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SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Pickens County
Perry H. Gravely, Circuit Court Judge

NORMAN KEITH BURGESS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000143

A P P E N D I X

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DANETTE P. HANKS
CIRCUIT COURT REPORTER

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Juror #	Name	Race	Sex	Strikes			Accept
				Court	Plaintiff	Def.	
10	Barrow, Kayla R	W	F			x	
159	Russell, Jamie C	W	F		x		
70	Green, James E	W	M			x	
176	Sutton, Eleanor R	B	F				x
144	Cope, Lisa H	W	F		x		
25	Chapman, Doris H	W	F				x
26	Chapman, Russell C	W	M		x		
111	Martin, Carol N	W	F			x	
105	Lewis, Christopher S	W	M				x
180	Thornton, Beverly L	W	F			x	
127	Negron, Steven J	W	M			x	
19	Burdick, Alisa S	W	F				x
60	Garren, Jack M	W	M			x	
174	Stewart, Melissa P	W	F				x
37	Couch, John D	W	M		x		
119	McKeon, Lawrence A	B	M		x		
139	Phillips, Wallace R	W	M			x	
138	Phillips, Deborah A	W	F				x
172	Stapleton, Tony R	W	M			x	
27	Chastain, Toney M	W	M				x
61	Garrett, Daniel H	W	M				x
163	Shapiro, Gladys M	W	M			x	
129	Oshea, Andrew J	W	M				x
146	Purry, Helen J	B	F				x
36	Couch, SON [REDACTED] D	W	M				x

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190	Watkins, Kayla N	W	F				x
1	Abercrombie, Michael J	W	M				x

1 December 17, 2012

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had.)

4 (WHEREUPON, State Exhibit Number 1 marked for
5 identification.)

6 THE COURT: Thank you for your patience with us,
7 ladies and gentlemen. We're now ready to select a jury for
8 the trial of the first case that we have on the docket
9 today. I have before me indictments. These indictments
10 make certain allegations. Among these three, the first one
11 says that Norman Keith Burgess did here in Pickens County,
12 on or about or between November the 2nd, 2001 and November
13 the 1st, 2003, he was over the age of fourteen and he
14 willfully and lewdly committed or attempted to commit a
15 lewd and lascivious act upon the person or the body parts
16 of MLT, a child under the age of sixteen, with the intent
17 to arouse or appeal to or gratify the lust, passion, sexual
18 desire of himself or the minor child. That constituting
19 the offense of lewd act upon a child.

20 There's also an indictment that says between those
21 same dates here in Pickens County that Mr. Burgess engaged
22 in sexual battery with MLT who was at least fourteen years
23 of age but less than sixteen years of age. He did so in a
24 position of familial or custodial or official authority to
25 coerce the victim to submit. And/or that he was older than

1 the victim. That constitutes the criminal offense under
2 South Carolina Law of criminal sexual conduct with a minor
3 in the second degree.

4 And I have a third indictment that says here in
5 Pickens County between the 2nd of November 2003 and the
6 23rd of March 2007 that the Defendant, Mr. Burgess, did
7 engage in sexual battery or force or coerce to accomplish
8 this sexual battery in the absence of aggravating
9 circumstances, or knew or had a reason to know that MLT was
10 mentally defective or incapacitated or physically helpless
11 and aggravated force and aggravated coercion was not used
12 to accomplish this sexual battery in the third degree.

13 Now, each of these charges have been brought. Mr.
14 Burgess, he's entered a plea of not guilty to each of
15 these. And everybody accused of any offense in this state
16 and our country is presumed innocent until the State can
17 prove that guilt beyond a reasonable doubt. We're going
18 to find twelve fair and impartial jurors to hear the facts
19 of the case, to make a factual determination on the
20 evidence that's presented in this courtroom, and that
21 alone. I'm going to be the judge of the law in the case
22 and decide what law is applicable. The State of South
23 Carolina, the Defendant, Mr. Burgess, they both desire to
24 have fair jurors to hear this case. They deserve the same.
25 I need to ask you some additional questions to determine

1 your eligibility to serve on this case, ladies and
2 gentlemen.

3 First of all, is there any member of the jury panel
4 related by blood or marriage to Mr. Norman Keith Burgess?
5 If so, would you please stand?

6 (No response.)

7 THE COURT: Is there any member of the jury panel
8 have a close business or social, a personal relationship
9 with Mr. Burgess? If so, would you please stand?

10 (No response.)

11 THE COURT: Thank you. Again, there's no
12 response.

13 Is there any member of the jury panel has any prior
14 knowledge about these particular alleged incidents that
15 happened on those dates that I mentioned? Either that you
16 read about it in the newspaper, heard about it on radio or
17 television. You heard someone talking about it at the
18 coffee shop. If you have any knowledge or information from
19 whatever source about these allegations, would you please
20 stand?

21 (No response.)

22 THE COURT: Thank you. There is no response.

23 Several witnesses may be called upon to testify in
24 this case. I'm going to read out the list of those names
25 and then afterwards, I'll ask you some questions. From the

1 Pickens County Sheriff's Office, Deputy Stephen Baxley,
2 Lieutenant J.B. Kelley, Deputy Teddi Palis. From DSS,
3 Patience Johnson. Greg Cumbee may be a potential witness.
4 Shauna Galloway-Williams, MINOR [REDACTED] formerly MINOR [REDACTED]
5 Tollison, now Shelton. Ethan Robinson, Jennifer Robinson,
6 MH [REDACTED] Sheri Aiken, HG [REDACTED] Angie Smith,
7 Kayla Cox Pilgrim, Valerie Michelle Cox, now Valerie
8 Michelle Buchanan, Rhonda Watson, Angie Tollison, Kayla
9 Burkhart, Ernest Barton, Chelsie Burgess, Linda Burgess.
10 Is there any member of the jury panel related by blood or
11 marriage to any of these potential witnesses? If so, would
12 you please stand?

13 (No response.)

14 THE COURT: Is there a member of the jury panel
15 who has a close business or a social, a personal
16 relationship with any of these potential witnesses? If so,
17 would you please stand?

18 (No response.)

19 THE COURT: Thank you. There is no response.

20 Is there any member of the jury panel a contributing
21 member of any organization whose primary concern is that of
22 victims' rights or the promotion of law enforcement, such
23 as the Sheriff's Association, MADD, SADD, PARR, CAVE. If
24 you're a member, a contributing member of any such
25 organization, would you please stand?

1 Yes, sir, your number, please and name?

2 THE JUROR: I'm number 60, Your Honor.

3 THE COURT: Number 60?

4 THE JUROR: Yes, sir.

5 THE COURT: What organization do you contribute
6 to?

7 THE JUROR: The Sheriff's Association.

8 THE COURT: Okay. You annually -- or you've made
9 contributions to that?

10 THE JUROR: Yes, sir.

11 THE COURT: Would the fact that you make those
12 contributions, would that affect your ability to be a fair
13 juror in this case? In other words, when you hear all the
14 evidence could you make a decision, not on your affiliation
15 with that organization, but on what takes place in this
16 courtroom, the evidence that you hear, the testimony that's
17 presented and the law that I give you? Do you believe
18 you'd have any hesitancy in doing that?

19 THE JUROR: No, sir, not at all.

20 THE COURT: You could be fair to both sides?

21 THE JUROR: Yes, sir.

22 THE COURT: All right. Thank you, sir. You may
23 be seated.

24 Yes, ma'am, your name, please, or number?

25 THE JUROR: Carol Martin, 111. I'm a teller at

1 Cornerstone Bank and one of those witnesses is a customer
2 there.

3 THE COURT: All right. So you would see that
4 witness on a periodic basis?

5 THE JUROR: Yes.

6 THE COURT: Would not see that witness socially?

7 THE JUROR: No.

8 THE COURT: Which witness is that?

9 THE JUROR: Cumbee.

10 THE COURT: Cumbee? Okay. Now, if he were to be
11 called upon to testify -- not all the witnesses may testify
12 -- but if he were to take the witness stand and give
13 testimony would that affect your ability to be a fair
14 juror?

15 THE JUROR: I don't think so.

16 THE COURT: Well, do you have any hesitancy at
17 all? In other words, could you weigh his evidence with all
18 the other evidence or would you put more emphasis on his
19 testimony because you know him?

20 THE JUROR: I think I can weigh it fairly. I
21 don't see a problem with that.

22 THE COURT: And, again, when you say you think
23 you can, do you mean you can or you ---

24 THE JUROR: I can, yes.

25 THE COURT: You can. No hesitancy at all? You

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1 could be fair to both sides?

2 THE JUROR: Not at all.

3 THE COURT: Thank you, ma'am. You may be seated.

4 Is there any member of the jury panel or a member of
5 your immediate family involved in law enforcement in any
6 way? If you or a member of your immediate family is in law
7 enforcement, would you please stand?

8 Yes, sir. Your number, please, and name?

9 THE JUROR: Charles Bridges, 15.

10 THE COURT: And what relative do you have in law
11 enforcement?

12 THE JUROR: My brother.

13 THE COURT: And where does he work?

14 THE JUROR: Greenville Correctional Facility.

15 THE COURT: And how long has he been in law
16 enforcement?

17 THE JUROR: For the past five months, I believe.

18 THE COURT: If you would remain standing just a
19 moment, please.

20 Yes, ma'am, your name?

21 THE JUROR: Beverly Thornton, 180. It's my
22 brother-in-law and he is a probation officer for
23 Greenville.

24 THE COURT: For Greenville County? How long has
25 he done that, do you know?

1 THE JUROR: I don't, but it's been a long time.

2 THE COURT: Okay. If you'd remain standing,
3 please.

4 Yes, sir. Your name and number?

5 THE JUROR: Steven Negron, 127. My uncle is a
6 Sheriff for Pickens County. He's been the sheriff for at
7 least seven or eight years.

8 THE COURT: Okay. He's a deputy?

9 THE JUROR: Yes.

10 THE COURT: What's his name?

11 THE JUROR: David Stanley.

12 THE COURT: So he works with the Pickens County
13 Sheriff's Office?

14 THE JUROR: Yes.

15 THE COURT: If you would remain standing.

16 Yes, ma'am. Your name and number?

17 THE JUROR: Carol Martin, 111. My son was an
18 Anderson County Deputy Sheriff. But he is now in Kuwait.

19 THE COURT: Okay. Thank you, ma'am. If you
20 would remain standing.

21 Yes, ma'am. Your name and number?

22 THE JUROR: My name is Eleanor Sutton. I'm
23 number 176. I have a nephew that works in the Pickens
24 Stockade and a cousin down at the law enforcement.

25 THE COURT: Okay. All right. Those of you who

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1 are standing and have relatives, some here in the county,
2 some in other areas that are in law enforcement, presumably
3 some law enforcement personnel will be testifying in this
4 case. The fact that you have a relative in law
5 enforcement, would that interfere with your ability to be a
6 fair juror? There will be other testimony, I'm confident,
7 given other than from law enforcement. Could you weigh all
8 the evidence fairly for both the state, for the Defendant?
9 And if you are selected, could you make a decision on the
10 evidence presented in this courtroom and the law that I
11 give you and that alone? If you believe that because of
12 the affiliation you have with relatives in law enforcement
13 you could not be a fair juror, I'm going to ask if you
14 would please remain standing. If you believe you could be
15 a fair juror, I'm going to ask if you'd be seated. Let the
16 record -- you're still standing?

17 THE JUROR: I would be fair.

18 THE COURT: You would be fair?

19 THE JUROR: Yes, sir.

20 THE COURT: Maybe I didn't make that clear. In
21 other words, if you believe you could be fair, I want you
22 to be seated.

23 THE JUROR: Okay.

24 THE COURT: But if you -- all right. Again, your
25 number, please, sir?

1 THE JUROR: 15.

2 THE COURT: All right, sir. I'm going to excuse
3 from the trial of this case. You can be seated at this
4 time. You don't need to respond to any other questions I
5 ask, okay? If you'd just be seated for a moment.

6 Is there any member of the jury panel expressed or
7 formed an opinion in any way about the facts in this case?
8 If so, would you please stand?

9 (No response.)

10 THE COURT: Is there any member of the jury panel
11 or a member of your immediate family who has ever been
12 accused or charged, arrested for any crime of violence
13 against another person, including a crime of violence
14 against a child? If you or a member of your immediate
15 family has ever been accused of that, any crime of violence
16 where you threatened another person or committed an assault
17 of a sexual nature or otherwise against any person or a
18 child, I want you to stand in just a moment.

19 I want to ask the same question on the other side. If
20 you or a family member has ever been a victim of a crime of
21 violence against you individually, against a family member,
22 be it acts of violence of a sexual nature or of a non-
23 sexual nature. If you or a family member have ever been
24 charged or accused or allegations have been made or if
25 you've ever been the victim or a family member has been a

1 victim of any crime of violence, would you please stand at
2 this time?

3 Anyone else? What I'd like for you to do is, I want
4 to get this on the record here by the court reporter and
5 with the attorneys. I'm going to just ask each of you if
6 you would come, one at a time, so we can talk about that
7 and you're on the record. Please come forward. What's
8 your number, please, ma'am?

9 THE JUROR: Barbara Mattison.

10 THE COURT: Was it you or a family member?

11 THE JUROR: It was me in 1985. I was a victim of
12 a sexual assault.

13 THE COURT: A sexual assault in 1985. Do you
14 believe that would affect your ability to be a fair juror
15 in this case?

16 THE JUROR: I don't know. I don't think so.

17 THE COURT: In other words, this is a charge
18 brought for a sexual assault against a child?

19 THE JUROR: I may lean a little bit towards the
20 victim, to be honest.

21 THE COURT: I'm going to excuse you from this
22 case. I'm going to let you take your seat. And you just
23 don't need to respond to any other questions. Thank you
24 for sharing that.

25 Yes, ma'am, your number, please?

1 THE JUROR: 163. Okay. My granddaughter, my
2 daughter's ex-boyfriend -- my granddaughter -- I'm sorry.
3 This is my granddaughter is -- there's an open
4 investigation against my daughter's boyfriend because my
5 granddaughter said that the he sexually abused her.

6 THE COURT: And that's on-going now?

7 THE JUROR: It's open, yes, sir.

8 THE COURT: It's open now?

9 THE JUROR: But now with DSS, it's been closed,
10 that portion of it. But, yes.

11 THE COURT: Would that put you in an awkward
12 position?

13 THE JUROR: No, sir. No, sir. It would not.

14 THE COURT: You could be fair to both sides?

15 THE JUROR: Yes, sir.

16 THE COURT: And you could decide whether or not
17 -- the facts presented ---

18 THE JUROR: Yes, I could.

19 THE COURT: Beyond a reasonable doubt? You would
20 have no hesitancy ---

21 THE JUROR: No, sir.

22 THE COURT: --- in finding a verdict for the
23 Defendant if that's what the evidence said?

24 THE JUROR: No, sir, I would have no problems.

25 THE COURT: You could do that?

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1 THE JUROR: Yes, sir.

2 THE COURT: All right. Thank you. You can
3 return to your seat.

4 Yes, sir. Your name and number, please.

5 THE JUROR: 119.

6 THE COURT: All right, sir.

7 THE JUROR: My dad was in the sexual offense ---

8 THE COURT: Registry or whatever?

9 THE JUROR: Yes, sir.

10 THE COURT: How long ago was that -- has that
11 been?

12 THE JUROR: I would say, three or four years.

13 THE COURT: Do you think that would affect your
14 ability to be a fair juror?

15 THE JUROR: No.

16 THE COURT: You could listen to all the evidence
17 and make a decision on ---

18 THE JUROR: Yes, sir.

19 THE COURT: -- what takes place here? Thank you
20 for sharing that. You can return to your seat.

21 Hey. Your name and number, please.

22 THE JUROR: Cindy Tucker, 182. My first husband
23 used to beat me. He could be quite violent with me. My
24 second husband has actually been accused of molesting my
25 son and my daughter.

1 THE COURT: So do you think you could be a good
2 juror on this?

3 THE JUROR: I don't know if it's molestation of a
4 child.

5 THE COURT: I'll excuse you from this case then.
6 If you'll just return to your seat. You don't need to
7 answer any other questions. Thank you, ma'am.

8 Hello, how are you?

9 THE JUROR: Fine, thank you.

10 THE COURT: Your name and number, please?

11 THE JUROR: Andrea Spencer, 171.

12 THE COURT: 171. Okay. Yes, ma'am. Did
13 something happen to you or a family member?

14 THE JUROR: I'm a victim of domestic violence and
15 I have a special needs son who had bruises left on him by a
16 caretaker.

17 THE COURT: Were charges brought on the domestic
18 violence?

19 THE JUROR: Yes.

20 THE COURT: How long ago was that? A long time
21 ago?

22 THE JUROR: Seven years ago.

23 THE COURT: And how about the bruises on your
24 special needs child, was that something more recent?

1 THE JUROR: Uh-huh (affirmative), within the past
2 year.

3 THE COURT: Do you think that would interfere
4 with your ability to be a fair juror in this case?

5 THE JUROR: Possibly.

6 THE COURT: I'll excuse you from this case.

7 THE JUROR: I'm sorry.

8 THE COURT: That's what we need to hear. If
9 you'll just have a seat. You don't need to respond to my
10 other questions. If you'll just have a seat.

11 THE JUROR: I'm sorry. Thank you.

12 THE COURT: Thank you.

13 Yes, sir. And your name and number, please.

14 THE JUROR: Andrew O'Shea, 129.

15 THE COURT: Number 129. Yes, sir.

16 THE JUROR: It's been several years ago, but I
17 had a cousin sexually assaulted by a another step-cousin, I
18 guess you would say.

19 THE COURT: So all were cousins. About seven
20 years ago, you say?

21 THE JUROR: About nine years ago.

22 THE COURT: Do you believe that information about
23 your family would affect your ability to be a fair juror
24 here?

25 THE JUROR: No.

1 THE COURT: In other words, there will be
2 evidence presented, I'll tell you what the law is and the
3 decision is going to have to be made from what happens in
4 this courtroom. You can do that?

5 THE JUROR: Yes.

6 THE COURT: No hesitancy?

7 THE JUROR: No, sir.

8 MR. ABDALLA: I apologize. I missed exactly
9 what happened.

10 THE Court: It was some cousins -- some distant
11 cousins molesting other cousins.

12 Thank you. You can return to your seat. Or step-
13 cousins or something like that.

14 Hey there. How are you? Your name and number,
15 please.

16 THE JUROR: Lisa Cope, 144. I'm not sure if I
17 need to tell you, but my ex-husband has anger issues and
18 we're not complete in a case with my daughter, that he has
19 signed over his parental rights. But we haven't-- we've
20 just got to go back to Court one more time to verify all of
21 that. He only sees her supervised, right now.

22 THE Court: Was there reasons for his separation
23 from the child related to any abuse of any kind?

24 THE JUROR: He was not physically abusive with
25 her. He was very verbally abusive.

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1 THE Court: Verbally abusive?

2 THE JUROR: And a lot of anger.

3 THE Court: Do you think that would affect your
4 ability to be a fair juror in this case? In other words,
5 this case -- I don't know -- I haven't heard any evidence;
6 I don't know whether it'll be that or not, but ---

7 THE JUROR: I don't think it would.

8 THE Court: You believe you could be fair? If
9 something comes up in the middle of the trial -- we'll have
10 an alternate -- if you feel like you can't continue, you
11 let me know.

12 THE JUROR: Okay.

13 THE Court: Thank you very much for sharing that.

14 At this time, I'm going to ask the attorneys if you
15 would to please stand and introduce yourselves to the jury.
16 Mr. Tooker.

17 MR. TOOKER: Thank you, Your Honor. May it
18 please the Court. My name is Sam Tooker and I'm an
19 Assistant Solicitor here in Pickens County. I work with
20 the Thirteenth Circuit Solicitor's Office. Seated beside
21 me at the table is Lieutenant J.B. Kelley with the Pickens
22 County Sheriff's Office and Deputy Teddi Palis.

23 THE Court: Mr. Abdalla.

24 MR. ABDALLA: Yes, sir. Good morning. My name
25 is John Abdalla and I'm an attorney working out of

1 Greenville and Pickens Counties.

2 THE Court: Mr. Rucker.

3 MR. RUCKER: My name is Brandt Rucker, I'm also a
4 Greenville attorney. And this is our client, Norman
5 Burgess.

6 THE Court: All right. Thank you, gentlemen.

7 Ladies and gentlemen of the jury, is there any member
8 of the jury panel related by blood or marriage to any of
9 these attorneys? If so, would you please stand?

10 (No response.)

11 THE Court: Is there any member of the jury panel
12 have a close business or a social, a personal relationship
13 with any of these attorneys? If so, would you please
14 stand.

15 Yes, sir. Your ---

16 THE JUROR: Teddi over here is my neighbor.

17 THE Court: Okay. All right. So you do know
18 her?

19 THE JUROR: Yeah.

20 THE Court: Do you see her on a regular basis?

21 THE JUROR: Yes.

22 THE Court: All right. So if she's called upon
23 to testify in this case as a witness, would that affect
24 your ability to be a fair juror?

25 THE JUROR: No, sir.

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1 THE Court: In other words, you could listen to
2 all the evidence and you could make a decision; regardless
3 of the neighborhood, ---

4 THE JUROR: That's correct.

5 THE Court: --- you could be fair to both sides?

6 THE JUROR: That's correct.

7 THE Court: All right. Thank you. Thank you for
8 sharing that. Your name and number, please?

9 THE JUROR: James E. Green, 70.

10 THE Court: All right. Thank you, sir. Is there
11 any member of the jury panel who has ever been involved in
12 any litigation in which either of these attorneys
13 represented you or represented the opposing side? If
14 you've ever been involved in any litigation of any kind in
15 which these attorneys were involved for you or against you,
16 would you please stand?

17 (No response.)

18 THE Court: Thank you. There is no response.

19 I've said it before; it bears repeating. These
20 parties deserve and they desire to have fair and impartial
21 jurors who can make a decision on the law that I give, the
22 evidence that you hear in this Courtroom, and that alone.
23 Is there any member of the jury panel aware of any bias or
24 prejudice, for whatever reason, that you believe in this
25 case you could not be fair to both parties and render a

1 verdict on the evidence and the law and that alone. If for
2 any reason you cannot be a fair juror, would you please
3 stand?

4 (No response.)

5 THE Court: Thank you. There is no response.

6 Any other questions from the State?

7 MR. TOOKER: Nothing from the State, Your Honor.

8 THE Court: From the Defense?

9 MR. ABDALLA: None from the Defense, Your Honor.

10 THE Court: We'll select a jury.

11 THE CLERK: As I call your name ---

12 MR. ABDALLA: I'm sorry. Could we approach
13 first?

14 THE Court: Yes, sir.

15 (WHEREUPON, Mr. Tooker, Mr. Abdalla and Mr. Brandt
16 approached the bar.)

17 THE CLERK: As I call your name if you would
18 please stand so the attorneys can see you.

19 Juror number 10, Kayla R. Barrow. What says the
20 State?

21 MR. TOOKER: Please present the Ms. Barrow.

22 MR. ABDALLA: Please excuse the juror from
23 service in this case.

24 THE CLERK: If you would, have a seat, please,
25 ma'am.

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1 Juror number 159, Jamie C. Russell. What says the
2 State?

3 MR. TOOKER: Please excuse Ms. Russell from the
4 trial of this case.

5 THE CLERK: If you would, have a seat, please,
6 ma'am.

7 Juror number 70, James E. Green. What says the State?

8 MR. TOOKER: Please present Mr. Green.

9 MR. ABDALLA: Please excuse the juror from
10 service in this case.

11 THE CLERK: If you would, have a seat, please,
12 sir.

13 Juror number 176, Eleanor R. Sutton. What says the
14 State?

15 MR. TOOKER: Please present Ms. Sutton.

16 THE CLERK: And the Defense?

17 MR. ABDALLA: Please seat the juror.

18 THE CLERK: All right. If you would come
19 forward, please, ma'am, and have a seat in the jury box.

20 Juror number 144, Lisa H. Cope. What says the State?

21 MR. TOOKER: Please excuse Ms. Cope.

22 THE CLERK: If you would have seat, please,
23 ma'am.

24 Juror number 25, Doris H. Chapman. What says the
25 State?

1 MR. TOOKER: Please present Ms. Chapman.

2 THE CLERK: And the Defense?

3 MR. ABDALLA: Please seat the juror.

4 THE CLERK: If you would come forward, please,
5 ma'am, and have a seat in the jury box.

6 Juror number 26, Russell C. Chapman. What says the
7 State?

8 MR. TOOKER: Please excuse Mr. Chapman.

9 THE CLERK: If you would have a seat, please,
10 sir.

11 Juror number 111, Carol N. Martin. What says the
12 State?

13 MR. TOOKER: Please present Ms. Martin.

14 THE CLERK: And the Defense?

15 MR. ABDALLA: Please excuse the juror from
16 service in this case.

17 THE CLERK: If you would have a seat, please,
18 ma'am.

19 Juror number 105, Christopher S. Lewis. What says the
20 State?

21 MR. TOOKER: Please present Mr. Lewis.

22 THE CLERK: And the Defense?

23 MR. ABDALLA: Please seat the juror.

24 THE CLERK: If you would come forward, please,
25 sir, and have a seat in the jury box.

1 Juror number 180, Beverly L. Thornton. What says the
2 State?

3 MR. TOOKER: Please present Ms. Thornton.

4 THE CLERK: And the Defense?

5 MR. ABDALLA: Please excuse the juror from
6 service in this case.

7 THE CLERK: If you would have a seat, please,
8 ma'am.

9 Juror number 127, Steven J. Negron. What says the
10 State?

11 MR. TOOKER: Please present Mr. Negron.

12 THE CLERK: And the Defense?

13 MR. ABDALLA: Excuse the juror from service in
14 this case.

15 THE CLERK: If you would have a seat, please,
16 sir.

17 Juror number 19, Alisa S. Burdick. What says the
18 State?

19 MR. TOOKER: Please present Ms. Burdick.

20 THE CLERK: And the Defense?

21 MR. TOOKER: Please seat the juror.

22 THE CLERK: If you would come forward, please,
23 ma'am, and have a seat in the jury box.

24 Juror number 60, Jack M. Garren. What says the State?

25 MR. TOOKER: Please present Mr. Garren.

1 THE CLERK: And the Defense?

2 MR. ABDALLA: Excuse this juror, please.

3 THE CLERK: If you would have a seat, please,
4 sir.

5 Juror number 174, Melissa P. Stewart. What says the
6 State?

7 MR. TOOKER: Please present Ms. Stewart.

8 THE CLERK: And the Defense?

9 MR. ABDALLA: Please seat the juror.

10 THE CLERK: If you would come forward, please,
11 ma'am, and have a seat in the jury box.

12 Juror number 37, John D. Couch. What says the State?

13 MR. TOOKER: Please excuse Mr. Couch.

14 THE CLERK: If you would have a seat, please,
15 sir.

16 Juror number 119, Lawrence A. McKeon. What says the
17 State?

18 MR. TOOKER: Please excuse Mr. McKeon.

19 THE CLERK: Okay. If you would have a seat,
20 please, sir.

21 Juror number 139, Wallace R. Phillips. What says the
22 State?

23 MR. TOOKER: Please present Mr. Phillips.

24 THE CLERK: And the Defense?

25 MR. ABDALLA: Please excuse the juror from

1 service in this case.

2 THE CLERK: if you would have a seat, please,
3 sir.

4 Juror number 138, Deborah A. Phillips. What says the
5 State?

6 MR. TOOKER: Please present Ms. Phillips.

7 THE CLERK: And the Defense?

8 MR. ABDALLA: Please seat the juror.

9 THE CLERK: If you would come forward, please,
10 ma'am, and have a seat in the jury box.

11 Juror number 172, Tony R. Stapleton. What says the
12 State?

13 MR. TOOKER: Please present Mr. Stapleton.

14 THE CLERK: And the Defense?

15 MR. ABDALLA: Please excuse the juror from
16 service in this case.

17 THE CLERK: If you would have a seat, please,
18 sir.

19 Juror number 27, Tony M. Chastain. What says the
20 State?

21 MR. TOOKER: Please present Mr. Chastain.

22 THE CLERK: And the Defense.

23 MR. ABDALLA: Please seat the juror.

24 THE CLERK: If you would come forward, please,
25 sir, and have a seat in the jury box.

1 Juror number 61, Daniel H. Garrett. What says the
2 State?

3 MR. TOOKER: Please present Mr. Garrett.

4 THE CLERK: And the Defense?

5 MR. ABDALLA: Please seat the juror.

6 THE CLERK: If you would come forward, please,
7 sir, and have a seat in the jury box..

8 Juror number 163, Gladys M. Shapiro. What says the
9 State?

10 MR. TOOKER: Please present Ms. Shapiro.

11 THE CLERK: And the Defense?

12 MR. ABDALLA: Please excuse the juror from
13 service in this case.

14 THE CLERK: If you would have a seat, please,
15 ma'am.

16 Juror Number 129, Andrew J. O'Shea. What says the
17 State?

18 MR. TOOKER: Please present Mr. O'Shea.

19 THE CLERK: And the Defense?

20 MR. ABDALLA: Please seat the juror.

21 THE CLERK: If you would come forward, please,
22 sir, and have a seat in the jury box.

23 Juror number 146, Helen J. Purry. What says the
24 State?

25 MR. TOOKER: Please present Ms. Purry.

1 THE CLERK: And the Defense?

2 MR. ABDALLA: Please seat the juror.

3 THE CLERK: If you would come forward, please,

4 ma'am, and have a seat in the jury box.

5 Juror number 36, SON [REDACTED] D. Couch. What says the

6 State?

7 MR. TOOKER: Please present Mr. Couch.

8 THE CLERK: And the Defense?

9 MR. ABDALLA: Please seat the juror.

10 THE CLERK: If you would come forward, please,

11 sir, and have a seat in the jury box.

12 Juror number 190, Kayla N. Watkins. What says the

13 State?

14 MR. TOOKER: Please present Ms. Watkins.

15 THE CLERK: And the Defense?

16 MR. ABDALLA: I missed the number.

17 THE CLERK: 190

18 MR. ABDALLA: 190?

19 THE CLERK: Yes, sir. 1-9-0.

20 MR. ABDALLA: Please seat the juror.

21 THE CLERK: If you would come forward, please,

22 ma'am, and have a seat in the jury box.

23 This will be for the alternate. Juror number 1,

24 Michael J. Abercrombie. What says the State?

25 MR. TOOKER: Please present Mr. Abercrombie.

1 THE CLERK: And the Defense?

2 MR. ABDALLA: Please seat the juror.

3 THE CLERK: If you would come forward, please,
4 sir, and have a seat in the jury box.

5 THE Court: Any legal matters we need to take
6 care of as far as the selection of the jury in this case?
7 From the State?

8 MR. TOOKER: Nothing from the State, Sir.

9 THE Court: From the Defense?

10 MR. TOOKER: Nothing from the Defense, Your
11 Honor.

12 THE Court: Ladies and gentlemen who were not
13 selected, I'm going to ask you if you would, please go back
14 downstairs to the Courtroom there. There will be
15 instructions for you from Ms. Garrett. Thank you very much
16 for your participation today. You're excused at this time.
17 If everyone else would please remain seated.

