it's hard to keep track of all those in your head in
7 the course of an hour or two-hour long interview?

8 A. Yes.

9 Q. Okay. Now, as to this particular case, your job is to
10 figure out what happened, correct?

11 A. My job is to figure out if something happened, if
12 something didn't happen.

13 Q. Okay. And Minor , at the beginning of her interview,
14 went through this diagram and labeled what she thought the
15 parts were?

16 A. In her -- yes.

17 Q. In her --

18 A. Those were her words what she called the body parts.

19 Q. In her own language?

20 A. Yes.

21 Q. And at that point you stick to that language so that she
22 can understand what you're talking about?

23 A. Correct.

24 Q. And in her own way, she told you kind of what her
25 allegation was, didn't she?

1 A. She told me, when I asked her if anyone had touched her
2 on any of her parts that were not okay to touch, that someone
3 had touched her.

4 Q. Okay. And then she pointed to a name?

5 A. She pointed to a name.

6 Q. Okay.

7 A. And verified to her when she pointed, "You're pointing
8 to Mike."

9 Q. Okay. And then I believe then she pointed, when you
10 asked "Where did he touch you?" I believe she pointed to what
11 she labeled the "my stuff," correct?

12 A. Correct.

13 Q. And that, in her own way, is telling you the allegation?
14 You can gauge at that point what she's saying happened?

15 A. Yes.

16 Q. Okay. And so that's when you start your questioning
17 about the facts, because that's not enough for an interview,
18 correct?

19 A. Correct.

20 Q. Okay. She has to give some sort of a description,
21 because that's just an accusation, right?

22 A. Yes, that's just her telling me what happened.

23 Q. Okay. And then you're just trying to figure out what
24 happened during that time that she's saying happened, right?

25 A. Correct.

1 Q. Okay. Now, the first story she gave, she ends up --
2 well, actually, if I could play a clip, I think it might help
3 with the question.

4 (Video played.)

5 Q. Okay.

6 A. Okay.

7 Q. Now, at that point you've identified who's in the room,
8 correct?

9 A. Yes.

10 Q. And you've asked her in her own words to describe it
11 what happened?

12 A. Yes.

13 Q. And in her own words, she describes Mike leaving the
14 room to make some food?

15 A. Yes, that's what she said.

16 Q. Okay. So at this point you stop the interview because,
17 in her own words, she's told you nothing happened, right?

18 A. She told me -- all right. I have to think about which
19 part of the interview. This was a long interview.

20 Q. I'm sorry. I can give you the exact time if it would
21 help.

22 A. No, I didn't date stamp my notes.

23 She told me that she thought that he had left the room
24 to go fix something to eat. That's what she told me.

25 Q. And it's my fault. She has identified; she has pointed;

1 and then this is the initial questioning. I'm sorry. That
2 was my fault.

3 A. Okay.

4 Q. But that's not the end of the interview, correct?

5 A. No.

6 Q. Okay. Because children, you know, might need some
7 prodding, they might need to be refocused, correct?

8 A. I don't know if they need to be prodded or refocused,
9 but if I still feel like there are questions to clarify, if I
10 don't really understand, then I'm going to continue asking
11 questions to see if I can make it very clear.

12 Q. Okay. And those still are non-leading questions?

13 A. Yes, that is my goal is non-leading questions.

14 Q. Okay.

15 (Video played.)

16 Q. I'm sorry. That's my fault. I didn't inform my intern
17 what I was trying to do.

18 Okay. But we can go through it. And if you remember,
19 if you don't, tell me.

20 A. Okay.

21 Q. I can try to pull it back up on the video?

22 A. Okay.

23 (Video played.)

24 Q. Okay. Now, what did you describe? Well, I'm sorry.
25 Let me start over.

1 You ask non-leading questions, correct?

2 A. That's what I try to do is ask non-leading questions.

3 Q. And another way to put that is you ask open-ended
4 questions?

5 A. Sometimes I ask open-ended questions. Sometimes I might
6 do more of a multiple choice. Sometimes it might be "yes" or
7 "no."

8 Q. Okay. What's your definition of a leading question?

9 A. When I'm bringing new information in to the interview
10 that she hasn't already told me.

11 Q. Okay.

12 A. So she's told me something already, then I ask
13 clarifying questions pertaining to that.

14 Q. Okay. So your definition is that once she tells you
15 something, at that point that is available to insert into any
16 question, even if the answer is yes or no?

17 A. Yes. If she's told me something, I can ask clarifying
18 questions about what she told me so that I understand exactly
19 what she's -- what happened.

20 Q. Okay. Without trying to push her in any one direction?

21 A. Yes.

22 (Video played.)

23 Q. Okay. So now you have tried to -- you've used the
24 phrase again in order to find out what happened, correct?

25 A. Yes. Which phrase?

1 Q. Specifically -- I'm sorry. Again, it's my fault -- that
2 his private part touched her my stuff.

3 A. Okay.

4 Q. You use that in order to try to figure out what happened
5 because she didn't tell you the first time?

6 A. Correct.

7 Q. And what did she say happened?

8 A. In this clip right here?

9 Q. Yes.

10 A. She said that she was blindfolded. She thought that
11 Mike went to go make food, that she was still trying to get
12 her pants on and that it was her brother A.H. that was in
13 the kitchen making food.

14 Q. Okay. And then she made mention that she took her
15 blindfold off and then she went to go get some food?

16 A. I --

17 Q. You didn't hear that?

18 A. Yes. I'm sorry. I didn't hear that.

19 Q. I can play it again for you.

20 (Video played.)

21 Q. Okay. So she takes off the blindfold?

22 A. She said she took it off and went to go make something
23 to eat, correct.

24 Q. Okay. So now this is the second time through her story
25 and both times she has left the room to go make something to

1 eat, correct?

2 A. I know she -- yes.

3 Q. Okay. Now, you said that you use the child's words --
4 once they've told you something, you can use the child's
5 words to figure out what happened?

6 A. Right.

7 Q. How many times after this point did you question her
8 about taking off the blindfold to make something to eat?

9 A. I know I asked her several more times. I don't know how
10 many. I didn't count.

11 Q. You asked her several more times?

12 A. I think I probably -- I know I asked her throughout the
13 interview about the blindfold.

14 Q. Okay. Did you specifically ask her if she took it off
15 to make something to eat or did you just mention that she had
16 a blindfold on?

17 A. I just mentioned probably that she had a blindfold on.

18 Q. Okay.

19 A. I don't remember asking her or saying anything else
20 about her taking it off to go get something to eat.

21 Q. Okay. So it would be fair then to say that not one more
22 time did you mention the fact that nothing happened and she
23 took the blindfold off to get something to eat?

24 A. I did not say that again to her.

25 Q. Okay. How many times did you say that Mike put his

1 private part on you're my stuff during the course of the
2 interview?

3 A. I didn't count, but I know that I said it -- we'll
4 say -- a lot.

5 Q. Would it be fair to say that around 28 times during the
6 course of the interview?

7 A. It could have been, yes.

8 Q. Okay. Now, the child at the beginning of the interview
9 told you by pointing what happened?

10 A. Correct.

11 Q. How many times after that did she tell you that Mike's
12 private part touched her my stuff?

13 A. She only told me in response to a question that I would
14 ask or she would show me. She showed me with the dolls. I
15 don't remember her saying to me that specifically.

16 Q. Okay. So it would be fair to say that she didn't again?

17 A. I don't remember her saying it to me again.

18 Q. Okay.

19 (Video played.)

20 Q. Okay. Now, you did use dolls in this case, correct?

21 A. I did.

22 Q. Because you went out and took -- I believe at this point
23 it was the second break, and you came back in and you needed
24 more clarification?

25 A. Right.

1 Q. Okay. You needed her to show you what happened rather
2 than trying to tell you again?

3 A. Yes. I was -- at that point I was confused.

4 Q. Okay. You were confused?

5 A. And I wanted to make sure that I gave her the
6 opportunity to tell me what happened. And that's when we use
7 the dolls, when we're just not sure what happened. Because,
8 again, my job isn't to prove or disprove. It's to try to get
9 to what happened in her words.

10 Q. Okay. And sometimes it's easier for people to show
11 rather than to tell?

12 A. Sometimes it is easier for children to be able to show
13 what happened. They might not have the right words or not
14 know how to describe it.

15 Q. Okay. Because children might not know how to describe
16 these things is what you just said, correct?

17 A. Correct.

18 Q. So you pulled out the dolls in this case?

19 A. I did.

20 Q. And you showed her how they worked?

21 A. Right. Showed her that they had all the parts, just as
22 we had labeled on the anatomical diagrams.

23 Q. Okay. And at that point she had the opportunity to show
24 you and show everyone that was -- the two people that were on
25 the closed-circuit TV exactly what happened?

1 A. Right.

2 Q. Okay.

3 (Video played.)

4 Q. So when she told you what happened, you were confused?

5 A. Yes.

6 Q. So you had her --

7 A. She told me a couple different things, and she told me
8 that it happened more than one time, and it's very confusing
9 to me what times we were talking about.

10 Q. But you were confused?

11 A. I was.

12 Q. So you used the dolls?

13 A. I did, to see if we could clarify.

14 Q. Okay. And you had her show you what happened?

15 A. Yes.

16 Q. Okay. And that right there, I believe it's a shrug?

17 A. It was an "I don't know."

18 Q. I don't know?

19 A. Yes.

20 Q. So she couldn't show you what happened?

21 A. No she could not show me what happened then.

22 Q. She could not accurately describe to you what happened
23 sufficiently?

24 A. It was confusing to me.

25 Q. And she couldn't show you what happened?

1 A. She said "I don't know."

2 Q. Now, at this point when she can't describe to you what
3 happened to her and she can't show you what happened to her,
4 did the interview end?

5 A. No, it did not.

6 Q. You kept questioning her?

7 A. Yes. There were other questions that I didn't
8 understand and she had asked before or other statements that
9 she had said before that didn't match with her not being able
10 to describe what happened.

11 Q. And again, you said your effort was to find out what
12 happened?

13 A. Exactly, to find out what happened.

14 Q. And she has told you and showed you that she doesn't
15 know? She can't describe what happened?

16 A. She has. But on the other hand, she's also told me that
17 his private part touched her my stuff and it was confusing to
18 me. She's telling me one thing. She's telling me something
19 else. So at that point I was trying to figure out really
20 what happened, so I continue asking questions because she
21 told me two different things.

22 Q. And isn't it correct that in the course of her
23 interview, she gave you five different stories in which no
24 abuse occurred?

25 A. I don't know if it was five, but she gave me several,

1 which in this scenario nothing happened or she didn't
2 remember what happened or they -- she was -- she said that it
3 happened more than once, but sometimes it was different and
4 that sometimes when it was different, nothing happened.

5 Q. She actually told you that when it was different, she
6 would be playing the Wii?

7 A. Right, or she could be outside doing something else.

8 Q. And that's an instance of him doing this act, but it
9 being different?

10 A. That is how she explained it to me.

11 Q. Now, you said you didn't remember exactly how many
12 times. Isn't it correct that the first time you questioned
13 her, she told you that Mike left the room to go make some
14 food?

15 A. She did.

16 Q. And the second time, and I believe this was in order,
17 the very next time, she thought Mike left to go make food.
18 It turned out to be A.H. , but then she took off her
19 blindfold and went to go make food?

20 A. Yes, she thought it was A.H. , or she said it was

21 A.H. . It wasn't Mike. It was A.H. making food and she
22 took off her blindfold. Yes, she did tell me that.

23 Q. And then when questioning her about the other times, she
24 said that he would be on the computer and she'd be playing
25 the Wii.

1 A. She did.

2 Q. And you showed her the dolls and she did the shrug?

3 A. That is correct. She did a shrug.

4 Q. Basically telling you that I don't know?

5 A. I don't know or I don't remember. It was a shrug.

6 Q. And then at the very end of the interview, she said that
7 he laid down and he put his pants on and then she tried to
8 find the door?

9 A. Yes, there was a point where she said that.

10 Q. Okay. And there was an additional time where she closed
11 her eyes. He got undressed to put on his work clothes?

12 A. Correct.

13 Q. So in the face of all of those times when she told you
14 in her own way one time what she's alleging, you continued on
15 with the interview?

16 A. I did.

17 Q. And you continued asking her questions that were mostly
18 phrased when his private part touched her my stuff?

19 A. Yes. That's what she initially told me when I was
20 asking her the questions about sexual abuse, so yes, that's
21 what I was basing the other questions that I was clarifying.
22 Because she said different things at different occasions, I
23 was continuing to ask questions because I was confused.

24 She said that it happened more than once, but I was
25 unable to really get her to define, except maybe the first

1 time. Then the other times, she just couldn't give me
2 details on another specific time. She couldn't remember the
3 last time, but she was also giving me conflicting answers and
4 I was just trying to understand what she was saying.

5 Q. So it was a confusing interview?

6 A. Yes, it was.

7 MR. WEHMAN: Court's indulgence, Your Honor.

8 Q. Just a couple more questions.

9 A. Okay.

10 Q. Now, as we -- as you agreed, it was around 20, 28 times
11 that you started a question of "When his private part touched
12 you're my stuff," right?

13 A. Right. Because that was what I was trying to get to --
14 to get her to clarify so that I wasn't confused, because that
15 was her first statement is that that's what had happened. So
16 I wanted to get those details to either figure out something
17 did happen, something didn't happen, and that's why I
18 continued because it was not clear to me.

19 Q. Okay. Why did you never ask her clarifying questions
20 about the other instances when nothing happened?

21 A. I tried to ask -- I felt like I did and she -- she -- I
22 wanted her to say, "What do you mean by different?" Because
23 she would say that it happened more than one time and
24 sometimes it was different. I think the most she gave me was
25 sometimes she was outside. Sometimes she was playing the

1 Wii. And I never could get her to define what do you mean by
2 different.

3 Q. Okay.

4 A. At least to the point that I understood it.

5 Q. Now, you asked her if her clothes were on or off when
6 she was playing the Wii.

7 A. Yes. That's a question that we ask with sexual abuse.
8 That's a common question we ask to determine -- sometimes a
9 child, when you ask if a private part touched another private
10 part, it's a question that I always ask: Were the clothes on
11 or were the clothes off?

12 Q. Well, I understand. It's to make sure that the child
13 isn't trying to tell you something in her own language. But
14 my question to you is, how come you did not ask her what she
15 was doing when she was playing the Wii or any other questions
16 similar to that to go down that path to see where it ended?

17 A. I felt like I did. I felt like I was asking her, you
18 know, what was different. What I was trying to clarify is,
19 she told me that something had happened, so I was just trying
20 to -- that's what I was trying to do is figure out what
21 happened. So I don't have an answer for why didn't I go down
22 that path. I thought that I was covering all the bases that
23 I could to get clarification.

24 Q. Okay. And the same with the making the food, you didn't
25 go down that anymore because you felt that you had had all

1 the answers for that line of thought from her?

2 A. I don't know if I thought that I had all the answers,
3 but at the time I did not go back down that line of
4 questioning.

5 Q. So the instances where she doesn't allege abuse, you
6 didn't pursue that?

7 A. She told me that there were things different. I guess
8 because I wanted her to help me understand what she meant
9 when she said that something had happened. I wasn't trying
10 to find out if -- something that didn't happen. She said
11 something happened, so my questions were focused around
12 trying to clarify that.

13 Q. Okay. Trying to get her to tell you in her own words
14 that something happened?

15 A. Trying to get her to clarify any details about what she
16 did tell me, which was that something happened. And so I
17 just was -- I was trying to get details to clarify what she
18 told me, what that meant.

19 MR. WEHMAN: I have no further questions, Your Honor.

20 THE COURT: Thank you.

21 Any redirect?

22 MS. MIMS: Yes, ma'am.

23 REDIRECT EXAMINATION BY MS. MIMS:

24 Q. Ms. Boyle, can you remind the jury again, can you tell
25 me why do you conduct a forensic interview?

1 A. When there's an allegation of abuse or neglect of a
2 child, we'll have referrals and we perform the forensic
3 interview so that the child has the opportunity to tell what
4 may or may not have happened.

5 Q. Okay. So when you're conducting a forensic interview,
6 are you trying to determine if there had been sexual or
7 physical abuse?

8 MR. WEHMAN: Objection, Your Honor. Leading.

9 THE COURT: Sustained.

10 Q. I'll ask that a different way.

11 Let me ask you this: I'll go back to the beginning.

12 When you first started interviewing Minor , the first thing
13 you -- what was the first thing that you did when you were
14 talking about the body parts? Do you ask her to identify the
15 body parts?

16 A. The first thing we do is I say, "I've got two drawings
17 or diagrams of a boy and a girl and we're going to name body
18 parts from the top to the bottom."

19 Q. Okay. And as we just saw on that video, do you ask her
20 at that point if anybody has touched her in a private part?

21 A. No. I -- I go through. We name all the parts, then
22 we -- then I ask her some questions about okay touches,
23 hugging, kissing, tickling, who does it, where on the body,
24 are those okay. And then I asked her "Are there places on
25 the girl's body that would not be okay for someone to touch?"

1 And she said yes.

2 Q. Okay.

3 A. So I handed her a marker and said, "Would you just" -- I
4 showed her just to make a mark. I said, "Would you mark
5 those places on the girl's body."

6 Q. And again, did you ask her if someone had ever touched
7 her in those spots?

8 A. I did once she had identified the spots as places that
9 were not okay to touch, then I asked her has anyone ever
10 touched. And I think I asked her for all three that she'd
11 identified.

12 Q. Okay.

13 A. And she said yes.

14 Q. So did she already identify for you that someone in the
15 beginning had touched her in those spots?

16 A. After we had done the anatomy names, then she did say
17 that someone had touched her. She didn't say it; she
18 pointed.

19 Q. Okay. And did she say who had touched her?

20 A. Yes.

21 Q. Who did she say?

22 A. No. At that point she actually -- she pointed to the
23 name on the drawing and I said -- and she touched the name
24 and I said, "And so you're saying that it was Mike?" And she
25 said yes.

1 Q. Okay. So in, in the beginning did you lead her towards
2 saying that she had been touched?

3 A. No.

4 Q. And in the beginning did you lead her to say who had
5 touched her?

6 A. No.

7 Q. Okay. And how old is Minor when she's giving this
8 interview?

9 A. She was 9.

10 Q. Okay. Did she seem eager to talk to you about what
11 happened when her clothes were off?

12 A. Okay. Ask me that question. Did she seem?

13 Q. Well, I'll go to the dolls, for instance. You talked a
14 good bit about the dolls. When you were asking her about
15 when they were lying on the bed and you asked about where he
16 touched her, where Mike had touched her when his clothes were
17 off, did she get quiet before she answered?

18 A. When we were doing it with the dolls?

19 Q. Yes.

20 A. She paused. I don't know if you want to consider that
21 quiet.

22 Q. Did she speak?

23 A. Which time with the dolls?

24 Q. Did she pause before she answered your question?

25 A. She did.

1 Q. Did she seem eager to answer that question?

2 MR. WEHMAN: Objection, Your Honor. Calls for
3 speculation.

4 THE COURT: Sustained.

5 Q. When you were interviewing her, did she say it happened
6 more than once?

7 A. She did.

8 Q. Did she seem to describe different scenarios?

9 A. She did.

10 MS. MIMS: Okay. Beg the Court's indulgence, Your
11 Honor.

12 No further questions, Your Honor.

13 THE COURT: You may step down, Mrs. Boyle. Thank you.

14 THE WITNESS: Thank you.

15 THE COURT: You may call your next witness.

16 MR. WARD: One moment, Your Honor.

17 At this time, Your Honor, the State would rest.

18 THE COURT: All right. Ladies and gentlemen of the
19 jury, the State has rested their case. At this point it's a
20 good time for us to take just a brief morning recess. If you
21 would to your jury room, we'll be back with you in about 15
22 minutes.

23 (The jury retires to the jury room at 10:34 a.m.)

24 THE COURT: Any motions?

25 MR. WEHMAN: Your Honor, at this time I'd have a motion

1 for directed verdict. As to the first indictment for CSC
2 with a minor, first degree, that indictment requires
3 penetration, however slight. Throughout the testimony of
4 Minor live, in person, Minor in her forensic interview,
5 not one time does she say that there was any penetration of
6 any type.

7 In fact, she was asked multiple times if anything went
8 in and it was no. She stated that in her version of events
9 it touched her. He touched her. She couldn't really
10 describe what that touching was, but she was asked, and it
11 did not penetrate. And I believe without penetration, that
12 indictment -- the burden on that indictment has been failed.
13 I understand the burden is heavy on us at this point, that
14 really any evidence tending to show that will win the day at
15 this point, but there has been no evidence.

16 And at this point allowing this indictment to the jury,
17 I believe they have nothing to base that on, which is the
18 directed verdict standard. There's been no testimony, live
19 or on camera, that any penetration of any of kind occurred,
20 and I know the solicitor has a case, and I'll let him argue
21 his case if you'd like, or I can attack it right now. It's
22 whatever.

23 THE COURT: Mr. Wehman, although during the interview
24 itself, the forensic interview, she did not state any
25 penetration, during her direct testimony she did state

1 penetration. She did state it went in. We can review that
2 testimony, but I specifically wrote it down when she actually
3 stated "in."

4 MR. WEHMAN: If it's okay, I would like to see with the
5 court reporter's --

6 THE COURT: Sure. While I look it up on here, do you
7 have an argument, Solicitor?

8 MR. WARD: Yes, Your Honor. When considering a directed
9 verdict, as Your Honor's well aware, the trial court's
10 concerned only with the existence of evidence and not its
11 weight, and it must be viewed in light most favorable to the
12 State. And it would be the State's argument that during
13 direct examination of Minor , she did state that
14 at one time when her clothes were off, the defendant's
15 clothes were off, it did -- and she was describing his penis
16 and touching her vagina, that it did go in. Also on
17 redirect, Ms. Mims asked her about this incident and asked
18 her if it hurt. And her -- Minor 's response was yes.

19 There is a case, Your Honor, *State v. Toohey*, I provided
20 your law clerk with earlier that there was -- in this case
21 the victim testified that the defendant had the victim pull
22 her shorts and underwear down. He placed her on a table,
23 told her to lie down. While the victim was lying on the
24 table undressed from the waist down, touched the victim's
25 front and that it hurt.

1 The court in that case found that hurt -- the victim
2 saying it hurt is enough to show slight penetration because
3 of the young age of a child, that they're not -- they don't
4 need to go into sordid detail about any type of sexual
5 penetration, but if the victim does say it hurt, that that
6 would be enough evidence to show there was slight
7 penetration.

8 THE COURT: Mr. Wehman?

9 MR. WEHMAN: Yes, if it pleases the Court, Your Honor.
10 I believe the case provided by the solicitor is out of South
11 Dakota, a South Dakota Supreme Court case, which I don't
12 think has any binding precedent here. And the case there is
13 different than this case.

14 In the forensic interview of that case, the child said
15 that it hurt and then furthermore said it hurt when she had
16 to use the bathroom, which shows some circumstantial evidence
17 of penetration.

18 Furthermore, as I said, it was consistent. So she said
19 that in the forensic interview, she testified to that live.
20 And I don't believe -- I tried to read quickly through the
21 questioning of her, I don't believe she was asked or said
22 that it went outside in this case.

23 In the interview Minor clearly was asked and she said
24 on the outside. It didn't go in. Obviously I'm waiting to
25 see the record if she testified live here to something

1 different. I was unaware of it.

2 And in that case, the court went over the facts. As the
3 solicitor said, the child was lying on the table, undressed
4 from the waist down and she was touched. And then she was
5 asked and she said it hurt. Specifically it hurt when I went
6 to the bathroom.

7 I believe that's a very different scenario than the one
8 we find ourselves in here, as long as there's nothing in the
9 record that she testified that it went in. If her only
10 testimony was based on a question from the solicitor that
11 said, "Did it hurt?" and she replied yes, I don't think
12 that's the same scenario. There she's consistent it hurt and
13 it hurt when I went to the bathroom, internal damage, and
14 that can be inferred from the jury.

15 Being specifically asked repeatedly that it didn't go in
16 and then being asked live, in person and her not remembering
17 and then being prompted by a question from the solicitor "Did
18 it hurt," with her saying yes, I think that's completely
19 different.

20 THE COURT: Mr. Wehman, why don't we do this: Before we
21 get into all that, let's look at the record and see what
22 exactly the testimony was. My recollection was that she did
23 testify during direct that it went in.

24 MR. WEHMAN: Yes, Your Honor.

25 THE COURT: I think on two occasions, but let's double

1 check that.

2 MR. WARD: After we find that, Your Honor, if I may just
3 briefly.

4 THE COURT: Sure.

5 (Recess held to review the record.)

6 THE COURT: Do the parties wish to be further heard on
7 the motion for directed verdict?

8 MR. WARD: Yes, Your Honor, briefly. I would like to
9 first cite a South Carolina case that I believe is relevant.
10 It is *State v. Mathis*. I've provided Your Honor with a copy.
11 The Supreme Court of South Carolina ruled that the
12 six-year-old victim in this case testified that.

13 (Defendant present.)

14 THE COURT: Counsel, you may proceed.

15 MR. WARD: Thank you, Your Honor. As I was stating, the
16 Court found in *State v. Mathis* that the victim testified that
17 the defendant touched her with his penis and that she could
18 not remember if he put it inside her body; however, when
19 asked if it hurt, she replied that it had. The Court found
20 this was evidence of some intrusion, however slight, and a
21 jury issue was created from that.

22 I believe the Defense and myself and Your Honor went
23 through the record of Minor 's testimony. She
24 was asked about the incident where she was blindfolded and
25 Ms. Mims asked her "When he touched you, did it hurt?" She

1 replied "Sometimes." I believe that would give rise to
2 existence of intrusion. And also, we were able to find on
3 the record during direct examination two times where
4 Minor was asked "Did he touch you in your
5 vagina?" and she replied yes.

6 THE COURT: Mr. Wehman, did you have anything to add?

7 MR. WEHMAN: Yes, Your Honor. I would make an argument,
8 first with the testimony. We have reviewed it in chambers
9 with Your Honor and the solicitor. And as to one of those
10 instances, I believe Minor states that he touched her in
11 her coconuts and in her -- in her coconuts and my stuff is
12 what I think she said.

13 I would argue that that is an identification term rather
14 than a location term. In her coconuts wouldn't be inside. I
15 think what's -- I think it's clear that what she was saying
16 is those are the two places where she was touched. I don't
17 think at that point she is saying that she was touched in her
18 my stuff.

19 As to the other allegation or the other snippet from her
20 testimony that's being cited, I believe also I would argue
21 that's an identification of where it was touched. We would
22 argue that it is not an allegation of penetration. That it's
23 a -- "It touched me there," and she used "in" to describe it.
24 It could have been "on." That's just the word she used. She
25 never describes penetration, and that's consistent with her

1 forensic interview, where she also never describes
2 penetration.

3 If the solicitor also is arguing *State v. Mathis*, I
4 would like to distinguish that for the purposes of the
5 record. In that case the six-year-old did not remember
6 whether or not penetration occurred and she testified that it
7 hurt. She was never asked in this case by the solicitor
8 whether or not it went in. She didn't say that she didn't
9 remember.

10 In fact, if you look at the forensic interview, she
11 never claims that it goes in. I understand what Your Honor
12 might interpret that first bit of her testimony to mean, but
13 she never claims that it went in. She never describes
14 penetration; therefore, because she says she doesn't
15 remember, the fact that it hurt I don't believe is
16 appropriate to infer penetration.