18 (WHEREUPON, the jury panel exited the open Court at
19 approximately 12:16 P.M.)

20 THE Court: Ladies and gentlemen, you've seen the
21 process by which you were selected to serve as a juror on
22 this case. The parties, they believe you're the best
23 twelve people to hear this case and make a decision as to
24 what the facts are. We have thirteen members of this
25 panel. The last member picked, as the clerk implied, was a

1 -- or stated, was an alternate. He's every bit as much a
2 part of the jury as everyone else. We have twelve people
3 who'll make a decision, but between now and the time this
4 case is over, there may be an emergency that comes up in
5 one of your lives. An illness may befall you. I certainly
6 hope it doesn't. But if that were to happen, the alternate
7 can step into the shoes of that individual who does have
8 that event happening and we won't have to start the trial
9 again. We can continue going as we started.

10 I told you, you're going to be judges of the facts.
11 And you may have some apprehension about the title I've
12 bestowed upon you to be a judge. You may be thinking to
13 yourself, well, I did what I was supposed to do on a Monday
14 morning. I answered my Summons. I came to a big room and
15 went through that process. And now I find myself sitting
16 in a jury box. I've never even been in the Courthouse
17 before, certainly not a Courtroom. How can I be a judge?
18 How can I fulfill this role?

19 Ladies and gentlemen, I assure you, each of you bring
20 into this Courtroom every skill you're going to need to be
21 the judge of the facts in this case, because into this
22 Courtroom you bring the everyday experiences that you enjoy
23 in school, in work, in home, in social activities. You
24 bring into this Courtroom the good common sense with which
25 you've been blessed. And that's what you're going to need

1 to utilize in being the fact-finder in this case. I'm
2 honored to have a chance to work with you and have this
3 opportunity.

4 As I stated downstairs, I know you're here at a
5 sacrifice. I'm going to do everything within my power to
6 keep the trial running in an efficient matter so that when
7 you're not actually participating in the testimony and the
8 proceedings here, you're going to be free to go about your
9 activities. My job is to conduct the trial, to be the
10 presiding officer. My job is to rule upon the law that
11 takes place. Among my responsibilities is to rule upon
12 evidence that's offered. Sometimes there may be a document
13 that's offered into evidence and someone, one side or the
14 other, may object to it or a question is asked which one
15 side feels is improper. That's my job, to rule upon that
16 objection. Frequently, I can do that by just saying
17 sustained or overruled and we move on to the next matter.

18 Sometimes, as you've already seen, the lawyers may
19 come up here and we'll huddle together and whisper at the
20 bench and hopefully can resolve a legal matter. Sometimes,
21 in the course of a trial, just in the timing of the trial,
22 sometimes a legal matter may come up. And sometimes when
23 we have legal matters in a trial, I have to make those
24 decisions outside of your presence. I want to make the
25 very best decision I can as the judge of the law.

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1 Sometimes I may have to read a legal book or hear some
2 arguments of the lawyers. I may have to hear some
3 testimony that normally wouldn't even be presented before a
4 jury. In order to do that, I have to sometimes have you
5 back in your jury room just waiting on me to get that
6 resolved. You're a judge, just as I am. Your job is to
7 judge the facts, though. And when all the evidence has
8 been presented, all the testimony is given and whatever
9 documents are entered, then you're going to be back there
10 deliberating and making the decision on the facts. Even
11 though I'm a Judge, just as you are, I'm not going to be
12 back in that jury room with you, because that's not my
13 role. Your role is to decide the facts. My job is to
14 determine what the law is. So we have different roles and
15 I hope you'll understand that sometimes in the course of a
16 trial we have legal matters that need to be presented.

17 Normally, in a trial, we'll be starting about nine
18 o'clock in the morning. Sometimes it may be nine-thirty,
19 if there's some legal matters pending. Or sometimes I have
20 some other matters I need to take care of that doesn't
21 involve this case. And I try to get those done the first
22 thing if I can. We'll take a morning break and then we'll
23 normally break for lunch around one o'clock, sometimes a
24 little earlier. After we have our lunch break, then we'll
25 come back and we'll go about another hour, hour and a half,

1 take a break, and then hopefully finish by five, five-
2 thirty in the afternoon.

3 I've told you that you need to be a good listener.
4 You need to weigh all the evidence and listen carefully as
5 the witness is testifying, judge the credibility of that
6 witness, the appearance of that witness while on the
7 witness stand. So it's vitally important that you be alert
8 and focused on the trial. If you need to take a break and
9 I haven't called for a break, please get my attention or
10 get one of these bailiffs' attention. Mr. Schumacher, over
11 to your left, he will be closer to you. And Mr. Garrison
12 and Mr. Gilstrap are both working here in the Courtroom.
13 You can get one of their attention. Mr. Welborn will be
14 here most of the time. There may be one of his deputy
15 clerks up here during the course of the trial. You can get
16 the attention of one of the clerks here. Seated directly
17 in front of you, with her back to you, is Ms. Danette
18 Hanks. She's the Court reporter. She's going to be taking
19 down everything that's said during the course of this
20 trial, to keep a record, mark any exhibits that may be
21 introduced in the trial. Certainly she can assist you.
22 David Brown is the young man seated behind me, my law
23 clerk. A valuable asset for me. He's a recent law school
24 grad, recently admitted to the South Carolina Bar. So you
25 may see him coming and going. During the progress of the

1 trial, he might be taking care of things back in the office
2 as well. So any of these folks will certainly be glad to
3 help you in any way.

4 Cases take place in stages. Normally, the attorneys
5 start with an opening statement to you and give you an
6 overview of what each of them feels is important about the
7 case. And then we'll have the testimony. After all the
8 evidence is in, testimony and other tangible evidence, then
9 the attorneys will again have a chance to address you in a
10 closing statement. And then that's when I'll instruct you
11 on what the law is.

12 While the case is in progress, you should not be
13 discussing it one with another, when you take a break back
14 in your jury room, or otherwise. The law says that your
15 deliberations and your discussion about what you've heard
16 so far shouldn't take place until all the evidence is in so
17 that you can make sure the entire package is presented to
18 you before you start that deliberation process. So you
19 shouldn't be discussing it one with another. Likewise, you
20 shouldn't be discussing it with anyone else. You may
21 decide to go home at lunch or have lunch here in Pickens.
22 And if someone were to come up to you and want to talk
23 about this case or give you information or ask you
24 questions, you, of course, should tell them you can't be
25 talking about the case. You're a juror in this matter and

1 you've made a commitment that you're going to decide it on
2 what takes place in this Courtroom and not from what
3 someone wants to tell you. And you just excuse yourself
4 from that person. And if anyone were to persist in wanting
5 to give you information, please excuse yourself as quickly
6 as you can. If possible, get the name of that person,
7 report it back to me, and I assure you I'll take care of
8 that. I don't anticipate anything like that to happen. I
9 want to impress upon you how important it is that the
10 process we're now in, that we maintain the purity of that
11 process, that we fulfill the commitment that I've made to
12 these lawyers and parties under the law, to dispense it
13 properly. And you've made a commitment already to be the
14 fact finder. So if you're out and about eating and
15 someone's on an adjoining or at an adjoining table, and you
16 hear them talking about the case, you take the initiative.
17 You just move to another booth or another table so that
18 you're not listening to any of those other comments that
19 may be taking place.

20 As we come and go in the Courthouse, in the elevator,
21 the hallways, you may see one of these lawyers or an
22 individual with their team. And you may see these lawyers
23 high-hat you and sort of walk the other way and not make
24 any eye contact. Please don't hold that against these
25 lawyers. They're not unfriendly by nature. They are

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1 friendly gentlemen, but their training is to such an extent
2 they want to avoid any appearance of any impropriety, even
3 though they may be talking to a juror in the hallway about
4 a sport score or the weather or any other innocent matter,
5 it could be perceived wrongly. So they want to make sure
6 that they avoid any contact with jurors while the case is
7 in progress. So don't hold that against them if they seem
8 to walk the other way.

9 While the case is in progress, you shouldn't be
10 talking to your family about it. You're going to have a
11 chance, when this case is concluded, to share your
12 experience in this case with your family, your friends, and
13 your loved ones. But while it's in progress, you shouldn't
14 be talking about it. Certainly, you can tell them the
15 general nature of the trial that you're in. But beyond
16 that, about what the evidence is and what you've heard,
17 don't be talking about that while the case is in progress.
18 That's to wait until the case is concluded before you share
19 you experiences with your loved ones or friends.

20 We're in a very highly technological age and
21 information age where information is readily available.
22 The Chief Justice of our Supreme Court in South Carolina
23 has issued an order that all Trial Judges, such as I, are
24 to give to jurors who have been empaneled to serve as a
25 juror on a particular case. And that is that there's not

1 to be any independent research or checking archives, going
2 by the scene, getting in a dictionary and looking up words
3 that you may -- haven't heard before. All of that would be
4 improper for you to do. The same with any social media.
5 Getting on Facebook or Twitter or anywhere else and sharing
6 your experience as a juror, while the case is in progress,
7 that's improper for you to do. The Chief Justice has
8 ordered you not to do that. And I'm conveying that to you.

9 I've told you before, after the case is concluded you
10 can do those things and talk about the case, but while it's
11 in progress is not the time to do that. I want you to
12 fulfill the commitment you've made to these parties and I'm
13 sure you want to do that. So I give you that instruction,
14 not by way of temptation, but by way of impressing upon you
15 the importance of the commitment you're making to these
16 parties.

17 We have some legal matters that we have to take care
18 of before we actually start the trial of this case. I'm
19 not sure how long those may take. But I understand from
20 the attorneys it may take an extended time. So I'm going
21 to give you a little earlier lunch today and a little
22 longer lunch today while we can get these matters resolved.
23 Hopefully, we'll be ready to start back when you return
24 with the opening statements of the attorneys.

25 Have a good lunch, ladies and gentlemen. I'm going to

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1 ask, if you would, be back at two-fifteen. We'll be ready
2 to -- hopefully be ready to start by then. I certainly
3 don't want to keep you waiting. But if it has to, please
4 be patient with me. I try to estimate times as best I can,
5 knowing the lawyers and the matters that we have to attend
6 to.

7 Mr. Schumacher will show you where you're to report
8 back and where your jury room will be. So if you'll go
9 with him at this time. I'll see you back at two-fifteen.
10 We'll be ready to begin then.

11 (WHEREUPON, the jury exited the open Court at
12 approximately 12:29 P.M.)

13 THE Court: All right. Gentlemen, what do we
14 need to take care of before we break. Any kind of motions
15 or preliminary matters we need to cover?

16 MR. TOOKER: The first thing the State's got,
17 Your Honor, and again, we touched on this briefly before we
18 went on the record. But the State's got a motion in limine
19 for compliance with rape shield laws. And that is before
20 you. And I've given a copy to Mr. Abdalla. Essentially,
21 you know, per the statute 16-3-659.1, we're asking that the
22 Court enforce that statute mandating limited admissibility
23 of opinion, reputation, or specific instances of sexual
24 activity by the victim with persons other than the
25 Defendant. Furthermore, this is pursuant to Rule 412 of

1 the South Carolina Rules of Evidence. We're moving to
2 prohibit the Defense from any reference or line of inquiry
3 regarding prior sexual knowledge and/or sexual activity
4 concerning the victim in this case with any person other
5 than the Defendant. It's the State's understanding of the
6 rape shield law that the Defense can go into the victim's
7 sexual history for purposes of showing consent with the
8 Defendant, and so can ask her about consensual encounters
9 with the Defendant. However, the Defense cannot go into
10 encounters with other people unless they go to explain
11 either the existence of some sort of piece of evidence like
12 -- for instance, if the victim had tested positive for
13 chlamydia, and maybe another partner had chlamydia, the
14 Defense can then question her about that to show that she
15 got chlamydia from the other partner, not from the
16 Defendant. But absent some sort of showing that that's the
17 case, I don't think that any other evidence of the victim's
18 sexual history is admissible. Furthermore, per 16-3-659.1
19 section 2, there needs to be notice to the State before any
20 evidence about the victim's sexual history can be proffered
21 before the Court. And we're requesting legally mandated
22 in-camera review by the Court before the Court deems any of
23 the Defenses evidence. And, granted, you know, the State
24 is speculating right now. But if they do intend to go into
25 the victim's prior sexual history, before any evidence is

1 admitted or any questions are asked of the victim, we would
2 request that in-camera review. And that's it for the
3 State's motion with regards to rape shield.

4 THE Court: All right. Mr. Abdalla, any response
5 on that issue?

6 MR. ABDALLA: No, sir. We don't intend to
7 violate the rape shield statute. I can't make any
8 predictions as to what kind of cross-examination we'll
9 have. Once the witness testifies, if need be, we'll have a
10 side-bar or an in-camera hearing. But I don't anticipate
11 that at this time.

12 THE Court: Okay. Good. All right. Nothing
13 else from the State?

14 MR. TOOKER: The only other thing the State's
15 got, the State intends to call Greg Cumbee to testify in
16 this trial. Greg Cumbee is the Defendant's Bondsman. And
17 Mr. Cumbee will testify that he was responsible for the
18 Defendant. The Defendant was alerted of his Court
19 presence, didn't show up for Court. So Mr. Cumbee -- and
20 he'll go into this -- but he's got ninety days to find that
21 person before the bond is forfeited. He said that he went
22 looking for the Defendant, found the Defendant living in a
23 trailer because of a tip from a third party. Not the
24 trailer that he knew him to be living in. When he found
25 him there, the Defendant tried to run out the back and Mr.

1 Cumbee and a third party had to wrestle him down. While
2 they were wrestling him down, some guys actually came out
3 of the woods. There was a pasture near that property. And
4 they came out of the woods. And one of them evidently knew
5 Mr. Cumbee and said, Greg, what did he do? Greg said, he
6 impregnated his daughter. And then Mr. Burgess blurted
7 out. No, she was my step-daughter. At which point he
8 stopped resisting Mr. Cumbee's attempts to restrain him and
9 to put him in custody and went with Mr. Cumbee at that
10 point.

11 THE Court: So is the purpose of Mr. Cumbee's
12 testimony to get the statement in of the Defendant?

13 MR. TOOKER: Well, it's two-fold. First, it's
14 for the purposes of flight. It's the State's opinion --
15 well, the case law says that flight or attempt to flight is
16 evidence of guilt. And it states the opinion of the
17 Defendant not showing up for Court when bond carded and
18 then attempted to flee when Mr. Cumbee showed up to
19 apprehend him, is flight or at least attempted flight,
20 because Mr. Cumbee was able to apprehend him. But then
21 second, the purpose of his testimony would be to get out
22 the statement, she was my step-daughter, clarifying, when
23 Mr. Cumbee was asked by that individual that came out of
24 the woods, clarifying Mr. Cumbee's statement that he
25 impregnated his daughter.

1 And so those are the two pieces of relevant evidence
2 that the State would intend to introduce through Mr. Cumbee
3 as a witness. And the State does have some case law on
4 that. But I thought maybe it would be best to proffer his
5 testimony first, let Your Honor hear it, and then Mr.
6 Abdalla and I could argue about the worth of that testimony
7 and address the case law on point.

8 THE Court: All right. Mr. Abdalla?

9 MR. ABDALLA: Your Honor, I'd like to circumvent
10 all of that if the Court would be willing. I've never
11 heard of anything like this with all the trials I've had,
12 where somebody would testify and use flight as a bond card
13 hearing for just a regular bond card to come in, that
14 wasn't for a trial. Flight is generally when a person is
15 running away from the initial arrest. So this is a unique
16 use of the flight rule for me. The Defense isn't aware of
17 anything like that. I think the prejudicial value of that
18 is so outstanding my client would be convicted just on its
19 face, just because the jury's going to see that he wouldn't
20 come in. The fact is, he turned himself in initially, and
21 he knew what he was getting into, when he first was
22 arrested. That's when I got into the case in March -- I'm
23 sorry, April -- late March or early April. He turned
24 himself in, I believe it was April 2nd of 2007.

25 And as for the statement, the prejudicial value --

1 aside from the fact it's very prejudicial, there's
2 virtually no probative value. It's just an inflammatory
3 thing. We're not denying that that's his child so ...
4 We're not denying the relationship, that it's his step-
5 daughter. So to have the bondsman come up and testify
6 about the fact that he ran and that he corrected him about
7 it not being his daughter, but his step-daughter, I don't
8 see why that should come before the jury.

9 One moment, Your Honor. Your Honor, furthermore, he
10 was coming in merely for roll call. It wasn't for a trial.
11 So the ---

12 MR. TOOKER: Your Honor, I have some case law on
13 point when you're prepared to hear it.

14 THE Court: I mean, is there any reason we need
15 to hear his testimony? Is it going to be contested -- you
16 pretty much agree that's what he's going to ---

17 MR. TOOKER: I think my summary is pretty
18 sufficient.

19 MR. ABDALLA: I guess I'm anxious to see the case
20 law because I have another standard here about the case
21 before.

22 MR. TOOKER: Sure.

23 THE Court: Well, I was just thinking is there
24 ---

25 MR. TOOKER: Oh, I'm sorry.

1 THE Court: If he's going to basically testify to
2 that, do we need to spend time hearing his testimony and
3 just go ahead and let me hear the law?

4 MR. TOOKER: If Mr. Abdalla's content with my
5 summary, then I don't think so.

6 MR. ABDALLA: If that's, in fact, what he's going
7 to say pretty much verbatim, I understand there's few
8 remarks, but I'm all for going with the argument and
9 proceeding.

10 THE Court: All right. Let's leave this one
11 alone for a moment.

12 MR. TOOKER: Okay.

13 THE Court: Anything else from the State?

14 MR. TOOKER: No, I believe that's it from the
15 State, Your Honor.

16 THE Court: Okay. Is there any pre-trial matters
17 that we need from the Defense?

18 MR. ABDALLA: The only thing we have left, since
19 I've spoken to the Solicitor about the witnesses, the only
20 issue left, Your Honor, is just sequestering the State's
21 witnesses while their witnesses are testifying.

22 MR. TOOKER: And the State is entirely okay with
23 that, with the exception, of course, of the victim and the
24 chief investigating officer, Lieutenant Kelley.

25 THE Court: Okay. Lieutenant Kelley will be

1 here. And the victim, if she wants to be here.

2 MR. ABDALLA: Yes, Your Honor, I agree.

3 MR. TOOKER: And she'll be our first witness
4 anyway so ...

5 THE Court: Okay. All right. And your witnesses
6 will be sequestered, as well?

7 MR. TOOKER: Yes, sir.

8 MR. ABDALLA: I would ask that they be
9 sequestered during the testimony of the Defense
10 presentation, just as the Prosecution goes and their
11 witnesses are allowed to come into the Courtroom when the
12 Defense testifies. I would argue that -- ask that the
13 Court allow our witnesses to be here for the presentation
14 of the State's case, but not when we're putting up our
15 case.

16 MR. TOOKER: Well, the problem with that, I
17 think, Your Honor, you know, the purpose of sequestration
18 is to: (a) prevent corroboration when there isn't any; but,
19 (b), to prevent contradiction when there isn't any. And
20 the State -- and granted the State is not aware of what any
21 of Mr. Abdalla's witnesses would like to testify to, with
22 the exception of one. And so the State's concern would be
23 that, you know, some of these people -- and granted, we
24 don't know what they'll say -- but they might sit in here
25 and listen to what is said and alter their testimony

1 specifically to contradict it. As opposed to -- in case
2 there are instances of overlap, testify truthfully to those
3 instances of overlap, because they would not yet have been
4 made aware of what the State's witnesses said that was, in
5 fact, the same as what they intend to say.

6 THE Court: Well, we're going to have either
7 sequestration or non-sequestration. So I -- if the State
8 wants your witnesses sequestered, I'm going to grant their
9 motion, just as I'll grant yours to have all of the State's
10 witnesses sequestered.

11 MR. ABDALLA: All right.

12 THE Court: And sequestration, in my view, means
13 that you don't, even after a witness testifies, that
14 witness does not share the testimony with upcoming
15 witnesses. That's what I mean by sequestration.

16 MR. ABDALLA: Thank you, Your Honor.

17 THE Court: Obviously, they can talk to the
18 lawyers and, you know, but that's -- that sometimes creates
19 a muddle, just what sequestration means. So that's what it
20 means to me.

21 MR. TOOKER: And, Your Honor, so I'm clear, after
22 the State's witnesses testify are they free then to remain
23 in the Courtroom?

24 THE Court: If they're not going to testify
25 anymore.

1 MR. TOOKER: Okay.

2 THE Court: If you might need to recall them,
3 that might create another issue. But they're all free --
4 once you finish with them, they can stay. All right.

5 Anything else, Mr. Abdalla?

6 MR. ABDALLA: No, Your Honor.

7 THE Court: All right. Have you got a copy of
8 your law for Mr. Abdalla and for me?

9 MR. TOOKER: Yes, sir, Your Honor. I'm actually
10 ---

11 THE Court: Maybe we can just take a lunch and
12 come back at two o'clock and talk about that then.

13 MR. TOOKER: I have my copies. I need to
14 actually go print a copy for Your Honor and then a copy for
15 Mr. Abdalla.

16 THE Court: How many cases you got? We can look
17 them up.

18 MR. TOOKER: I've got three here.

19 THE Court: Well, just give them to Mr. Abdalla
20 and give us the cite. Give us the South Carolina cite.

21 MR. TOOKER: Sure. The first site, and this
22 really just goes to flight generally, it's *State v. Pagan*,
23 P-A-G-A-N. And the South Carolina Cite is 369 S.C. 201.
24 The second case I've got here, and this is flight as
25 unexplained absences, that's *State v. Walker*. The South

1 Carolina cite, 366 S.C. 643 of the Court of Appeals, 2005.
2 And then finally a case here, and that suicide is flight,
3 and that is State v. Orozco, O-R-O-Z-C-O. And that's South
4 Carolina citation 392 S.C. 212. And those are the three
5 cases.

6 THE Court: 392, 212?

7 MR. TOOKER: 392, 212, Yes, sir.

8 THE Court: Okay. All right. On the statement,
9 Mr. Abdalla, I gather from your comments that there's
10 really not going to be an issue as to whether or not ---

11 MR. ABDALLA: To the paternity. We've already
12 consented to that. The paternity is established. It's
13 just bolstering with that comment, makes it sound -- it's
14 just very prejudicial. I don't understand any probative
15 value. He's not denying this is his child. And he hasn't.

16 THE Court: Okay. All right.

17 MR. TOOKER: Well, to be fair, Your Honor, he's
18 not denying this is his child now. You know, for the
19 longest time he did deny that this was his child. And then
20 we went and we got paternity test. And, you know, at that
21 point, he's like, oh, okay. All right, we'll stipulate to
22 the admissibility of that evidence. I think that the
23 testimony is probative of the fact that he was aware of
24 that status for sometime, that he recognized it. And that
25 he thinks, somehow, the fact that she's his step-daughter

1 is mitigation in the fact that he impregnated her. And the
2 State thinks that's particularly probative of his ---

3 THE Court: Okay. Well, I'll ---

4 MR. ABDALLA: Judge, can I just give a few more
5 things?

6 THE Court: Yes.

7 MR. ABDALLA: The Solicitor is presenting this as
8 if my client never admitted it was his child. When Peter
9 Them was prosecuting the case, my client admitted it was
10 his child. That's long before the Solicitor gets in. It's
11 almost akin to saying, my client denied he was guilty when
12 he was arrested; now, he's coming before the Court and
13 wants to plead guilty and saying, well, no, it's too late,
14 you can't plead guilty now. He admitted it was his child
15 quite a while ago, years ago. And, again, the prejudicial
16 value is outweighing any probative value and it's just more
17 of a bolstering situation than anything. And, again, just
18 prejudicial. There's nothing to be learned from it for the
19 jury. The jury knows he's the father.

20 MR. TOOKER: Well, the jury will know he's the
21 father. But the jury will also know that he knows he's the
22 father.

23 THE Court: All right. Well, I'll study ---

24 MR. ABDALLA: There was one last matter. I'm
25 sorry.

1 THE Court: Yes, sir.

2 MR. ABDALLA: One last matter I wanted to take up
3 with the Court, Your Honor. And it was just -- I asked the
4 Court to compel the Prosecution to enforce an offer that
5 was made to the Defendant by Mr. Them when he was the
6 prosecutor. And I don't have it in writing. But,
7 unfortunately, I did tell Mr. Tooker about it last time we
8 were over here. And at that time, of course, for what it
9 would have been worth, Mr. Them could have been reached
10 about it. He was offered an ABHAN plea to aggravated
11 assault. Since then, of course, we've had direct
12 indictments and it's blown up quite a bit. But this case
13 is five and a half years old now. And he had a plea offer
14 and now he has no offer.

15 MR. TOOKER: And, Your Honor, if I could touch on
16 that. Mr. Abdalla told me that. Mr. Abdalla told me that
17 he and Peter had been in negotiations about an ABHAN offer.
18 So I ran through the file and I looked for all the offers I
19 could find. The only offers I found were offers for like
20 twenty years. So what I decided to do was just start
21 afresh with what I thought. And I didn't think that the
22 case warranted that kind of offer.

23 THE Court: Okay.

24 MR. ABDALLA: I don't deny that he was offered a
25 ridiculous offer in the beginning when I came to Pickens.

1 I was all ready to not care for Peter. I had never met him
2 before. And then we negotiated for quite a while and then
3 got it down to the ABHAN plea, for the knowledge of the
4 Court. But I don't deny, I can't find it in writing. I
5 could just offer it as an Officer of the Court to say I
6 wouldn't make up something like that.

7 THE Court: You have nothing to show that you
8 accepted that offer, Mr. Abdalla?

9 MR. ABDALLA: No, Your Honor, other than my
10 conversation with Mr. Them.

11 THE Court: All right. Let's be back at two
12 o'clock.

13 MR. TOOKER: Thank you, Your Honor.

14 MR. ABDALLA: Thanks, Your Honor.

15 (WHEREUPON, the Court stood at recess for a lunch
16 break.)

17 MR. TOOKER: Yes, sir, Your Honor. I provided
18 two more cases to Defense counsel and they're up there with
19 your law clerk. Essentially, I want to start from -- well,
20 it's not necessarily a chronological interpretation of the
21 case law, but foundation for flight. And that foundation
22 is that flight from prosecution is admissible as evidence
23 of guilt for a great many cases from the State of South
24 Carolina. The one I'm citing right now is the State v.
25 Crawford, 362 S.C. 627. What's important about that case

1 is that case also acknowledges that attempts to run -- and
2 I'm on page eight, although on your copy it will say nine
3 of sixteen at the top -- attempts to run -- and this is the
4 right-hand column, about a quarter of the way down to the
5 bottom -- attempts to run away have always been regarded as
6 some evidence of guilty knowledge and intent -- internal
7 quotation marks omitted. That's from *State v. Davis*,
8 another South Carolina case, 354 S.C. 348, Court of Appeals
9 in 2003. And with regards to flight generally, and here's
10 where I refer to *State v. Pagan*, which I handed up to or I
11 gave Your Honor the citation for earlier. In that case,
12 the Court recognized that flight from prosecution is
13 admissible as guilt, evidence of flight admissible to show
14 guilty knowledge and intent and that the Defendant sought
15 to avoid apprehension. Flight or evasion of arrest in
16 circumstances go to the jury, but there's got to be a nexus
17 between the flight and the offense charged. And imminence
18 of flight should be excluded when the flight is clearly
19 linked to a separate offense which the Defendant is not on
20 trial for. And that's important. Because in *State v.*
21 *Pagan*, the guy is pulled over and charged with failure to
22 stop for a blue light when he's already out on bond for a
23 murder charge. And the State was attempting to introduce
24 evidence of that failure to stop for blue light to show
25 flight as guilty conscience.

1 Now, the Court concluded that there's no nexus there,
2 that the State was unable to show that when he failed to
3 stop for a blue light that was because of anything related
4 to that murder charge that he was already out on bond for.
5 Because there was no evidence in the totality of the
6 circumstances illustrating that fact, you know, that
7 evidence of flight should not have been admissible. But
8 what the Courts have also concluded is that when you can't
9 show that nexus, when there's a link, when there's evidence
10 that the Defendant is not where he's supposed to be or is
11 running from people or trying to run from people, that he
12 is -- you know, if there's that nexus, then that evidence
13 should be included as evidence of his guilty conscience.

14 Now, I say, not where he's supposed to be because
15 there's a case, and I think it's as on point as any I could
16 find in these circumstances. I could find no case, and all
17 of our cases are on record in South Carolina, where
18 somebody tries to run from his bondsman, when his bondsman
19 is there to pick him up for a failure to appear. But what
20 I did find and this is in *State v. Walker*, is that it's
21 sufficient that circumstances justify an inference that the
22 accused's actions are motivated as a result of his belief
23 that police officers were aware of his wrongdoing or
24 seeking him for that purpose. In that case, the Defendant
25 Walker fled his residence after an investigator asked him

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1 just to stay there. So an investigator shows up ---

2 THE Court: But he hadn't been arrested yet.

3 MR. TOOKER: Hadn't been arrested yet.

4 THE Court: Yeah.

5 MR. TOOKER: He's there just to talk to him about
6 a case. Goes away, comes back, the Defendant has fled. In
7 that case, the Court concluded that that nexus is
8 established. That there is that nexus between his
9 knowledge that he's wanted and the person who is trying to
10 get him, you know, not able to find him because the
11 Defendant has absconded. There's also *State v. Orozco*.

12 And I think *State v. Orozco* is important because the
13 analysis is very in-depth, the Court's analysis is.
14 Because the Court was analyzing something that was new
15 until to that point in South Carolina. In that case, the
16 State tried to introduce evidence the Defendant attempted
17 suicide to show guilty conscience. And the State's
18 argument is that that is analogous to flight. Because, you
19 know, he's trying to escape somehow. Because it had not
20 even been decided, the Court goes through a pretty lengthy
21 analysis of flight. And so the ---

22 THE Court: When was the arrest made in this
23 case? What date was he arrested?

24 MR. TOOKER: The arrest in this case is in 2007.

25 MR. ABDALLA: April 2nd, 2007.

1 MR. TOOKER: Yes, sir.

2 THE Court: When was the bond arrest made on the
3 bond.

4 MR. TOOKER: I'll have to refer to Mr. Cumbee to
5 be exact.

6 MR. ABDALLA: It was 2011.

7 MR. TOOKER: But it was 2011.

8 THE Court: Okay.

9 MR. TOOKER: A bench warrant was issued
10 8/25/2011.

11 THE Court: Okay.

12 MR. TOOKER: And I believe he was picked up in
13 September. Now, the State's not trying to introduce
14 evidence of the failure to appear as flight. And I don't
15 want Your Honor to get that impression. I don't think the
16 State could show the nexus between the Defendant not
17 showing up for a bond card and intending to flee from that
18 particular charge. I don't think just because you don't
19 show up the State should be entitled every time to
20 introduce that as evidence of flight.