17 If she had said, "I don't remember," it would have been
18 on point. She just was never asked, so I think it's
19 inappropriate to infer that her answer would have been I
20 don't remember.

21 THE COURT: Thank you, Mr. Wehman.

22 As you know, Counsel, at this stage of the proceedings,
23 the Court is concerned only with the existence of evidence
24 and not its weight. The evidence, of course, must be viewed
25 in the light most favorable by the State and any evidence,

1 whether it's direct or circulation, tending to prove the
2 guilt of the accused creates a jury question.

3 In reviewing the transcript specifically regarding the
4 penetration issue on page 31 in response to questioning from
5 the solicitor where they talk about the defendant and why at
6 some point the victim did not like him, she talked about
7 being in the bedroom alone with him with the door locked.
8 And she stated, "Can you tell me what happened when you were
9 locked in the bedroom?"

10 The response from the victim was "He touched me in my
11 places and did a lot of things."

12 Solicitor said, "In places?" and she said yes.

13 Subsequent to that the solicitor went on to ask her to
14 describe where she was indicating, and that's where the
15 victim circled on the anatomical drawing her vagina area.

16 After that questioning it goes on to say, "So sometimes
17 when your clothes were off did he touch you in those two
18 places?" And she responded, "Yes, ma'am."

19 So certainly the inference -- basically her direct is
20 "in," based upon the victim's testimony.

21 Further in the record on page 41, the solicitor did ask
22 her on redirect "When he touched you, did it ever hurt? and
23 she stated yes, or she stated sometimes. So certainly I
24 think that creates a question of fact for the jury to
25 determine, and your motion is respectfully denied.

1 MR. WEHMAN: Thank you, Your Honor.

2 THE COURT: Anything further at this time?

3 MR. WARD: Nothing from the State?

4 THE COURT: Did you have the same arguments on the lewd
5 act directed verdict motion?

6 MR. WEHMAN: Yes, Your Honor. I would just make a
7 motion for directed verdict on lewd act. The child gave
8 numerous renditions of the acts that she has alleged
9 Mr. Gentile did. And in those renditions, more often than
10 not, she ends the story with nothing happening.

11 I believe that no trier of fact could reasonably come to
12 the conclusion that this happened based on that, and we would
13 respectfully ask for a directed verdict on this indictment as
14 well.

15 THE COURT: Solicitor?

16 MR. WARD: Your Honor, the State would argue that the
17 victim's testimony, her direct testimony yesterday, she
18 stated that the defendant touched her, not only without
19 clothes on but also with -- when her clothes were on, in her
20 breast and vaginal area. And also in the forensic interview,
21 she describes multiple incidents where the defendant did
22 touch her in those areas, whether it was tickling or other
23 types of descriptions. She never said didn't happen, she
24 would just say she didn't remember, and that, I believe --
25 the State believes is enough to get past directed verdict.

1 THE COURT: I agree. I think there is existence of
2 evidence which would tend to prove each of the elements of
3 the offense and, again, we're not concerned with the weight
4 of the evidence at this stage, so your motion is respectfully
5 denied, Mr. Wehman. Have you discussed with your client
6 whether or not he wishes to testify?

7 MR. WEHMAN: Your Honor, I did this morning. If I could
8 have just a moment to reconfirm with him.

9 THE COURT: Sure.

10 (Defendant and attorney confer.)

11 MR. WEHMAN: Thank you, Your Honor.

12 THE COURT: Mr. Gentile, would you please stand.

13 CLERK OF COURT: Please raise your right hand, state
14 your full name for the record.

15 THE DEFENDANT: Michael Edward Gentile.

16 MICHAEL EDWARD GENTILE,
17 being first duly sworn, was examined and testified as
18 follows:

19 THE COURT: Mr. Gentile, at this time I'm going to
20 explain to you certain of your rights. If you don't
21 understand anything that I say during this proceeding, please
22 stop and let me know. Do you understand?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: We have now reached the stage of the trial
25 where you may present your defense. You have the right to

1 claim the protections given to you by the 5th Amendment of
2 the constitution of the United States. This amendment states
3 in part that no person shall be compelled in any criminal
4 case to be a witness against himself. This means that you
5 cannot be required to testify in this case. You have the
6 right to testify on your own behalf; however, no one can make
7 you testify. This is a personal right and no one can waive
8 this right except for you.

9 If you decide to testify, you will be subject to the
10 same rules that govern other witnesses and you may be
11 examined and cross-examined on any relevant issue in this
12 case.

13 In addition, if you have any convictions involving
14 dishonesty or false statement or for crimes punishable by
15 prison for more than one year and the Court determines that
16 the probative value outweighs the prejudicial effect to you,
17 the solicitor will be able to introduce your record and
18 attack your credibility.

19 If you decide to testify, this decision on your part
20 must be freely, voluntarily and intelligently made with the
21 knowledge of the protections given to you by the Fifth
22 Amendment and the consequences of your decision to testify.

23 If you decide not to testify, I will instruct the jurors
24 that they cannot give the fact that you did not testify any
25 weight whatsoever and that there's to be absolutely no

1 prejudice to you because you did not testify.

2 It is left entirely up to you as to whether or not you
3 wish to testify. You may talk with your attorney, your
4 family, your friends, but the final decision is left entirely
5 up to you.

6 Do you understand what I have just explained to you?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: And do you wish to testify?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: Do you have any questions about what I've
11 just explained to you?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: All right, sir. Thank you.

14 Are we ready to proceed?

15 MR. WARD: Yes, Your Honor.

16 MR. WEHMAN: Yes, Your Honor.

17 THE COURT: Mr. Wehman, when we bring the jury back in,
18 did you just want to rest and go immediately into closings?

19 MR. WEHMAN: Whatever the Court would prefer. That's
20 fine.

21 THE COURT: Are you all ready to proceed with that?

22 MR. WARD: I'm ready, Your Honor.

23 MR. WEHMAN: I'm ready, Your Honor.

24 THE COURT: Let's have our jury, please.

25 (The jury enters the courtroom at 11:27 a.m.)

1 THE COURT: Welcome back, ladies and gentlemen of the
2 jury.

3 Mr. Wehman.

4 MR. WEHMAN: Thank you, Your Honor. At this time the
5 Defense rests.

6 THE COURT: Thank you, Mr. Wehman.

7 Ladies and gentlemen of the jury, at this time both
8 sides have rested their cases. It will now be time to
9 proceed with the closing arguments in this matter. Please
10 pay close attention.

11 Solicitor.

12 MR. WARD: Thank you, Your Honor. May it please the
13 Court.

14 Amanda Holsapple entrusted her two kids, Minor and
15 A.H. , with her boyfriend, Michael Gentile. She would go to
16 work and he would take care of them. Little did she know,
17 while she was at work, Mr. Gentile would take Minor into
18 their bedroom, lock the door and sexually assault her. He
19 did this on multiple occasions.

20 Ladies and gentlemen, this has been a short trial.
21 Thank you for your attention. Even though it's been short,
22 it's still a very important case, not just for the State
23 itself but also for the defendant.

24 I'm going to present the State's closing argument and
25 then you're going to hear from the Defense. And remember, as

1 the judge told you previously, whatever myself says or the
2 Defense, that is not evidence. The only evidence in this
3 case came from the witnesses' testimony and also the exhibits
4 that have we have admitted into evidence.

5 But first, let's talk about the two indictments, because
6 the Defense in its opening made a big deal about the lewd act
7 indictment. He said first criminal sexual conduct with the
8 first degree. This was true billed back in October of 2012,
9 just after the defendant was arrested for this charge. He
10 was arrested for this charge because of the forensic
11 interview Minor did back in September.

12 As you all saw, she clearly states that the defendant,
13 on multiple occasions, would take her clothes off or she had
14 her clothes off. He took his own clothes off, put his
15 privates on her my stuff. She was referring to him putting
16 his penis in her vagina. So he was arrested for criminal
17 sexual conduct.

18 Just because someone's arrested doesn't mean the
19 investigation stops. As the State was preparing for trial,
20 as we review the forensic interview further, you clearly hear
21 Minor is talking about multiple incidents, not just one, a
22 period of time over two years. And that's why the grand jury
23 indicted him and true billed him just two weeks a few weeks
24 ago on June 4th for a lewd act, because, as you heard in the
25 forensic interview and as you heard Minor testify to, the

1 defendant would touch her sometimes when her underwear was on
2 and her clothes were on, not only on her breasts but also on
3 her vagina. Ladies and gentlemen, that is exactly what a
4 lewd act is; therefore, there's two separate crimes, two
5 separate indictments, and that's the reason for both.

6 The Defense, in its opening, told you you all would be
7 left confused at the end of this trial. I'm going to go
8 through the charges in this case as they pertain to all the
9 evidence and facts that have been presented to show you that
10 it's actually very simple and not confusing at all.

11 As I stated, the first charge is criminal sexual conduct
12 with the first degree. The State must prove beyond a
13 reasonable doubt the defendant engaged in a sexual battery
14 with a victim who is less than 11 years of age.

15 Let's just talk about the victim is less than 11 years
16 of age real quick. That's not an issue in this case. I
17 think -- I submit to you there's no doubt the victim

18 Minor was under 11. She testified yesterday she
19 was 9 years old back in 2012, so that would have put her
20 between 7 and 8 years old between the time of 2010 and 2012.
21 Also, in the forensic interview, she told you, you heard that
22 she was 7 and 8 years old when the defendant committed these
23 sexual assaults, so that's not an issue.

24 For sexual battery, sexual battery is defined as sexual
25 intercourse, cunnilingus, fellatio, anal intercourse or --

1 this is important -- any intrusion, however slight, of any
2 part of a person's body or object into the genital or anal
3 openings of a person's body. An intrusion however slight.

4 Minor testified twice yesterday. She was asked about
5 when these instances occurred. She said she was in the
6 bedroom alone with the defendant. The door was locked. And
7 she was asked "Where did he touch you?" or "Did he touch you
8 in places?" And she said yes, then she described the places
9 she was touched in.

10 She was shown this diagram, State's Exhibit 4, diagram
11 of a female. She -- on the screen she pointed to her vagina
12 and she said in her place. I submit to you that means he
13 touched her in her vagina, inside, slight penetration.

14 Also, she testified on redirect about her being
15 blindfolded. And during that incident, she had said earlier
16 that's when her clothes were off and that the defendant's
17 clothes were off. Ms. Mims asked her "When he touched you,
18 did it hurt?" She said yes.

19 I submit to you if the defendant was only rubbing
20 himself on her vagina, it wouldn't hurt. But for a 7- or
21 8-year-old, for an adult male to use his penis and touch her
22 in her vagina, it would hurt, no matter how slight, if
23 penetration occurred.

24 Lewd act is the other charge. It is unlawful for a
25 person over the age of 14. The defendant, on the forensic

1 interview, Minor said he was 32 years of age. It's not
2 going to be an issue in this case, I submit to you.

3 Willfully and lewdly commit or attempt a lewd or
4 lascivious act on or with the body or its parts of a child
5 under the age of 16 years. Again, as I just said, Minor ,
6 she was between 7, 8 years old when all these sexual assaults
7 occurred.

8 With the intent to arouse, appeal to or gratify the
9 lust, passions or sexual desires of the defendant or the
10 child. Let's just go through what lewd means real briefly.
11 Lewd means obscene, lustful, indecent or lecherous, and I had
12 to look that one up. And it means having or showing
13 excessive or offensive sexual desire.

14 I submit to you there is nothing more offensive of a
15 type of sexual desire than a 32-year-old man taking his
16 clothes off and putting his penis on a 9-year -- 8-year-old's
17 vagina or touching her breasts. The only reason he would be
18 doing that is to satisfy the lust and passions that he wants.

19 Again, lascivious is just another definition that's in
20 the -- in this crime. It means tending to insight lust,
21 lewd, indecent, obscene or tending to deprave the morals in
22 respect to sexual relations. Again, nothing more obscene
23 than what Minor told you yesterday about he touched her in
24 her places above and under the clothing.

25 As Ms. Mims told you in the opening statement, in cases

1 like this for criminal sexual conduct, there does not need to
2 be any other evidence besides the victim's testimony for you
3 to find the defendant guilty of these crimes, if you believe
4 the victim beyond a reasonable doubt.

5 The testimony of the victim need not be corroborated,
6 simple as that. If you, all 12 of you, believe beyond a
7 reasonable doubt from listening to Minor 's testimony
8 yesterday and after watching her forensic interview that
9 these incidents did occur, then you can find the defendant
10 guilty.

11 Let's go to the credibility of witnesses. The judge
12 will tell you that you can believe some, all or none of a
13 witness's testimony. You are the trier of the facts. Now,
14 I'm at a little bit of a disadvantage because I have to go
15 first, so I don't know the exact arguments the Defense is
16 going to make, but I can assume they're going to attack
17 Minor 's credibility. I'd like to go through these factors
18 briefly with you to show you why Minor is credible and why
19 you can believe her when she tells you the defendant sexually
20 assaulted her.

21 First one, demeanor of the witness, talking about
22 Minor . When she testified yesterday, you saw that she was
23 nervous, quiet. She didn't just want to come out and tell
24 you what she had been through. When she was asked about her
25 age, where she lived, who her brothers and sisters were, she

1 answered those fine, no hesitation.

2 But when Ms. Mims started asking her about "Can you
3 please tell me if you were ever alone with the defendant?"
4 she would shrink down, get nervous. That's because she's
5 traumatized and she's having to relive these traumatic events
6 to tell you all what exactly happened.

7 And in the forensic interview, you could see the same
8 thing. She was -- she had a drawstring on her shorts that
9 she was wearing. She was constantly fiddling with that, not
10 making eye contact with Ms. Boyle. That was the first time
11 she had ever told anyone that this had happened.

12 And the reason I submit to you that was the first time
13 is because the defendant was living with them for two years
14 as this was going on. Minor was scared. He was in the
15 house all the time. She had no one to tell.

16 The first opportunity she had, he was out of town. He
17 was driving his truck. Her mom saw something on her phone
18 that concerned her, so she called the police. Minor was
19 then sent to do the forensic interview, and that was the
20 first time she could feel safe and open up and tell someone
21 about these traumatic events and sexual assaults that
22 occurred.

23 Forthright or hesitant, again, little similar to
24 demeanor. I submit to you it's hard for anyone, whether it
25 be a 12-year-old Minor or a 9-year-old Minor, when she

1 was doing the forensic interview, to come out and give great
2 detail about these events.

3 She's describing in the forensic interview she's 9 years
4 old. She even says these happened when she was 7 or 8. That
5 could have been almost two years ago. I submit to you the
6 reason she's not able to give great detail and say, "It
7 happened on August 1st," is because it happened so many
8 times, they're so traumatic, they all run together. It's not
9 separate events anymore. It's all one long period over two
10 years of one long traumatic event. That's why she's unable
11 to give you specific details.

12 Consistent, luckily, we have two ways -- you got to see
13 basically Minor testify twice to see if she was consistent
14 in what she said. Got to see her yesterday. She testified
15 directly in front of you. Also you got to look and see if
16 she was consistent by the forensic interview you watched.

17 Yesterday she testified the assault took place in the
18 defendant's bedroom and the door was locked. I'm just going
19 to go through her testimony a little bit. That's one thing
20 she stated.

21 She also stated, "He touched me in places and other
22 things." Again, she was shown this diagram. She circled for
23 you her vagina and her breasts. Then she was shown the male
24 diagram, just like she was in the forensic interview, asked,
25 "What did he touch you with?" Circles hands and the boy's

1 privates. She was asked, "Were your clothes on or off?" She
2 answered sometimes they were on; sometimes they were off.

3 She even talked about a blue bandana. She was
4 blindfolded. She talks about how her clothes were in her
5 mom's bedroom and that's where she would have to go to get
6 dressed. This is all what she testified to yesterday.

7 Now let's see how consistent she was with what she
8 stated compared to the forensic interview. In the forensic
9 interview, Minor tells Ms. Boyle the defendant touched her
10 my stuff, which, as you heard Ms. Boyle testify to, they went
11 through this diagram and Minor told her what the names of
12 each body part was. And she circled my stuff, pointing to
13 her vagina. Same thing as she told you yesterday.

14 Multiple times in the forensic interview she tells
15 Ms. Boyle that her clothes were on sometimes and her clothes
16 were off, because, like I said, multiple incidents, not just
17 one. It was a two-year period of multiple incidents.
18 Sometimes they were off; sometimes they weren't.

19 Then about 26 minutes into the forensic interview, she
20 talks about the blue bandana. That's what she was
21 blindfolded with. Let's talk about that blue bandana for a
22 second. We had Minor's mom, Amanda Holsapple, testify,
23 and I asked her at the end of her testimony if this was her
24 in this picture (indicating). She's wearing a blue bandana
25 that she said the defendant asked her to put on or he put it

1 on. Same one, I submit to you, he put on Minor .

2 She also said in the forensic interview all her stuff is
3 smooshed in her mom's room because it's a small apartment,
4 just like she told you about yesterday.

5 And there was one weird thing in the forensic interview,
6 while I'm on it. She said she fell asleep during one of the
7 times the defendant was sexually assaulting her. I submit to
8 you she didn't fall asleep, but she was asleep and the
9 defendant began fondling her and that's -- and she woke up,
10 and that's why she said, "What are you doing?" because he
11 woke her up. She didn't fall asleep; she was woke up by him
12 touching her.

13 Opportunity to know the facts. Minor testified.

14 A.H. testified. There's two people in that bedroom:

15 Minor and the defendant. They're the only two people who
16 know what happened. And because she didn't disclose for up
17 to two years, there's not going to be any physical evidence,
18 because after that point, two years, the physical evidence is
19 gone. All we have is her testimony. And that's why cases
20 like this, there doesn't need to be any other evidence to
21 convict the defendant.

22 Bias. Minor testified she liked Michael at first,
23 but she knew something -- he was doing something wrong. She
24 knew something was wrong because on multiple occasions, he
25 would take his clothes off and put his penis in her vagina or

1 he would take her into the bedroom, lock the door and fondle
2 her. Even at 7 or 8 years old, she knew that was wrong.

3 And why would she lie? Why would she make this up? Why
4 would she continue to say he sexually assaulted her five
5 years after it happened? I submit to you that's because
6 she's telling the truth and she's reliving these events that
7 she told you yesterday.

8 Corroboration. I know I've said there doesn't have to
9 be any corroboration for you to convict, but I submit to you
10 there is corroboration in this case that proves Minor 's
11 telling the truth.

12 First, as I already pointed out, the blindfold, same one
13 he used on her mom he used on Minor . Do you see the
14 blanket behind the mom? Pink, yellow striped? If you
15 remember the forensic interview, Minor describes the
16 blanket she had to sit on while she was on the edge of the
17 bed and the defendant stood in front of her while he was only
18 in his underwear. She said it was pink and yellow striped,
19 thick blanket.

20 We also had Minor 's little brother testify, A.H.
21 He corroborates that A.H. , Minor and the defendant would
22 be at home alone while their mom would be at work from about
23 9 to 6 in the evening. It was just them. And that he knew
24 Minor and the defendant were in the bedroom, but he
25 couldn't go in there. He didn't say why he couldn't go in

1 there, but I submit to you because he knew the door was
2 locked and he couldn't go in there.

3 Beyond a reasonable doubt. It's not proof beyond any
4 and all doubt. People may believe the earth is flat, but is
5 that reasonable? Simplest way to think about it is if you
6 are firmly convinced that the defendant on multiple occasions
7 would either take Minor 's clothes off, his clothes off,
8 put his penis in her vagina and penetrate her, if you're
9 firmly convinced of that and if you're firmly convinced that
10 on other occasions during this two-year period he would lock
11 the bedroom door, he would fondle her breasts and touch her
12 above her underwear on her vagina, then he's guilty of both
13 charges.

14 I'll leave you with this: The term "verdict" comes from
15 the Latin term *veredicto*, which means to speak the truth. I
16 submit to you yesterday you saw a 12-year-old girl,
17 Minor , get up here and speak the truth, probably
18 only the second time she's ever spoke the truth about this.
19 She told you he touched me in my vagina, that it hurt,
20 sometimes the clothes were on, sometimes the clothes were
21 off.

22 The other time she spoke the truth was the forensic
23 interview about three years ago, two and a half years ago,
24 when she describes multiple incidents over that period of
25 time the defendant sexually assaulting her.

1 In a short time, you're going to go back there and
2 deliberate. And the only truth that you guys will be able to
3 find is that he is guilty of both these crimes. Thank you.

4 THE COURT: Counsel.

5 MR. WEHMAN: Thank you, Your Honor. May it please the
6 Court.

7 THE COURT: Yes, sir.

8 MR. WEHMAN: Solicitor Ward, Solicitor Mims.

9 That's it. That's all the evidence. The evidence that
10 you're supposed to take back and deliberate about and the
11 State would contend finds Michael Gentile guilty beyond any
12 and all reasonable doubt.

13 Now, reasonable doubt in terms such as that are
14 abstract. They're hard to put a handle on. It's hard to
15 figure out what they mean. I don't have any fancy
16 PowerPoints, but I will give you a story that I would submit
17 kind of explains it.

18 As a child, growing up, my father hated that I would
19 slam the door. I would always slam the door. When I'd come
20 home from school, run upstairs, slam the door behind me.
21 Every time he'd tell me "Don't do that. Don't do that." I
22 continued to do it. I didn't listen to my father, as kids
23 tend to do.

24 And so one day I came home from school, I had to go to
25 soccer practice, and I had to change, so he dropped me off,

1 followed in behind me, and as I'm running up the stairs, he
2 said, "Don't you slam that door." I go up the stairs, go in,
3 the door slams behind me.

4 What I hear is my father coming up the stairs, probably
5 trying to instill the fear of God in me, and he yelled. He
6 screamed. I came out the door, said, "It wasn't me. It
7 wasn't me."

8 Now, I'm an only child, so blaming my Scottish terrier
9 wasn't really an option. He didn't slam the door. But I
10 told him, "Dad, the windows were open." Because it was
11 spring. The windows were open. I said, "The wind pulled the
12 door shut." He didn't believe me.

13 Right as he was about to probably tell me in no
14 uncertain terms what my punishment would be, the door next to
15 me slams shut. I guess the air in the room had shifted and
16 that door slammed shut.

17 In that moment he stopped, kind of looked at it. I
18 looked at him. "See? I'm telling you the truth." And he
19 believed me. He paused. He saw the evidence. He saw what
20 had happened and he paused. That is what I submit to you is
21 what a reasonable doubt is, something that would cause you to
22 pause.

23 You're reasonable people. Do any of you believe the
24 earth is flat? No, you're reasonable people. So if you have
25 a doubt, I would submit to you that's a reasonable doubt.

1 Now, the solicitor's talked about the witnesses. I'll
2 go through them briefly. Amanda Holsapple testified. And
3 really what she said was "I took these pictures. These are
4 of me." See the blue bandana, rope behind her head. She
5 said they were of her. They were on a camera. Nobody knows
6 where the camera's kept, but they were on a camera. They're
7 digital photos which can travel between computers phones, can
8 be picked up, looked at. But she said it was there and she
9 didn't know where it was kept, and that's fine.

10 And then you heard from A.H. , who really didn't say
11 much of anything.

12 And really the star of this case is Minor . That's
13 what we're here for. She testified in person and the
14 solicitor went over the credibility factors and said that I
15 would say she's not a credible witness. That's not what I
16 would say here.

17 I understand the time that's elapsed. She said some
18 things and some things were inconsistent with what she said
19 in her video, but I don't expect her to remember everything
20 completely, but that's why we have the video. She goes into
21 a forensic interview room and tells the person what happened.
22 She goes through it step by step. So the fact that she can't
23 remember yesterday, it's not a concern. We have more. We
24 can see what her story is.

25 But he is correct in that there are credibility factors,

1 and you heard them. You can make a determination for
2 yourself. Her demeanor, she seemed nervous. Who wouldn't be
3 nervous? She was definitely nervous. She seemed nervous in
4 the forensic interview; but she continued. She gave the
5 story.

6 Forthright. When she talked to me, she said a couple of
7 things. She didn't say much. I didn't ask her many
8 questions because I understood that she didn't remember, but
9 she told me, no, A.H. 's never untied a blindfold. That
10 never happened. I said okay. She told me that Mike touched
11 her on her coconuts. Okay. She didn't really remember.

12 So we turn to the forensic interview and Ms. Boyle.
13 Now, Ms. Boyle told you that they don't ask leading
14 questions. You can judge for yourself whether or not any of
15 those were leading. I would submit to you that most of them
16 are.

17 She said that they don't work for law enforcement;
18 however she does take breaks to go talk to law enforcement to
19 see if they have any more questions for her. When she's done
20 with her questions, she talks to them.

21 But she said that she wants the girl to be able to tell
22 her story in her own words, not the interviewer's words, her
23 own words. And she does a good job. She asks non-leading
24 questions and gets a story out of Minor .

25 Minor , taking a shower, getting a bath, she wraps a

1 towel around herself. She has to get dressed. She goes in
2 her mom's room. That's where her clothes are. Small
3 apartment. Everything makes sense. At that point Mike says
4 the only thing I believe that he says this entire time, the
5 only word, and that should be a factor that you consider in
6 credibility. He doesn't say anything. I don't know if that
7 strikes anyone as odd, but it did to me. He doesn't say
8 anything, but he says this: "What are you doing in the room?
9 Why are you in here changing?"

10 And she says, "Well, A.H. 's in the bathtub, so I have
11 to be."

12 And what happens at the end of that story? Mike leaves
13 to go make some food once.

14 So then the forensic interviewer at this point has a
15 decision to make. Minor has pointed to two things. She
16 has pointed to her my stuff and pointed to Mike's name. We
17 don't have the list of names, but the forensic interviewer
18 told her what she was doing. She was looking at a list of
19 names. She pointed. She didn't say anything, but I'm not
20 saying that's not her way of telling you. She's telling you
21 what happened, but at the same time, when asked to tell
22 exactly what happened, details, "All right. Tell me how it
23 happened." She can't do it. Can't do it.

24 And at this point I'd like to mention these indictments
25 sound a lot like the testimony we've heard from Minor .

1 These are allegations. If it's alleging these things, and
2 yes, they've achieved it. They've alleged these things.
3 What they are held to do is prove beyond a reasonable doubt
4 that this happened.

5 We have heard from the testimony that this happened,
6 that Michael Gentile willfully and lewdly committed or
7 attempted to commit a lewd or lascivious act upon the body of
8 Minor

9 Now, she said that. She pointed. She said it. Now we
10 need more. If not, the interview would end. All right, you
11 pointed. Good. We're done. You need more. You need to
12 know how it happened.

13 She tries multiple times. I won't go through all of
14 them. You know. You heard it. One time Mike leaves to get
15 food. Next time she leaves to get food. Eventually the
16 forensic interviewer says, "I was confused. I didn't know
17 what happened." So what she does is she gets the dolls, the
18 strange anatomical dolls. She gets those out, and the only
19 clip I'll show you is of this.

20 (Video played.)

21 MR. WEHMAN: She couldn't tell her what happened. She
22 can't show her what happened. And I know why the dolls are
23 out. Some people just have different ways of expressing it.
24 That's a child. She might not know the words to say, but
25 surely if this act had been committed, if she had been

1 assaulted, running out of the room terrified, screaming,
2 banging on doors, surely she could show what caused that
3 reaction or have some idea.

4 What does she do? She stares for a long time at the
5 dolls, looks at them, looks at the forensic interviewer. "I
6 don't know" (indicating).