21 Now, the evidence of flight in this case, and this is
22 the distinction I'm trying to draw, is that when Greg
23 Cumbee shows up, and this will also be established through
24 Mr. Cumbee's testimony, you know, he talks to his people
25 about bonds. He says, you understand when I'm paying to

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1 get you out of jail, you have to show up. If you don't
2 show up, I'm coming to get you and put you back in jail;
3 right? That's your responsibility. Once I bond you out,
4 you're supposed to show up. He shows up at the Defendant's
5 residence, the place the Defendant is staying now. When he
6 shows up, the third-party kind of goes around the side of
7 that trailer. An individual opens the door. The Defendant
8 bolts out the back. The third party alerts Mr. Cumbee to
9 the Defendant's attempt to flee. Mr. Cumbee comes around,
10 he and the third party attempt to apprehend the Defendant.
11 The Defendant, the whole time, is resisting, and, again,
12 trying to flee. Trying to get away. And this is why I
13 think this is particularly probative. Those fellows that
14 are coming out of the woods that say, what did he do, Greg?
15 Greg says, he impregnated his daughter. And the Defendant
16 says, no, she was my step-daughter. That is direct
17 evidence of his knowledge of what they're there for at that
18 point in time. And so when he's trying to get away, no,
19 she's my daughter. She -- or she's my step-daughter. That
20 is evidence that he knew why they were there. He knew that
21 he was not where he was supposed to be because Greg Cumbee
22 had come to pick him up for not showing up for Court. And
23 so I think that given the totality of the circumstances --
24 and that's what these cases all say is you've got to look
25 at the totality of the circumstances -- but given the

1 totality of the circumstances, I think that this evidence
2 should be admitted to show that the Defendant was
3 attempting to flee from Mr. Cumbee, knew why he was -- Mr.
4 Cumbee was there, and was trying to get away because he
5 didn't want to face these charges in Court.

6 THE Court: All right. Thank you. I've read the
7 three cases you gave me during lunch break. And the two
8 you've just given me, I've had a chance to scan. I think
9 in the light of the totality of the circumstances that the
10 evidence will not be admissible. I believe the prejudicial
11 effect would outweigh its probative value. As far as the
12 statement made, we can revisit that issue later. Mr.
13 Cumbee may get to testify. I gather from what the Defense
14 said that that's not going to be an issue as to what that
15 statement was anyhow. So I'll be glad to revisit that as
16 the case develops, Solicitor, if you still want to offer
17 that statement in, I'll be glad to hear from you on that
18 later, but not now.

19 MR. TOOKER: Yes, sir.

20 THE Court: Okay. Is everybody ready to proceed?

21 MR. ABDALLA: Yes, sir.

22 MR. TOOKER: Yes, sir.

23 THE Court: All right. Have our jury come in if
24 they're ready, Mr. Schumacher.

25 THE BAILIFF: Yes, sir.

1 (WHEREUPON, the jury entered the open Court at
2 approximately 2:28 P.M.)

3 THE BAILIFF: All present, sir.

4 THE Court: All right. Thank you very much, Mr.
5 Schumacher.

6 Ladies and gentlemen, you've patiently waited for us.
7 I did miscalculate the time just a little bit, but I
8 apologize for that.

9 We're now ready to have the attorneys address you in
10 their opening statement. What these lawyers have to say to
11 you is not evidence. The evidence will come from the
12 witness stand, from any other evidence that may be
13 introduced. While this is not evidence, I urge you to
14 listen carefully as each attorney addresses you. I'm
15 confident that each of them can give you some valuable
16 insights to perhaps help you as the case unfolds, as to
17 different matters you need to be alerted to and watching
18 for. Before the opening statements of the attorneys, Mr.
19 Welborn is going to administer an oath to you. I hope that
20 each of you will listen carefully as this oath is given to
21 you. It's a time-honored oath, which has been in existence
22 well before the foundation of our country even. In
23 England, oaths similar to this were taken by those who were
24 the fact-finders in cases. So listen carefully as the
25 words are given you. After the oath is administered, then

1 the State will make its opening statement followed by Mr.
2 Abdalla or Mr. Rucker.

3 Mr. Clerk, if you would swear the jury, please.

4 THE CLERK: If you would, please stand. Again,
5 after the oath is administered, answer by saying, I will.
6 Raise your right hand.

7 You shall well and truly try the issue joined in this
8 case of the State versus Norman Keith Burgess, and a true
9 verdict render, according to law and evidence, so help you
10 God?

11 (WHEREUPON, the jury was duly sworn.)

12 THE CLERK: Thank you. You may be seated.

13 THE Court: All right. Solicitor, you may
14 address the jury in your opening.

15 MR. TOOKER: Thank you, Your Honor. May it
16 please the Court. Mr. Abdalla.

17 **OPENING STATEMENT**

18 **BY MR. TOOKER:**

19 Ladies and gentlemen of the jury, I introduced myself
20 briefly earlier. My name is Sam Tooker. And I work here
21 in this office, in this Courthouse, as an Assistant
22 Solicitor. I prosecute a wide variety of crimes. Many of
23 them are crimes that don't seem all that serious sometimes.
24 They're crimes that you can kind of shrug off, that don't
25 really seem to mean all that much in the long run. But

1 that's not the kind of case that's before you jurors today.
2 And that's second. But first, I do want to thank you for
3 your service. I know folks, you roll your eyes and you
4 kind of exhale deeply when you get picked; and I wish I
5 wasn't on this jury. But it is an extremely important
6 role, extremely important. There is not anything that you
7 can do for your State, for the State of South Carolina,
8 more important than jury service. I know that I feel that
9 way. The victim in this case, MINOR and her husband,
10 feel that way. I know the Defendant and Mr. Abdalla feel
11 that way. And I'm sure I can speak for the Court, as well,
12 when I say we are all extremely grateful for your presence.
13 Without you, we can't have trials. We can't decide the
14 truth. And ultimately, that's what you do. That's your
15 function. You guys are the truth finders. You figure out
16 what the truth is in a case and you render a verdict
17 accordingly.

18 Now, I said this is going to be a difficult trial.
19 And I'm not going to sugarcoat it for you. This is a
20 trial. And you heard the indictments read of rape, sexual
21 assault, what we call in South Carolina criminal sexual
22 conduct. It's a case, as mentioned in the indictments,
23 where there are three indictments. Those three indictments
24 refer to the period of time spanning some six years. The
25 first two indictments are for lewd act upon a child, and

1 for criminal sexual conduct with a minor in the second
2 degree. And essentially, to break those both down,
3 starting in November of 2001 until the victim turned
4 sixteen, so between the ages of fourteen and sixteen, the
5 Defendant unlawfully and repeatedly sexually assaulted the
6 victim.

7 Now, the third indictment is for CSC in the third
8 degree. CSC in the third degree is what we think of when
9 we talk about traditional rape, forced intercourse.
10 Intercourse against someone's will. And that is for the
11 period of time after the victim turned sixteen until she
12 eventually told folks what was going on and got out of the
13 house, got out of the circumstances, and got away from the
14 Defendant so he could never do those things to her again.

15 Now, I say this is a difficult case. These are cases
16 where, really, everything depends upon the victim, her
17 testimony. I mean, these are cases that take place behind
18 closed doors. You don't have independent witnesses to
19 rape. You don't have videos. You don't have photographs.
20 You don't have audio recordings. You have the testimony of
21 someone who's been abused for six years. And she's telling
22 you what happened. The rest of the evidence, the rest of
23 the testimony, those are pieces of the puzzle. But
24 ultimately, the most significant piece, the piece of the
25 puzzle that tells you where all those other pieces fit is

1 the victim's testimony. And you need to weigh that
2 accordingly.

3 These are cases that we like to talk about as cases of
4 guilt and of shame and of fear. They're cases where people
5 are put in positions, where things happen that you would
6 never imagine happening. Where your life changes and you
7 don't know why. Where you don't know if people are going
8 to believe you when you tell them what's been happening.

9 The story and the case that you're going to see
10 presented, again, starts in 2004. But it really begins
11 before that. The victim in this case, MINOR [REDACTED] her
12 maiden name is Tollison. On the indictment it says, MLT,
13 because we try to afford rape victims a degree of anonymity
14 in the indictments. But her mother starts dating a man,
15 meets this man in a bar. And eventually he starts living
16 with the victim and the victim's mother. He does some
17 things that we think of as bizarre behavior, that you don't
18 associate with a traditional step-father, not the kind of
19 stuff that you'd expect someone to do in front of a child.
20 And eventually when the victim matures some physically, the
21 Defendant begins to sexually assault her. And you will
22 hear her describe in great detail the first time that
23 happened, what it was like, specifically how it happened
24 and then how often it happened after that. It happened
25 until she was able to get out of the house at nineteen

1 years of age. So from the time she was fourteen until she
2 was nineteen, she was living in this house subject to this
3 Defendant and his wishes.

4 Now, we don't need to overlook the fact that when the
5 victim was seventeen years of age, the Defendant
6 impregnated her. And we have evidence of that. You will
7 see it at trial. The DNA verifies it; that the Defendant
8 fathered a child with the victim when she was seventeen.
9 And that's what this case is about and that's what I have
10 to show you. That's what the State has to show you because
11 we have the burden.

12 In any criminal trial, the State has the burden of
13 proof. And that means that the Defendant doesn't have to
14 put anybody on the stand. We have to show you that that's
15 what happened. And we have to show it to you beyond a
16 reasonable doubt. Now, the Judge will instruct you on
17 that. I don't need to belabor it. But I do want you to
18 remember one thing. In the history of this country, going
19 back to 1783 and the Constitutional Convention, the burden
20 has always been on the State. And the burden of proof has
21 always been beyond a reasonable doubt. So anytime in this
22 state and in this country, be it in Magistrate's Court or
23 General Sessions and Federal Court, the burden has always
24 been on the State. The proof has always been beyond a
25 reasonable doubt. And every time someone has been guilty,

1 those standards have been met.

2 Now, I've said a lot and you'll see a lot more. I
3 don't want to, I don't want to harp on this more than I
4 have to. But the testimony in this case is key. And you
5 have to evaluate the testimony yourselves, talk about it
6 yourselves when you go to deliberate. But after you hear
7 her story, after you hear her testify on that witness
8 stand, I believe that you will be firmly convinced that the
9 Defendant is guilty of the crimes with which he's charged.
10 And at that point, at the end of trial, I will come back
11 and ask you for a verdict of guilty.

12 THE Court: Mr. Abdalla, you may address the jury
13 in your opening.

14 MR. ABDALLA: Thank you, Your Honor. Solicitor.

15 OPENING STATEMENT

16 BY MR. ABDALLA:

17 Ladies and gentlemen of the jury, my name is John
18 Abdalla. I did introduce myself briefly before the jury
19 this morning.

20 This case presents a very difficult set of facts, to
21 say the least. We are not here to deny my client fathered
22 a child with his step-daughter. The most difficult thing
23 you, as jurors, are going to have to reconcile is there's
24 no argument that he had a child with her. She was
25 impregnated when she was seventeen. She had a child when

1 she was eighteen. In South Carolina, you can consent to
2 sex at the age of sixteen. The reason I bring that up is,
3 regardless of what you think of the fact that they had a
4 child together, that, in and of itself, is not illegal.
5 He's charged with criminal sexual conduct in the second
6 degree, criminal sexual conduct in the third degree and
7 lewd act on a minor. I say this to you because I
8 understand, and this is the best I can understand, that
9 this presents quite a challenge because you could easily
10 say, well, he had a baby with his step-daughter; he's
11 guilty. You're going to hear a lot of testimony. You'll
12 have a lot of time to decide through the evidence presented
13 in the case, the testimony presented, what's true and
14 what's not true.

15 You're going to be the sole judges of that and the
16 Judge will tell you, and he probably already had told you
17 that he judges the law, you judge the facts. It's going to
18 be the witnesses they put up and how believable they are.
19 The State is going to present evidence, because they have
20 to present evidence, to say my client, Mr. Norman Burgess,
21 was having relations with a lady, MINOR [REDACTED] from
22 the time she was fourteen. Not from the time she was
23 seventeen. They're arguing that it happened before she was
24 sixteen. And that's the crux of the matter.

25 So I say that to you just so you'll keep that in mind

MINOR - Direct Examination by Mr. Tooker

1 and not just kind of wonder why you're here since they had
2 a baby together. There is also the allegation of a crime.
3 Well, actually three crimes. They've indicted him on three
4 different offenses. But, again, I just ask you to listen
5 to all of the evidence before making a judgment. And I
6 thank you for your patience and my client thanks you for
7 your attention to this.

8 THE Court: Solicitor, you may call your first
9 witness.

10 MR. TOOKER: Thank you, Your Honor. The State
11 calls MINOR to the stand.

12 THE CLERK: If you would, place your left hand on
13 the Bible and raise your right hand.

14 Do you solemnly swear or affirm the testimony you're
15 about to give in this case will be the truth, the whole
16 truth and nothing but the truth, so help you God?

17 THE JUROR: Yes.

18 THE CLERK: Have a seat and state your name for
19 the record, please.

20 THE JUROR: My name is MINOR

21 MINOR

22 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MR. TOOKER:

25 Q. Ms. Shelton, what is your

- 1 A. [REDACTED]
- 2 Q. Okay. And where were you born?
- 3 A. In Easley, South Carolina.
- 4 Q. And where have you grown up?
- 5 A. Pretty much in Easley, South Carolina, my whole life.
- 6 Q. All right. Who are your parents?
- 7 A. Angie Tollison and Barry Tollison.
- 8 Q. And who raised you primarily, your mother or your
- 9 father?
- 10 A. My mother.
- 11 Q. Your mother?
- 12 A. Yes.
- 13 Q. And what's your mother's name?
- 14 A. Angela Marie Tollison.
- 15 Q. And how do you know the Defendant, Norman Burgess?
- 16 A. He was my mom's boyfriend at the time.
- 17 Q. How long have you known him?
- 18 A. They got together when I was seven. So up until I got
- 19 out of the relation -- out of the home, so that was -- I've
- 20 known him for a while.
- 21 Q. Okay. So since you were seven years old?
- 22 A. Yes. Yes.
- 23 Q. And how is it that you got to know him?
- 24 A. Him and my mom were together.
- 25 Q. How did they meet?

1 A. They actually met at a club called D. Walker's.

2 Q. How do you know that?

3 A. Because me and my -- me and my mom's friend's daughter
4 were sitting in the car while they were clubbing. And when
5 they came back out of the club, he was walking along the
6 sidewalk. And her and her friend hollered at him to get
7 his attention.

8 Q. And then what happened?

9 A. Then he came over to the car. And I guess they
10 flirted for a little while and then that -- and then we
11 went; we left. I mean, nothing happened at that moment.

12 Q. Did they start seeing each other at some point?

13 A. Yes.

14 Q. How long after they started seeing each other until he
15 moved in with you guys?

16 A. A couple of months.

17 Q. Okay. Do you remember when he moved in to live with
18 y'all?

19 A. I can't -- I don't know the exact date. It wasn't too
20 long after they got together. I want to say around three,
21 four months, maybe.

22 Q. Okay. And where were y'all living at that point in
23 time?

24 A. We actually had moved in with him at this apartment
25 above this body shop in Easley.

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1 Q. Okay. And how long did y'all live there?

2 A. We lived there for -- I'm not sure. I'm sorry.

3 Q. That's okay. Did y'all move?

4 A. Yes. Quite a bit, actually.

5 Q. Okay. How often did y'all move?

6 A. I went to five different elementary schools, so we

7 moved around a good bit.

8 Q. In the beginning when the Defendant first came to live

9 with you guys -- well, I guess you guys actually went to

10 live with him?

11 A. Yes.

12 Q. How did he treat you?

13 A. He treated me fine. I mean, there was no -- nothing

14 out of the ordinary.

15 Q. When was the first time that you remember his conduct

16 towards you seemed inappropriate?

17 A. When him and my mom decided to play a game of strip

18 poker and he insisted that I watch as they stripped their

19 clothes off. And then he suggested that they have sex in

20 front of me.

21 Q. He suggested to your mom that they have sex in front

22 of you?

23 A. Yes.

24 Q. Did that happen?

25 A. It did.

1 Q. How old were you at the time?

2 A. I was about eight and a half, nine.

3 Q. And were there other instances of inappropriate
4 conduct from the Defendant towards you?

5 A. Yes. One time he actually put me in the corner of the
6 bedroom and covered my head up with covers and had me watch
7 him and my mom have sex in their bed.

8 Q. How old were you when that happened?

9 A. I can't remember. I'm sorry.

10 Q. Were you a child?

11 A. Yeah. I was a child, yes.

12 Q. Before the physical abuse stated, did he have you do
13 anything for him?

14 A. Yes. He started buying different types of lingerie
15 and stuff like that and tight fitting dresses and just
16 would have me try them on and take pictures of me. And,
17 you know, he would tell my mom, oh, you know, look, she's
18 so pretty. And my mom would say, yes, she's getting little
19 boobs. And, you know, and every time I would try something
20 on, I would feel very awkward about him being around. And
21 my mom would actually be the one to insist to call him in
22 there. So he -- yeah.

23 Q. He took pictures of you?

24 A. Yes, he did.

25 Q. Did you ever see any of these pictures?

1 A. I did.

2 Q. Did he physically abuse you at this point in time?

3 A. No.

4 Q. About how old were you when that started?

5 A. About the lingerie trying on or ...

6 Q. Yes?

7 A. I'm not quite sure. I would say like eleven, around
8 eleven or so. I was developed. I started developing -- I
9 had my -- I first started my period when I was twelve. So
10 I started getting breasts and stuff around that age.

11 Q. Okay. When did the physical assaults begin?

12 A. I was thirteen and a half.

13 Q. Thirteen and a half?

14 A. Yes.

15 Q. Okay.

16 A. I remember, because I was at Gettys Middle School in
17 the sixth grade.

18 Q. Now, you've said fourteen before; haven't you?

19 A. I did.

20 Q. Okay. Why would you have said fourteen before if you
21 were thirteen and a half?

22 A. I just didn't really -- I hadn't really thought about
23 it before. I didn't really relate to the school I was at.
24 And I just -- I was thinking about when we lived at that
25 house, 125 South Second Street, because I lived there for

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1 -- we lived there for like three years. And when we first
2 moved in is when the abuse actually started. And when we
3 moved in there, I was actually in the sixth grade.

4 Q. Okay. Now, you say you were about thirteen and a half
5 when it first started.

6 A. Yes.

7 Q. Do you remember the first time?

8 A. I do.

9 Q. All right. Describe the first time for the jury?

10 A. I remember being in my mom and his bedroom at the
11 house in Easley. And he had asked me if I'd ever kissed
12 anyone before. And I said, no. And he said, well, do you
13 want me to show you how? And I said, well, I guess. And
14 so he showed me how. And then he asked me if I would lay
15 down on the bed. And I laid down and he began to rub my
16 leg. And then his hands moved up into my underwear. And
17 he started to fondle me down there. And I didn't know what
18 to do because he was the only adult home at the time. So I
19 didn't want him to get mad at me. So I just laid there.
20 And he then began to take my underwear off and he
21 penetrated me. And I just remember feeling this sharp,
22 stabbing pain and there was blood on the cover afterwards.
23 And he told me not to tell my mom because she would look at
24 me like I was weird and everybody would make fun of me.
25 But he told me to tell my mom that he actually -- that I

1 fingered myself and I popped my cherry and that's why there
2 was blood on the cover. I'm sorry.

3 Q. Where was your mother when this happened?

4 A. I believe she was working first shift. So she wasn't
5 home.

6 Q. Did it stop after that first time?

7 A. It stopped for a little while.

8 Q. Okay. How long do you think it stopped until it
9 happened again?

10 A. It really started getting very consistent once his
11 other daughter Jordan stopped coming to the house. Because
12 when Jordan was there, everything was -- had to be made
13 like everything was okay and that there was nothing going
14 on. And then once it did start it happened at least every
15 other day. Because I would know because I would look at
16 the hallway. And I would look at the light that was there.
17 And I know that every other night he was going to come in
18 there. And I would try to tie my pants as tight as I could
19 because I wore pajama bottoms. I would try to tie them as
20 tight as I could so that he couldn't get his hands in
21 there. And one time, I didn't -- I thought if I made
22 myself uglier and nasty that he wouldn't want to mess with
23 me. So I cut all my hair off.

24 Q. Did ---

25 A. One time I actually pooped on myself. That's

1 embarrassing. But I didn't know what else to do.

2 Q. Where did these assaults happen?

3 A. They happened -- the first assault happened at the
4 house in Easley at 125 South Second Street. And then the

5 consistent assaults started whenever I lived at [REDACTED]

6 [REDACTED], which is in between Dacusville and

7 Easley.

8 Q. Are both of those houses in Pickens County?

9 A. Yes.

10 Q. Did your mother know what was going on?

11 A. At the beginning she didn't, but she became aware of
12 it because one day he actually had wanted to do something
13 during the day. And after so long of being abused, I just
14 didn't argue anymore. I just went because it made my life
15 a little easier. And I went -- so I told him I had to go
16 pee first. And I knew my mom -- my mom was asleep in her
17 bedroom, you know. And I told him that I had to go pee.
18 And when I got up from the toilet, I slammed the lid down
19 thinking that she would wake up and walk in there and catch
20 him and kick him out, you know, so that I would finally not
21 have to go through that anymore. But she actually got up,
22 according to plan. But she walked in there and she didn't
23 do anything. She just said that we would keep it a secret.
24 And I was apologizing when she first walked in there
25 because I was so scared. Because my mom, as a young child,

1 she was very suicidal. And she constantly tried to kill
2 herself, every time her and my dad were together and they
3 got in an argument. And so I didn't want her to kill
4 herself because I knew how suicidal she was. So I just
5 started apologizing. I don't know what I was apologizing
6 for, but I just didn't want her to kill herself.

7 Q. How do you know that she saw you?

8 A. Because she walked in the room.

9 Q. Where was the Defendant?

10 A. On top of me in the floor.

11 Q. What became of your home life after the Defendant
12 started sexually assaulting you?

13 A. Very controlling. I wasn't allowed to have friends
14 over. I wasn't allowed to talk on the phone very long. I
15 did have a boyfriend at one point.

16 Q. How old were you when you had a boyfriend?

17 A. I was sixteen or so, sixteen. And we went to school
18 together. And we went on a couple of dates. Like, we went
19 to the movie theater one time and went to the bowling alley
20 one time.

21 Q. What about school, how many schools did you attend?

22 A. In elementary school, I attended five different
23 elementary schools. And then I went to two middle schools
24 and then one high school.

25 Q. And were you allowed to people socially?

1 A. No.

2 Q. Were you allowed to go to parties?

3 A. No.

4 Q. Did the Defendant let you see your extended family?

5 A. They would come over to visit, and I was seeing my dad
6 every other weekend.

7 Q. Okay. How come you didn't tell your dad what was
8 going on?

9 A. He actually had threatened to kill my dad.

10 Q. To who?

11 A. He told me that he was going to kill my dad.

12 Q. Is that the only thing he threatened to do?

13 A. He also threatened to kill me before. There was an
14 incident one time when I was actually working at Eckerd's.
15 Well, it's Rite-Aid now. But I was working there and my
16 aunt had called and I was on the phone with her. And he
17 walked in and actually -- he thought I was on the phone
18 with my ex-boyfriend. Because I wasn't allowed to talk to
19 boys at all. And then we -- my mom went to work and I went
20 to go get in the bathtub. And he come in there, the
21 Defendant came in there, with a gun and was sitting there
22 cleaning it. And he kept asking me over and over, who were
23 you talking to? Who were you talking to? And he said, if
24 you lie to me, I'm going to kill you. And finally, of
25 course, I told him the truth. I told him, I said, I was

1 talking to my aunt, you know, she called. I was like, but,
2 you know, I work there. I said if someone calls, I have to
3 answer the phone. I don't have a choice in that matter.
4 And he actually insisted that he was going to kill me
5 anyway. And I said, well, can I pray first? And he said,
6 make it fast. And he said, since I was in the bathtub
7 there wouldn't be as big of a mess to clean up.

8 Q. Who is HG [REDACTED]

9 A. My cousin.

10 Q. Okay. How old is she?

11 A. She's twenty-four.

12 Q. She's twenty-four. Is she your age?

13 A. Yes. Well, I'm twenty-five, but she's twenty-four.

14 Q. Were you guys close before the Defendant started
15 dating your mother?

16 A. Yes.

17 Q. Okay. How did that relationship change after the
18 Defendant started dating your mother?

19 A. He didn't want me or my mother to really have contact
20 with family. It wasn't just for me, it was my mom, as
21 well. He would say things to turn me against my family and
22 to turn my mom against my family.

23 Q. Did that include Sheri Aiken, your aunt?

24 A. Yes.

25 Q. What about Ethan Robinson, your uncle?

1 A. Yes. He actually had insisted at one point that my
2 mom and my uncle had had sex together. So it just, you
3 know, kind of sick notions like that. And whenever we were
4 alone he would say that my family would think I was weird
5 and that they wouldn't want anything to do with me.

6 Q. Where would the Defendant sleep? What were y'all's
7 sleeping arrangements at the house?

8 A. Me and -- the Defendant, me and my sister would sleep
9 in the bed. And my mom, most of the time, would sleep on
10 the couch.

11 Q. Now, you keep calling him the Defendant. What did you
12 call him in y'all's house?

13 A. Keith.

14 Q. Did you call him Keith, did you call him dad or what
15 did you call him?

16 A. Keith.

17 Q. Keith?

18 A. Yes.

19 Q. And where did your mom sleep?

20 A. My mom slept on the couch.

21 Q. Always?

22 A. No, I mean, that was the majority of time. Sometimes
23 she would come in and, you know, she would get in the bed.
24 My little girl would be in the bed and she would crawl in
25 the bed when she got off third shift and sleep in her bed.

1 But mainly on the weekends, she would sleep on the couch

2 and me and my sister would sleep in the bed with him.

3 Q. When did the Defendant start making you and your

4 sister sleep in the bed with him?

5 A. Once we moved into the house on [REDACTED] Circle.

6 Q. Okay. How old were you when that happened?

7 A. I can't remember exactly.

8 Q. Do you have a guesstimation?

9 A. I was probably around fifteen, sixteen.

10 Q. Was it before you had your first child?

11 A. Yes.

12 Q. Okay.

13 A. It was before I had Daughter

14 Q. When is it that you got pregnant with Daughter

15 A. I got pregnant with Daughter when I was seventeen.

16 Q. Seventeen?

17 A. Yes.

18 Q. All right. When that happened, did you know who the

19 father was?

20 A. Yes, I did.

21 Q. Okay. Who was the father?

22 A. Keith.

23 Q. How did you know it was him?

24 A. Because I wasn't with anyone else and he had actually

25 been the only -- he was, well, he was having sex with me

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1 every other night so ...

2 Q. And did he know that he was the father?

3 A. Yes, I believe he did.

4 Q. Why do you think that?

5 A. Because he would make comments out of spite towards
6 me. Like wouldn't it just be bad if a baby came and
7 screwed your life up. You have all these dreams of going
8 to college. Wouldn't it be bad. And at the time, I didn't
9 know I was pregnant. I think he knew all along what he had
10 done.

11 Q. What's your sister's name?

12 A. Sister [REDACTED]

13 Q. And how old was she when you got out of the house?

14 A. She was eleven, I believe.

15 Q. Now, what's Sister [REDACTED] relationship to the Defendant and
16 to your mother?

17 A. That's their daughter together.

18 MR. ABDALLA: Objection, Your Honor. May we
19 approach?

20 THE Court: Yes, sir.

21 (WHEREUPON, Mr. Tooker, Mr. Abdalla and Mr. Rucker
22 approached the bar.)

23 Q. Okay. So Sister [REDACTED] is the daughter of your mother and
24 Keith?

25 A. Yes.

1 Q. And did she have to sleep in the same bed with you and
2 Keith, as well?

3 A. Yes.

4 Q. To your knowledge had the Defendant sexually assaulted
5 her?

6 A. Not to my knowledge, no.

7 Q. And, you know, you mentioned your daughter Daughter How
8 many children do you have?

9 A. I have two.

10 Q. What are their names?

11 A. Daughter and SON

12 Q. Who's the oldest?

13 A. Daughter

14 Q. How old is she now?

15 A. She's six.

16 Q. Six. Well, when was her birthday?

17 A. It's

18 Q. Okay. And you said you knew when you got pregnant
19 that the Defendant's her father?

20 A. Correct.

21 Q. Did you tell anybody that?

22 A. No.

23 Q. Why not?

24 A. Because he said that people would look at me weird.

25 And so I just made up a story. I mean, we actually

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1 conjured a story.

2 Q. Who is we?

3 A. Me and the -- Norman Keith Burgess.

4 Q. You guys came up with a story together?

5 A. Well, he told me a story to tell.

6 Q. And what was that story?

7 A. That I had went to a party and had sex with a boy. It
8 was my first time of having sex and I got pregnant on the
9 first time. And that's what I was made to tell my family,
10 as well as the people at school.

11 Q. Did you tell everybody that?

12 A. Yes, I did.

13 Q. Did you tell anybody at that point that the Defendant
14 had been raping you?

15 A. No.

16 Q. Why not?

17 A. I was just too scared to. I didn't know if people
18 were going to get me out of the situation. I didn't know
19 how they were going to get me out. I didn't know -- in my
20 mind, I thought that they were going to come in and say, I
21 know you've been raping MINOR and the next thing I know,
22 bullets were going to go all flying and everybody was going
23 to end up dead. And I was worried, also, as well, about my
24 mother. I didn't want her to kill herself. And, you know,
25 Sister I didn't want to destroy her having a home with

1 both of her parents. And so I just -- in some ways I feel
2 I kind of -- I kind of sacrificed myself to help them have
3 a better life. Because my mom, she was adopted and her
4 parents didn't love her. Well, I mean, her, you know, the
5 parents that gave her up didn't love her, but her adoptive
6 parents did love her. And I just felt that I didn't want
7 to take another thing away from her because her and my dad
8 had a really bad relationship. And I just, I didn't want
9 -- she was finally in love with someone and I didn't want
10 to take that away from her. So I just, I just dealt with
11 it because I knew I'd get through it eventually.

12 Q. When you got pregnant, what grade were you in?

13 A. I was in the eleventh grade.

14 Q. What happened to your schooling when you became
15 pregnant?

16 A. I was actually homebound whenever -- I went to school
17 throughout my pregnancy. And then when I got in my eighth
18 month, I was homebound.

19 Q. What is homebound?

20 A. Actually, I had a teacher come and bring my
21 assignments and everything. And I went back to school
22 after Daughter you know, after I healed.

23 Q. Did you keep up with your assignments when you were
24 homebound?

25 A. I did.

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1 Q. And you went back to school after that?

2 A. I did. I finished out my eleventh grade year.

3 Q. Okay. Did you get to go back and finish high school?

4 A. No.

5 Q. Why not?

6 A. He did not want me around my ex-boyfriend or any boys,
7 especially after Daughter was born. Because he became a lot
8 more protective once Daughter was born.