7 The interviewer had multiple chances to say, "That's
8 enough. I'm not convinced. That's enough. I'm here on a
9 fact-finding mission and I found the facts. This didn't
10 happen." She's been told five times, Mike making food,
11 Minor making food, playing the Wii. He was on the
12 computer, the "I don't know" with the dolls. He laid down,
13 put his pants on, and I tried to find the door.

14 And speaking of the door, I just want to set the scene
15 for you. Minor with the bandana around her
16 head, around her face, covering it. She can't get it off.
17 She testifies earlier in her forensic interview that she can
18 get it off, but at this point she can't get it off. And what
19 does she do? Mike Gentile has allegedly at this point
20 assaulted her and she's trying to get out the room. So she
21 puts her clothes back on blindfolded.

22 And what is she doing? She's banging on the door.
23 "A.H. , A.H. , save me." A.H. 's on the other side. He
24 can't get in. The door's locked. She's banging. He's
25 banging. Finally she finds the lock, gets out. A.H. takes

1 the blindfold off of her head, but no one remembers that.
2 Something to consider in the corroboration department of her
3 credibility.

4 Now, I'm a big sports fan. I like stats. I like
5 numbers. Obviously not skilled enough to get a job in stats,
6 but I did find some in this interview. The number of times
7 the forensic interviewer says his private part touching her
8 my stuff, I believe I said it in the cross-examination, 28.
9 28 times she says that phrase.

10 The number of times Minor ends her stories
11 with no abuse, five. Five times.

12 The number of breaks the forensic interviewer takes in
13 order to talk to law enforcement because she was running out
14 of questions and she thinks, I'm finished, three, three times
15 she comes back in the room. Law enforcement says, "No,
16 that's not going to do it."

17 The number of times the forensic interviewer stops and
18 says, "I'm confused" or "Show me, because I don't know what
19 you're saying," two, two times she says it. I would submit
20 that there are multiple more looks, but she says it twice.

21 The number of times Minor states in her own
22 way that Michael Gentile touched her my stuff with his
23 private part, one. The first word she says.

24 But the forensic interviewer in her fact-finding
25 mission, not using leading questions, not suggesting answers

1 to this child, determined that it was appropriate to continue
2 questioning, saying, "Now, when his private part touched
3 you're my stuff. Now, when his private part touched you're
4 my stuff."

5 She told you, "I thought you were going to ask me
6 millions and millions of questions. How do I make the
7 questions end?" When his private part touched you're my
8 stuff, when his private part touched you're my stuff. What's
9 the answer she wants? Make it happen. Show me, tell me, do
10 something..

11 So she does. She picks up the doll, puts it on top of
12 his, literally putting his private part on her my stuff.
13 Makes the questions end.

14 Have they proven it beyond a reasonable doubt? These
15 pictures (indicating)? The one thing Minor
16 knows is what to say. Point, yes, private part, my stuff.
17 Does she know anything else? Can she describe it? Can she
18 show it? No, she can't. Can she describe this (indicating)?
19 This digital photograph on a camera that could be in the
20 house, could be on phones, could be anywhere? Yes, she can
21 describe that.

22 What she told, the basics going in, but then her story
23 fell apart when asked questions? That's for you to
24 determine.

25 Now, the State wants to tell you they've proven both of

1 these beyond a reasonable doubt. They've told you. I've
2 told you in opening, one of these came in a couple of weeks
3 ago preparing for trial. The State has seen the video. The
4 video's been in existence three years. September 2012, I
5 believe. They had the video. They watched it, I think,
6 probably multiple times.

7 No charge came, but when the month of this trial came
8 about, they probably watched again and said, "Oh, I don't
9 know. I need another charge." Because at no point during
10 any of those interviews does Minor say, "It went
11 in." They asked her. She never says it goes in. Touched
12 on. Touched on. Didn't go in.

13 Here live she said, "Touched in my coconuts and my my
14 stuff." Is that a description or is that a location? In my
15 coconuts. She's describing where, in these places. Not
16 inside, but this is where. But the State wants you to
17 believe that that's proof beyond a reasonable doubt that
18 penetration occurred.

19 This was a short trial, and the solicitor's right. It's
20 important for everyone involved. Don't take that for
21 granted. But also don't take for granted what the
22 solicitor's asking of you. He's asking you to sit here in
23 the light of this evidence when the solicitor's told you, "We
24 don't know what happened."

25 The forensic interviewer told you "I'm confused. I

1 don't know what happened. Let me get the dolls. I still
2 don't know what happened."

3 Law enforcement has told you, "Get back in there. I
4 don't know what happened."

5 Minor , how many times? "I don't know. I don't
6 remember. It didn't happen. I went to make some food. He
7 went" -- she doesn't -- I don't know.

8 Every single person in connection with this case has
9 told you "I don't know what happened," yet the solicitor
10 wants to stick this in front of you and say, "We've proven it
11 beyond a reasonable doubt. You find that. That's your job."

12 They've asked you to do something they haven't prepared
13 you to do. You can't with what you have. Someone should be
14 able to do it, so why not you, is his thinking.

15 My father didn't punish me that day. He saw the door
16 slam. He knew what caused the door to slam. He paused.
17 Five times the story ends nothing happened. Solicitor
18 drafting a new indictment on the eve of trial. The forensic
19 interviewer saying, "I don't know. I'm confused." Law
20 enforcement, did you hear from them? They don't know what
21 happened. But you find beyond a reasonable doubt, no one
22 knows what happened, but you do it. Thank you.

23 THE COURT: Ladies and gentlemen of the jury, it's about
24 12:00. The jury instructions take a little bit of time, so
25 I'm going to allow you to go to lunch and then come back. If

1 you could be back in your jury room at, say, 1:00 or just a
2 couple minutes after 1:00, then we'll go with the jury
3 instructions.

4 I am in receipt of the note that you have submitted to
5 the Court. I will address that when you come back.

6 Again, please remember my previous instructions that
7 you're not to talk about the case with anyone or allow anyone
8 to talk about the case with you. That includes amongst
9 yourselves, and that is because you have not yet heard the
10 instruction on the law. You must have all of the relevant
11 information before you can discuss the case and that actually
12 begins when you retire to the jury room to deliberate.

13 Again, have a nice lunch and we will see you about 1:15.

14 (The jury retires to the jury room at 12:06 p.m.)

15 THE COURT: I was handed a note from the jury obviously
16 right when they walked in right when you started your
17 closings. I'll allow you to review it, but I can read it to
18 you what it says. Basically, it's four separate questions
19 that basically states, "What was on the phone that led to the
20 mother to call the police and assume the defendant assaulted
21 her daughter," question mark. Then the next question says,
22 "What did the doctor's examination say," question mark. The
23 next question says, "Mom said she waited for police before
24 waking her daughter. Did police question daughter alone,"
25 question mark. Next question says, "Did mom notice any

1 differences in child's behavior prior to this night,
2 differences how she behaved around the defendant, not wanting
3 to be left alone," and we have a question mark.

4 So obviously the jury has some questions. Any --
5 obviously we'll mark it as a Court's Exhibit. I have
6 instructed them not to discuss this case amongst themselves
7 and to not do so. There's obviously some indication that
8 that's gone on somewhat to some extent, so I'll be happy to
9 hear from either side if you have a position.

10 We can mark it as a Court's Exhibit.

11 Hopefully the curative instruction that they're not to
12 consider anything in the jury instructions will clear up what
13 their duties are, but I'll be happy to hear from either side.

14 MR. WEHMAN: Your Honor, can I have to think about it
15 until after lunch?

16 THE COURT: Sure.

17 MR. WEHMAN: And maybe we can address it at that point.

18 THE COURT: Absolutely. I told them to be back at 1:15,
19 so if you all can be back a few minutes before then so we'll
20 have a chance to address it, then we'll have time to address
21 it so they're not waiting.

22 (The Court's Exhibit 1 marked for identification.)

23 (Lunch recess held.)

24 THE COURT: All right. Now regarding -- back to
25 Mr. Gentile's case. Mr. Loy, I understand that you have a

1 motion.

2 MR. LOY: I do, Your Honor. And, Your Honor, it's not a
3 situation I've addressed in the past. I'm trying to put my
4 argument together as best I can. I've been given a case
5 which -- well, a couple of cases, most recent one that may be
6 important I believe is the case of *State v. Ziegler*. Does
7 Your Honor have that case?

8 THE COURT: Do you have an extra copy?

9 MR. LOY: I had one, but the State took it from me.
10 But, Your Honor, the first case I found that seems to be
11 controlling on the issue of potential juror misconduct and
12 what is my motion for a mistrial in this case is *State v.*
13 *Aldridge*, and it doesn't appear to be on point.

14 I mean, there's some dicta. There's some language in
15 there where they address the issues of premature
16 deliberation, but they basically say the defendant attempted
17 to hold the issue in pocket so to speak, that he became aware
18 of allegations of juror misconduct, that is premature
19 deliberation, that he didn't raise the issue.

20 There was no contemporaneous motion or no objection that
21 the law would have required he make that motion or that
22 request for a mistrial as soon as possible or as soon as he
23 received the information. He waited till subsequent to the
24 conviction, then obtained an affidavit and tried to submit
25 it.

1 And they basically said in *Aldridge* that that was
2 procedurally barred at that point, without saying -- although
3 the dicta seems to indicate that premature deliberations, in
4 and of itself, does not necessarily mandate a mistrial.

5 Then I'm reading the Ziegler case subsequent. This is a
6 2005 case, Your Honor, in the Court of Appeals. And although
7 I've only given it a cursory reading at this point, I'd like
8 to look at it a little further. It seems to be that the
9 Court -- and I think it said the Court is first going to have
10 to make a determination as to whether or not there has been
11 juror misconduct.

12 THE COURT: Correct.

13 MR. LOY: And further, the dicta in the earlier case,
14 *Antern* [sic], whatever, indicated that the burden for showing
15 a prejudice to the defendant was, in fact, on the defendant,
16 again, citing some earlier cases.

17 Your Honor, other than to ask the Court or if the Court
18 denies my motion for a directed verdict, I assume there would
19 be some inquiry on the Court's behalf. Where that goes
20 honestly, I'm a little taken aback. I mean, if the burden is
21 on us to show prejudice, other than through individual voir
22 dire of the jurors, subject to -- I don't know how else we go
23 about showing prejudice at this point other than to wait and
24 complain we didn't like the verdict afterwards, and I think
25 we're procedurally barred at that point.

1 So my motion is for a directed verdict. I believe that
2 the -- the questions that have been sent out by the jurors
3 clearly indicate that deliberation has begun. There's four
4 different questions. Your Honor, has published them earlier.
5 They want to know what was on the phone, evidence that was
6 suppressed. They want to know about a doctor's examination
7 they assume was performed. They want further inquiry into
8 examination of the mom, etc.

9 All these things, which I don't think there's any
10 sensible avenue or road where which one person is sitting
11 back there surreptitiously in the corner separate and apart
12 from the other jurors composed this list of questions and
13 sneaked it to the bailiff on his way back into the room. I
14 think the only reasonable conclusion is that Court's Exhibit
15 No. 1 is the product of conclusion amongst the jurors in
16 direct violation of Your Honor's earlier instructions to
17 them.

18 The cases I've cited do several times point out that
19 it's a fundamental principal they not commence deliberation
20 simply because they tend to solidify their positions. The
21 State goes first. People put themselves in a corner. They
22 create alliances within the jury itself, etc., without ever
23 having heard the arguments of counsel, without having the
24 benefit of the Court's instruction, understanding what the
25 law is.

1 And personalities being what they are, once these people
2 have guarded one position or another and advanced it as their
3 own, it's human nature and their natural inclination to dig
4 in and defend it, particularly when challenged by the others
5 back there.

6 So the conversation is going on. I think that juror
7 misconduct has occurred on its face. I would contend that
8 the premature deliberations, extensive as they are in this
9 case, because there's four questions touching on a bunch of
10 different topics or at least several different topics, have
11 been clearly prejudicial to the defendant's right to have the
12 jury commence deliberation after having the benefit of
13 argument of counsel as well as the Court's instructions on
14 the law.

15 And so, Your Honor, at this point I'm asking for a
16 mistrial on this case so that we could proceed de novo.

17 THE COURT: Solicitor.

18 MR. WARD: Your Honor, the State would cite as well
19 *State v. Aldridge*. In that case the Court found that unless
20 misconduct affects the jury's impartiality, it is not -- it
21 is not such misconduct as will affect the verdict. I think
22 the questions asked, even though I would agree with the
23 Defense, deliberations have begun. The questions are on
24 point with this trial. These are holes in our case we felt
25 before we started the trial. They aren't going off on wild

1 tangents. I don't think it has affected their impartiality
2 because it's all questions that I think would have come up
3 after we presented all of our evidence, and we have done that
4 at this point, and none of these things were touched upon
5 afterwards.

6 As the Defense also stated, it is their burden to prove,
7 I guess, impartiality, and we would find that without doing
8 some type of questioning into the jurors, you know, we should
9 continue. And I think also in this case they talk about a
10 curative instruction is proper to continue with instead of
11 granting a mistrial.

12 THE COURT: Thank you, Solicitor.

13 Mr. Loy, in regards to your argument, in reviewing the
14 case law as well the ones that you cited as well as what we
15 were able to find, it appears that I think an inquiry of the
16 jury is proper at this point. I think although that there
17 appears to have been some misconduct, we don't know the
18 extent or how, if it does prejudice your client, frankly, it
19 sounds like it's prejudice more towards the State than
20 towards your client because they're bringing out questions
21 that put holes in the State's case.

22 I understand your position regarding your client's right
23 to not have them deliberate prior to the proper time;
24 however, for the Court to declare a mistrial, first conduct
25 must be found and then the Court then must find on top of

1 that that it would affect the jurors' ability to be fair and
2 impartial and to listen to the instructions.