9 Q. And were you working then, instead of going to school?

10 A. I believe so. I can't remember. I'm sorry.

11 Q. Okay. What kind of jobs have you held? What kind of
12 jobs had you had, at least, when you were still living with
13 the Defendant?

14 A. I worked in fast food. I worked at a nursing home, at
15 Countryside Village. I worked there for a little while. I
16 worked at April Valley. I believe that's it while I was
17 living at home. That's the only places I worked.

18 Q. Okay. And was it difficult to get the Defendant to
19 let you work outside of the house?

20 A. It was. Yes.

21 Q. Why?

22 A. The things -- I was able to actually get a job at KFC
23 because I was actually buying a vehicle from them, so they
24 did it for the money. And then I quit there as soon as I
25 got the car paid off. And then I went and -- that car

1 actually got the key jammed in it. So I ended up actually
2 selling that car to my dad because I couldn't get the key
3 out. And then they had another car; it was a Dodge
4 Intrepid, and they were going to sell it to me, as well.
5 So my dad gave me a thousand dollars to, you know, to give
6 to them. And then they were low on money. I always tried
7 to help out as much as I could because I knew that we were
8 financially struggling. And we went and got a loan out on
9 the car with Citi Financial for four thousand dollars.

10 Q. So you had to work to pay the loan?

11 A. I did, correct. Yes.

12 Q. Now, you mentioned April Valley. What is April
13 Valley?

14 A. It is assisted living pretty much. I would say it was
15 more of a nursing home than assisted living, really.

16 Q. Okay. And when did you eventually disclose to an
17 adult what the Defendant had been doing to you for so long?

18 A. When I was working at April Valley.

19 Q. Okay. And who did you tell?

20 A. Angie Smith.

21 Q. Angie Smith?

22 A. Yes.

23 Q. Now, who was Angie Smith to you at April Valley?

24 A. She was actually a co-worker there.

25 Q. Is she older than you or younger than you?

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1 A. She's older than me.

2 Q. Okay. And why is it that you felt comfortable in
3 telling her what had happened?

4 A. I had come in one day. He was -- me and Keith had
5 actually got in an argument about the makeup I was wearing
6 or the clothes I was wearing. I can't remember which,
7 really. I was very emotional that day. I went in. And my
8 co-worker had actually previously met Keith before. And
9 she had told me that she had gotten a funny vibe from him,
10 you know. I still never said anything. I went in that day
11 and I was very emotional. And she just called me back into
12 a room and she was telling me about her childhood and what
13 she had went through. And that's when I disclosed to her
14 what was going on with me. Because I felt comfortable
15 because she had been through it, as well. And individuals
16 -- I felt like I couldn't just go up and tell anyone.
17 Because those that haven't been through it, they don't
18 understand. And so I ---

19 Q. After y'all talked, what did you do next?

20 A. She told me to call someone that I trusted, a family
21 member that I trusted. I called my aunt. And I told ---

22 Q. What's your aunt's name?

23 A. Sheri Aiken.

24 Q. Okay. What did you tell Sheri?

25 A. I told her, you know, that I had been being abused and

1 that [Daughter] was his. And she said she knew all along.

2 MR. ABDALLA: Objection. I've been letting her
3 get away with hearsay, but she's been speaking a lot of
4 what ---

5 THE Court: I sustain the objection as to
6 hearsay.

7 Q. So you told Sheri what had been going on?

8 A. Yes.

9 Q. Did you guys come up with a plan?

10 A. No, not then. I told them to wait until I gave them
11 the cue to get me out.

12 Q. Did they wait?

13 A. No, they did not wait.

14 Q. Okay. How did you eventually get freed from that
15 house?

16 A. They actually came -- her daughter [NII] and [HA]
17 Ethan, which is my uncle and my cousin's husband, [NII]
18 husband came. And they actually knocked on the door to
19 actually get into the house because they didn't want to
20 like, you know, break and enter or whatever or trespass.
21 So they said that my aunt had been in a really bad car
22 accident and that they needed to get in to talk to my mom.
23 Well, as soon as they were able to get into the door, my
24 uncle, who's a big guy, grabbed ---

25 MR. ABDALLA: Objection, again. With the hearsay

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1 comments.

2 THE Court: Well, I haven't heard the comment
3 yet.

4 MR. TOOKER: There was no hearsay. Thank you.

5 Q. Continue. So he was able to get in the house?

6 A. Yeah. Because I was actually there to witness this.

7 And so he actually grabbed him by the hands and pushed him
8 back onto the couch and sat down on top of him.

9 Q. So what did you do when they came in and he sat on the
10 Defendant?

11 A. Oh, I ran out the door and got into the floor -- I
12 mean -- to the floor -- sorry. Got into the car.

13 Q. What about your baby?

14 A. She was actually in the room with my mom with the door
15 shut.

16 Q. Okay. And who got the baby?

17 A. My cousin, [REDACTED] My mom actually didn't want to let
18 Daughter go to me. She didn't want to give her up.

19 Q. So you left the house without your baby?

20 A. I did.

21 Q. You didn't go back for her?

22 A. No.

23 Q. Why?

24 A. I was just scared. It just happened so suddenly. I
25 just -- I didn't know what was going to happen. It wasn't

1 ...

2 Q. It's okay.

3 A. I just -- she was like -- I would have had to have
4 went past him to go into the room to go get my daughter.

5 And I just ---

6 Q. Did you ever go back to the house?

7 A. I actually went -- once we got out, I went with an
8 officer to get my stuff..

9 Q. Okay. And after that did you ever go back?

10 A. No, I did not.

11 Q. Now, you mentioned this earlier and I want to touch on
12 it again.

13 A. Okay.

14 Q. Over the years the Defendant abused you, did you do
15 anything to protect yourself from him?

16 A. I did.

17 Q. And what were those things?

18 A. I would tie my pajama pants as tight as I possibly
19 could so that he couldn't get into them. And then I cut my
20 hair one time because I thought if I made myself ugly then
21 he wouldn't want to do that to me. And then when that
22 didn't work, I actually -- I used the bathroom on myself.

23 Q. And you say that the assaults started when you were
24 thirteen and a half and went on. Now, with regards to
25 frequency, you said it happened every other day. Was that

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1 always the case?

2 A. There was exceptions.

3 Q. Okay.

4 A. Like if his daughter, Jordan, was over then it didn't
5 happen because she was there and things were -- had to be
6 made normal when she was there.

7 Q. Now, your mom ---

8 A. Yes.

9 Q. You touched on this briefly before. You said the
10 first time it happened your mom wasn't there?

11 A. Right.

12 Q. And then one time it did happen and your mom was there
13 ---

14 A. Correct.

15 Q. --- and you alerted her to what was going on?

16 A. Correct.

17 Q. How often would it happen when she was there? Or
18 where was she when this stuff was going on?

19 A. She worked third shift so she was not home.

20 Q. Okay. I mean, she worked third shift the first time
21 it happened?

22 A. She was working first then. And we were out on break
23 or something for school.

24 Q. Okay.

25 A. I can't remember exactly why we were out.

1 Q. So the first time it happened during the day?

2 A. Yes.

3 Q. Now, third shift, for those of us who ---

4 MR. ABDALLA: Excuse me. Objection, Your Honor.

5 He's doing an awful lot of leading here. I wish he'd just

6 ask questions and not define the testimony.

7 THE Court: Sustained. Ask your next question,

8 Solicitor.

9 Q. So third shift, what is that period of time?

10 A. It is from eleven o'clock at night to seven o'clock in

11 the morning.

12 Q. Okay. That is from when until when? When did she get

13 on third shift? How old were you approximately?

14 A. Sixteen, I believe.

15 Q. Okay. So it had been going on for some time before

16 she got on third shift?

17 A. Yes

18 MR. ABDALLA: Objection, again, Your Honor. He's

19 leading.

20 MR. TOOKER: I'm just clarifying her testimony,

21 Your Honor.

22 THE Court: Well, reask the question.

23 Q. The first two years that this stuff was occurring,

24 when was it occurring?

25 A. At -- during the daytime.

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1 Q. And why is that?

2 A. Because my mom worked first shift.

3 Q. Okay. And then after she got on third shift, when
4 would this stuff occur?

5 A. At night when she was at work.

6 Q. Where in the house would it occur?

7 A. Normally, in the bedroom. Well, whenever she worked
8 third shift, it would occur mainly on the couch because my
9 sister was asleep in the bedroom, in the bed. And then
10 when I was younger, it would occur mainly in the bedroom.

11 Q. Now, did he ever do or say anything before he would
12 abuse you to let you know it was coming?

13 A. He would say -- I can't remember.

14 Q. Now, I know this sounds strange. But after you turned
15 sixteen did you consent to having sex with him?

16 A. No, I did not.

17 Q. Okay. So before you turned sixteen, of course,
18 consent is irrelevant. But after that point, did you
19 engage in consensual sex with him?

20 A. I did not.

21 Q. You did say sometimes you would lay there; right?

22 A. I did. Because when you are going through that for so
23 long, you get tired of fighting. You mentally, you
24 physically, you get tired of fighting. You feel like
25 you're never going to get out of the situation so don't

1 make your life harder than it has to be.

2 Q. Did you ever encourage him to do what he did?

3 A. No.

4 Q. Did you ever tell him to stop?

5 A. Yes.

6 Q. How many times did you tell him to stop?

7 A. Numerous.

8 Q. Would you tell him to stop every time?

9 A. No.

10 Q. Did you ever try to keep him away?

11 A. Yes.

12 Q. Did you ever explain to him that you didn't like what
13 he was doing?

14 A. Yes, I did. I actually even tried to bring up God and
15 talked about how God didn't want him to do what he's doing
16 to me. And he said, well, in God's eyes, we're all
17 brothers and sisters anyway. So I'm not really doing
18 anything wrong.

19 Q. Would he ever stop?

20 A. No.

21 Q. Did he care?

22 A. No.

23 Q. Now, I'm going to show you something. You said here
24 today that this stuff started when you were thirteen and a
25 half?

1 A. Yes.

2 Q. I'm going to show you a piece of paper. Do you
3 recognize that?

4 A. I do.

5 MR. ABDALLA: Your Honor, I'm objecting to the
6 foundation being laid here on her own statement. She gave
7 a statement five years ago, over five years ago. She's
8 testified. She shouldn't be looking at her statement to
9 correct anything that's inconsistent now.

10 THE WITNESS: I wouldn't do that.

11 MR. TOOKER: Your Honor, we're just -- we're
12 showing the jury that she said initially she was fourteen.
13 And now that she's had more time to think about it, she
14 actually said it started when she was thirteen and a half.

15 THE Court: Okay. I'll allow you to ---

16 A. I'm not -- I mean ---

17 Q. So you remember giving that statement?

18 A. I do.

19 Q. Okay.

20 A. It was -- they had -- literally, the same night that
21 my family had came busting me out of the situation, we went
22 to the law enforcement center. And I was just, I was
23 frazzled. I mean, I was scared. And my nerves were shot.
24 Almost like they are now. And just -- I really, in my
25 mind, at that moment, I just wanted to get it over with as

1 quick as possible. So that's -- honestly.

2 Q. Were you doing your best to tell the truth then?

3 A. I was. Yes.

4 Q. Are you doing your best to tell the truth today?

5 A. I am.

6 Q. Did the Defendant ever say exactly why it was that it
7 was important for you and your sister to sleep in the bed
8 with him.

9 A. He did.

10 Q. Why was that?

11 A. He said that the gun was in the bedroom and that it
12 was for our protection.

13 Q. It was for your protection that you and your little
14 sister sleep in the bed with him?

15 A. Yeah.

16 MR. TOOKER: No further questions.

17 THE Court: You may cross-examine the witness,
18 Mr. Abdalla.

19 MR. ABDALLA: Thank you, Judge.

20 **CROSS-EXAMINATION**

21 **BY MR. ABDALLA:**

22 Q. Ms. Sutton?

23 A. Shelton.

24 Q. Shelton. I apologize.

25 A. It's okay.

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1 Q. Now, you said that you lived with Keith and your
2 mother -- well, you lived with your mother your entire your
3 life. But Keith came into your life when you were about
4 eight or something?

5 A. Seven and a half, eight, yes.

6 Q. And during that time there were all of these sexual
7 encounters; correct?

8 A. Yes.

9 Q. And you went to elementary school, then to middle
10 school. Were your schools separate or were they the same
11 school?

12 A. They were separate.

13 Q. Pardon? Separate schools?

14 A. Yes.

15 Q. And then when was the first time you got a job?

16 A. I worked at KFC. That was my first job.

17 Q. KFC?

18 A. Yes.

19 Q. And how old were you at that time?

20 A. Fifteen.

21 Q. And how long did you work there?

22 A. I worked there a year.

23 Q. And do you remember what hours you worked? I don't
24 mean exactly, but roughly what your hours at work were?

25 A. It was second shift. I do know that. It was -- it

1 varied, on my school schedule mainly.

2 Q. And during that time your mother and Keith were living
3 together. Is that correct?

4 A. They were.

5 Q. And you went to school. You worked there?

6 A. Uh-huh (affirmative). I did.

7 Q. And then later on you had a child. Were you working
8 during that time? I mean, when you were pregnant?

9 A. Yeah. I had actually worked at Zaxby's.

10 Q. And were you about -- I guess if I did the math
11 correctly, you were about seventeen and a half when you got
12 pregnant. Is that right?

13 A. Yes.

14 Q. Because you were about -- close nineteen when you had
15 the baby. Am I wrong?

16 A. Well, I had turned eighteen when she was born.

17 Q. Okay.

18 A. Because I actually turned eighteen in November. And
19 then she turned -- I had her whenever -- that was in
20 February. Sorry.

21 Q. A little over eighteen?

22 A. Yes.

23 Q. During the time you lived at the home, you were at
24 home, school and at work; right?

25 A. Yes, sir.

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1 Q. A lot of the time?

2 A. Yes, sir.

3 Q. Now, do you remember when Keith -- didn't Keith buy a
4 car, corvette?

5 A. He did, yes.

6 Q. Do you remember anything in particular about that car?

7 A. It was black.

8 Q. Did you like the car?

9 A. Yes. It was a very nice car.

10 Q. Did you used to go riding with him in it?

11 A. I did, yes.

12 Q. Do you remember one time when he took it over to his
13 sister's house, to Linda's?

14 A. I don't remember.

15 Q. And he took Linda for a ride in it and he left you?
16 Do you remember making a comment to somebody that one day
17 you were going to have that car?

18 A. I don't remember.

19 Q. Do you remember telling Ernie that?

20 A. Well, I'm sure -- I'm not saying anyone's lying. I'm
21 just saying, I know it was a nice car.

22 Q. And you wanted the car. You would like ---

23 A. It was pretty. I mean, yeah.

24 Q. And you rode around with him a lot in it. Isn't that
25 correct?

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1 A. No, not a whole lot, no.

2 Q. Not a lot?

3 A. No.

4 Q. Do you remember a situation once when you were in the
5 house and you and your mother had gone out shopping to --
6 for some lingerie?

7 A. I don't remember.

8 Q. You don't remember?

9 A. No.

10 Q. Do you remember making a statement to the police that
11 your mother was jealous of you?

12 A. Yes, I do.

13 Q. And that you had said to Keith, who looks prettier, me
14 or her?

15 A. No, I do not remember that.

16 Q. You don't remember that?

17 A. No.

18 Q. Do you remember modeling lingerie with your mother?

19 A. My mother was in the room and I was trying the
20 lingerie on.

21 Q. And do you remember calling Keith in?

22 A. I did not call Keith in. My mother called Keith in.

23 Q. Your testimony is your mother called Keith in?

24 A. Yes.

25 Q. And do you recall saying to Keith, who looks better?

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1 A. No, I do not.

2 Q. You don't recall it?

3 A. Uh-uh (negative).

4 Q. Okay. You told the officers when you were first --
5 when you first went in to give your statement that Keith
6 was very controlling of you and didn't allow you to do a
7 lot of things. Do you remember saying that?

8 A. That's correct. Yes.

9 Q. And you said that he whooped you because you didn't
10 eat or something, you weren't eating, when you were
11 younger?

12 A. Yeah. I would actually -- yeah. I would hide the
13 food when I was younger.

14 Q. Wasn't it true your mother disciplined you?

15 A. I'm sorry. Do what?

16 Q. Isn't it true that your mother disciplined you?

17 A. Yes, my mother did.

18 Q. And who was it that disciplined you for a situation --
19 do you remember when you were dating **Boyfie** early on, when
20 you were working at KFC?

21 A. I do.

22 Q. Was there a situation where you got caught and you got
23 in trouble?

24 A. No.

25 Q. You don't remember ---

1 MR. TOOKER: Your Honor, I'm going to go ahead
2 and object and ask that we approach.

3 THE Court: All right, sir.

4 (WHEREUPON, Mr. Tooker and Mr. Abdalla approached the
5 bar.)

6 THE Court: Ladies and gentlemen, we have a legal
7 matter we need to resolve. So I'm going to ask you to go
8 back to your jury room. Don't discuss the case. We'll
9 call you back in just a few moments. We'll discuss this
10 and have you back as soon as we can.

11 MS. SHELTON: Can I step down?

12 THE Court: Just sit down, stay where you are for
13 right now; okay?

14 (WHEREUPON, the jury exited the open Court at
15 approximately 3:22 P.M.)

16 THE Court: All right. Solicitor.

17 MR. ABDALLA: Your Honor, what I'd like to do, if
18 the Court would indulge is to continue with my examination
19 and let the Court rule on whether it's out of bounds or
20 not. Just proffer some testimony.

21 THE Court: Well, I understand that there was not
22 going to be an issue with the rape shield statute. Is now
23 there now an issue? I thought I heard ---

24 MR. ABDALLA: There may be. Well, and I said at
25 the time, if the situation presents itself, and we believe

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1 it does.

2 THE Court: Because of some testimony that's come
3 up so far?

4 MR. ABDALLA: Well, Your Honor, the way she
5 testifies about the fact that her step-father had done all
6 these things. And there was a reason for some of it. It
7 was based on some behavior she allegedly had become
8 involved in.

9 THE Court: All right, sir. Yes, sir.

10 MR. TOOKER: Your Honor, that's clear rape
11 shield. I mean, essentially, his argument's going to be
12 she did some stuff with some boy and, therefore, jury, you
13 know, she is aware of sexual things. So she's making this
14 up about this guy for whatever reason. He can argue that
15 she's falsifying her statement for whatever reason. But to
16 bring up prior sexual conduct is in clear violation of rape
17 shield, unless it is with regards to consent with the
18 Defendant or to explain away some sort of biological
19 circumstances like a venereal disease or a pregnancy.

20 MR. ABDALLA: Right.

21 THE Court: Yes, sir.

22 MR. ABDALLA: Consent does become an issue.

23 Because if she is sexually active, of course, it does

24 become consensual. We're not doing it to try and say that

25 she's engaging in sex. We're talking about her veracity as

1 a witness. Her veracity. Her veracity for ---

2 THE Court: All right, sir. I'll let you make
3 the proffer.

4 Do you need a break before we continue?

5 MS. SHELTON: Yes, please.

6 MR. ABDALLA: Yes.

7 THE Court: All right. Let's take a short break.

8 You obviously can't discuss your testimony with anyone at
9 this time. We'll take a short break and then we'll put
10 this back on the record. About a five minute break?

11 MR. TOOKER: Yes, sir.

12 (WHEREUPON, the Court stood at recess for a short
13 break.)

14 THE Court: You may make your proffer.

15 Q. Ms. Shelton, you said that your parents, especially
16 Keith, wouldn't let you out and he was very controlling of
17 you?

18 A. Correct.

19 Q. He kept you at home all the time?

20 A. Correct.

21 Q. And you said that you in fact had never done anything
22 with anyone before; correct?

23 A. Sexually, I hadn't.

24 Q. Sexually, you hadn't?

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1 A. No.

2 Q. Isn't it a fact when you were working at KFC that you
3 were behind the dumpster and you told other people about a
4 situation with you and Boyfrien

5 A. I told my mother and he eavesdropped.

6 Q. And what?

7 A. He was eavesdropping and overheard the conversation.

8 Q. He was eavesdropping?

9 A. I was telling my mother in confidence.

10 Q. And isn't it a fact that's when they came down on you
11 and started making you stay home?

12 A. That's incorrect. That was the main reason why I did
13 what I did. That's why I snuck. Because I thought that if
14 I could make a boy fall in love with me, then they would
15 marry me and get me out of the house.

16 MR. ABDALLA: Your Honor, that was the line of
17 questioning and the reason for it.

18 THE Court: All right. Now, tell me how this
19 testimony gets around the rape shield statute?

20 MR. ABDALLA: The way it gets around it, Your
21 Honor, is she testified that she had never, that she hadn't
22 -- she didn't do anything with anyone else. Secondly, her
23 motive.

24 THE Court: All right. She testified to that in

1 her direct examination.

2 MR. ABDALLA: Yes, Your Honor.

3 MR. TOOKER: I believe her testimony was that she
4 hadn't done anything with anybody before the Defendant.

5 But she also testified that she was dating that boy, Boyfriend

6 So it's not that she'd never done anything else with
7 anybody, but that he was the person to do anything with.

8 MR. ABDALLA: She also testified she wasn't
9 allowed to go out and do anything.

10 THE Court: Okay.

11 MR. ABDALLA: She was clearly out with someone
12 else and it was more adventurous -- it goes to the motive
13 of her honesty for why she's going against Keith in this
14 whole action. It's not to make her out to be sexually
15 active. That's really irrelevant.

16 MR. TOOKER: Well, I think if he wants to ---

17 MR. ABDALLA: I mean, I realize it's a casualty
18 of the argument, but that's not where I'm going. I'm not
19 going for that purpose.

20 MR. TOOKER: So it's impeachment?

21 MR. ABDALLA: Yes. Yeah.

22 MR. TOOKER: I mean, if he wants to impeach her
23 with it. He can impeach her and say, well, you had a
24 boyfriend and you guys would go out; right? You went out
25 with your boyfriend.

1 MR. ABDALLA: That's true. And somehow I have to
2 get into the fact that our theory of the case is when she's
3 talking about her being controlled, the controlling began
4 when she got in trouble with a boy and they restricted her
5 after that.

6 THE Court: Is that all you want to ask her about
7 that?

8 MR. ABDALLA: Yeah. I mean, I have to make sure
9 the question ---

10 MR. TOOKER: I think you could say, didn't you
11 get in trouble and that's why your parents restricted your
12 behavior? It wasn't because of any sort of malice or -- I
13 mean, it was because you got in trouble and you were on
14 punishment. I mean, that's how you get around any
15 potential issues of rape shield.

16 MR. ABDALLA: I think the sex is important
17 because it does show -- I guess what I'm trying to find
18 out, Judge, is I need to find out -- can I continue the
19 proffer?

20 THE Court: Well, your goal, as I understand it,
21 Mr. Abdalla, is to show that she had restrictions from her
22 parents because of dating a boy and not doing the things
23 that she should have been doing to mind her parents in the
24 dating of that boy. Is that what you want ---

25 MR. ABDALLA: That's a part of it. And there's

1 another, there's another leg to it.

2 THE Court: What's the other?

3 MR. ABDALLA: Well, I don't want to say before I
4 ask the question. Can I ask a question?

5 THE Court: I thought you were through asking her
6 questions. I'm sorry.

7 MR. ABDALLA: I was. But I forgot something.

8 THE Court: All right.

9 MR. ABDALLA: Okay.

10 Q. I don't know that I'll be able to ask this when the
11 jury's here, but the question is going to be. Isn't it
12 true that you admitted to your mother that you had sex with
13 **Boyfrie** behind the dumpster when you were working at KFC?

14 A. That's incorrect.

15 Q. That's incorrect?

16 A. It is incorrect. All the facts on that is incorrect.
17 I did have sex with **Boyfrie** But the facts of the location
18 and everything is incorrect.

19 Q. Okay. Was it the same time that ---

20 A. I have nothing to hide.

21 Q. When was it? Was it at KFC when you were working at
22 KFC?

23 A. It was after I had **Daughter** It was after I had **Daughter**
24 And I did it as a method to get away from him.

25 MR. ABDALLA: One moment, Your Honor.

1 Q. So that will be your testimony. So if I put somebody
2 else up there to attest that you mentioned that to them,
3 they'd be lying is what you're saying, about the sex
4 happening when you were fifteen?

5 A. I know what happened.

6 Q. I understand that. I'm not arguing with you.

7 A. And I was the only one there.

8 Q. Okay.

9 MR. ABDALLA: Well, Your Honor, we'll just have
10 to proceed, I guess, well, however the Court instructs us.

11 MR. TOOKER: Your Honor, I think the statute is
12 pretty clear. It says evidence of the victim's sexual
13 conduct with the Defendant or evidence of specific
14 instances of sexual activity with persons other than the
15 Defendant, introduced to show source or origin of semen,
16 pregnancy or disease about which evidence has been
17 introduced previously at trial is admissible if the judge
18 finds such evidence is relevant and material and at issue
19 in this case. And that its inflammatory and prejudicial
20 nature do not outweigh its probative value. Evidence of
21 specific instances of sexual activity, which would
22 constitute adultery would be admissible under rules of
23 evidence to impeach credibility of witness may not be
24 excluded. So in this case, I mean, he doesn't meet any of
25 the three, three sort of outlined instances of sexual

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1 conduct with -- specific sexual conduct with a person other
2 than the Defendant to get around rape shield. I mean, rape
3 shield makes it pretty clear, it's for source of semen,
4 pregnancy, or disease about which evidence has been
5 introduced previously at trial. And I don't think -- I
6 mean, he can impeach her effectively without asking her
7 about her sexual relationship with somebody else. Now, you
8 were in trouble, not because the Defendant is an evil guy,
9 but because you got in trouble with your parents. Isn't
10 that right? You -- I'm trying to think of the other piece
11 of impeachment. What was the other thing you were trying
12 to get in?

13 MR. ABDALLA: I feel strongly that she has to
14 deny on the record the questions I'm asking her. Because
15 she made a statement, Your Honor, that she didn't have sex
16 with anybody else before [Daughter] was born. If we can show
17 that that did occur, that there were statements made, then
18 she would need to deny that. It isn't to show that she's a
19 slut or something. That has nothing to do with it. And I
20 realize it could have that appearance. But that isn't the
21 purpose of it. The purpose is to impeach her on her
22 credibility, the whole basis of this ---

23 THE Court: All right.

24 MR. TOOKER: But, again, it's violating the rape
25 shield.

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1 THE Court: Well, hang on just a minute. Mr.
2 Abdalla, let me make sure I understand the distinction and
3 that the witness understands this. You're asking questions
4 about whether she had sex versus questions about whether
5 she told someone she had sex?

6 MR. ABDALLA: Both. She -- Your Honor.

7 THE Court: Is your question did you tell someone
8 that you had sex?

9 MR. ABDALLA: Did you tell your mother?

10 THE Court: Or is your question, did you have sex
11 with Boyfrien

12 MR. ABDALLA: Did you tell your mother that you
13 had sex with Boyfrien

14 THE Court: Okay. All right.

15 MR. ABDALLA: And she told me I was wrong in the
16 time period, but that would be obviously for the jury to
17 decide. But that's an important distinction for the trial
18 of this case, that she made the statement she made earlier.
19 She opened the door.

20 THE Court: And the statement she made earlier
21 was on her direct examination, you're saying?

22 MR. ABDALLA: Yes, Your Honor.

23 MR. TOOKER: And, again, on direct she was asked
24 -- or she said that she hadn't had sex with anybody before
25 she started having -- or before the Defendant started

1 raping her. But she admitted to the relationship with

2 Boyfriend I'm not sure how that impeaches her.

3 MR. ABDALLA: The way it impeaches her, if we
4 could prove it, is that she said she didn't have -- she
5 knew Daughter was his child because she didn't have sex with
6 anyone else. So there's a time element there. And that
7 goes to her credibility. Because the child is Keith's.

8 MR. TOOKER: Well, I find that interesting in as
9 much as, you know, on a previous motion Mr. Abdalla's made
10 it clear that paternity is not an issue.

11 MR. ABDALLA: Paternity isn't.

12 MR. TOOKER: Okay. So what does it matter who's
13 had sex with who before the child was conceived?

14 MR. ABDALLA: Credibility. Impeachment.

15 MR. TOOKER: And impeachment is not one of the
16 three listed exceptions to rape shield.

17 MR. ABDALLA: It's in the rules of evidence. And
18 the rape shield doesn't totally circumvent the rules of
19 evidence.

20 MR. TOOKER: I mean, rape shield is codified and
21 explicit.

22 MR. ABDALLA: And I still say she opened the
23 door, Your Honor.

24 MR. TOOKER: You know what's interesting, too,
25 we're having this whole argument, sub-section 2 of 16-3-

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1 659.1 rape shield says, that if the Defendant proposes to
2 offer evidence describing sub-section 1, the Defendant,
3 prior to the presenting of his Defense shall file a written
4 motion and offer of proof. None of those things have
5 occurred in this case. The Court shall order an in-camera
6 hearing based on that offer of proof. I mean, what we've
7 had is the Defendant tried to go into -- or the Defense
8 tried to go into the stuff with this victim while she's on
9 the stand. The State had to object. Had it not, he would
10 have gone into stuff despite the State's already filed the
11 motion in limine for compliance with rape shield.

12 So I don't think that the proper procedure has been
13 followed to get us to this point period. But, again,
14 impeachment is not an exception to rape shield. I mean, I
15 think to thoroughly represent his client, he has to impeach
16 her if he thinks he can impeach her. But he can impeach
17 her without violating rape shield. And I think that's the
18 distinction that needs to be made.

19 MR. ABDALLA: Your Honor, if I may. The biggest
20 distinction is here, Mr. Tooker's arguing about the
21 formalities of how to file motions. The reality is, the
22 way a trial unfolds you can't anticipate certain things.
23 She made a statement on the stand that wasn't given
24 previously, to my knowledge, that she knew it was Keith's
25 child because it's the only time -- he was the only one she

1 had sex with. And that flies in the face from Defense
2 perspective as to a situation that occurred when, Defense
3 position is, when she was fifteen while she was working at
4 Kentucky Fried Chicken.

5 THE Court: Danette, can you find me that
6 testimony?

7 MADAM Court REPORTER: I sure can. You're
8 wanting the testimony of?

9 THE Court: That she knew whatever about Daughter
10 being born, that she knew it was Keith's.

11 MR. TOOKER: Your Honor, the State will stipulate
12 she said that.

13 THE Court: Well, I want to know what else she
14 said. That's what I want to know. He said she said that I
15 didn't have sex with anybody else. I just want to hear
16 that that's -- I didn't hear her say those things. I want
17 to verify that I heard that. Did you hear that?

18 MR. TOOKER: Yes, sir.

19 THE Court: So it's clear that she said she ---

20 MR. TOOKER: That she know ---

21 THE Court: Prior to Daughter being born?

22 MR. TOOKER: Yes, prior to ---

23 THE Court: And you've got evidence to say that
24 she's going to say I had sex with someone before Daughter was
25 born, other than the Defendant?

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1 MR. ABDALLA: Yes, Your Honor.