3 What I intend on doing is I'm going to bring the jury
4 out. I'm going to ask them -- basically I'm going to ask the
5 foreman to let me know how the question came about. I'll
6 have to ask the bailiff, did the foreman hand you the note?

7 THE BAILIFF: I was told there were questions and
8 whether they were supposed to give them to you.

9 THE COURT: Did the foreman hand the note to you?

10 THE BAILIFF: Not the foreman -- yes. Oh, yes, ma'am.

11 THE COURT: Yes?

12 THE BAILIFF: So somebody else mentioned it. The
13 foreman didn't.

14 THE COURT: Well, I intend on is I'm just going to bring
15 the jury out and ask the foreman how it came about since he
16 is technically the appointed liaison for the Court, and we'll
17 just go from there. And once I question the jury, then we'll
18 send them back out and I will rule on your motion.

19 All right. Let's have our jury, please.

20 MR. LOY: Your Honor, may we approach?

21 THE COURT: Sure. Can you have her hold on?

22 MR. LOY: My question essentially was going to ask
23 whether or not your line of inquiry, as more suggestion,
24 would include continued deliberations throughout lunch,
25 because they weren't admonished. They presented these notes

1 and then they were -- this note and then they were sent away.
2 I know that some were downstairs in the jury room together.
3 Others may have gone to lunch together and now they've been
4 back there sitting since.

5 THE COURT: Right.

6 MR. WEHMAN: So not just prior to the actual composition
7 of the note itself but whether or not deliberations have
8 continued even up to this point.

9 THE COURT: Sure, I'll ask them.

10 MR. LOY: Thank you.

11 (The jury enters the courtroom at 2:01 p.m.)

12 THE COURT: Welcome back, ladies and gentlemen of the
13 jury. Obviously as I discussed with you prior to you leaving
14 for lunch, I am in receipt of your note with certain
15 questions.

16 And Mr. Foreman, I'm going to ask you certain questions
17 regarding that note. The Court needs to have certain
18 information regarding what, if anything, the jury has
19 discussed up until now.

20 As you are aware, the Court instructed the jury to not
21 have any type of deliberations prior to the case being
22 submitted to you for deliberations after the close of the
23 evidence after the closing arguments and the jury
24 instructions on the law. By receiving that note with certain
25 questions, it raises the question as to whether or not

1 premature deliberations have begun amongst the jury.

2 Mr. Foreman, can you tell me how those questions came
3 about for submission to the Court? Has the jury communicated
4 with each other as preliminary?

5 JURY FOREMAN: No. We were given the tablet beforehand
6 and we were unclear as to whether questions were to be
7 written down during the whole time we were in there or
8 afterwards, so some questions were written down so they
9 wouldn't be forgotten. And I came and asked one of the
10 officers if we were allowed to deliberate, because it sort of
11 began but not really, and she said no and we ceased.

12 THE COURT: Okay. So a particular -- several questions
13 came up and it was the jury's impression that you could
14 communicate during the Court during the trial; is that
15 correct? Is that what you're telling me? I want to make
16 sure I get it right.

17 JURY FOREMAN: No, we just didn't know. It wasn't made
18 clear, I don't think, whether any discussion could take place
19 or not, and so the question was asked. And there was no
20 discussion. There was no deliberation.

21 THE COURT: Okay. So what you're telling me is there
22 was no deliberation amongst the jury regarding the evidence
23 or anything of that nature.

24 JURY FOREMAN: No.

25 THE COURT: Is that what you're telling me?

1 JURY FOREMAN: Yes.

2 THE COURT: All right. So the next question for the
3 jury is -- and this is a question as a whole -- I'm going to
4 ask you this question. If this applies to you, if you feel
5 that you cannot follow this instruction, I just -- and I want
6 you to be honest. Obviously we're here to seek the truth and
7 make sure that we follow all the rules and nobody will be in
8 trouble, but I just need to know for sure if this question
9 applies to you and you can't answer it in the affirmative,
10 just raise your hand and that will be the end of it.

11 But I need to find out from each of you whether or not
12 those previous discussions or any kind of communication
13 whatsoever, will it affect your impartiality? Can you set
14 whatever you heard aside, listen to the jury instructions and
15 only begin your deliberations anew when you're instructed to
16 do so when you go back to the jury room? Will you listen to
17 the instructions and to the law and not allow any of those
18 previous discussions enter into your mind prior to your
19 deliberation of the case? Can each of you do that? If so,
20 please stand; if not, stay seated. That is completely up to
21 you.

22 All right. Let the record reflect that each of the
23 jurors has stood. Most of them have actually acknowledged as
24 well by shaking their head in the affirmative.

25 So thank you, ladies and gentlemen. You may go back to

1 your jury room just briefly. Again, do not begin your
2 deliberations or discuss the case.

3 (The jury retires to the jury room at 2:05 p.m.)

4 THE COURT: Anything further from either the State or
5 from the Defense?

6 MR. LOY: Yes, Your Honor. First of all, the burden to
7 show prejudice is on us, is my understanding.

8 THE COURT: That's correct.

9 MR. LOY: From what I perceive as a relatively skeletal
10 inquiry, it's impossible for me to deal with that. The
11 foreperson indicated to the Court that, essentially, we
12 talked some, but deliberations did not commence.

13 I don't think he knows what deliberations mean. And
14 there certainly wasn't any inquiry as to that or as to how
15 these questions arose, whether or not these were questions
16 all that one person had that they put forward and they wrote
17 down, whether or not they were kicking around about the
18 problems that they had and who had a question and putting
19 them together, whether this is a joint effort or one person's
20 just communicating with the Court.

21 I mean, simply to ask them "Did you all deliberate?"
22 "No, but we talked about the case and came up with these
23 issues" is a non sequitur. I mean, to discuss the case
24 amongst themselves, the relative strengths and the
25 weaknesses, is I believe clearly deliberation, separate and

1 apart from whether or not they've addressed issues of guilt
2 or innocence.

3 THE COURT: That wasn't his answer, though, Mr. Loy.
4 What he answered, I asked him basically how did this come
5 about and his thing was we did not know if we could ask
6 questions during the trial itself or not.

7 MR. LOY: Right.

8 THE COURT: If there was a question, we just wrote it
9 down, but we didn't talk about it.

10 MR. LOY: Well, my question is, who wrote it down? Did
11 they take a vote on the questions that they wanted to ask? I
12 mean, was it one person had questions? Did they agree these
13 are the issues that we need before we can decide? But it's
14 impossible for them to compose the questions without
15 discussing the factual matters before them, which I think is
16 violative of the Court's instruction.

17 And so I think for them simply to say, "We talked about
18 it. We came up with a list of questions somehow amongst us
19 in a way that we're going to keep secret from the rest of the
20 world, but we didn't deliberate," is meaningless for us at
21 the proceeding at this point. It just doesn't give us any
22 information.

23 Again, is this question every time they took a break did
24 they go out and say, "Is there anything we need to make sure
25 we get answered and write it down?" Because I think that

1 would certainly be an ongoing issue. First time we went out,
2 we wanted -- well, what was on the phone?

3 Later on they've got their list of questions they want
4 answered. They take another break. Anything anybody's not
5 clear on? Do we need to add to the list of questions? It
6 clearly involves discussion of the strengths, the weaknesses,
7 the merits of the case, etc.

8 So I just think simply to ask them "But you didn't
9 deliberate?" "No," and call that that is -- it puts us in a
10 position where it's impossible for us to argue prejudice
11 because I can't show it. The information's just not been
12 presented.

13 Additionally, Your Honor, there seems to be another
14 issue and that is if the -- if the jury has questions, it's
15 my understanding they're directed to the Court not to bang on
16 the door and ask security, etc., "Can we do this? Can we do
17 that? Can we get a legal ruling?" And I've actually had
18 that issue before where the bailiffs gave a legal ruling a
19 long time ago. That case was reversed.

20 But to bang on the door, "We have a question. What are
21 we allowed to do?" I think the answer is, "You wait. We'll
22 get you into court." It's not to get rulings from the
23 security, the bailiffs or the court personnel, which is what
24 he indicated happened here.

25 THE COURT: I don't think that was his answer. I think

1 he said, "What can we do?" and they wrote down the question
2 for the Court. They didn't ask the bailiff basically "What
3 is an answer? What can we do?" Basically they wrote it down
4 for the Court, as I instructed them to do at the very
5 beginning. If they had questions, the foreman was to convey
6 them to the Court.

7 So maybe that's more of a problem in the Court's general
8 instruction when you appoint the foreman in stating to him if
9 there's questions from the jury, you need to submit them to
10 the Court.

11 MR. LOY: I think if we look -- and I have been
12 corrected on the record as far as what it reflected earlier
13 today in chambers. I think if we look back, the foreman,
14 however, will say, "We asked, 'Are we allowed to deliberate
15 at this point,' of the bailiffs or the courtroom personnel"
16 and that they were told, no. So instead of deliberating,
17 they -- my surmise is that then they just went back to
18 comprising their own list of questions, which I think
19 obviously incorporates deliberation.

20 Can I ask the court reporter to look back at just that
21 and say whether or not what the question was that was
22 directed to court security?

23 THE COURT: Sure.

24 My question to them was, "Welcome back, ladies and
25 gentlemen of the jury. Mr. Foreman, I'm going to ask you

1 certain questions regarding that note. The Court needs to
2 have certain information, what, if anything, the jury has
3 discussed up until now. As you are aware, the Court
4 instructed the jury not to have any type of deliberations
5 prior to the case being submitted to you for deliberations
6 after the close of the evidence and after the closing
7 arguments and the jury instructions on the law. By receiving
8 that note with certain questions, it raises the question as
9 to whether or not premature deliberations have begun amongst
10 the jury. Mr. Foreman, can you tell me how those questions
11 came about for submission to the Court? Has the jury
12 communicated with each other preliminarily?"

13 "No. We were given the tablet beforehand and we were
14 unclear as to whether questions were to be written down
15 during the whole time we were in there or afterwards, so some
16 questions were written down so they wouldn't be forgotten and
17 I came and asked one of the officers if we were allowed to
18 deliberate, because it sort of began but not really and she
19 said no and we stopped."

20 MR. LOY: And that's my recollection also, Your Honor,
21 that when they have a question as to procedural issue in the
22 trial itself, they bang on the door and they ask court
23 security "How do we deal with this?" They get a ruling.
24 There's no record of that or that conversation whatsoever,
25 which certainly would have been. We would have had had that

1 question been communicated to the Court for Your Honor to
2 answer, as I think is the proper procedure.

3 THE COURT: Solicitor, what's your position?

4 MR. WARD: Your Honor, State's position is that the
5 Defense has not met their burden to show that prejudice from
6 the jury misconduct. As the foreperson stated, they didn't
7 really begin deliberations. Some questions were written down
8 that they had during the trial. And as Your Honor stated, if
9 anything, the questions they asked are more prejudicial to
10 the State than they are to the Defense.

11 And also you asked them point blank if they can listen
12 to your rulings, listen to the laws as presented to them and
13 if they can be impartial even given that these questions have
14 been raised and possible deliberations have begun, which
15 could be misconduct, but they said they can be impartial,
16 which would show that the Defense would not be prejudiced
17 from the misconduct.

18 THE COURT: Actually, reading the foreman's next answer,
19 when I asked him "So several questions came up. It was the
20 jury's impression that you could communicate to the Court
21 during the trial; is that correct? Is that what you're
22 telling me? I want to make sure I get it right."

23 And the foreman said, "No, we just didn't know. It
24 wasn't made clear, I don't think, whether any discussions
25 would take place or not. So the question was asked and there

1 was no discussion. There was no deliberation."

2 And then I followed up "Well, you're telling me there
3 was no deliberation amongst the jury regarding the evidence
4 or anything of that nature?"

5 "No."

6 "Is that what you're telling me?"

7 "Yes."

8 So basically they're stating that there was no
9 deliberation. The jurors are obviously under oath and each
10 indicated that that was their position, and your motion for
11 mistrial is denied, Mr. Loy.

12 MR. LOY: Thank you, Your Honor. Then, again, I
13 understand it's denied at this point. I don't have further
14 argument. I renew my motion and I would ask the Court to
15 bring the jurors in and ask in what manner these questions
16 arose.

17 THE COURT: No, sir, we're done with that.

18 MR. LOY: Thank you, Your Honor.

19 THE COURT: Let's have our jury, please.

20 (The jury enters the courtroom at 2:14 p.m.)

21 THE COURT: Welcome back, ladies and gentlemen of the
22 jury. It is now time for me to instruct you on the law in
23 this case. The indictments in this case allege two different
24 offenses against the defendant. The charges are criminal
25 sexual conduct with a minor in the first degree and also lewd

1 act or committing a lewd act upon a child, and this offense
2 is also currently known as criminal sexual conduct with a
3 minor in the third degree.

4 Each of these indictments charges a separate and
5 distinct offense. You must decide each indictment separately
6 on the evidence and the law applicable to it, uninfluenced by
7 your decision as to any other indictment. The defendant may
8 be convicted or acquitted on any other all of the offenses
9 charged. You will be asked to write a separate verdict of
10 guilty or not guilty for each indictment.

11 The defendant has pled not guilty to these indictments
12 and that plea puts the burden on the State to prove the
13 defendant guilty. A person charged with committing a
14 criminal offense in South Carolina is never required to prove
15 himself innocent.

16 I charge you that it is an important rule of the law
17 that the defendant in a criminal trial, no matter the
18 seriousness of what the charge may be, will always be
19 presumed innocent of the crime for which the indictment was
20 issued unless guilt has been proven by evidence satisfying
21 you of that guilt beyond a reasonable doubt.

22 This presumption of innocence does not end when you
23 begin your deliberations, but it accompanies the defendant
24 throughout the trial until you reach a verdict of guilt based
25 on evidence satisfying you of that guilt beyond a reasonable

1 doubt.

2 The presumption of innocence is like a robe of
3 righteousness placed about the shoulders of the defendant,
4 which remains with the defendant until it has been stripped
5 from the defendant by evidence satisfying you of the
6 defendant's guilt beyond a reasonable doubt.