2 THE Court: To impeach her? You've got witnesses
3 that you're going to ---

4 MR. ABDALLA: Well, I have a witness that if all
5 goes well will testify to that. Yes, Your Honor. I can't
6 say how credible anything is. I mean, because ---

7 THE Court: That witness is going to say that she
8 was told that.

9 MR. ABDALLA: Yes, sir.

10 THE Court: Not that she saw that?

11 MR. ABDALLA: Yes, Your Honor.

12 THE Court: So it's all about what she's saying?

13 MR. ABDALLA: Yes, Your Honor. Yeah. None of
14 it's first -- none of it is observed. And she admitted on
15 the stand just now that she said it to -- for a different
16 reason was why she told her mother that she said it
17 happened later. So there is a discrepancy as to the time
18 frame.

19 THE Court: All right. Mr. Abdalla, you're sure
20 you want to go there now based upon the answer that she's
21 given?

22 MR. ABDALLA: I'd like to, Your Honor.

23 THE Court: And I gather that you've already
24 admitted to the jury that there's no question of paternity?

25 MR. ABDALLA: Yes, sir. And that's correct. I'm

1 not going back on that. There's not a question of
2 paternity.

3 THE Court: So you feel like that you want to
4 impeach her on -- I think she just said now that any sex
5 with **Boyfie** happened afterwards.

6 MR. ABDALLA: Yes, sir.

7 THE Court: After the baby was born.

8 MR. ABDALLA: Yes, sir. That the child was
9 conceived when she was seventeen and a half and this
10 occurred when she was fifteen or sixteen, something like
11 that, before the child was conceived. And so Defense
12 believes it's relevant because it goes to the credibility.
13 Again, it's not that we're denying paternity. It's the
14 credibility of the way things have unfolded.

15 MR. TOOKER: Your Honor, I'd like to point the
16 Court to Rule 412 of the South Carolina Rules of Evidence.
17 Admissibility of evidence concerning victim's sexual
18 conduct in criminal sexual conduct cases in the prosecution
19 of criminal sexual conduct, the admissibility of evidence
20 concerning the victim's sexual conduct is subject to the
21 limitations contained in S.C. Code 16-3-659.1. So there
22 was mention that whether the rules of evidence -- the rules
23 of evidence say the codification is what presides.

24 THE Court: Have you read the case of State v.
25 Lang, Mr. Tooker?

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1 MR. TOOKER: No, sir.

2 THE Court: All right. I'm going to allow the
3 examination of the witness, limited. You understand, Mr.
4 Abdalla, we're not trying another case. But I'm going to
5 allow you to get into that only for the purposes of
6 attacking her credibility on what she said earlier. I'm
7 going to give you the opportunity to impeach that later. I
8 don't know of any other way to do it, other than now or
9 having her recalled. And I believe this is the more proper
10 way to do it while we're here now.

11 MR. ABDALLA: Thank you, Your Honor.

12 MR. TOOKER: Your Honor, if I could request a
13 limiting instruction that Mr. Abdalla can ask her, so it's
14 your testimony that you had sex with **Boyfire** after you gave
15 birth to your child, **Daughter**. You didn't tell your mom that
16 you had sex with him before then. Is that right.

17 MR. ABDALLA: Well, let me ask -- let me just ask
18 my questions.

19 MR. TOOKER: As opposed to whatever he's going to
20 say about the dumpster at KFC because that sounds
21 particularly ---

22 MR. ABDALLA: Well, I'm not going into the
23 dumpster. I'll forget that. Just when she was working at
24 Kentucky Fried Chicken, isn't it true you talked to your
25 mother about having had a relationship with **Boyfire**

1 THE Court: Okay. I'll allow that question.

2 MR. ABDALLA: And let me -- can I ask the
3 Prosecutor a question?

4 THE Court: Yes, sir.

5 MR. ABDALLA: Judge, the Solicitor has agreed to
6 let me ask something else in the proffer on a similar line.
7 Just because I don't cause ---

8 THE Court: All right.

9 Q. Ms. Shelton, do you remember when you were speaking
10 with the detective several years ago, talking about the
11 fact that you'd been on birth control and you stopped for a
12 while and then got pregnant?

13 A. I do.

14 MR. ABDALLA: Thank you.

15 THE Court: Let's have our jury come back if
16 they're ready. If they're ready, Mr. Schumacher.

17 (WHEREUPON, the jury entered the open Court at
18 approximately 3:53 P.M.)

19 THE Court: All right. Thank you, ladies and
20 gentlemen, we're now ready to proceed. You can continue
21 your examination of the witness, Mr. Abdalla.

22 MR. ABDALLA: Thank you, Your Honor.

23 Q. Ms. Shelton, do you remember back when you were
24 working at Kentucky Fried Chicken you were dating a fellow
25 named Boyfien Is that correct?

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1 A. That's correct.

2 Q. Was it Boyfrie Moss?

3 A. Boyfrie Moss.

4 Q. Boyfrie Moss. And do you remember telling your mother,
5 Angela, that you had had sex with him during that time?

6 A. No, I did not say that.

7 Q. Okay. You didn't tell her that?

8 A. I did not. I told her later on, after Daughter was born.

9 I was not working at KFC when I had sex with Boyfrien

10 Q. So you told your mother later on that you had had sex
11 with Boyfrien but it was later on?

12 A. It was later on.

13 Q. All right. And do you remember when the investigators
14 talked to you previously you gave a statement saying that
15 you had been on birth control and then you stopped taking
16 the birth control pills for a while and that's when you got
17 pregnant with Daughter

18 A. That's correct. May I enlighten on that, as well?

19 Q. Do what? I'm sorry?

20 A. May I enlighten on that as well? I stopped taking the
21 birth control because Keith said that I was a whore and
22 that I was going to go out and screw everyone. And that I
23 was using birth control as an excuse.

24 Q. Okay. Where was your bedroom in relation to your
25 mom's bedroom and Sister bedroom in the house?

1 A. Mine was at the end of the trailer, opposite end of
2 the trailer.

3 Q. All right. At the opposite end?

4 A. Yes, sir.

5 Q. And where was the living room?

6 A. It was as soon as you came in the door, the front
7 door.

8 Q. When you came in the door, you came in the living
9 room?

10 A. Yes.

11 Q. And you said your mother worked first shift for a
12 while and then worked third shift; correct?

13 A. She worked first shift whenever we lived in Easley on
14 [REDACTED]. When we lived at [REDACTED]
15 [REDACTED] she worked third shift.

16 Q. And do you remember how long she worked at -- what job
17 was this at? Was it the same job or a different job?

18 A. Different jobs.

19 Q. And do you remember what jobs they were?

20 A. I do remember the third shift job. It was -- I'm
21 trying to think of the name. Brookway. I believe it was
22 Brookway. It was an institute for schizophrenia
23 individuals.

24 Q. I can't hear you. I'm sorry.

25 A. It was an institute for like people that had

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1 schizophrenia and stuff such as that.

2 MR. ABDALLA: One moment, Your Honor.

3 Q. Was it Community Health Services or is that not the
4 one you're talking about?

5 A. I believe the name of it was Brookway, I think. I
6 can't remember.

7 Q. Was she not working at the same place from 2001 until
8 2007?

9 A. I can't remember.

10 Q. So you can't refute that she was working at Community
11 Health Services from 2001 to 2007. Is that correct?

12 A. I don't remember. I've blocked out a lot of stuff.

13 Q. That's fair enough. All right. You said when your
14 family members came into the house that you went running
15 out; correct?

16 A. I did.

17 Q. And you left Daughier correct?

18 A. I did.

19 Q. How long was it before you went back and got Daughier or
20 whatever?

21 A. I stayed in the car and my cousin actually went and
22 got Daughier

23 Q. Now, I know you were young when this occurred. You
24 were eighteen or nineteen when you had her. So who, in
25 fact, did most of the raising? You or your mother and

1 Keith? How ---

2 A. He actually had said that my mom -- I was going to be
3 like Allie's sister. And that my mom was going to be more
4 of her mother. So I was always too scared to get too
5 attached to Daughter because I knew that they were going to
6 just take her away from me. So I would say, yes, my mother
7 did the primary care. But I did love her.

8 Q. And you have Daughter now, though?

9 A. I do.

10 Q. And I was talking earlier about the fact that Keith
11 had the Corvette?

12 A. Yes.

13 Q. And did he used to buy you things?

14 A. Yes.

15 Q. What kinds of things?

16 A. Clothes. I mean, there was never an issue there.
17 Outside, if you would have seen us outside of the home, you
18 would think we were a normal family. You would never have
19 known what went on behind closed doors.

20 Q. But you said that he didn't buy you anything; didn't
21 you?

22 A. No. Not that I remember.

23 Q. I'm sorry?

24 A. I don't remember saying that. I mean, he bought me
25 stuff. Clothes, food, basic necessities.

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1 Q. Do you remember when you spoke to the officers that
2 night, you don't remember saying he didn't spend any money
3 on you?

4 A. To be honest with you, sir, I can't hardly remember
5 that night in general. I can't remember where I went after
6 that.

7 Q. Okay.

8 A. It was such a frantic night. My nerves were
9 completely shot.

10 Q. I understand.

11 A. I can't remember.

12 Q. But you understand they based the warrant on what you
13 said that night. And I'm not pushing you to remember
14 everything, but you do know that that's how they did it;
15 right? You went in and made a report?

16 A. Yes.

17 Q. And then they went and filed the warrant?

18 A. Yes, sir.

19 Q. And it was based on things you told the police at that
20 time; correct?

21 A. Yes, sir.

22 Q. A couple of things before I sit down. You worked
23 jobs, you went to school ---

24 A. Yes, sir.

25 Q. --- and you talked about how you had to tell your

1 family to rescue you. One thing that doesn't make sense is
2 you never told anybody for the four and a half years this
3 went on, five years, and yet you were going out of the
4 house everyday. And I don't understand that.

5 A. There is a reason for that. When you are in a
6 situation like that, you fear for your life. And you think
7 -- you feel guilt. And you think that people are going to
8 blame you for what happened. You think people are going to
9 look at you weird. That is the only reason. And the fact
10 that Keith threatened to kill my family. He said, your dad
11 better watch out when he cranks his car up.

12 Q. Well, wasn't that just as true the day your family
13 went and got you. That if he was really bent on killing
14 you ---

15 A. I told them to wait. They did that without my
16 knowledge. I had told them to wait because I did have that
17 fear. I told them to wait. Like I said, they did that
18 without me being aware of it.

19 Q. And he was arrested almost six years ago; correct?
20 Five and a half years ago, April 2007; correct?

21 A. Yes.

22 Q. For this charge?

23 A. I believe.

24 Q. And do you remember the police officers saying to you,
25 challenging you about making sure you're telling the truth?

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1 And that it was against the law ---

2 A. I do.

3 Q. --- to make false statements to the police. Do you
4 remember that?

5 A. I do.

6 Q. And do you remember your mother confronting you about
7 that and you telling her that you made this up and you
8 couldn't back out because they told you you would get
9 convicted?

10 A. No, sir.

11 Q. You deny saying that?

12 A. I deny saying that one hundred percent.

13 Q. Thank you.

14 A. You're welcome.

15 MR. ABDALLA: No further questions.

16 THE Court: Any redirect?

17 MR. TOOKER: Briefly, Your Honor.

18 **REDIRECT EXAMINATION**

19 **BY MR. TOOKER:**

20 Q. Mr. Abdalla asked you if that warrant was based on the
21 things you said at that time. You talked to the police
22 several times?

23 A. I stayed in kind of contact with Lieutenant Kelley.

24 Q. Initially, you talked to Deputy Baxley. Isn't that
25 right?

1 A. That's correct.

2 Q. That was at the gas station?

3 A. It was.

4 Q. And how would you -- well, you gave a written
5 statement. Did you give that written statement then or
6 later?

7 A. It was later.

8 Q. Okay. So initially, you just said what was happening?

9 A. Right. Correct.

10 MR. ABDALLA: Objection, Your Honor. They gave
11 us a statement.

12 A. And he, he took ---

13 THE Court: Wait just a moment.

14 MS. SHELTON: Sorry.

15 THE Court: Let me hear the objection. Yes, sir.

16 MR. ABDALLA: Judge, they gave us a statement,
17 the written statement and the other from March 23rd of
18 2007. Now they're discussing these other statements that I
19 don't see a record for.

20 MR. TOOKER: Mr. Abdalla asked her if she
21 understood that the warrant was got based on the statement
22 that she gave.

23 MR. ABDALLA: Right.

24 MR. TOOKER: And I'm just clarifying that she
25 gave several statements to them.

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1 MR. ABDALLA: Well, the reality of it is, the
2 warrant was obtained on March 23rd and he was indicted
3 shortly afterward. And we were given no information about
4 any other statements. So I don't understand the relevance
5 of it. It seems ---

6 MR. TOOKER: Mr. Abdalla can look in the incident
7 report. In the incident report it talks about Deputy
8 Baxley responded to the scene.

9 THE Court: Just ask your question again.

10 MR. TOOKER: Okay.

11 Q. So you met with Deputy Baxley at a gas station?

12 A. Correct.

13 Q. What did you tell him?

14 A. I can't remember.

15 Q. I mean, did you tell him about why you were ---

16 A. I mean, I told him that ---

17 MR. ABDALLA: Objection, Your Honor. He's
18 leading.

19 THE Court: I sustain the objection.

20 A. I told him about a brief, a brief summary of what had
21 happened, but it wasn't detailed.

22 Q. And then later did you give him a written statement?

23 A. I did. We actually went to the police station after
24 that. We actually followed him to the police station.

25 Q. Okay.

1 A. I did a video statement, as well as a written
2 statement.

3 Q. That video statement, was that with Lieutenant Kelley?

4 A. It was.

5 Q. And had you talked to him before you even gave the
6 video statement?

7 A. I did.

8 Q. So you talked to law enforcement several times?

9 A. I have. Correct.

10 Q. Now, you say your mom was working at Brookway?

11 A. Yes.

12 Q. Now is Brookway the place where the Community Health
13 Services puts people, schizophrenics and whatever?

14 A. Yeah. I believe so. I'm not positive.

15 Q. Is it a residential facility?

16 A. Yeah. Well, it's for ---

17 Q. Where they stay there?

18 A. --- individuals that, yeah, that have schizophrenia or
19 mental, psychological.

20 Q. That's okay. Now, he said that Keith had a Corvette
21 that you liked?

22 A. Yes.

23 Q. Is that true?

24 A. Yes. It was a nice car.

25 Q. Okay. Did you make all this up to get a Corvette?

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1 A. No, sir, I did not.

2 Q. Do you have a Corvette now?

3 A. No, sir, I do not.

4 Q. Defense counsel asked you, you know, you had jobs, you
5 went to school and you never told anybody what was going
6 on. Again, why is it that you didn't tell anybody what was
7 going on?

8 MR. ABDALLA: Your Honor, that was asked and
9 answered. She explained it after I asked the question.

10 MR. TOOKER: Well, I think it needs
11 clarification, Your Honor.

12 THE Court: I sustain the objection..

13 Q. You mentioned that you went running out of the house
14 and that you left your child inside?

15 A. That's correct.

16 Q. And Mr. Abdalla asked you about your mother doing the
17 primary child rearing, taking care of your child?

18 A. Yes.

19 Q. Did you say all of this stuff because you wanted to
20 get your child? Did you make these allegations against the
21 Defense attorney ---

22 A. No, sir.

23 Q. --- or against the Defendant because you thought that
24 that would somehow give you your child?

25 A. No, sir.

1 Q. Okay. Why did you make the allegations?

2 A. Because they're true. They're not allegations. It's
3 what's happened to me.

4 MR. TOOKER: No further questions.

5 A. And I would have had my child either way. I wouldn't
6 let her get abused and have to go through what I've went
7 through all those years.

8 THE Court: All right. Thank you, ma'am. You
9 may step down from the witness stand. You may call your
10 next witness, Solicitor.

11 MR. TOOKER: At this point in time, Your Honor,
12 the State would like to introduce the stipulation in this
13 case into evidence and proffer it to the jury.

14 THE Court: Any objection?

15 MR. ABDALLA: No.

16 THE Court: Ladies and gentleman, a stipulation
17 is just where the parties have agreed to certain facts
18 without the necessity of calling witnesses or putting other
19 documents in. So if you'll just listen carefully as the
20 stipulation is read to you.

21 (WHEREUPON, State Exhibit Number 1 was admitted into
22 evidence and published to the jury.)

23 MR. TOOKER: The first document says the below
24 parties stipulate to the following: That the DNA profile
25 from Daughter illustrates that she is the biological

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1 offspring of MINOR formerly Tollison, and Norman
2 Burgess. The stapled pages say that there are three items
3 analyzed in this case, a swab from Norman Keith Burgess, a
4 swab from MINOR Shelton and a swab from Daughter
5 Burgess. The examination says that the DNA analysis was
6 performed on the items above. The results and the analysis
7 are shown in table one. The results are that the DNA
8 profile developed from Daughter is consistent with
9 being the biological offspring of MINOR and
10 Norman Burgess. It is approximately eight point one
11 million times more likely to see these genetic results if
12 the alleged father was the true biological father than an
13 random male. The genetic results obtained is greater than
14 ninety-nine point ninety-nine percent of randomly tested
15 men would be excluded as potential contributors. The third
16 page consists of the table as mentioned on the second page.

17 THE Court: All right. You may call your next
18 witness.

19 MR. TOOKER: Thank you, Your Honor. May it
20 please the Court. At this point, the State would call -- I
21 suppose we should take care of this. But the State would
22 call Greg Cumbee.

23 MR. ABDALLA: Your Honor. Could we?

24 THE Court: All right. I'll see you just a
25 moment.

1 (WHEREUPON, Mr. Tooker and Mr. Abdalla approached the
2 bar.)

3 THE Court: Ladies and gentlemen of the jury,
4 sometimes we can, as I told you, we could have bench
5 conferences and we could resolve certain issues. The
6 lawyers are trying to efficiently put the case up and both
7 lawyers have now agreed to another stipulation in lieu of a
8 witness being inconvenienced and you being inconvenienced
9 with length testimony. So if y'all could just agree to put
10 on the record the stipulated testimony of Mr. Cumbee if he
11 were called as a witness.

12 MR. TOOKER: Yes, sir, Your Honor. And it's my
13 understanding the stipulated testimony would be that in
14 2011 Mr. Cumbee heard the Defendant admit that he was, in
15 fact, the father of [REDACTED] Daughter

16 THE Court: And the Defense agrees with that
17 stipulation as to what his testimony would be. Is that
18 correct?

19 MR. ABDALLA: That's correct, Your Honor. Yes.

20 THE Court: All right. Thank you, gentlemen.

21 MR. TOOKER: Thank you, Your Honor.

22 THE Court: You may call your next witness.

23 MR. TOOKER: The next witness would be Kayla Cox
24 Pilgrim.

25 MR. ABDALLA: Who's the witness?

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1 MR. TOOKER: Kayla Cox Pilgrim.

2 THE CLERK: If you would place your left hand on
3 the Bible and raise your right hand.

4 Do you solemnly swear or affirm that the testimony
5 you're about to give in this case to be the truth, the
6 whole truth and nothing but the truth, so help you God?

7 THE WITNESS: Yes, sir.

8 THE CLERK: If you would take a seat and state
9 your name for the record.

10 THE WITNESS: Kayla Cox Pilgrim.

11 KAYLA COX PILGRIM,

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MR. TOOKER:

15 Q. Ms. Pilgrim, where are you from?

16 A. Pickens, South Carolina.

17 Q. How long have you lived in Pickens?

18 THE Court: Now, ma'am, make sure you project
19 your voice. I want to make sure the Court reporter and the
20 jury and everyone at the Defense table can hear your
21 testimony; all right?

22 A. All my life.

23 Q. All your life?

24 A. Uh-huh (affirmative).

25 Q. Do you know the victim in this case, MINOR

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1 A. Yes, sir, I do.

2 Q. And how long have you known MINOR

3 A. Since I was fourteen, I think.

4 Q. And where did you know her from?

5 A. She lived in my mama's trailer park.

6 Q. Where was her trailer in relation to your trailer?

7 A. It was, I think, three trailers down.

8 Q. And do you recognize the Defendant, Norman Keith
9 Burgess?

10 A. Yes, I do.

11 Q. Where do you recognize him from?

12 A. From walking them to the school bus and going to his
13 house.

14 Q. Okay. Did he and MINOR live in the same house or a
15 different house?

16 A. Yes. They live in the same house.

17 Q. What did you think their relationship was?

18 A. I thought he was her father.

19 Q. And you said that you've known her since you were
20 fourteen?

21 A. (Affirmative nod).

22 Q. When was the last time before today that you actually
23 saw her?

24 A. When I was about, say, sixteen.

25 Q. Sixteen?

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- 1 A. Uh-huh (affirmative).
- 2 Q. Okay. Have you talked to her about this trial?
- 3 A. No, I haven't. I haven't spoke to her since school.
- 4 Q. Okay. Have you talked to her at all since she left
- 5 that trailer park and moved away?
- 6 A. No, sir.
- 7 Q. And do you remember an instance -- well, let me back
- 8 up. Did you ever happen to see her daughter Daughter [REDACTED]
- 9 A. I seen her once when she was a baby.
- 10 Q. And did you comment on Daughter [REDACTED]
- 11 A. Yes, me and my sister did.
- 12 Q. And where was this and who was around?
- 13 A. It was at their house. And ---
- 14 Q. Whose house?
- 15 A. His.
- 16 Q. The Defendant?
- 17 A. Yes.
- 18 Q. Who was around?
- 19 A. Him, MINOR [REDACTED] and, I think, their little sister -- or
- 20 MINOR [REDACTED] little sister.
- 21 Q. Sister [REDACTED]
- 22 A. Sister [REDACTED]
- 23 Q. Okay. And what did you say?
- 24 A. We were complimenting on how the baby looked like him
- 25 because we thought he was her father.

1 Q. And what was his reaction?

2 A. He did not like that too well.

3 Q. Okay. What happened?

4 A. He got defensive and started saying that, you know,
5 all kids look alike. For all that we knew, he could be our
6 father. Talking to me and my sister.

7 Q. The Defendant could be your father?

8 A. Yes.

9 Q. After that happened, did you have occasion to speak
10 with MINOR

11 A. Me and MINOR spoke from time-to-time on the bus.

12 Q. Okay. Now, she would have been a couple of years
13 older than you?

14 A. Yes.

15 Q. Now, when you spoke to her, did you talk to her about
16 her baby?

17 A. She -- we spoke about the baby a little bit.

18 Q. Okay. And just cutting to the chase, what particular
19 thing about the baby did you learn from her?

20 A. That he was the father of the baby and had been raping
21 MINOR

22 Q. Did she say when the Defendant started raping her?

23 MR. ABDALLA: Objection, Your Honor.

24 THE Court: What's your objection?

25 MR. ABDALLA: Can we approach, Your Honor?

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1 THE Court: Yes, sir.

2 (WHEREUPON, Mr. Tooker, Mr. Abdalla and Mr. Rucker
3 approached the bar.)

4 THE Court: All right. If I could see the
5 attorneys here, just for a moment.

6 (WHEREUPON, Mr. Tooker, Mr. Abdalla and Mr. Rucker
7 approached the bar.)

8 THE Court: All right. I sustain the objection
9 at this time.

10 Q. All right. Based on your conversation with MINOR
11 do you know about how old she was when this stuff started?

12 MR. ABDALLA: Objection, Your Honor. He's still
13 ---

14 MR. TOOKER: It's time and place. The time is
15 when it started.

16 MR. ABDALLA: It's not contemporaneous, Your
17 Honor. How could she know if she wasn't there anywhere
18 near the time or nothing was said to her?

19 MR. TOOKER: Now we're going to 801(d).

20 MR. ABDALLA: Her statement was made ---

21 MR. TOOKER: 1(d).

22 MR. ABDALLA: --- this year. Her statement was
23 made this year. That's when she spoke to MINOR

24 MR. TOOKER: No.

25 MR. ABDALLA: I mean, in 2007.

1 MR. TOOKER: Yes. 2007, before any of these
2 charges were filed.

3 THE Court: All right. I'll allow as to the time
4 and place.

5 MR. ABDALLA: Time and place. Could we approach
6 again, Your Honor?

7 THE Court: Yes, sir.

8 MR. ABDALLA: I think there's a misunderstanding
9 between 2012 and 2007. I hope I didn't confuse the Court.
10 That's why I want to make sure.

11 THE Court: Yes, sir.

12 (WHEREUPON, Mr. Tooker, Mr. Abdalla, and Mr. Rucker
13 approached the bar.)

14 THE Court: Your objection is overruled, Mr.
15 Abdalla.

16 Q. Let's try this one more time. About how old was she,
17 according to what she told you, when the rape started
18 happening?

19 A. I think she was like fifteen or so.

20 Q. Okay. And where did these things occur?

21 A. At her house, I guess.

22 Q. Okay. And she told you this while she was still
23 living in the trailer park?

24 A. Yes, sir.

25 Q. When did she move away? I mean, in relation in time

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1 to when she tells you these things and she moves away, how
2 much longer after that?

3 A. I'm not sure if she moved away first or if I moved
4 away first.

5 Q. Okay. If you had to -- when you moved away, how long
6 after you moved -- or after she told you that, did you move
7 away?

8 A. I was sixteen when I moved. So about two years, I
9 guess.

10 Q. And if she told you that and then moved, when do you
11 think she moved?

12 A. I'm not sure.

13 Q. Okay. But it was when she was still living with the
14 Defendant?

15 A. Yes.

16 Q. And before she'd gotten out of the house?

17 A. Yes.

18 Q. Now, why -- well, let's go back. Did you tell
19 anybody?

20 A. I told my mom.

21 Q. You told your mom?

22 A. Uh-huh (affirmative).

23 Q. And what happened?

24 A. She didn't do nothing. We didn't know what to do, to
25 be honest.

1 Q. Did you ever tell law enforcement?

2 A. No.

3 Q. Did you ever tell any of your teachers?

4 A. No.

5 Q. Do you wish you had now?

6 A. Yes.

7 MR. TOOKER: No further questions.

8 THE Court: You may cross-examine.

9 CROSS-EXAMINATION

10 BY MR. RUCKER:

11 Q. Kayla, I'm Brandt Rucker. I'm one of the attorneys
12 for the Defense. Isn't it true you told Officer Jan
13 Kelley, who's present in the Courtroom right now, didn't
14 you tell him that the first time that MINOR told you
15 about this was after she had the baby?

16 A. Yes.

17 Q. All right. How old was she at that point?

18 A. I'm not sure how old she was.

19 Q. Okay. How old were you, do you recall?

20 A. I was either -- I think I was fourteen.

21 Q. I'm going to show you -- see if I can refresh your
22 memory. Do you recognize that?

23 A. Yes, I do.

24 Q. Okay. How old does it say you were when you gave that
25 statement?

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1 A. Twenty-one.

2 MR. RUCKER: No further questions.

3 THE COURT: Any redirect?

4 MR. TOOKER: Briefly.

5 REDIRECT EXAMINATION

6 BY MR. TOOKER:

7 Q. You gave the statement after Detective Kelley got in
8 touch with you; right?

9 A. Yes, sir.

10 Q. Okay. And that was pretty recently?

11 A. Yes, sir.

12 Q. Before that, you didn't know what had happened,
13 though?

14 A. No.

15 Q. Okay.

16 MR. TOOKER: No further questions.

17 THE COURT: Thank you, ma'am. You may step down.
18 You may call your next witness, Solicitor.

19 MR. TOOKER: One moment. Valerie Buchanan.

20 THE CLERK: If you would place your left hand on
21 the Bible and raise your right.

22 Do you solemnly swear or affirm that the testimony
23 you're about to give in this case to be the truth, the
24 whole truth and nothing but the truth, so help you God?

25 THE WITNESS: I do.

1 THE CLERK: If you would have a seat, State your
2 name for the record, please.

3 THE WITNESS: Valerie Buchanan.

4 VALERIE BUCHANAN,

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MR. TOOKER:

8 Q. All right. Valerie, Kayla Cox Pilgrim has testified.

9 What's she in relation to you?

10 A. She's my cousin.

11 Q. All right. And did you ever live with her?

12 A. Yes.

13 Q. Okay. And when you lived with her, did you know

14 MINOR

15 A. Yes.

16 Q. And did you know the Defendant, Norman Burgess?

17 A. No.

18 Q. All right. How is it that you knew MINOR

19 A. We were friends.

20 Q. Okay. Now, are you guys about the same age?

21 A. Yes.

22 Q. Okay. Did you go to school together?

23 A. Yes.

24 Q. How long were you guys friends?

25 A. I don't -- a few years.

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1 Q. Okay. And were you with Kayla when MINOR said what
2 had been happening to her?

3 A. Yes.

4 Q. And did she say about how old she was when this stuff
5 started?

6 A. No, not that I remember.

7 Q. Not that you remember?

8 A. Yes.

9 Q. Did she say where it had been happening?

10 A. At her house. That he came into her room or that it
11 was happening in her room or ...

12 Q. Okay. And she was living with the Defendant ---

13 MR. ABDALLA: Objection, Your Honor. He's
14 leading again.

15 THE Court: Okay. Rephrase your question.

16 Q. Was she or was she not living with the Defendant at
17 that point in time?

18 A. Yes.

19 Q. Had she had her baby already or not?

20 A. Yes.

21 Q. Did you ever see the baby?

22 A. No.

23 Q. And after you heard about what had been happening to
24 her, what did you do?

25 A. We had said something to my aunt about it. But we

1 were just told to stay away from them.

2 MR. ABDALLA: Objection, Your Honor. Hearsay.

3 THE Court: Sustained.

4 Q. Your aunt is Kayla's mother. Is that correct?

5 A. Yes.

6 MR. ABDALLA: Objection. He's leading
7 everything. Let her answer.

8 THE Court: Rephrase your questions, Mr. Tooker.

9 Q. Who is your aunt in relation to you and Kayla?

10 A. Her name or ---

11 Q. No. What is her relationship to Kayla?

12 A. She is her mom.

13 Q. She's her mom?

14 A. Yes.

15 Q. Why were you living with her?

16 A. Stuff that happened -- my dad couldn't afford for us a
17 place to live, so I lived with them.

18 Q. And y'all told Kayla's mom what had been going on?

19 A. Yes.

20 Q. Did you ever contact law enforcement?

21 A. No.

22 Q. Did you ever tell your teachers?

23 A. No.

24 Q. Did Detective Kelley eventually come to talk to you
25 about all this?

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1 A. Yes.

2 Q. And did you tell him what you just told this jury?

3 A. Yes.

4 Q. Now, you said you never talked to law enforcement. Do
5 you wish you had?

6 A. Yes.

7 MR. TOOKER: No further questions.

8 CROSS-EXAMINATION

9 BY MR. RUCKER:

10 Q. Valerie, my name's Brandt Rucker. I'm a Defense
11 attorney. All you know of the circumstances was told to
12 you by MINOR Is that right?

13 A. Yes.

14 Q. Okay. You never witnessed anything yourself; did you?

15 A. No.

16 Q. And MINOR told about when it happened and where it
17 happened; correct?

18 A. Yes.

19 Q. Okay.

20 MR. RUCKER: All right. No further questions.

21 THE Court: Thank you, ma'am. You may step down.

22 You may call your next witness, Solicitor.

23 MR. TOOKER: Thank you, Your Honor. The State
24 calls Reserve Deputy Stephen Baxley.

25 THE CLERK: If you would place your left hand on

1 the Bible and raise your right.

2 Do you solemnly swear or affirm that the testimony
3 you're about to give in this case to be the truth, the
4 whole truth and nothing but the truth, so help you God?

5 THE WITNESS: I do.

6 THE CLERK: If you would have a seat. State your
7 name for the record, please.

8 THE WITNESS: My name is Stephen Baxley.

9 STEPHEN BAXLEY,

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. TOOKER:

13 Q. All right. Where do you work, sir?

14 A. I am a Regional Manager with Sprint PCS.

15 Q. And how long have you been doing that?

16 A. Twelve years.

17 Q. And do you do anything else?

18 A. Yes, sir. I'm a Reserve Deputy, currently with
19 Anderson County Sheriff's Office.

20 Q. All right. Were you ever a Reserve Deputy with the
21 Pickens County Sheriff's Office?

22 A. Yes, I was.

23 Q. When was that?

24 A. From 2006 to 2008.

25 Q. All right. And what kind of duties did you have?

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1 What do you have to do as a reserve deputy?

2 A. You're qualified and certified through the State of
3 South Carolina, the Criminal Justice Academy, the same as a
4 full-time officer, just in a different, more abbreviated,
5 training through Tri-County Technical College.

6 Q. Okay. But you are certified?

7 A. Yes, sir.

8 Q. And what were your duties when you were working for
9 the Pickens County Sheriff's Office as a Reserve Deputy?

10 A. I was assigned to the uniform patrol division to
11 fulfill the same duties as a full-time deputy.

12 Q. Were you working or on duty March 23rd, 2007?

13 A. I was.

14 Q. And when you're on reserve and you're a reserve
15 deputy, how is it that you deal with calls? What happens?

16 A. The same as any other. You receive the call from
17 dispatch, respond to the scene or wherever, you know, the
18 call is, wherever you're dispatched to. Take the initial
19 report basically. And at that point you either determine
20 to follow the case yourself or refer it to investigations
21 or another division, which could do more with the case if
22 needed, more investigation.

23 Q. Okay. And on March the 23rd of 2007, where were you
24 dispatched to?

25 A. I was dispatched, I believe, to Ridgefield Court or

1 Circle -- I can't recall exactly the exact name -- in
2 Easley. And then ---

3 Q. Is that in Pickens County, South Carolina?

4 A. Yes, it is. Yes, sir. And then ultimately I believe
5 en route to the call, I was rerouted to the convenience
6 store near the Palmetto Baptist Hospital in a parking lot
7 where I met with the complainant, the victim.

8 Q. Okay. And once you arrived at that parking lot, who
9 did you encounter? Who did you see? What did you do? Who
10 did you talk to?

11 A. I very briefly recall Ms. Tollison. And I believe
12 Ethan Robinson was her uncle. And I believe there was
13 somebody else there. It's been almost six years ago. I
14 don't remember exactly. I don't recall in my report
15 putting the additional folks that were there. I remember
16 those two.

17 Q. Okay. Were you aware when you were dispatched what
18 the complaint was?

19 A. All I -- initially, the call came in as a disturbance.
20 So initially, I did not know, until after arriving on the
21 scene.

22 Q. When you arrived on the scene, did you find out what
23 had been alleged?

24 A. Yes. Upon arriving on the scene, I talked to Ms.
25 Tollison. And she advised me that since she was a young

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1 child she had been engaged in sexual activity with her
2 step-father. And she had been afraid to come forward until
3 family members basically ---

4 MR. ABDALLA: Objection, Your Honor, to anything
5 other than time and place.

6 MR. TOOKER: I've actually got a case on this,
7 Your Honor. This is *State v. Thompson*, Your Honor. 352 --
8 Your Honor, I think maybe at this point in Deputy Baxley's
9 testimony, can we excuse the jury?

10 THE Court: All right. We've got a matter of
11 law, ladies and gentlemen. We won't be long. If you'll go
12 back. Don't discuss the case. I'll call you back in just
13 a few moments.

14 (WHEREUPON, the jury exited the open Court at
15 approximate 4:37 P.M.)

16 THE Court: All right, Solicitor.

17 MR. TOOKER: Thank you, Your Honor. The case
18 I've got here is *State v. Thompson*, 352 S.C. 552. It's the
19 State's contention that like in *Thompson* -- well, I'll go
20 through those facts. In *Thompson*, an officer responds on
21 the scene and the party says to that officer, you know, go
22 that way. The bad guy's that way. You can find him there.
23 He goes to the Defendant's house, finds the Defendant
24 there. The State introduced that evidence or that
25 statement, that hearsay statement, or what would have been

1 hearsay, through the officer who was testifying. But the
2 State argued that it's not hearsay. And the Court
3 concluded the State was correct, as much as that testimony
4 is not hearsay because it goes before -- or it goes to what
5 the officer was doing during the course of the
6 investigation. So he hears X, Y, and Z, and then takes the
7 steps A, B, and C as a result of what he's heard. And so
8 the State wants to introduce Deputy Baxley's testimony as
9 to what he was told by Ms. Tollison, in as much as it goes
10 to why it is he referred the case to investigations. And
11 what happened next or the next step that he took as a
12 result of what he heard.

13 THE Court: What were the next steps that he took
14 after referring it to someone else.

15 MR. TOOKER: I think we can probably proffer
16 that. But it's my understanding that Deputy Baxley
17 continued the investigation by getting a written statement
18 and then refers it to further investigation by CID.

19 THE Court: Well, he's already said what she said
20 to him. He's already mentioned what happened.

21 MR. TOOKER: Okay. Yeah. I thought that's what
22 they were objecting to.

23 THE Court: Well, no. That was three questions
24 ago, I think.

25 MR. TOOKER: Okay.

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1 THE Court: But now you're wanting him to say
2 specifically what she told him; right?

3 MR. TOOKER: Well, with regards to specifics, I
4 can just ---

5 THE Court: I thought I overheard ---

6 MR. TOOKER: --- I can just go to time and place
7 then. But I thought they were objecting to that whole line
8 of questioning.

9 MR. ABDALLA: Your Honor, I said -- my objection
10 was specifically time and place. And he went down -- and
11 I'm not faulting the officer. He was just going on to what
12 was said about all the other stuff that's in the report.

13 THE Court: I'll allow him to testify as to what
14 he did as a result of his conversation with the witness.

15 MR. TOOKER: Okay.

16 THE Court: Do you other witnesses for today,
17 Solicitor?

18 MR. TOOKER: Your Honor, I can.

19 THE Court: I was just wondering while the jury
20 is out whether ---

21 MR. TOOKER: We have several people here. It
22 just depends on how much longer Your Honor wants to go.

23 THE Court: How long will this witness be?

24 MR. TOOKER: I think I've probably only got a few
25 more minutes with him.

1 THE Court: Okay. And then a short witness?

2 MR. TOOKER: Yeah. I could do one more short
3 witness, yes, sir.

4 THE Court: Okay. All right. Just let this
5 officer talk about, you know, he turned it over to the
6 abuse section. If they're ready, we're ready. If the
7 jury's ready.

8 MR. ABDALLA: You're just keeping it to he
9 responded and time and place, nothing else, right?

10 MR. TOOKER: Yeah. I mean, I ---

11 MR. ABDALLA: Yeah.

12 MR. TOOKER: I thought you were objecting to what
13 he had already said.

14 MR. ABDALLA: I said time and place is it. I'm
15 not trying to make the law. I'm just saying that -- I
16 stated my objection is that.

17 MR. TOOKER: Your Honor, I'm just going to ask
18 about time and place.

19 MR. ABDALLA: Okay. Which was already asked.
20 But okay.

21 THE BAILIFF: All right, sir.

22 THE Court: All right. If they're ready.

23 THE BAILIFF: We've got one in the bathroom, sir.

24 THE Court: All right. Let's make sure
25 everybody's ready before you bring them in.

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1 (WHEREUPON, the jury entered the open Court at
2 approximately 4:42 P.M.).

3 THE Court: All right, Solicitor. You may
4 continue your examination.

5 MR. TOOKER: Thank you, Your Honor.

6 MR. ABDALLA: I'm sorry, Your Honor. Did you
7 rule on the objection.

8 THE Court: I did. I sustain the objection.

9 MR. ABDALLA: Okay.

10 Q. All right. Did she say when the sexual assault
11 started?

12 A. I don't recall specifically. I believe age ten.

13 Q. Would it help you if you could refer to your report?

14 A. Yes, sir. If I could refer to my report. After
15 reviewing the report, age fourteen.

16 Q. Okay. So she complained of the assault starting at
17 fourteen?

18 A. Age fourteen.

19 Q. And was it a one-time thing or ---

20 MR. ABDALLA: Objection, Your Honor. Again, time
21 and place.

22 MR. TOOKER: Well, when it happens over a six-
23 year period is when it starts and it continuous for six
24 years.

25 THE Court: I'll allow the question.

1 A. In my report, I noted repeatedly.

2 Q. And after you gathered that information, what other
3 investigating did you do?

4 A. At that point I basically took a statement from Ms.
5 Tollison and filled out a victim's form for her. And then
6 referred it, at that point after my initial report, to
7 investigations.

8 Q. All right. Is that standard practice?

9 A. It's protocol, yes, sir.

10 Q. So when you, as a deputy, respond and there's
11 something that needs more investigation, you refer it to
12 Lieutenant Kelley or another investigator?

13 A. That's correct.

14 Q. All right.

15 MR. TOOKER: No further questions.

16 THE Court: You may cross-examine the witness.

17 CROSS-EXAMINATION

18 BY MR. RUCKER:

19 Q. Deputy, you're still a deputy, I guess ---

20 A. Yes.

21 Q. --- because you're still a reserve deputy?

22 A. Yes. That's correct, yes, sir.

23 Q. Deputy, I'm Brandt Rucker. I'm an attorney for Mr.
24 Burgess. Other than what you were told, you don't know
25 anything about the case?

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1 A. No, sir.

2 Q. You didn't go in, you didn't execute a search warrant
3 at any time?

4 A. No, sir.

5 Q. So basically your testimony is what you've been told
6 in its entirety?

7 A. Yes.

8 MR. RUCKER: No further questions.

9 THE Court: Thank you, sir. You may step down.

10 MR. BAXLEY: Thank you, sir.

11 THE Court: You may call your next witness,

12 Solicitor.

13 MR. TOOKER: Thank you, Your Honor. The State
14 calls Deputy Teddi Palis.

15 THE CLERK: If you would place your left hand on
16 the Bible and raise your right.

17 Do you solemnly swear or affirm that the testimony
18 you're about to give in this case to be the truth, the
19 whole truth and nothing but the truth, so help you God?

20 THE WITNESS: Yes, sir.

21 THE CLERK: If you would have a seat. State your
22 name for the record, please.

23 THE WITNESS: My name is Cynthia T. Palis.

24 TEDDI PALIS,

25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

1
2 BY MR. TOOKER:

3 Q. Deputy Palis, where do you work now?

4 A. Pickens County Sheriff's Office.

5 Q. How long have you worked there?

6 A. Probably about twenty years.

7 Q. And were you working there in March of 2007?

8 A. Yes, sir, I was.

9 Q. And were you there or were you not when Lieutenant
10 Kelley interviewed the victim in this case?

11 A. Yes, I was there.

12 Q. And while you were there, during that interview --
13 well, was that interview recorded or not?

14 A. It was recorded.

15 Q. And during that interview did the victim say at what
16 point the sexual assaults began?

17 A. If I may refer back to my notes?

18 Q. Yes, ma'am?

19 A. She was around fourteen years of age.

20 Q. Okay. And was it a one-time thing or was it
21 continuous?

22 A. It was continuous.

23 Q. And where did these assaults occur?

24 A. They occurred at the residence, which is located -- or
25 was located at [REDACTED] in Easley, South

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1 Carolina.

2 Q. And how long did this interview take?

3 A. To be honest with you, I'm not really sure.

4 Q. Was it short or long?

5 A. It seemed like it was a long interview. I'm not sure
6 exactly how long it took.

7 Q. How would you describe the victim's emotional state at
8 that time?

9 MR. ABDALLA: Objection, Your Honor?

10 THE Court: What's your objection?

11 MR. ABDALLA: Well, are we going to -- is the
12 witness going to testify to believability of the witness or
13 simply ---

14 MR. TOOKER: It's her personal observations.

15 THE Court: I'll overrule your objection.

16 Q. Would you describe her emotional state?

17 A. She was emotional, upset.

18 Q. What do you mean by emotional?

19 A. She was -- upon speaking to her, she was upset about
20 all the events that had taken place?

21 Q. Did she cry?

22 A. To be honest with you, I can't remember on that.

23 Q. Okay. But you said she was emotional?

24 A. She was emotional.

25 Q. And did you do anything else in the course of this

1 investigation?

2 A. No, sir.

3 Q. You were just there for that interview ---

4 A. I was just there for the interview.

5 Q. --- with Lieutenant Kelley?

6 A. Yes, sir.

7 Q. Okay. And he would have seen all the same things you
8 saw?

9 A. Exactly.

10 MR. TOOKER: No further questions.

11 MR. ABDALLA: One moment, Your Honor. If I could
12 just have -- I have no questions, Your Honor.

13 THE Court: Thank you. You may step down. You
14 may call your next witness, Solicitor.

15 MR. TOOKER: The State would call Sheri Aiken to
16 the stand.

17 THE CLERK: If you would place your left hand on
18 the Bible and raise your right.

19 Do you solemnly swear or affirm that the testimony
20 you're about to give in this case to be the truth, the
21 whole truth and nothing but the truth, so help you God?

22 THE WITNESS: Yes, I do.

23 THE CLERK: If you would have a seat. State your
24 name for the record, please.

25 THE WITNESS: My name is Sheri Yvonne Aiken.

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SHERI AIKEN,

2

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

3

DIRECT EXAMINATION

4

BY MR. TOOKER:

5

Q. All right. Ms. Aiken, where are you from?

6

A. I am from Easley, South Carolina.

7

Q. Okay. And have you always lived in Easley?

8

A. Yes.

9

Q. Where do you live now, still in Easley?

10

A. Well, it's actually close to Dacusville, but it is in

11

Easley, still considered Easley.

12

Q. And what is your relationship to MINOR

13

A. She is my niece.

14

Q. She's your niece. Through which side of the family?

15

A. Through my sister.

16

Q. What's your sister's name?

17

A. My sister is Angie Tollison. My sister was actually

18

adopted and MINOR her daughter. My mother adopted her

19

when she was two years old.

20

Q. Okay. And do you know the Defendant Norman Keith

21

Burgess?

22

A. Yes.

23

Q. And how do you know him?

24

A. He is -- he was my sister's boyfriend.

25

Q. Do you remember about what time they got together?

1 A. It was sometime in the nineties. I'm not sure, you
2 know, specific, but it was around the nineties, maybe the
3 middle nineties.

4 Q. Okay. And when they got together, did they eventually
5 move in together?

6 A. Yes, they did.

7 Q. And if you would, before they got together, describe
8 for the jury what your relationship was like with Angie and
9 her family?

10 A. We were all very close. Really, we were all a close
11 family. And we were very close, very close.

12 Q. And do you have a daughter?

13 A. Yes, I do.

14 Q. What is her name?

15 A. [REDACTED] Lara.

16 Q. All right. And how old is she?

17 A. She is twenty-three.

18 Q. Are her and [REDACTED] close in age?

19 A. Yes. They're the same age.

20 Q. They're the same age?

21 A. Yes. I think about -- [REDACTED] may be a little older.

22 I'm not sure.

23 Q. What was their relationship like when they were
24 little?

25 A. Very close. They stayed with my mother a lot before

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1 she passed away. They spent a lot of time together.

2 Q. Okay. And did that relationship ever change?

3 A. Yes, it did. It changed sometime after MINOR -- I
4 mean, Angie and Keith had gotten together. That
5 relationship changed between them.

6 Q. How did it change?

7 A. There come a time in the relationship that MINOR and
8 MINOR didn't have a very close relationship anymore. They
9 weren't allowed to spend time together like they did when
10 they were younger.

11 Q. Okay. And who wouldn't let them spend time together?

12 A. Angie and Keith.

13 Q. Did y'all ever live near them or no?

14 A. Yes.

15 Q. Okay. When was that?

16 A. I don't exactly know the dates, but they lived down
17 below us. We moved ---

18 Q. What do you mean down below you?

19 A. Right down below us in a mobile home ---

20 Q. Okay.

21 A. --- on Chaparral Way. We lived there -- we moved
22 there in '91. It was a few years after that.

23 Q. Okay. And the Defendant and Angie and MINOR moved
24 in near y'all?

25 A. Yes.

1 Q. And what was the relationship like from what you
2 observed in that household?

3 A. When [MINOR] was young, it wasn't as strained as it
4 became. But at first, you know, we would go visit them a
5 lot, but they didn't come to my house a lot.

6 Q. Okay. When did things start to change?

7 A. When [MINOR] got a little older, maybe around twelve
8 to thirteen years old, around in that age, she wasn't
9 allowed to come and spend the night or have a lot to do
10 with my daughter, [LA]

11 Q. Okay. Why not?

12 A. I'm not quite sure why. But I know that she was not
13 allowed to go -- like if we went over there to visit, she
14 wasn't allowed to go in her room with her by herself.

15 MR. ABDALLA: Objection, Your Honor. That's
16 speculation. There's no first-hand ---

17 MR. TOOKER: It sounds like it's first-hand.

18 THE Court: I overrule your objection.

19 Q. Continue.

20 A. Okay. They weren't allowed to go in the bedroom
21 together. There was no spending the night with each other.
22 And the relationship was just very strained, you know. It
23 was not like a free relationship that a teenage girl would
24 have with another teenage girl.

25 Q. And is that how it remained until [MINOR] got out of

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1 that house?

2 A. Yes. And it became more and more strained as the
3 relationship, you know, as teenage girls would have that,
4 you know, time together and everything. It became a
5 tighter, strained relationship more and more as the years
6 went on.

7 Q. Okay. So to your knowledge they weren't allowed to go
8 off together?

9 A. No, they were not.

10 Q. And you said it became more strained until she got out
11 of the house. What do you remember about how she got out
12 of the house.

13 A. We had went over to visit them. And MINOR had told
14 IIA I need to talk to you. I need to let -- you know,
15 I need to talk to you. And she had actually called IIA
16 the next day. And she had told her ---

17 MR. ABDALLA: Objection, Your Honor. It sounds
18 like hearsay and double hearsay.

19 THE Court: All right. I sustain the objection.

20 Q. MINOR called y'all?

21 A. Yes.

22 Q. And then after she called y'all, what did you do?

23 A. We went over to the house to visit because she had
24 told us some situations that had been going on. And we
25 went over to the house to visit, to see what was, you know,

1 see if we could just sort of scope out the atmosphere to
2 see what was going on. And then we -- I spoke with my
3 brother and we made a way to go and take MINOR out of the
4 house.

5 Q. What's your brother's name?

6 A. His name is Ethan Robinson.

7 Q. Okay. And what was the plan? How were y'all going to
8 get MINOR out of the house?

9 A. Okay. My brother, he actually went -- my youngest
10 daughter BIA and my oldest daughter AII and her
11 husband Matt, they had decided to go and remove MINOR
12 from the house. I didn't know exactly how, at first, that
13 were going to plan to do it. But they were going to go
14 over there and get MINOR take her out of that place that
15 she was at, of danger.

16 Q. And did they do that?

17 A. Yes, they did.

18 Q. Okay. And after MINOR got out of that situation,
19 did you guys ever have occasion to talk about what had been
20 happening?

21 A. Yes, we did.

22 Q. Did she tell you around when the sexual assault
23 started?

24 A. Yes. She told us that when she was at the age of
25 fourteen was the first time that she began to be molested.

1 Q. Okay. And you said it began. Was it a continuing
2 series of events?

3 A. Yes, it was.

4 Q. Okay. Where did these events occur?

5 A. At different -- the first time that I think that it
6 happened was -- they lived in Easley, close to where the
7 old Colony Theater is. And the assaults began to happen
8 there. And they continued -- they had moved to Pickens and
9 they continued there.

10 Q. And were they continuing up until she got out of the
11 house?

12 A. Yes.

13 Q. Now, if you would, too, have you stayed in touch with
14 MINOR after she got out?

15 A. Yes, I have. She lived with me for a little while.
16 And I have been very close to MINOR I've tried to be a
17 mother figure to her, to try to be real close to her. I
18 feel like she's my own daughter.

19 Q. And have y'all talked freely about what happened?

20 A. Yes, we have.

21 Q. How does she seem when she talks about what happened?

22 A. Very upset. Very nervous and upset about it.

23 Q. And if she got out five years ago, has she improved at
24 all or changed at all?

25 A. Yes, she has. She's tried to pick up the pieces of

1 her life and go on. It still bothers her a lot when we
2 talk about it. I feel at times MINOR don't have the
3 self-confidence that she needs. But she's tried to pick up
4 the pieces. And, you know, I try to encourage her as ---

5 MR. ABDALLA: Objection, Your Honor. This
6 doesn't go with a part of the case. This is just ---

7 A. I'm sorry.

8 THE Court: I overrule your objection.

9 A. I'm sorry.

10 Q. No, you can continue.

11 A. Okay. I just try to encourage her as the mother
12 figure that I'm trying to be, to pick up those pieces and
13 go on with her life.

14 Q. Now, why are you trying to be a mother figure to her?

15 A. Because her mother will not have anything to do with
16 her any longer.

17 Q. Since when?

18 A. Since the situation that she found out that she told
19 about him raping her, my sister won't have anything to do
20 with any of our family or MINOR either one.

21 Q. Thank you, ma'am.

22 MR. TOOKER: No further questions.

23 THE Court: You may cross-examine the witness.

24 MR. ABDALLA: Could I have one moment, Your
25 Honor?

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1 THE Court: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. ABDALLA:

4 Q. Ms. Aiken, you said that you spoke to MINOR and she
5 told you this situation had been occurring for a few years;
6 correct?

7 A. Yes, sir.

8 Q. So you didn't witness it. You just heard from

9 MINOR

10 A. Yes.

11 Q. And you don't have any first-hand knowledge. You just
12 go by what she told you?

13 A. Yes.

14 Q. And she got married shortly after that. Is that
15 correct?

16 A. It was a little while after that. I'm not sure
17 exactly how long.

18 Q. And she told you this right before she filed charges
19 and Keith got arrested. Is that correct?

20 A. Yes.

21 MR. ABDALLA: No further questions.

22 THE Court: All right. Thank you, ma'am. You
23 may step down.

24 Ladies and gentlemen, this might be a good time for us
25 to break for the day. Thank you very much for your

1 patience with us today, your attention as a juror. We're
2 going to be ready to start back at nine o'clock in the
3 morning. If you'll be back, they'll show you where to --
4 you are to report the same as you did after lunch.

5 Let me remind you again the importance of not
6 discussing the case with anyone. Don't let anyone discuss
7 the case with you. You're not to do any kind of
8 independent research. You've made a very high commitment
9 to these parties. And I know you'll fulfill that
10 commitment and make your decision on the transactions here
11 in this Courtroom and not from any other source. I'm
12 confident you'll remember that. We'll be ready to start
13 back tomorrow at nine o'clock. Have a good evening. I'll
14 see you tomorrow.

15 Everyone else, please remain seated while our jury
16 departs for the day.

17 (WHEREUPON, the jury exited the open Court at
18 approximately 5:00 P.M.)

19 THE Court: All right. We'll be at ease until
20 nine o'clock in the morning.

21 MR. ABDALLA: Thank you, Judge.

22 MR. TOOKER: Thank you, Your Honor.

23 (WHEREUPON, the Court stood at recess for the day.)

24 December 18, 2012

25 (WHEREUPON, Court convened with all parties present

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1 and the following proceedings were had.)

2 THE Court: All right. Everybody ready to proceed? The
3 State?

4 MR. TOOKER: Yes, sir, Your Honor.

5 THE Court: Defense?

6 MR. ABDALLA: We're ready, Your Honor.

7 THE Court: I understand from the Clerk's office
8 that one of our jurors has called in sick with a migraine
9 headache. It's juror Watkins, maybe?

10 THE CLERK: Yes, sir.

11 THE Court: The last one picked. Very sick.
12 Crying to the clerk's staff about a migraine headache. So
13 we'll have the alternate move in. She wasn't able to come
14 today, based on the clerk's conversation with her.

15 All right. Let's have our jury come in if they're
16 ready.

17 (WHEREUPON, the jury entered the open Court at
18 approximately 9:25 A.M.)

19 THE Court: Ladies and gentlemen, good morning to
20 you. One of your jurors called in sick today. It happened
21 as we didn't anticipate, but we wanted to prepare for. So
22 our alternate is now part of the jury. So we have twelve
23 of you to hear this case and we're going to continue with
24 the testimony now. I urge you to listen carefully as each
25 witness testifies.

1 Solicitor, you may call your next witness.

2 MR. TOOKER: Thank you, Your Honor. May it
3 please the Court. The State calls Shauna Galloway-
4 Williams.

5 THE CLERK: If you would place your left hand on
6 the Bible and raise your right.

7 Do you solemnly swear or affirm that the testimony
8 you're about to give in this case to be the truth, the
9 whole truth and nothing but the truth, so help you God?

10 THE WITNESS: Yes, I do.

11 THE CLERK: If you would have a seat. State your
12 name for the record, please.

13 THE WITNESS: Shauna Galloway-Williams.

14 SHAUNA GALLOWAY-WILLIAMS,

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. TOOKER:

18 Q. All right. Ms. Galloway-Williams, where are you
19 employed?

20 A. I am the Executive Director of the Julie Valentine
21 Center.

22 Q. And what do your duties consist of there?

23 A. As Executive Director, I am responsible for the
24 oversight, management, administration of the entire center.
25 In addition to that, I supervise the clinical services that

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1 are provided there, which include counseling and forensic
2 interviewing. And I also provide clinical services in the
3 way of conducting forensic interviews and facilitating
4 groups.

5 Q. Okay. What does that mean exactly conducting forensic
6 interviews and facilitating groups?

7 A. Forensic interviews are investigative interviews when
8 there are allegations of abuse or neglect of a child. So
9 those are interviews that are conducted at our center and
10 they're videotaped and essentially treated as evidence in
11 cases where there are allegations of abuse and neglect.

12 Q. Okay. And what's your educational background?

13 A. I have a Bachelor's Degree in Psychology and a
14 Master's Degree in Counseling.

15 Q. Okay. And where did you go to school?

16 A. I went to Winthrop for my Bachelor's and at Clemson
17 for my graduate degree.

18 Q. And I mean, what are those fields specifically,
19 psychology and counseling? Does that training to do
20 specific tasks or skills?

21 A. Yes.

22 Q. What are those?

23 A. Well, as a -- I'm also licensed as a professional
24 counselor in the State of South Carolina. And with that
25 license and my education, I have the authority to provide

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1 individual and group counseling, assessments and interviews
2 to children and families and adults in the State of South
3 Carolina.

4 Q. And I was about to ask, do you have specialized
5 training in those fields?

6 A. Yes. My specialized training is specifically in the
7 area of child sexual abuse, the identification and
8 investigation and response to allegations and substantiated
9 cases of child sexual abuse.

10 Q. Okay. And you said you hold a professional license?

11 A. I do. I'm a licensed professional counselor in the
12 State of South Carolina.

13 Q. What do you have to do to become licensed in South
14 Carolina?

15 A. It requires two years of direct supervision by a
16 licensing supervisor. So that's someone who's already
17 licensed and has been practicing. In addition to that, you
18 have to provide services to a certain number of
19 individuals. And you also have to maintain continuing
20 education requirements once you have been licensed.

21 Q. And how many years have you been counseling children
22 and adults involved in sexual abuse?

23 A. A little over eleven years.

24 Q. Okay. And what types of people do you counsel? What
25 circumstances do you get involved?

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1 A. Most of my experience has been working with children
2 and adolescents and their families when there have been
3 allegations of abuse or neglect. Physical abuse, sexual
4 abuse, neglect of some kind. Presently, most of my work
5 focuses specifically on the area of sexual abuse and
6 physical abuse. And I work a lot with care givers of
7 children who've been sexually abused, in addition to
8 working with the children themselves.

9 Q. And do you provide any professional training or teach
10 others in your field?

11 A. I have and do. Like I said, I provide supervision at
12 our center to the clinicians, to the other counselors there
13 that conduct forensic interviews and provide therapy. I
14 also have presented at the National Symposium on Child
15 Abuse. I've specifically presented on working with non-
16 offending care givers of children who've been sexually
17 abused. I've also presented on working with traumatized
18 victims who testify in Court.

19 Q. Okay. And some of those victims, are they people who
20 are abused as children and then later came forward?

21 A. Yes.

22 Q. And have you testified in Court before?

23 A. I have.

24 Q. As an expert?

25 A. Yes.

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1 Q. And how many times have you been qualified as an
2 expert?

3 A. In General Sessions, I've been qualified sixteen
4 times. In Family Court, it's been twenty-five or more
5 times.

6 MR. TOOKER: At this point, Your Honor, the State
7 requests that Ms. Galloway-Williams be qualified as an
8 expert in counseling sexually abused children and adults.

9 THE Court: Any voir dire of this witness or any
10 objection?

11 MR. RUCKER: No objection as to the expertise in
12 counseling.

13 THE Court: Is that what she's being offered for,
14 as an expert in counseling?

15 MR. TOOKER: Well, counseling and then going
16 into, I guess, her understanding of abused children and
17 adults.

18 MR. RUCKER: We're certainly not going to agree
19 to the latter portion.

20 THE Court: All right. She's admitted as an
21 expert in that field.

22 And, ladies and gentlemen, let me just explain to you.
23 Normally, when a trial takes place and a person is sworn in
24 and testifies, they can testify to what they saw or heard
25 or sensed by one of the senses they have. But there is an

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1 exception to this when a person is qualified because of
2 background and training, education and experience, they're
3 permitted to give an opinion. And in the area of that
4 expertise, they can give a reason for that opinion. The
5 fact that this witness is qualified in the area of child
6 abuse -- child sexual abuse and counseling, doesn't mean
7 that you must accept the opinion that she gives. It's
8 evidence, just like all the other evidence, for you to use
9 any way that you see fit.

10 All right. Solicitor, you may continue your
11 examination.

12 MR. TOOKER: Thank you, Your Honor.

13 Q. Do you know why you're testifying here today?

14 A. I'm testifying as an expert witness to share
15 information about the issues related to child abuse and
16 sexual assault.

17 Q. Okay. And who subpoenaed you?

18 A. The Solicitor's office.

19 Q. Okay. And are you being paid by our office to be here
20 today?

21 A. No.

22 Q. Have you ever had any contact with the victim in this
23 case, MINOR [REDACTED]

24 A. No.

25 Q. Where does your funding come from?

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1 A. At the Center?