7 The presumption of innocence is not a mere legal theory.
8 It's not just a mere legal phrase. It is a substantial right
9 to which every defendant is entitled to unless you, the jury,
10 are satisfied from the evidence of the defendant's guilt
11 beyond a reasonable doubt.

12 What is a reasonable doubt in the law? A reasonable
13 doubt is a doubt that would cause a reasonable person to
14 hesitate to act. The State has the burden of proving the
15 defendant guilty beyond a reasonable doubt. Some of you may
16 have served as jurors in civil cases where you were told that
17 it is only necessary to prove that a fact is more likely true
18 than not true such as by the greater weight or the
19 preponderance of the evidence. In criminal cases the State's
20 proof must be more powerful than that, it must be beyond a
21 reasonable doubt.

22 Proof beyond a reasonable doubt is proof that leaves you
23 firmly convinced of the defendant's guilt. There are very
24 few things in this world that we know with absolute
25 certainty, and in criminal cases the law does not require

1 proof that overcomes every possible doubt.

2 If based on your consideration of the evidence you are
3 firmly convinced that the defendant is guilty of the crime
4 charged, you must find the defendant guilty. If on the other
5 hand you think there is a real possibility that the defendant
6 is not guilty, then you must give the defendant the benefit
7 of the doubt and find him not guilty.

8 I remind you that during this trial, you and I have
9 certain duties to perform. As a trial judge, it's my
10 responsibility to preside over the trial of this case, and I
11 also have the duty to rule on the admissibility of the
12 evidence offered during this trial.

13 You are to consider only the competent evidence before
14 you. If there was any testimony ordered stricken from the
15 record in this case during this trial, you must disregard
16 that testimony. You are to consider only the testimony which
17 has been presented from the witness stand, any exhibits that
18 have been made part of the record in this case and any
19 stipulations of counsel.

20 I have the additional duty to charge you the law
21 applicable to this case, and as the providing judge, I'm the
22 sole judge of the law in this case and it is your duty as
23 jurors to accept and apply the law as I now state it to you.

24 If you already have any idea as to what the law is or
25 what the law ought to be and it does not agree with what I

1 now tell you the law is, you must abandon this idea because
2 you are sworn to accept the law and apply the law exactly as
3 I state it to you.

4 In every case tried in this Court before a jury, the
5 jury becomes the sole and exclusive judge of the facts in the
6 case. A trial judge cannot intimate, state, comment on or
7 make any statement to a trial jury by the facts in the case.
8 Since you, the jury, are the sole judge of the facts in this
9 case, you're not to infer from anything that I have said
10 during the progress of this trial in ruling upon the
11 admissibility of evidence or otherwise or anything that I say
12 now during the course of this instruction to you that I have
13 any opinion about the facts in this case. The law does not
14 allow me to have an opinion about the facts in this case.

15 This matter is solely for you, the jury, to determine.
16 As jurors, it is your duty to determine the effect, the
17 value, the weight and the truth of the evidence presented
18 during this trial.

19 There are two types of evidence which are generally
20 presented during the trial: Direct and circumstantial
21 evidence. Direct evidence is the testimony of a person who
22 claims to have actual knowledge of a fact, such as an
23 eyewitness. Circumstantial evidence is proof of a chain of
24 facts and circumstances indicating the existence of a fact.

25 The law makes absolutely no distinction between the

1 weight or value to be given either to direct or
2 circumstantial evidence, nor is a greater degree of certainty
3 required of circumstantial evidence than of direct evidence.
4 You should weigh all of the evidence in the case. After
5 weighing all the evidence, if you're not convinced of the
6 guilt of the defendant beyond a reasonable doubt, you must
7 find the defendant not guilty.

8 Necessarily, you must determine the credibility of
9 witnesses who have testified in this case. Credibility
10 simply means believability. It becomes your duty as jurors
11 to analyze and to evaluate the evidence and determine which
12 evidence convinces you of its truth.

13 In determining the believability of witnesses who have
14 testified in this case, you may believe one witness over
15 several witnesses or several witnesses over one witness. You
16 may believe a part of the testimony of a witness and reject
17 the remaining part of the testimony of that same witness.
18 You may believe the testimony of a witness in its entirety or
19 reject the testimony of a witness in its entirety.

20 You may consider whether any witness has exhibited to
21 you any interest, bias, prejudice or other motive in the
22 case. You may also consider the appearance and the manner of
23 a witness while on the witness stand.

24 During this trial you have heard testimony from a child.
25 Where a witness is a child, you must determine, as with any

1 witness, whether that testimony is believable. In deciding
2 believability, you may consider not only matters that I have
3 already discussed with you, but you may also consider the age
4 of the child, child's ability to observe and remember facts,
5 the child's ability to understand and answer questions.

6 Because young children may not fully understand what is
7 happening here, it is up to you to decide whether the child
8 understood the seriousness of appearing as a witness at a
9 criminal trial, whether the child understood the questions,
10 whether the child has a good memory and whether the child
11 understands the difference between lying and telling the
12 truth.

13 In addition, young children may be influenced by the way
14 that questions are asked. It is up to you to decide whether
15 the child understood the questions that were asked.

16 I instruct you and emphasize that the fact that the
17 defendant did not testify is not a factor to be considered by
18 you in any way in your deliberation and in your consideration
19 on the question of guilt or innocence of the defendant. It
20 must not be considered by you in any manner whatsoever.

21 A defendant has a constitutional right to remain silent,
22 and the assertion of this right must not be considered by you
23 in your deliberations. I repeat under your oath that you are
24 to draw no conclusion whatsoever from the fact that the
25 defendant in this case did not testify. The fact that the

1 defendant did not testify should not even be discussed in the
2 jury room.

3 The burden of proof, as I have stated to you, is on the
4 State. The defendant is not required to prove his innocence.
5 The burden of proof remains on the State to prove guilt
6 beyond a reasonable doubt.

7 In order to establish criminal liability, criminal
8 intent is required. For example, the mental state required
9 to be proven by the State for a particular crime might be
10 purpose, intent, knowledge, recklessness or criminal
11 negligence. Criminal intent must be proven by the State
12 beyond a reasonable doubt. Criminal intent is always a
13 matter that must be determined by the jury from the
14 circumstances surrounding a situation.

15 There is no way to prove criminal intent to a
16 mathematical certainty. There is no way medical science can
17 dissect a person's brain and determine what the person had in
18 mind. So the law says that criminal intent may be inferred
19 from the circumstances shown to have existed. This is how
20 you make a determination of whether or not the element
21 requiring intent was present.

22 It is not necessary to establish intent by direct and
23 positive evidence, but intent may be established by inference
24 in the same way any other fact, by taking into consideration
25 the acts of the parties and all of the facts and

1 circumstances of the case.

2 Criminal intent is a mental state, a conscious
3 wrongdoing. It is up to you to determine what the defendant
4 intended to do based upon the circumstances shown to have
5 existed. Criminal intent can arise from an action or a
6 failure to act. It may arise from negligence, recklessness
7 or an indifference to duty or to consequences that is
8 considered by the law to be the equivalent of criminal
9 intent.

10 The testimony of a victim need not be corroborated in
11 prosecutions for criminal sexual conduct. The defendant is
12 charged with first degree sexual conduct with a minor. The
13 State must prove beyond a reasonable doubt that the defendant
14 engaged in a sexual battery with the victim. A sexual
15 battery is sexual intercourse, cunnilingus, fellatio, anal
16 intercourse or any intrusion, however slight, on any part of
17 a person's body or of any object into the genital or anal
18 openings of another person's body, except for when the
19 intrusion is accomplished for medically recognized treatment
20 or diagnostic purposes.

21 The State must then prove beyond a reasonable doubt that
22 the victim was less than 11 years old at the time of the
23 sexual battery. Consent, willingness, indifference or
24 ignorance on the part of the minor, if any, as to what was
25 taking place does not in any way affect the charge of

1 criminal sexual conduct with a minor because an unmarried
2 woman under the age of 14 cannot legally consent to sexual
3 battery.

4 The defendant is charged with committing a lewd act upon
5 a minor. A minor is a person under the age of 18. The State
6 must first prove beyond a reasonable doubt that the defendant
7 was over the age of 14. Next, the defendant must prove that
8 the defendant willfully and lewdly committed or attempted a
9 lewd or lascivious act on or with the body or its parts of a
10 child under the age of 16 years with the intent to arouse,
11 appeal to or gratify the lust, passions or sexual desires of
12 the defendant or the child.

13 Willfully means voluntarily and intentionally with a
14 specific intent to do something that the law prevents. Lewd
15 means obscene, lustful, indecent or lecherous. Lascivious
16 means tending to insight lust, lewd, indecent, obscene or
17 tending to deprave the morals in respect to sexual relations.

18 There are several possible verdicts which you may find
19 in this case. There is no significance which of the verdicts
20 is stated first.

21 Ladies and gentlemen of the jury, your verdict must be
22 unanimous.

23 Mr. Foreman, you will have the verdict form back in the
24 jury room. It's rather self-explanatory. It goes from each
25 charge. Basically it says, "We, the jury, unanimously find

1 the defendant," and then you circle one, either not guilty or
2 guilty. And the same goes with the subsequent charge of the
3 lewd act charge. It says, "We, the jury, unanimously find
4 the defendant," you circle the appropriate verdict on that.
5 You must then sign your name. Also the indictment, you will
6 have the indictments back in the jury room.

7 Mr. Foreman, on the front of the indictment, it has a
8 section here where it says "verdict." If you will write what
9 the verdict is, sign your name and also date it, then when
10 you reach a verdict, please knock on the jury room door and
11 then we will receive your verdict.

12 Again, do not begin your deliberations yet. I know I've
13 told you that before, but you must wait to make sure there's
14 no objections to the charge and also must wait until you
15 receive any exhibits that were properly introduced into
16 evidence.

17 When the bailiff brings to you the verdict form and the
18 indictments as well as any exhibits that were introduced,
19 then you may begin your deliberations. Thank you.

20 (The jury retires to the jury room at 2:28 p.m.)

21 THE COURT: Any exceptions or objections to the charge
22 on the law from either the State or the Defense?

23 MR. WARD: Nothing from the State.

24 MR. WEHMAN: None from the Defense. And, Your Honor, at
25 this point I'd respectfully renew my earlier motions,

1 specifically my motions for directed verdict on both of these
2 charges.

3 THE COURT: Yes, sir. And again, for the same reasons,
4 your motions are respectfully denied.

5 MR. WEHMAN: Thank you, Your Honor.

6 THE COURT: If you all would make sure we have all the
7 exhibits, and here's the verdict form and indictments.

8 (Verdict form and exhibits delivered to the jury at
9 2:29 p.m.)

10 (Recess held.)

11 THE COURT: The Court has been provided a note from the
12 jury that has three questions. The questions are: What was
13 on the cell phone that led the mother to initially call the
14 police; the second question, what was the doctor's exam --
15 was there a doctor's exam and what was found; the third
16 question, is the police report available to review?

17 Obviously at this point I will just instruct the jury
18 that they have all the competent evidence that's before them
19 and they must make a determination based on the evidence that
20 was submitted. Any objections to that language from either
21 the State or from the Defense?

22 MR. WARD: No, Your Honor.

23 MR. WEHMAN: No, Your Honor.

24 THE COURT: All right. Let's have our jury, please.

25 (The Court's Exhibit 2 marked for identification.)

1 (The jury enters the courtroom at 3:20 p.m.)

2 THE COURT: Welcome back, ladies and gentlemen of the
3 jury. I've received your note with the three questions that
4 were included on that note. You have all the competent
5 evidence that is before you that was properly admitted into
6 evidence in this case and you must make a determination with
7 your verdict based upon the evidence that's before you.
8 Thank you.

9 (The jury retires to the jury room at 3:21 p.m.)

10 THE COURT: Any exceptions or objections from either the
11 State or from the Defense?

12 MR. WARD: No, Your Honor.

13 MR. WEHMAN: No, Your Honor.

14 THE COURT: All right. We'll be at ease.

15 (Recess held.)

16 THE COURT: It's my understanding that the jury has
17 reached a verdict. Is there anything further before we bring
18 the jury out from either the State or the Defense?

19 MR. WARD: Nothing from the State, Your Honor.

20 MR. WEHMAN: No, Your Honor.

21 THE COURT: Let's have our jury, please.

22 (The jury enters the courtroom at 3:58 p.m.)

23 THE COURT: Mr. Foreman, has the jury reached a verdict?

24 THE WITNESS: Yes, we have.

25 THE COURT: Would you please hand it to the bailiff.

1 Madam clerk, if you'd publish our verdict.

2 CLERK OF COURT: In the matter of State of South
3 Carolina County of Dorchester County versus Michael Gentile,
4 Indictment Nos. 2012-GS-18-1480 and 2015-GS-18-0598, as to
5 the charge of criminal sexual conduct with a minor first
6 degree, we, the jury, unanimously find the defendant not
7 guilty.

8 As to the charge of committing or attempting lewd act
9 upon a child under 16, we, the jury, unanimously find the
10 defendant guilty.

11 Signed by foreperson Jeffrey Daugherty, June 17, 2015.

12 THE COURT: Madam clerk, if you'd please poll the jury.

13 CLERK OF COURT: Yes, ma'am.

14 As I call your name and number, if you'd please stand.
15 Juror No. 82, Savannah Hutto, was this your verdict in the
16 jury room?