2 Q. At the Center?

3 A. The Julie Valentine Center is funded -- about a third
4 of our funding is United Way Funding in Greenville County.
5 Another third of it is through federal grants, the Violence
6 Against Women Act, VOCA, DHEC, The Children's Trust Fund.
7 And the other third is made up of donations of fund-
8 raisers.

9 Q. Okay. Now, is that funding in any way, I guess,
10 contingent upon what you say here today?

11 A. No.

12 Q. Now, you said you don't know the victim. You've never
13 spoken to her, I take it?

14 A. No.

15 Q. Have you ever viewed any of her written statements?

16 A. No.

17 Q. Have you ever viewed her video recorded statement?

18 A. No.

19 Q. Have you seen any evidence at all in this case?

20 A. No.

21 Q. And other than the conversations you've had with me
22 have you done any other investigatory work or looked into
23 this case at all?

24 A. No.

25 Q. What is delayed disclosure?

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1 A. Delayed disclosure is the term we use to refer to
2 children and adults not disclosing or telling about abuse
3 right away.

4 Q. Okay. And in your experience as an expert in
5 children's sexual abuse, how common is delayed reporting
6 and delayed disclosure.

7 A. Delayed reporting is very common. In my experience
8 and in the research, most children do not tell right away
9 after something has happened.

10 Q. And are there any statistics regarding the frequency
11 of sexually abused children and how often they disclose
12 right away or delay disclosure?

13 A. Right. In some of the research, you know, as fifty-
14 eight to seventy-five percent of those that are abused do
15 not disclose right away. And that delayed disclosure can
16 be forty-eight hours, a month, years, months later. The
17 delay is really anything beyond telling right after
18 something has happened.

19 Q. Okay. And what kind of factors commonly play a role
20 in a person's delaying that disclosure?

21 A. The number one reason that victims report for not
22 telling right away is fear. Fear that something's going to
23 happen to them, fear that something's going to happen to
24 the person that has committed the act on them. Fear of
25 consequences to other family members, pets, siblings. But

1 fear is the number one reason. The other thing that has a
2 huge impact on whether children tell or not is the
3 relationship to the person that has committed the offense.
4 Most times a child is abused by someone that they know,
5 they love and they trust. Whether that's a family member,
6 a community member. It's usually someone that's involved
7 in the child's life. And with that dynamic it makes it
8 even harder for a child to tell. Because this is usually
9 someone they have a relationship with. There are usually
10 some good things about that relationship, some things that
11 are positive that they do enjoy. And then there are also
12 these things that they don't enjoy. The person that abuses
13 them may also be someone that's close to other members of
14 their family. In situations, you know, it could be that
15 it's mom friend, mom's boyfriend. It could be someone that
16 is a supporter of the household and the community. And
17 sometimes the child has to make choices about the outcome
18 of telling. You know, this could be the one person that
19 provides the financial support for the family and they know
20 that if they tell, they're risking losing their home, their
21 comforts, their security. So there are a number of factors
22 that play into it. Additionally, you know, children tend
23 to feel responsible. They're very egocentric. They think
24 that everything is about them. And so children tend to
25 internalize and feel like they play some role in the abuse,

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1 even though they really don't. And that responsibility can
2 keep children from telling. Along with that, the feelings
3 of shame and guilt for what has happened. So there are a
4 number of reasons why children don't tell.

5 Q. Okay. Now, you mentioned shame or guilt. What role
6 does shame or guilt play?

7 A. Well, certainly the act of, you know, for most
8 children, for most adults, sexuality and sex is not
9 something that most people are very comfortable talking
10 about. When a sexual act has been committed on someone and
11 then the feelings of shame and guilt associated with that
12 can be so strong that they don't feel that they can talk
13 about that or tell someone about it. I mean, even in
14 pleasurable circumstances, most of us don't talk about
15 sexual behavior in public or with other people. And so,
16 you know, add to that the fact that in most of the -- in
17 these cases, you know, it's an unwanted sexual experience.
18 That shame and guilt can really have a strong impact on
19 whether a child tells or not.

20 Q. Okay. And you mentioned sometimes that there's a
21 relationship between a parent and the abuser; that can
22 affect. What role would an abuser have in a role of
23 authority over the abused person play?

24 A. Well, in cases of child abuse, adults always have more
25 power and authority. We teach our children, all of us

1 teach our children, you know, to respect adults. And
2 children just by, you know, nature of being a child,
3 believe that children have their best interests in mind and
4 tend to view adults as authority figures. So that, in and
5 of itself, has a strong influence on a child complying with
6 or participating in and not disclosing abuse that has
7 occurred. They just really feel powerless a lot of times,
8 just because they are a child. Many times children believe
9 that they're not going to be believed. And that's because
10 a lot of times children say things and we do question them,
11 just normal things, you know. They tell you something
12 happened at school that day. And you say, really, did that
13 happen? And so, you know, even in just normal
14 circumstances like that, they're questioned and not
15 believed. And so they come to believe that anytime they
16 tell something it might be the same circumstance,
17 especially something that, you know, is abuse-related that
18 really is outside of their normal realm of experience.

19 Q. And along that same line of reasoning, what role would
20 the abuser, not only being in a position of authority but
21 living in the same household as the victim, play?

22 A. Well, you know, a lot of times the fact that they are
23 still around this person, if this person is someone who
24 provides support to the family, if they have a positive
25 relationship with this person, if others in the family have

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1 a positive relationship, that may make it harder for them
2 to tell. In some circumstances continuing to have contact
3 with that person may create a sense of fear and lead a
4 child to realize they do have to tell. But, again, in many
5 of these circumstances, there are positive things and other
6 factors outside of the abuse. We're talking about families
7 a lot of times and family dynamics. And so outside of just
8 the abuse act itself are all these other things. You know,
9 there could be siblings involved. There could be financial
10 support involved. You know, sometimes children are in
11 households where there might be abuse. They may not be --
12 domestic abuse. They may not be abused themselves, but
13 they may witness that in their household. Those kind of
14 things make keep them in that fear response and may keep
15 them from being able to tell, also.

16 Q. Okay. And, again, in that same vein, what about fear
17 of being punished. Would that play a role in the victim
18 failing to disclose?

19 A. Right. I mean, that's one of the most basic things,
20 is that children fear what's going to happen to them or
21 what's going to happen to others. And that, again, plays
22 into that whole egocentrism that children have and feeling
23 that responsibility and their own role in what's happened.
24 They may have been told that they're going to be in
25 trouble. They may have been threatened. They may have

1 seen other people in the household get in trouble for doing
2 things. And they internalize that on themselves, too.

3 Q. And what role would the victim's fear of harm or to --
4 harm to herself or harm to another member of the family
5 play in that delayed disclosure?

6 A. Again, if a child has been threatened, that may keep
7 them from telling. If they've been threatened that
8 something's going to happen to them or something's going to
9 happen to another member of the family, if threats have
10 been made towards, you know, their pets, their siblings, or
11 their parents, children take those threats at, you know,
12 they take them very seriously, particularly if they have
13 already seen violent behavior or seen someone make a threat
14 and follow through with it. And that can really keep a
15 child from disclosing. They do it sometimes to protect
16 themselves and sometimes they do it to protect others.

17 Q. Okay. And what role would the, I guess, the
18 normalization of sexual activity in a child's life play in
19 her failing to disclose?

20 A. If you're talking about normalization then we're
21 probably talking about sexual abuse that has occurred over
22 a period of time or something that's become more chronic.
23 That's what I would refer to as normalization. And the
24 more chronic the abuse, the more normal that becomes a part
25 of someone's life, the harder it is for them to disclose.

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1 It really becomes something that sometimes creates even
2 more of a sense of helplessness, more of a sense of
3 responsibility. You know, children really do start to
4 believe, well, I didn't tell. I've played a role in this.
5 I'm responsible for this. And if I do tell, then I'm going
6 to be questioned and people are going to say that I'm
7 responsible for doing this. And so that, again, can impact
8 whether or not they tell and do something about it.

9 Q. Is disclosure sometimes a process?

10 A. Disclosure is always a process. In our field, we
11 refer to it that way, meaning that we don't generally
12 expect that when a child or an adult discloses abuse for
13 the first time, that they're going to tell every single
14 detail about that abuse, whether it was a one-time incident
15 or whether it was chronic abuse. We know that many times
16 children will, you know, share bits and pieces of the abuse
17 over time. We know that adults and children will share
18 information about the abuse based on the types of questions
19 that they're being asked. What's relevant to the survivor
20 of abuse may not be the same thing that is relevant to an
21 investigator or a prosecutor or someone else asking them
22 about the abuse. So there may be a detail that, you know,
23 someone from law enforcement asked the child about or the
24 adult about and they share that once they're asked about
25 it. But it may never have occurred to them that that's

1 something that would be important to the case or to the
2 investigation.

3 Q. Okay. And how would the passing of time affect
4 disclosure?

5 A. Well, certainly, you know, with all of us, our memory
6 changes over time. And if we're talking about someone who
7 has experienced chronic abuse, over time you would expect
8 that there would be significant incidents that might be
9 very vivid in their memory. There may be -- it may be that
10 they remember the very first time that it happened. They
11 remember the last time that it happened. They may remember
12 a time when it happened in a different setting or a
13 different circumstance. But in general they're going to
14 remember the core details of it. Who did it, what
15 happened, how it happened. But over time, some of those
16 other details may fade. But they may also be very, very
17 vivid for them. A lot of times when someone has
18 experienced a traumatic experience, which sexual abuse is,
19 they will have a lot of sensory memories. They'll remember
20 a lot of the sites and sounds and smells, the things that
21 -- again, those may be things that we don't necessarily ask
22 someone to share when they're sharing their disclosure or
23 their statement.

24 Q. And how do years of abuse affect a victim's ability to
25 quickly and accurately recall specifics of what happened to

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1 them?

2 A. Well, again, you know, if it is something that has
3 happened over a period of time, one of the best ways that I
4 can think to describe this, and I don't want in any way to
5 minimize the experience of abuse, but we all have certain
6 things that we do on a regular basis. I go to the grocery
7 on the same day every week. I park in the same parking
8 spot pretty much every week that I go. And I can tell you
9 that. I can tell you where I park. I can tell you what
10 day, almost down to the time that I go to shop. I even
11 through the grocery store down the same aisles. So if you
12 ask me to tell you about going to the grocery store, I can
13 tell you in general those core details about it. But I'm
14 not going to be able to tell you about the time that I went
15 to the grocery on January 12th, 2012. That's just not
16 going to be the way that I remember it, unless there was
17 something remarkable or outstanding about that experience.
18 Maybe someone bumped into my car with a buggy and I very
19 vividly remember that. So the same kind of thing with
20 someone who's experienced chronic abuse. These acts may
21 have taken place over and over and over and over again,
22 over a period of time. And there will be certain things
23 that will be very vivid and that they will remember. There
24 may be the way that the act was initiated, where it
25 happened, those kind of things. But to be able to pinpoint

1 specific dates, times and all of those details about a
2 chronic situation that's happened over time, that may just
3 not be possible.

4 Q. Okay. Now, is it rare or common to get the full
5 disclosure from the victim the first time she's in?

6 A. It really would be rare for someone to disclose for
7 the first time and to share every detail about the abuse,
8 even if it was a one-time -- whether it was a one-time
9 incident or a chronic pattern of abuse. Again, some of
10 that depends on who is asking the questions of them, the
11 setting when they are disclosing. You know, if the first
12 person that they disclosed to is a family member, they may
13 disclose different details to that person than if they're
14 disclosing for the first time to a detective at the
15 sheriff's office. It just really depends on who's asking
16 the questions, the circumstances under which they're
17 disclosing.

18 Q. Okay. And would it surprise you to see a victim give
19 different details at different times to different people?

20 A. That would not surprise me.

21 Q. Why not?

22 A. Because, again, it would depend on what kind of
23 questions or circumstances the victim is in. Again,
24 sometimes the things that are important to me as a forensic
25 interviewer or to law enforcement as they're gathering

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1 their information, the things that I may think are
2 important may not necessarily be those relevant, off the
3 top of their head kind of things that are important to a
4 victim. You know, I may ask, where did this happen and
5 they might tell me that. And that would probably be about
6 in the same. But I might also ask, okay, so if this
7 happened in the bedroom, what color was the bedspread?
8 What color were the curtains? I might ask details that
9 really no one else may have asked about or they may not
10 have been relevant. Or when a person is talking about the
11 general disclosure of what's happened to them, those things
12 may not seem like important details. So there may be
13 things that would be disclosed that are different.

14 Q. Okay. Now, what is grooming?

15 A. Grooming? That's really what we refer to as, you
16 know, an offender sort of testing the waters with a child.
17 Maybe warming up to a child before actually committing an
18 act of abuse. That would be, you know, developing a
19 trusting relationship with a child, perhaps giving a child
20 special treatment or special gifts. And maybe even sort of
21 testing the waters to see how far someone could go with an
22 abuse act. Sometimes we see offenders start off with sort
23 of ambiguous touching, you know, patting a child on the
24 butt, something that may be kind of normal. And then
25 moving on to, you know, sliding their hand between their

1 legs and seeing how the child reacts to that. That's what
2 we consider grooming, testing the waters. Is the child
3 going to tell or do something about that when it happens?
4 And, again, creating that trusting relationship and
5 building a relationship with the child is part of the
6 abuse.

7 Q. All right. Now, would engaging in sexualized conduct
8 in front of a child be considered a form of grooming?

9 A. Yes.

10 Q. Why?

11 A. Well, it desensitizes a child to that. You're
12 exposing a child to something that they're not yet ready to
13 be exposed to. Exposing a child to sexual behavior, again,
14 could be one of -- you know, testing the waters to see how
15 they're going to respond to that. A child who sees their,
16 you know, primary care givers engaging in this act, you
17 know, certainly might see that as normal because, again, it
18 is normal behavior between consenting adults and care
19 givers to do that. But to do that in front of a child and
20 have them watch it intentionally, not having a child walk
21 in on an unlocked door and walk out. But intentionally
22 exposing them to that could certainly be a way of grooming
23 or testing the waters with a child. It also could be
24 considered, you know, abusive behavior because you're
25 exposing a child to something that they're not ready to

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1 understand.

2 Q. Okay. Now, you already mentioned that chronic sexual
3 abuse can affect memory. If events happen to somebody as a
4 child and they're asked to recall those events as an adult,
5 would their memory of those events be a child's memory or
6 an adult's memory, and why?

7 A. Well, you know, their memory of it, they may remember
8 it as it was when they were a child. But they're going to
9 record it with the words that they have now. So, you know,
10 if a five year old is reporting a sexual abuse act that
11 happened to them when they were five, the words that they
12 use as a five-year-old are going to be much different than
13 the words they use as a thirty-eight year old. As you get
14 older, you have more understanding, you have more language,
15 you have more words to use. And so the way that you
16 describe what happens is probably going to be more in line
17 with the language they are using at the time of your age.

18 Q. All right. Now, do chronically abused individuals
19 oftentimes repress traumatic memories?

20 A. Do ---

21 Q. Chronically abused people repress traumatic memories?

22 A. Certainly that happens. When folks are traumatized,
23 they do sometimes just try to forget or suppress memories
24 of things that have happened. It's a coping mechanism.

25 It's something that all of us probably do at some times to

1 protect ourselves. But sometimes that does happen. It
2 does not always happen in trauma situations. But we do see
3 it often.

4 Q. In your clinical sessions with victims, do you find
5 often that offenders threaten the victims of family members
6 with physical harm if they tell?

7 A. Not always, but there certainly are instances where
8 there have been threats made to the child or to the adults.
9 You know, I've had cases where children's-- the threats
10 have been to harm the child's pets or their siblings or
11 their friends. Sometimes the threats that are made to
12 children are things that maybe wouldn't seem like a big
13 deal to us. You know, sometimes it's, we'll move if you
14 tell. You won't be able to see your friends. You won't be
15 at school. Those threats can be even more threatening and
16 impactful to a child than other things. But, certainly,
17 physical threats are also part of that, as well.

18 Q. And then back on memory. If somebody were recounting
19 what happened to them, would it be common or uncommon to
20 see them recount when it happened very slightly?

21 A. Well, going back to what I was talking about before,
22 you know, a lot of us will remember things in sort of
23 general terms. This happened, you know, around a
24 particular time. We may not be able to remember the exact
25 date and time, particularly with children. You know, time

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1 is such an abstract concept to them, that sometimes they're
2 unable to really identify those specifics. So, yes, I
3 mean, it would not be uncommon for someone to, you know,
4 not specifically identify a date when something happened to
5 them if they've experienced a chronic abuse situation.

6 MR. TOOKER: No further questions at this time.

7 THE Court: You may cross-examine the witness,
8 Mr. Rucker.

9 MR. RUCKER: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. RUCKER:

12 Q. Ms. Galloway-Williams, I'm Brandt Rucker. I'm a
13 Defense attorney. You testified earlier you did not meet
14 with MINOR the alleged victim, in this; correct?

15 A. That's correct.

16 Q. Generally, as your job as a counselor, do you treat
17 older people, as well?

18 A. I have. I don't usually -- well, now, I work with
19 adults who are care givers of children who've been abused.
20 And many of them are also survivors of childhood sexual
21 abuse themselves.

22 Q. Part of your job in interviewing is to determine if
23 you -- and I'm not asking you to give an opinion in this
24 case, obviously, because you haven't met with anybody. But
25 you're trying to determine if the person is truthful;

1 correct?

2 A. We're trying to determine -- yes. We're not
3 determining whether someone is telling the truth or not.
4 But when we conduct a forensic interview we are trying to
5 present the facts that that child is sharing.

6 Q. Okay. What are -- are the criteria available on the
7 internet for how people -- if people are appearing honest
8 or not honest? Are these accessible through literature on
9 the internet for anybody?

10 A. Whether someone's being honest or not?

11 Q. Well, I mean, the general criteria that you follow,
12 not to determine if an event actually happened, but if the
13 person is telling you the truth?

14 A. Well, again, I'm not really assessing whether someone
15 -- I'm not determining whether someone is telling the truth
16 or not, because we're not lie detectors.

17 Q. Sure.

18 A. What we're looking for are, we're looking for the way
19 that the child shares information. We're looking at that
20 in the context of the family system and all the background
21 information they've shared. We look at it in terms of any
22 other additional statements that have been made. What
23 we're looking for essentially are the child's core and
24 contextual details, the information that they're sharing.
25 And the core details would be, you know, the who, the what,

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1 the when. The contextual details are those sensory details
2 that a child would share, that would indicate to us that
3 they're recording something that they may have experienced,
4 rather than something that someone has told them about.

5 Q. You are aware that people have made false allegations
6 in the past?

7 A. Yes.

8 Q. And there are cases across the United States, some
9 very famous cases, in which people have been accused and it
10 turns out there was no way it could have happened in the
11 first place?

12 A. Certainly. There are false allegations.

13 Q. And certain people could have motives to falsely
14 allege that this horrible type of crime occurred; correct?

15 A. There are false allegations. But the instances of
16 false allegations, though, are much lower than the
17 instances of children who are delaying disclosure ---

18 Q. Right.

19 A. --- or recanting or, you know, not disclosing, when
20 there actually is some sort of evidence that abuse has
21 occurred.

22 Q. You're aware that certain people in their
23 personalities can use this kind of information, can use
24 these kind of accusations to better themselves or at least
25 to, in their own mind, improve their situation; correct?

1 A. Can you restate that question?

2 Q. I'm sorry, that was a compound question.

3 A. That's okay. Yeah. It was a big question.

4 Q. What I'm asking simply is that -- this information is
5 available to people, that sexual allegations is available
6 and histories of sexual allegation cases are available on
7 line; correct, or in literature in libraries; correct?

8 A. Information about sexual abuse and sexual abuse
9 dynamics?

10 Q. Sure?

11 A. There is certainly information about sexual abuse
12 cases. And, certainly, if someone wanted to look up the
13 research that we base our work on, that someone could find
14 that. It's not as if someone could just -- I mean, the
15 general lay public is not going to just google and find,
16 you know, these specific articles. But if someone were to
17 do their research and want to find out about abuse, yes.
18 And, in fact, you know, we put information out on, not only
19 our website, but other coalitions that we work with about
20 sexual abuse. Because we want folks to be aware of the
21 issues, not to, you know, to use it in a negative way.

22 Q. I certainly understand. But the information is out
23 there. That's all I'm asking?

24 A. Yes, there's information about child sexual abuse.

25 Q. Right. And it's easily accessible to basically

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1 anyone? And that's the whole idea behind your center and
2 other areas, other centers or other groups, to make sure
3 people can see if there are signs; correct?

4 A. Certainly. We want people to be able to recognize
5 signs and symptoms if there's something that is concerning
6 to them about their child or others in their lives, yes.

7 Q. And I'm not really asking for statistics here. Your
8 testimony earlier was about hypothetical situations. I
9 mean, that's what I understood from direct examination. Do
10 sometimes people report later? Do sometimes people report
11 sooner? Those kind of questions. I mean, that was --
12 that's the testimony you're giving to the jury?

13 A. Actually, that information is based on the research
14 that we base our work on and my experience in working with
15 survivors of childhood sexual abuse.

16 Q. To form an opinion, you would actually have to work
17 with the alleged victim in these cases; right?

18 A. To state an opinion about a particular victim, as to
19 whether they're abused specifically, yes, I would need to
20 at least review some of their information. But to share
21 information about the general dynamics of child sexual
22 abuse, how disclosures come about, all of that is based on,
23 not only my experience, but also my training and the
24 research that has been conducted about disclosure and
25 abuse.

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1 Q. Okay. And the process, though, is done so you can do
2 the counseling properly to make sure the person has been
3 abused and see -- I mean, each case is different, I would
4 assume?

5 A. Every case is different. However, there are some
6 commonalities around these issues, being that, you know,
7 most times someone is abused by someone that they know,
8 they love and they trust. And most times individuals don't
9 freely come forward and disclose right after something's
10 happened. Those are the kind of things that, you know, are
11 very typical in these types of cases.

12 Q. All right. To sum up. You never met with the victim
13 in this case; correct?

14 A. I did not.

15 Q. You have no other information about the victim in any
16 way, I am assuming?

17 A. Other than meeting with the Solicitor.

18 Q. Okay. And did y'all go over the facts and the
19 background of the case in this case?

20 A. We discussed just generalities about the case.

21 MR. RUCKER: No further questions.

22 THE Court: Any redirect?

23 REDIRECT EXAMINATION

24 BY MR. TOOKER:

25 Q. Ms. Galloway-Williams, Mr. Rucker mentioned to you

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1 forensic interviews?

2 A. Yes.

3 Q. Okay. When do you conduct forensic interviews for
4 Court?

5 A. When do I conduct forensic interviews?

6 Q. Yeah, I guess. What are the circumstances? How old
7 does the victim have to be for you to do a forensic
8 interview for Court?

9 A. Generally, we conduct forensic interviews with
10 children who are age three up to about twelve. Under
11 special circumstances, we might conduct an interview with a
12 child who's over the age of twelve or under the age of
13 three. But those would be very special circumstances.

14 Q. So you don't do forensic interviews with adults
15 reporting?

16 A. No.

17 Q. Now, Mr. Rucker was asking you about criteria for
18 honesty. And he mentioned the context of family systems
19 and other additional statements?

20 A. Yes.

21 Q. Okay. So what's the importance of somebody giving the
22 same statement over and over again?

23 A. Well, I mean, if someone gives the same statement over
24 and over again, then they're providing that core detail,
25 that information, that consistency, across time.

1 Q. Okay. And you said core details are who, what and
2 when?

3 A. Uh-huh (affirmative).

4 Q. Okay. And then contextual details are the actual
5 specific details of what happened?

6 A. Yeah. And those would be more of the sensory details,
7 you know, the feelings, the thoughts, the sites, the
8 smells, the things that really indicate that this is
9 something that someone's experienced versus something that
10 someone has told them about.

11 Q. Okay. And those contextual details, on direct you
12 mentioned in memory that they tend to come up with specific
13 instances. But if it's routine conduct, a lot of times
14 those things blur together?

15 A. Sure. Some of those things may change. Some of those
16 things may not be as, you know, may not be the first thing
17 that occurs to someone to report, unless they're
18 specifically asked about those things.

19 Q. Okay. And those contextual details that do stand out
20 in a victim's mind, why would some instances stand out,
21 again?

22 A. Well, again, some instances, you know, might stand out
23 because it was something that was different from another
24 time that it happened. It could be something that stands
25 out because it was exactly the same every time it happened.

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1 It could be something that just really was -- made an
2 impact on the person at the time. You know, if there's a
3 chronic event or something that's happened over and over,
4 it could have been that one detail or that one thing that
5 was different about that one time than another time.

6 Q. Okay.

7 MR. TOOKER: No further questions.

8 THE Court: All right. Thank you, ma'am. You
9 may step down, Ms. Galloway-Williams.

10 MR. TOOKER: May Ms. Galloway-Williams be
11 excused, Your Honor?

12 THE Court: Any objection?

13 MR. RUCKER: Without objection.

14 THE Court: Without objection. The witness may
15 be excused. Thank you for coming.

16 The State may call its next witness.

17 MR. TOOKER: The State calls Rhonda Watson.

18 THE CLERK: If you would place your left hand on
19 the Bible and raise your right.

20 Do you solemnly swear or affirm that the testimony
21 you're about to give in this case to be the truth, the
22 whole truth and nothing but the truth, so help you God?

23 THE WITNESS: I do.

24 THE CLERK: If you would have a seat. State your
25 name for the record, please.

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1 THE WITNESS: Rhonda Watson.

2 RHONDA WATSON,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MR. TOOKER:

6 Q. Ms. Watson, make sure you speak into that microphone
7 real good so everybody in the back can hear you.

8 A. Okay.

9 Q. Where do you work?

10 A. Pickens High School.

11 Q. And what do you do there?

12 A. I am an English teacher and a journalism teacher.

13 Q. And how long have you taught there?

14 A. Fifteen years.

15 Q. What's your educational background?

16 A. I received my Bachelor's Degree from Clemson in
17 secondary education; Master's from Furman in reading. And
18 I'm pursuing a Doctorate in educational leadership.

19 Q. Do you know the victim in this case, MINOR

20 She used to be MINOR

21 A. Yes, I do.

22 Q. And when was the last time you saw her?

23 A. Yesterday. But before that, six years ago.

24 Q. Okay. And six years ago, what were the circumstances

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1 -- I guess how is that you knew MINOR

2 A. I first knew her as a student in my English class.

3 And I taught her for a year in English. And then I had her

4 the subsequent year in journalism. And then I was her

5 homebound teacher. So over a three-year period, really.

6 Q. Was she a good student?

7 A. Oh, yeah. She was a dream student in the sense that

8 she always tried her best. She always had her work. She

9 always gave it a hundred percent. She was an unforgettable

10 student in that aspect.

11 Q. What is homebound?

12 A. Homebound is for students who either have illness or

13 in her case, a maternity leave, where they can keep up with

14 their studies and credits while not at the physical school.

15 Q. Okay. So why was she on homebound?

16 A. Because of her pregnancy.

17 Q. Okay. And what did you do, specifically? What's your

18 role as a homebound teacher?

19 A. I will -- whomever the teachers are who are assigned

20 to give her her credits, I will go get work notes,

21 assignments from them and then meet with her to actually go

22 over the work, make sure she gets it, she completes it.

23 And sort of serve as a liaison between the school and her

24 home.

25 Q. Okay. Do you know the circumstances about how she got

1 pregnant?

2 A. I do not. She never explicitly told me, but I found
3 out ---

4 MR. ABDALLA: Objection.

5 A. --- she was pregnant over the summer.

6 MR. ABDALLA: Oh, okay.

7 THE Court: All right.

8 MR. ABDALLA: I'm sorry. I wanted to make sure
9 that ---

10 THE Court: All right.

11 MR. ABDALLA: --- there wasn't going to be any
12 hearsay coming.

13 A. Okay. I found out she was pregnant over the summer.
14 After having taught her for two years, when I ran into her
15 at Walmart, and I myself was pregnant, and that's when she
16 told me that she was. And it was a very strange encounter.

17 Q. Why was it strange?

18 A. Because I had known MINOR for two years, this sweet,
19 just sweet student. And then when I ran into her at
20 Walmart, she was a totally different person. Wouldn't look
21 at me. And she told me she was going to have a baby. And
22 I couldn't wrap my head around that because I had known her
23 as one -- school and home. I couldn't -- never even had
24 known her to have a boyfriend. And I began to ask
25 questions and her step-father stepped out in front of her

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1 and started answering for her. And it just made me very
2 uncomfortable.

3 Q. Okay. Now, with homebound, where is it that you would
4 meet up with her to give her the assignments?

5 A. In her case, at her home.

6 Q. Okay. And her home is the same home as the Defendant,
7 Mr. Burgess?

8 A. Correct.

9 Q. And would you describe those encounters?

10 A. The first thing that sticks out is it was very
11 difficult to even make an appointment to get there because
12 -- well, it may work for me or MINOR or her mom, he
13 always had to approve it and he had to be present.

14 Q. And you say present. Was he ever out of the room when
15 you were there?

16 A. He may have been, but I just remember his presence,
17 always being there in the home.

18 Q. Okay. And did that strike you as usual or unusual?

19 A. It seemed unusual because I could see the student who
20 thrived in the classroom was very uncomfortable sitting at
21 her kitchen table and couldn't concentrate.

22 Q. And after she finished the homebound did she graduate
23 high school?

24 A. No, she did not.

25 Q. Did that strike you as usual or unusual?

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1 A. Very unusual. But after I visited her home, I totally
2 understood why she thrived as a student because I felt that
3 that was her -- school was her safety zone. I mean, a few
4 minutes in her home, I realized she was not comfortable
5 there and didn't feel safe there. And so I think that's
6 why she thrived in school because that was the one thing
7 she had control over.

8 MR. TOOKER: No further questions.

9 Ms. Watson, you've got to stay ---

10 THE WITNESS: Oh, I'm sorry.

11 MR. TOOKER: --- because he may ask some
12 questions.

13 THE Court: If you would just remain. You may
14 cross-examine.

15 THE WITNESS: This is my first time doing this.

16 CROSS-EXAMINATION

17 BY MR. ABDALLA:

18 Q. You said you knew [REDACTED] before she got pregnant?

19 A. Correct.

20 Q. She was your student?

21 A. Yes.

22 Q. And how many years was it before she got pregnant that
23 you knew her?

24 A. Two years.

25 Q. And when she got pregnant, she was eighteen?

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1 A. I'm not sure what her age was. I taught her English,
2 then journalism.

3 Q. When you went to the house was her mother ever there?

4 A. Yes.

5 Q. So you met her mother and her father?

6 A. I did.

7 Q. And you made an assessment, just your opinion, that
8 you thought that she liked getting away from home, that
9 school was a place she liked?