17 THE JUROR: Yes.

18 CLERK OF COURT: Is it still your verdict?

19 THE JUROR: Yes.

20 THE COURT: Thank you.

21 No. 37, Jeffrey Daugherty, was this your verdict in the
22 jury room?

23 THE JUROR: Yes.

24 CLERK OF COURT: Is this still your verdict?

25 THE JUROR: Yes.

1 CLERK OF COURT: Thank you.

2 No. 99, Heather Ledford Molnar, was this your verdict in
3 the jury room?

4 THE JUROR: Yes.

5 THE COURT: Is this still your verdict?

6 THE JUROR: Yes.

7 CLERK OF COURT: Thank you.

8 No. 97, Wanda Krantz, was this your verdict in the jury
9 room?

10 THE JUROR: Yes, ma'am.

11 CLERK OF COURT: Is this still your verdict?

12 THE JUROR: Yes, ma'am.

13 CLERK OF COURT: Thank you.

14 No. 13, Brittany Braga, was this your verdict in the
15 jury room?

16 THE JUROR: Yes.

17 CLERK OF COURT: Is this still your verdict?

18 THE JUROR: Yes.

19 CLERK OF COURT: Thank you.

20 No. 38, Brian Davis, was this your verdict in the jury
21 room?

22 THE JUROR: Yes.

23 CLERK OF COURT: Is this still your verdict?

24 THE JUROR: Yes.

25 CLERK OF COURT: Thank you.

1 No. 4, Jose Ayala, was this your verdict in the jury
2 room?

3 THE JUROR: Yes.

4 CLERK OF COURT: Is this still your verdict?

5 THE JUROR: Yes.

6 CLERK OF COURT: Thank you.

7 No. 22, Ashley Byron, was this your verdict in the jury
8 room?

9 THE JUROR: Yes.

10 CLERK OF COURT: Is this still your verdict?

11 THE JUROR: Yes.

12 CLERK OF COURT: Thank you.

13 No. 105, Charlie McAlhany, was this your verdict in the
14 jury room?

15 THE JUROR: Yes.

16 CLERK OF COURT: Is this still your verdict?

17 THE JUROR: Yes.

18 CLERK OF COURT: Thank you.

19 No. 44, Tammy Edwards, was this your verdict in the jury
20 room?

21 THE JUROR: Yes.

22 CLERK OF COURT: Is this still your verdict?

23 THE JUROR: Yes.

24 CLERK OF COURT: Thank you.

25 No. 184, Shalonda Willis Jones, was this your verdict in

1 the jury room?

2 THE JUROR: Yes.

3 CLERK OF COURT: Is this still your verdict?

4 THE JUROR: Yes.

5 CLERK OF COURT: Thank you.

6 And No. 85, Connie Jackson, was this your verdict in the
7 jury room?

8 THE JUROR: Yes.

9 CLERK OF COURT: Is this still your verdict?

10 THE JUROR: Yes.

11 CLERK OF COURT: Thank you.

12 THE COURT: Thank you.

13 Ladies and gentlemen of the jury, if you would please
14 return to your jury room one last time, I will be in there
15 shortly to release you.

16 (The jury retires to the jury room at 4:01 p.m.)

17 THE COURT: Anything further from the State or from the
18 Defense before I release the jury?

19 MR. WARD: Nothing, Your Honor.

20 MR. WEHMAN: No, Your Honor.

21 THE COURT: Solicitor, if you would please prepare the
22 sentencing sheets.

23 MR. WARD: Yes, Your Honor.

24 (Recess held.)

25 MR. WARD: May I approach, Your Honor?

1 THE COURT: Yes, sir. Solicitor, does the victim's
2 family care to be heard?

3 MR. WARD: Yes, the victim's mother, as well as the
4 grandmother, would like to speak briefly, Your Honor.

5 THE COURT: All right. Come on up, please.

6 MS. MARKEY: Good afternoon.

7 THE COURT: Good afternoon. Would you please state your
8 name for the record.

9 MS. MARKEY: Brenda McDowell Markey, grandmother.

10 THE COURT: Yes, ma'am.

11 MS. MARKEY: I am requesting that he gets the full
12 sentence that it -- the maximum allowable because of the
13 effect it's had on my granddaughter, my daughter and myself.
14 For two years, nine months and 17 days we have lived a
15 horrible time. Every waking moment is consumed, and I'm just
16 requesting that.

17 THE COURT: Thank you, ma'am.

18 Yes, ma'am.

19 MS. HOLSAPPLE: Hi, Your Honor. I'm
20 Amanda Marie Holsapple and go along with what she says.
21 Like, we've actually moved out of state, so we no longer get
22 to see my mom as much anymore because of all the memories
23 here. And I also would like the maximum sentence. I just
24 think that's fair and just. I think that's all I can come up
25 with right now.

1 THE COURT: Thank you, ma'am. Solicitor, anything
2 further.

3 MR. WARD: Nothing from the State, Your Honor. We would
4 just go along with the mother and grandmother's sentiments.
5 The defendant has no prior record, Your Honor.

6 THE COURT: Mr. Wehman.

7 MR. WEHMAN: Thank you, Your Honor. May it please the
8 Court.

9 Mr. Gentile's 34 years old. Completed the tenth grade.
10 Dropped out in the 11th but did get his GED. He's not
11 currently married, does have four children. In the past he's
12 suffered from anxiety, depression, sleep apnea, has never
13 been treated for any substance abuse issues.

14 He was born in New Haven, Connecticut, moved here when
15 he was two years old and has lived here ever since. He's
16 been out on bond for three years. He's traveled since he's
17 been on bond for his job, has made it to all his Court
18 appearances and obviously came here today.

19 He has no criminal record. This is his first charge and
20 obviously his first conviction. He's supported in court
21 today by members seated here on the second row: Mother,
22 stepfather and his sister. Various other family members have
23 been here during the course of the trial when their schedule
24 allowed it. His other -- his niece, his brother-in-law, his
25 girlfriend and his daughter have been here on and off when

1 they could.

2 Again, I would point out that this is his first offense.
3 I know it's a serious charge and I know he has taken this to
4 trial and I know there is a sentence to be given. We would
5 ask you to give him any consideration that you can.

6 He knows a number of things to be true in the next
7 couple of minutes. He will be going to prison today is his
8 understanding. He fully anticipates -- or he knows he's
9 going to be on the sex offender registration. I should
10 switch that. He anticipates on going to prison and he knows
11 that he will be on the sex offender registry.

12 We would ask you to give him any consideration that you
13 can and we would ask for some sort of a split sentence to
14 allow him to try his hand at probation when he gets out and
15 to hang some time over his head, but again, ask any
16 consideration you feel that you can give him.

17 THE COURT: Anything further?

18 MR. WARD: Nothing, Your Honor.

19 THE COURT: Mr. Gentile, I understand that this is your
20 first offense; however, it is a very serious offense to
21 commit an act like this against a child. On indictment
22 2015-GS-18-0598 you're hereby committed to the State
23 Department of Corrections for a period of 15 years, provided
24 upon the service of 14 years, and probation for four years.
25 Special conditions of probation are that you are to receive

1 sexual assault counseling and treatment and you must register
2 as a sex offender.

3 MR. WEHMAN: Thank you, Your Honor.

4 THE COURT: Thank you.

5 --- END OF TRANSCRIPT OF RECORD ---

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1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF DORCHESTER
4

5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the 1st Judicial Circuit Court for Dorchester County,
11 South Carolina, on the 16th of June, 2015.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 September 16, 2015
16

17 *Ruth L. Mott*

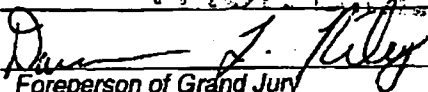
18 Official Court Reporter
19
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25

WITNESSES

Michael Weaver

Summerville Police Department
12-060019**ARREST WARRANT NUMBER**
2015DOR10

Arrested: 0, 0

ACTION OF GRAND JURY

 Foreperson of Grand Jury
 Date: June 4, 2015
VERDICTForeperson of Petit Jury
Date:

DOCKET NO. 2015GS18-0598

The State of South Carolina
County of DORCHESTER**COURT OF GENERAL SESSIONS**

June 8, 2015 TERM

THE STATE
vs.

Michael Edward Gentile

Indictment forLewd Act, Committing or Attempting
Lewd Act Upon Child Under 16

SC Code: 16-15-140

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. AND G.S.

 2015 JUN -4 PM 12:31
 CLERK OF COURT
 DORCHESTER COUNTY
 RECORD

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2015GS18-0598

As a Court of General Sessions, convened on June 4, 2015 the Grand Jurors of DORCHESTER County present upon their oath:

LEWD ACT, COMMITTING OR ATTEMPTING LEWD ACT UPON CHILD UNDER 16

That in Dorchester County, South Carolina, on or about January 1, 2010 to September 1, 2012, the Defendant, Michael Edward Gentile, being over the age of 14 years old, did willfully and lewdly commit or attempt to commit a lewd or lascivious act upon the body or its parts of [REDACTED] a child under the age of sixteen (16) years with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or the child. This offense in violation of Section 16-15-140, of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Kyle Ward, Solicitor

WITNESSES**WEAVER**

Summerville Police Department

12-060019

ARREST WARRANT NUMBER

2012A1820500143

Arrested: October 15, 2012

ACTION OF GRAND JURY

TRUE BILL

Dawn L. Riley
 Foreperson of Grand Jury
 Date: March 7, 2013

VERDICT

Foreperson of Petit Jury
 Date:

DOCKET NO. 2012GS18-1480

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

March 11, 2013 TERM

THE STATE
 vs.

Michael Edward Gentile

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH A
 MINOR, FIRST DEGREE**

SC Code: 16-3-655(1)

After being fully advised as to my legal
 rights, I hereby waive presentment to the
 Grand Jury.

Defendant

I
 hereby appear in my own proper person
 and plead guilty to the within indictment
 or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

RECORDED
 2015 JUN -4 PM 12:31
 CLERK OF COURT
 DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

INDICTMENT
2012GS18-1480

At a Court of General Sessions, convened on March 11, 2013 the Grand Jurors of
Dorchester County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That in Dorchester County, South Carolina, on or about January 1, 2010 to
September 1, 2012, the Defendant, Michael Edward Gentile, did engage in
sexual battery upon a minor who was less than eleven (11) years of age in that
the defendant did penetrate the victim's vagina, Minor . This
offense in violation of Section 16-3-655 of the South Carolina Code of Laws, as
amended.

Against the peace and dignity of the State, and contrary to the statute in
such case made and provided.



Kyle L. Ward, Solicitor

WITNESSES**WEAVER**

Summerville Police Department

12-060019

ARREST WARRANT NUMBER

2012A1820500143

Arrested: October 15, 2012

ACTION OF GRAND JURY**TRUE BILL***Donna Pratt*
Foreperson of Grand Jury

Date: March 7, 2013

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012GS18-1480

The State of South Carolina**County of DORCHESTER****COURT OF GENERAL SESSIONS****March 11, 2013 TERM****THE STATE
vs.**

Michael Edward Gentile

Indictment for**CRIMINAL SEXUAL CONDUCT WITH A
MINOR, FIRST DEGREE**

SC Code: 16-3-655(1)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2013 MAR -7 PM 6:24
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

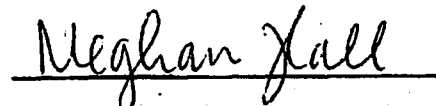
INDICTMENT
2012GS18-1480

At a Court of General Sessions, convened on March 11, 2013 the Grand Jurors of
Dorchester County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That in Dorchester County, South Carolina, on or about January 1, 2009, the
Defendant, Michael Edward Gentile, did engage in sexual battery upon a minor
who was less than eleven (11) years of age in that the defendant did perform
cunnilingus upon the victim, Minor . This offense in violation of
Section 16-3-655 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in
such case made and provided.


Meghan Hall, Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

8-12yr
205
FineCOUNTY OF DorchesterSTATE VS.Michael Edward Gentile

AKA:

Race: WHITE Sex: M Age: 35DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Lewd Act, Committing or Attempting Lewd Act Upon Child Under 16INDICTMENT/CASE#: 2015GS18-0598A/W#: 2015DOR10Date of Offense: 1/1/2009S.C. Code §: 16-15-140CDR Code #: 2468RECEIVED
JUN 24 2015
SC Court of Appeals
SENTENCE SHEET☒ CONVICTED OF or ☐ PLEADSin violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Ward, Kyle101005

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed 14 yearsand/or to pay a fine of \$ 14; provided that upon the service of 14 days/months/years and/or paymentof \$ 4; plus costs and assessments as applicable*; the balance is suspended with probation for 4 years

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ 18.90 plus 20% fee: 3.78 \$ 22.68

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$ 100§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ 100§ 56-5-2995 (DUI Assessment) \$12 \$ 12§ 56-1-286 (DUI Breath Test) \$25 \$ 25Proviso 47.9 (Public Def/Prob) \$500 \$ 500§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150§ 50-21-114 (BUI Breath Test Fee) \$50 \$ 50§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 40Proviso 90.5 (SCCJA Surcharge) \$5 \$ 53% to County (if paid in installments) \$ 18.90TOTAL \$ 648.9014 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. 14May serve W/E beginning 14Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 14 beginning 14\$ 14 paid to Public Defender FundOther: receive sexual offense treatment + register as sex offender☒ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Clerk of Court/ Deputy Clerk: Cheryl GrahamCourt Reporter: Ruth Holt

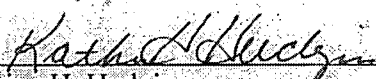
SCCA/217 (03/2011)

Presiding Judge: Walt's KingJudge Code: 216Sentence Date: 6/12/15

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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

May 20th, 2016


Kathrine H. Hudgins
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

RECEIVED

MAY 20 2016

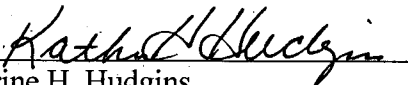
206

SC Court of Appeals

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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

May 20th, 2016


Kathrine H. Hudgins
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

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Maite Murphy, Circuit Court Judge

RECEIVED

MAY 20 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MICHAEL GENTILE,

APPELLANT

APPELLATE CASE NO. 2015-001370

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon William F. Schumacher, IV, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 20th day of May, 2016.



Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 20th day of May, 2016.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.