10 A. I didn't make that assessment until I visited her in
11 the home. I knew she liked school before then.

12 Q. And she never told you any other details?

13 A. Uh-uh (negative). I would ask but ...

14 MR. ABDALLA: I have no further questions. Thank
15 you.

16 THE Court: Thank you, ma'am. You may step down.

17 MR. TOOKER: May this witness be excused, Your
18 Honor?

19 THE Court: Any objection to the witness being
20 excused?

21 MR. ABDALLA: No.

22 THE Court: Without objection. Thank you for
23 coming. You may be excused at this time.

24 You may call your next witness, Solicitor.

25 MR. TOOKER: Thank you, Your Honor. The State

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1 calls Ethan Robinson.

2 THE CLERK: If you would place your left hand on
3 the Bible and raise your right.

4 Do you solemnly swear or affirm that the testimony
5 you're about to give in this case to be the truth, the
6 whole truth and nothing but the truth, so help you God?

7 THE WITNESS: I do.

8 THE CLERK: If you would have a seat. State your
9 name for the record, please.

10 THE WITNESS: Ethan Robinson.

11 ETHAN ROBINSON,

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MR. TOOKER:

15 Q. Mr. Robinson, do you know why you're here today?

16 A. Yes.

17 Q. Do you know the victim, MINOR [REDACTED]

18 A. Yes.

19 Q. Okay. What's your relation to her?

20 A. She is my niece.

21 Q. She's your niece. Do you know Angie Tollison?

22 A. Yes.

23 Q. What's your relation to her?

24 A. She is my sister.

25 Q. Okay. So MINOR [REDACTED] would be your niece through Angie?

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1 A. Yes.

2 Q. Okay. And do you know the Defendant, Norman Burgess?

3 A. Yes.

4 Q. How do you know him?

5 A. He is a boyfriend of my sister, Angie.

6 Q. Do you know about when they got together?

7 A. Not really. It's been a while. As long as I can
8 remember, for a while.

9 Q. Okay. Would MINOR have been young or was she older?

10 A. She was young.

11 Q. A child?

12 A. Yes.

13 Q. And when did you first hear about all this stuff?

14 A. My sister had called and said that my niece had
15 confided in my other niece and said that ---

16 MR. ABDALLA: Objection to any hearsay, Your
17 Honor.

18 THE Court: Sustained.

19 Q. You heard about what was going on?

20 A. Yes.

21 Q. All right. What did y'all do after you'd heard what
22 had been happening?

23 A. I went to the house to get MINOR

24 Q. You went, and who went with you?

25 A. Matt and NII and JIG

1 Q. Okay. Now, did MINOR know that you were coming?

2 A. No.

3 Q. She didn't? How did y'all formulate this plan or what
4 was the plan that you formulated?

5 A. Well, you know, we had heard for a while that, you
6 know, MINOR had got pregnant from a kid at school. But
7 it, you know, she was kept in the house. She wasn't
8 allowed to go back to school. So we just thought that was
9 the case, you know, she's a teenage girl. But then we
10 found out that the baby was actually Keith's baby. And
11 they'd been keeping it private all the time. And when it
12 hit me that way and I knew that was my family, I was going
13 to get her out of the house. And we just decided to just
14 go and -- I wanted him to be surprised. So I told him
15 something, you know, to get into the house. And then
16 that's when I put him down on the couch and held him there.
17 And told him that I ---

18 Q. What did you tell him to get in the house?

19 A. I told him that I knew that he had been molesting
20 MINOR her whole life and that we was taking her out of
21 the house. And that I wasn't there to hurt him or anybody.
22 We just wanted the baby and we wanted MINOR out of the
23 house. And my sister was there. And she said she was
24 going to get a gun to shoot me. And I was like, go do it.
25 Go do what you've got to do. But we're not leaving without

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1 the babies.

2 Q. Your sister being?

3 A. Angie Tollison.

4 Q. What was the Defendant doing this whole time?

5 A. He just kept saying, you're not going to hurt me, are
6 you? You not going to -- and he was just laying on the
7 couch and I was pretty much on top of him, holding him
8 down. And I was like, no, I'm not going to hurt you. And
9 then when we had to leave -- and I didn't want to just let
10 him roam around the house, because I'd heard that he had a
11 gun in there. And I just wanted him to, you know, staying
12 in the living room area. And I kind of led him by the
13 hands toward the door. I think he was kind of worried at
14 that point we were going to do something to him. And I was
15 like, no, we just want to get out of here safe and get
16 everybody gone. We walked him to the door and we left.

17 Q. To get in the house, what is it that y'all told him
18 had happened?

19 A. I wanted to surprise him because I didn't know, you
20 know, what he would do. So I told him, Keith, my sister's
21 been in a wreck. We've got to get in the house. I said,
22 let me in there. I've got to use your phone. It's an
23 emergency. So when I got in the house, he said, is it that
24 bad? And I said, yes, Keith. It's that bad. And then I
25 took him over after that point.

1 Q. Okay. When y'all got in the house, what did MINOR

2 do?

3 A. He just was running around, crying and didn't really
4 know what to do. She ran into the back bedroom and then I
5 yelled for HA and my other niece and her husband to
6 come in the house. Then they helped MINOR out of the
7 house.

8 Q. And did she come back after that?

9 A. No.

10 Q. Now, you say that she was caught off guard. You guys
11 hadn't arranged this with her beforehand?

12 A. I don't think so. You know, my wife had been talking
13 to my older sister, Sheri. And that's how we originally
14 found out what was going on.

15 Q. Okay. Who got MINOR baby out?

16 A. I think HA and MI did.

17 Q. And after y'all got MINOR out of the house and that
18 situation, where did she go live?

19 A. She went to live at our house for a while. Just a few
20 weeks there she stayed with us.

21 Q. During that time, what did you observe?

22 A. You know, just -- she was very secluded to herself.

23 And, just, you know, she didn't know what to do, you know.

24 And I think it was a very embarrassing situation. And, you
25 know, I just never knew before. You know, there was things

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1 that we saw that I thought were odd, but we never knew that
2 that was going on until then, you know. But, you know, she
3 had been kind of trapped in that house that long. I think
4 she was just glad to be out of there, too, you know.

5 Q. Did she tell you, I guess, what had happened to her?

6 A. Yes.

7 Q. Okay.

8 A. Because we went to the police station and did all of
9 those things right after we left the house.

10 Q. Did she tell you where it happened?

11 A. No.

12 Q. Did she tell you if it was an on-going thing or just
13 like a one-time thing?

14 A. It was an on-going thing.

15 Q. After that where did MINOR go after she left y'all's
16 place?

17 A. She went to my sister, Sheri's, house.

18 Q. Is there anything else that you know about this case
19 that you haven't told the jury?

20 A. I don't think so.

21 MR. TOOKER: No further questions.

22 MR. ABDALLA: One moment.

23 THE Court: Yes, sir.

24 MR. ABDALLA: I have no questions of this
25 witness.

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1 THE Court: All right. Thank you, sir. You may
2 step down.

3 You may call your next witness, Solicitor.

4 MR. TOOKER: Thank you, Your Honor. The State
5 calls Jennifer Robinson.

6 THE CLERK: If you would place your left hand on
7 the Bible and raise your right.

8 Do you solemnly swear or affirm that the testimony
9 you're about to give in this case to be the truth, the
10 whole truth and nothing but the truth, so help you God?

11 THE WITNESS: I do.

12 THE CLERK: If you would have a seat. State your
13 name for the record, please.

14 THE WITNESS: Jennifer Robinson.

15 JENNIFER ROBINSON,

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. TOOKER:

19 Q. Ms. Robinson, we just heard from Ethan Robinson. Is
20 he any kin to you?

21 A. He's my husband.

22 Q. Okay. And do you know the victim, MINOR

23 A. I do. That's my niece.

24 Q. All right. So she's your niece?

25 A. She's my niece.

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1 Q. Do you know the Defendant, Norman Keith Burgess?

2 A. Yes, I've met him a few times.

3 Q. Okay. And what's his relation to MINOR

4 A. Her step-father.

5 Q. Okay. Do you know Angie Tollison?

6 A. Yes.

7 Q. Okay. What is her relation to Ethan?

8 A. Sister.

9 Q. Okay. And what is Angie's relationship to the
10 Defendant?

11 A. Her mother.

12 Q. No.

13 A. Oh, I'm sorry.

14 Q. Angie's relation to the Defendant?

15 A. Wife.

16 Q. And do you know why you're here today?

17 A. Yes.

18 Q. When did you and Ethan get together?

19 A. 2004. I think it was 2004.

20 Q. And did you get to know MINOR very well at first?

21 A. Not really. We went to their house a few times. Just
22 maybe, I think it was the first Christmas Ethan and I were
23 together, we went over there and spent a few hours
24 Christmas Day. And we had went there maybe a few other
25 times, you know, the first couple of years of our marriage.

1 Q. Okay. And what was your perception?

2 A. I don't know. It was just kind of a weird atmosphere,
3 I guess. You know, he was kind of just always lurking
4 around and, you know, just kind of made me feel a little
5 awkward and on edge, a little uneasy, you know.

6 Q. Okay. And do you remember when you heard about what
7 had been happening to MINOR

8 A. Yes, I remember.

9 Q. Okay. Where were you when you found out?

10 A. We were at our house.

11 Q. You say we?

12 A. Ethan and I.

13 Q. Okay. And what is it that y'all resolved to do after
14 you found out?

15 A. Ethan had got a call from his sister. She told him,
16 you know, what she had found out, the information she had
17 found out about MINOR Ethan got off the phone and he
18 told me, you know, what his sister had told him. I told
19 Ethan, I said immediately, we need to go -- somebody -- we
20 need to go up there and get her. You know, I don't want to
21 sit here and think another night of anything happening to
22 her or her having to go through anything like that. So we
23 made plans to, a couple of family members, Ethan and his
24 two nieces and one of his niece's husband to go to the
25 house and get MINOR and Daughter out of the house.

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1 Q. Okay. Now, who were those people? Ethan and ---

2 A. Ethan and his two nieces, [REDACTED] and [REDACTED]

3 Holder.

4 Q. And after they got [REDACTED] out of the house, where did
5 she go?

6 A. She came back to [REDACTED] and Matt's house and she stayed
7 with them for a few days. And then she kind of got to
8 where she was a little bit afraid that maybe he knew where
9 she was, so she decided to come and stay at our house for a
10 couple of weeks. And then after that, she was a little bit
11 scared after a few weeks of being there, so she went and
12 stayed with Sheri and [REDACTED] for a little while.

13 Q. How do you know she was scared?

14 A. When she was -- I mean, she was just very unsettled at
15 our house. Even in the middle of the night, she was always
16 looking out the windows. And, you know, there were many
17 nights that I would have to personally sit up with her, you
18 know, late at night, just talking to her and comfort her,
19 making her, you know, feel safe and let her know that I was
20 there for her, you know. She was just always kind of just
21 very on-guard and just very nervous, very, you know,
22 cowered down and I don't know. Just not like a normal
23 person would act that's just kind of hanging out at
24 somebody's house, you know.

25 Q. Do any incidents in particular stick out in your mind?

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Jennifer Robinson - Direct Examination by Mr. Tooker

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1 A. Of her staying at her house?

2 Q. Uh-huh (affirmative).

3 A. No. Just because every day it was like that. You
4 know, every day she was just, just a bag of nerves, she was
5 a wreck. She couldn't eat well. She couldn't sleep well.

6 Q. And after she moved out, are there any instances that
7 stick out in your mind about her showing her fearfulness?

8 A. Yes. There was an incident, this was now after she
9 got married and she had had her child Daught, but she
10 called me from Travelers Rest Walmart in the parking lot.

11 MR. ABDALLA: Now, objection to anything she
12 said.

13 THE Court: All right.

14 MR. ABDALLA: That's hearsay.

15 THE Court: Your Objection is sustained. I don't
16 know whether she was going to quote or not. But we'll --
17 she's been pretty good about that -- not doing that.

18 Q. What is it that you came to believe after you talked
19 to her?

20 A. She saw him in Walmart and ---

21 MR. ABDALLA: Objection, Your Honor, because
22 she's basically saying -- it's hearsay.

23 THE Court: I sustain the objection.

24 THE WITNESS: I don't understand.

25 MR. TOOKER: Well, what I'm going to get at, Your

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Jennifer Robinson - Direct Examination by Mr. Tooker

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1 Honor, is that this is an excited utterance made by the
2 victim when she was upset.

3 MR. ABDALLA: Well, we have to have a -- we have
4 to approach and talk about that.

5 THE Court: All right.

6 (WHEREUPON, Mr. Tooker, Mr. Abdalla and Mr. Rucker
7 approached the bar.)

8 Q. Now, have you gotten to know MINOR better since she
9 got out of the house?

10 A. I have.

11 Q. Okay. Have you noticed a change in her?

12 A. I have.

13 Q. What kind of change?

14 A. Throughout the years, she just, you know, I guess
15 grown more as a person and, you know, she's maybe learned
16 to cope and deal with situations, you know, through the
17 help of friends and family and the love that we've all
18 surrounded her with. She's become a -- I don't even know
19 what word to describe the difference in her. She used to
20 be where she wouldn't really, like, give you a lot of eye
21 contact or look at you. Like, almost cowered down, like,
22 you know, somebody that had been pushed down in the gutters
23 for so long. And she's just got a lot of confidence.

24 She's grown a lot, you know.

25 Q. And did you have occasion to talk to her about what

1 had happened to her in that house?

2 A. I have. Quite a few times.

3 Q. Did she say when it began?

4 A. I think she was maybe twelve or thirteen years old,
5 you know, pre-teenage. I'm not going to quote a specific
6 age, though.

7 Q. So you don't remember, but in the early teens?

8 A. Yeah.

9 Q. Did she say if it was a regular thing or a one-time
10 thing?

11 A. It was a regular thing.

12 Q. Okay. And did she say where it was occurring?

13 A. I think in her bedroom, maybe at night when her mom
14 was working third shift, that's from what I gather from it.
15 I know that her mother wasn't there when the occurrences
16 were happening, so she had to be at work.

17 MR. TOOKER: No further questions.

18 CROSS-EXAMINATION

19 BY MR. ABDALLA:

20 Q. You said you've known MINOR since late 2004, am I
21 correct on that?

22 A. Correct.

23 Q. And you'd only been to the house a few times?

24 A. Uh-huh (affirmative).

25 Q. And you had no personal knowledge of anything that

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1 happened; correct?

2 A. Well, I heard things, but, you know ---

3 Q. You heard things. You have no personal knowledge?

4 A. No.

5 Q. Okay. Thank you.

6 MR. ABDALLA: I have no further questions.

7 THE Court: Thank you, ma'am. You may step down.

8 MS. ROBINSON: Okay.

9 MR. TOOKER: May Ms. Robinson be excused, Your
10 Honor?

11 MR. ABDALLA: No objection.

12 THE Court: Without objection.

13 You may call your next witness, Solicitor?

14 MR. TOOKER: Thank you, Your Honor. The State
15 calls Angie Smith.

16 THE CLERK: If you would place your left hand on
17 the Bible and raise your right.

18 Do you solemnly swear or affirm that the testimony
19 you're about to give in this case to be the truth, the
20 whole truth and nothing but the truth, so help you God?

21 THE WITNESS: I do.

22 THE CLERK: If you would have a seat. State your
23 name for the record, please.

24 THE WITNESS: Angie Smith.

25 ANGIE SMITH,

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1 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MR. TOOKER:

4 Q. All right. Ms. Smith, do you know why I've called you
5 to testify today?

6 A. Yes, I do.

7 Q. And when is it that my office got in contact with you?

8 A. A couple of months ago.

9 Q. Okay. Do you know the victim in this case, MINOR
10 Shelton? She used to be MINOR

11 A. Yes, I do.

12 Q. Okay. How do you know her?

13 A. I trained her at April Valley.

14 Q. And what is April Valley?

15 A. It's a retirement home, to take care of residents.

16 Q. And what did you train her in?

17 A. I trained her to be a CNA, and how to cook and clean
18 and stuff. What we do there at April Valley.

19 Q. And did you guys become close?

20 A. Yes, sir, we did. We become -- I become like a mother
21 to her.

22 Q. And do you remember having a conversation with MINOR
23 about what had been happening to her?

24 A. Yes, I do.

25 Q. Okay. What brought that about?

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1 A. She come to work two or three times, and I could tell
2 she acted nervous. Well, the third day that she came to
3 work, she was crying and very upset. And I kept asking her
4 what was wrong. And she kept crying. And I said, well,
5 you can't be upset while we're at work. You need to calm
6 down and you can tell me later what's wrong. Well, she
7 told me that something bad had happened and that she ---

8 Q. I'm going to stop you real quick so we don't get into
9 some hearsay stuff. But did she tell you, did she tell you
10 how long the sexual assaults had been going on?

11 MR. ABDALLA: Objection, Your Honor. He just led
12 her into sexual assault. Ask him to please ask questions.

13 THE Court: All right. Rephrase your question,
14 Solicitor.

15 MR. TOOKER: Okay.

16 Q. Did you tell you when these events started?

17 A. Yes. She told me that she was being molested when she
18 was around fourteen.

19 Q. Okay. And did she say it was like a one-time thing or
20 continuous?

21 A. No, sir. It wasn't.

22 Q. It wasn't a one-time thing?

23 A. No, it wasn't.

24 Q. And when she told you this stuff, what was her
25 emotional state like?

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1 A. She was crying and very upset. He was very harsh to
2 her. He would not let her ---

3 MR. ABDALLA: Objection, Your Honor, to hearsay
4 again.

5 THE Court: Sustain the objection.

6 Q. So after that happened, after she told you all these
7 things, what did you tell her to do?

8 A. I told her that she needed to go and confront to
9 someone and let somebody know what is going on or I was
10 going to do it myself. Because that is stupid for a man to
11 touch a child.

12 Q. And after that happened and she left that day, did you
13 ever see her again?

14 A. No, sir, I did not.

15 Q. Okay. So that was some five years ago. In that five
16 years, have you had occasion to talk to MINOR

17 A. Not until Court.

18 Q. Have you actually talked to her?

19 A. No.

20 Q. Have you talked to her about your testimony?

21 A. No.

22 Q. So did y'all get together and come up with this story?

23 A. No, sir.

24 Q. Is what you're saying the truth?

25 A. Yes, sir. I've been wondering what happened to her.

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Angie Smith - Cross Examination by Mr. Abdalla

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1 Q. What did you think had happened to her?

2 A. I didn't know. I didn't know.

3 MR. TOOKER: No further questions.

4 CROSS-EXAMINATION

5 BY MR. ABDALLA:

6 Q. Thank you, Ms. Smith. The Solicitor made a couple of
7 statements that didn't make sense to me. He said something
8 about five years ago. So I've lost track. I never heard
9 you give a time frame. When was it that Angie worked for
10 you or with you, whatever?

11 A. MINOR

12 Q. I'm sorry. MINOR I apologize. When is it that
13 MINOR worked with you? You said you trained her?

14 A. About five years ago I trained MINOR at a retirement
15 home, like a nursing home.

16 Q. Are we talking 2007?

17 A. Yeah, around that time, yeah. I guess.

18 Q. And how long had she been working with you, for you?

19 A. How long did she work with me?

20 Q. Yes, ma'am?

21 A. I guess around eight months.

22 Q. All right.

23 A. I'm not -- I can't remember that far back, how long
24 she worked.

25 Q. I understand. And you said that you noticed a change

1 in her. And I don't want to put words in your mouth. If
2 I'm misstating, you say that's wrong. But did I understand
3 that you noticed a change in her, when she came in she was
4 crying that day. And you wanted her to be happy, I guess,
5 around the clientele. Is that a safe assessment?

6 A. Uh-huh (affirmative).

7 Q. And that's when you confronted her about the
8 situation; correct?

9 A. Yeah.

10 Q. Now, is it important when you work there to be in good
11 spirits, when you're working with the people you work with,
12 the clients?

13 A. Do what now?

14 Q. Tell me the place you worked at with MINOR

15 A. It was a retirement home. You take care of elderly
16 people and give them shots and medicine and cook for them
17 and stuff.

18 Q. I guess I gathered from what you said earlier when you
19 told her, you don't need to be crying like that, should I
20 assume you would like her to be in a good mood when she's
21 working around retirement people -- retired people?

22 A. Yeah. Because I knew something very bad was wrong
23 with her.

24 Q. I'm not questioning that. I just wanted to make sure
25 I had that correct. So the eight months previous to that

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1 or whatever the time frame was, would you say that she was
2 in better spirits? She was more -- how would you describe
3 that?

4 A. She was just nervous.

5 Q. I'm talking about the period before that, not the day
6 that she came in?

7 A. She just always acted nervous like something was
8 wrong.

9 Q. For the eight months before you ---

10 A. Uh-huh (affirmative).

11 Q. So the whole time she was there, she didn't act right?

12 A. Well, she did act right. I mean, she did act normal.

13 But I could tell there was things wrong with her. You can
14 look at someone and tell something's wrong.

15 Q. And did she have a baby at that time?

16 A. She did.

17 Q. And you're the one who suggested that she do something
18 about this; correct?

19 A. Yes, I did.

20 Q. All right.

21 MR. ABDALLA: No further questions.

22 THE Court: Any redirect?

23 MR. TOOKER: Nothing from the State, sir.

24 THE Court: Thank you, ma'am. You may step down.

25 MS. SMITH: May I say something?

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1 THE Court: No, ma'am. All the questions have
2 been asked. Thank you.

3 MR. TOOKER: Permission for Ms. Smith to be
4 excused?

5 MR. ABDALLA: Yeah.

6 THE Court: Without objection. You may be
7 excused.

8 Ladies and gentlemen, this might be a good time for us
9 to take a short break. If you'll go back to your jury
10 room, I remind you again not to discuss the case one with
11 another. We'll call you back in about ten to fifteen
12 minutes.

13 (WHEREUPON, the jury exited the open Court at
14 approximately 10:33 A.M.)

15 THE Court: All right. We'll be at ease for a
16 short break.

17 (WHEREUPON, the Court stood at recess for a short
18 break.)

19 THE Court: Ready to proceed, gentlemen?

20 MR. TOOKER: Yes, sir, Your Honor.

21 (WHEREUPON, the jury entered the open Court at
22 approximately 11:00 A.M.)

23 THE Court: Solicitor, you may call your next
24 witness.

25 MR. TOOKER: Thank you, Your Honor. The State

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1 calls HG

2 THE CLERK: If you would place your left hand on
3 the Bible and raise your right.

4 Do you solemnly swear or affirm that the testimony
5 you're about to give in this case to be the truth, the
6 whole truth and nothing but the truth, so help you God?

7 THE WITNESS: I do.

8 THE CLERK: If you would have a seat. State your
9 name for the record, please.

10 THE WITNESS: HG

11 HG

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MR. TOOKER:

15 Q. I think I called you HG

16 A. Yeah. That's my maiden name.

17 Q. And Lara is your married name?

18 A. Yes, sir.

19 Q. Well, let's get into it. Do you know why I called you
20 to testify today?

21 A. I do.

22 Q. You do? Okay. I'm going to start off, do you know
23 the victim in this case, MINOR formerly

24 Tollison?

25 A. I do.

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[REDACTED] - Direct Examination by Mr. Tooker

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- 1 Q. And how do you know her?
- 2 A. [REDACTED] is my first cousin.
- 3 Q. Who is Sheri Aiken to you?
- 4 A. She's my mom.
- 5 Q. She's your mom?
- 6 A. Uh-huh (affirmative).
- 7 Q. What is Sheri Aiken's relationship to [REDACTED] mom?
- 8 A. They are sisters.
- 9 Q. What is [REDACTED] mom's name?
- 10 A. Her name is Angie.
- 11 Q. And do you know the Defendant in this case?
- 12 A. I do.
- 13 Q. And what's his relationship to the family?
- 14 A. At the time, he was my aunt's boyfriend.
- 15 Q. About when did they start dating?
- 16 A. Probably when [REDACTED] and I were around six or seven
- 17 years old.
- 18 Q. Now, you say [REDACTED] and I were around six or seven
- 19 years old. Are you guys the same age, thereabouts?
- 20 A. Yeah. We're about a year apart.
- 21 Q. Did y'all grow up together?
- 22 A. We did.
- 23 Q. Same grade?
- 24 A. Yeah.
- 25 Q. Now, you said when you were about six or seven. What

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HG [REDACTED] - Direct Examination by Mr. Tooker

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1 do you remember about when Angie Tollison got together with
2 the Defendant?

3 A. Well, around that time, it was a couple of years
4 before my grandmother died, they got together. And shortly
5 after they moved down close to us in Dacusville.

6 Q. Okay. But before that did they move in with the
7 Defendant?

8 A. They did.

9 Q. Okay. Where was that?

10 A. They lived in a small apartment in between Pickens and
11 Easley. It was on, I think, it was Highway 8.

12 Q. Okay. And then they moved in near y'all?

13 A. Uh-huh (affirmative).

14 Q. Where was that specifically?

15 A. That was in Dacusville. Do you need my address?

16 Q. No. That's fine.

17 A. We live in Dacusville. It's considered an Easley
18 address, but they lived just a couple of homes down below
19 us.

20 Q. Okay. So you guys were close?

21 A. Uh-huh (affirmative).

22 Q. Close in proximity?

23 A. We were.

24 Q. How old were you guys when that happened?

25 A. How old were we?

1 Q. Yeah. When they moved in close to you?

2 A. It was shortly after, so we were probably like seven,
3 eight years old.

4 Q. Okay. And were you and [REDACTED] close as little kids,
5 or not?

6 A. We were very, very close. We spent a lot of time
7 together.

8 Q. How would you spend time together?

9 A. We stayed at my grandma's a lot. We would play down
10 there together. Before they got together, the Defendant
11 and her mom, they lived with my grandmother and we would go
12 down there every day. So we were always together, playing
13 together, spending the night there. So ...

14 Q. All right. Did the Defendant move, and [REDACTED] and
15 that family, did they move away from y'all, from that
16 address in Dacusville?

17 A. Yeah, they did.

18 Q. Where did they move to?

19 A. Well, they moved to several different places. I
20 believe after that, they moved to a home near Pickens
21 towards Six Mile. Mostly, I just -- they moved so much. I
22 remember the house. I think it was a yellow house.

23 Q. At any point did your relationship with [REDACTED]
24 change?

25 A. It did.

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1 Q. When?

2 A. Well, it was really shortly after, you know, they got
3 together. A lot of the time we spent together was
4 eliminated. We weren't really allowed to be around each
5 other that often. Most of the time that we saw them it was
6 us going to their house to see them.

7 Q. Now, was there ever a dramatic change in the amount of
8 time you got to spend with MINOR

9 A. Yes.

10 Q. When did that happen?

11 A. Well, probably around, you know, towards middle
12 school. You know, she was never, ever allowed to spend the
13 night with us. Every time we ever asked she was never
14 allowed. Really, the only time we were able to visit and
15 stuff was when we just popped in. Because when we would
16 call there was always an excuse made up as to the reason
17 why we couldn't come over because they would be randomly
18 busy doing something else. So if we got to see them, we
19 would just have to pop in.

20 Q. Okay. And when you would pop in and see them, what
21 were things like inside that home?

22 A. Well, I mean, the atmosphere was controlled a lot.
23 You know, being young teenage girls, you want to spend time
24 together. Little girls go off in the bedroom and talk or
25 listen to the radio. But it's like she constantly had him

1 over her shoulder.

2 Q. And did that go on throughout your middle school and
3 high school years?

4 A. Yes, it did.

5 Q. Did y'all go to high school together, same high
6 school?

7 A. We did.

8 Q. What high school was that?

9 A. Pickens High School.

10 Q. Okay. And do you remember when [REDACTED] got pregnant?

11 A. I do.

12 Q. Okay. Did that strike you as something normal?

13 A. No, not at all.

14 Q. And what did you understand about how the child was
15 fathered?

16 A. We were told that [REDACTED] had went to a party and that
17 she was with some random person ---

18 MR. ABDALLA: Objection, Your Honor.

19 A. --- and she got pregnant by chance.

20 THE Court: Wait just a minute. Wait just a
21 minute. Yes, sir. What's your objection?

22 MR. ABDALLA: To hearsay. She said, we were
23 told.

24 THE WITNESS: I was told directly by her mother.

25 MR. ABDALLA: Again ---

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JIG [REDACTED] - Direct Examination by Mr. Tooker

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1 THE Court: All right. I'll sustain the
2 objection.

3 Q. So after she got pregnant, what happened to her
4 schooling?

5 A. Well, she went to school for a period of time. After
6 that, she had Daughter [REDACTED] She had to go for homebound. And
7 very, at the last part of the school year, she finished out
8 the school year. But the next year she wasn't back.

9 Q. Okay. Did that strike you as normal or abnormal?

10 A. Abnormal because MINOR [REDACTED] was a very good student. And
11 I know that she wanted to finish. And it just was out of
12 the ordinary because I knew that she had a lot of
13 determination. She always made very good grades, better
14 grades than me. She was somebody that I really looked up
15 to because she was such a strong person. And I wanted to
16 be like her.

17 Q. So she did not come back to school to finish with you?

18 A. No.

19 Q. Well, what did she do? Was she working?

20 A. Well, I think she worked a couple of jobs in little
21 restaurants in Easley. She -- I was told at first that she
22 was going to go to Adult Ed. And then she was just going
23 to finish that way because of the fact that she'd had
24 child, so ...

25 Q. And do you remember, I guess, when you and your family

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[REDACTED] - Direct Examination by Mr. Tooker

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1 were made aware of what was happening?

2 A. I do.

3 Q. Where were you?

4 A. I was at my house with my mom.

5 Q. And what happened?

6 A. Well, that day, I received a call from [REDACTED] MINOR She
7 was actually calling me from the nursing home that she was
8 working at. And she just told me what was going on. And
9 she told me how she just was so desperate to find a way
10 out. And she needed somebody to help her. She was very
11 upset and crying.

12 Q. And what did you and your family do?

13 A. Well, actually, later on that evening, me and my mama
14 were talking and we just decided to go over there and try
15 to really look and see how the atmosphere was in the
16 household that day. We went over. We went into the house.
17 My aunt, [REDACTED] MINOR daughter and [REDACTED] MINOR sister were in
18 the bedroom with the door shut. [REDACTED] MINOR was in the living
19 room with Keith. And you could look at her face. Her face
20 was red. You could tell she had been crying. She had
21 tears in her eyes. Her face was just really red when we
22 went in.

23 Q. Okay. And after that, what did your family resolve to
24 do?

25 A. Well, me and my mom actually left. And from that

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[REDACTED] - Direct Examination by Mr. Tooker

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1 point we went back to my home. She called my uncle, Ethan
2 Robinson, and my sister and her husband. We all met at my
3 mom's house. We talked and decided what we were going to
4 do is to go over to the house and just take [REDACTED] MINOR out of
5 the home, take her out immediately. We went there. My
6 uncle knocked on the door. He basically told him that my
7 mom had been in a car accident and that we needed to talk
8 to my aunt. He barely cracked open the door. And we told
9 him the situation, that she'd been in a wreck. That's when
10 he finally let us in. We went into the house. As soon as
11 they got in there, my uncle restrained him. [REDACTED] MINOR ran
12 out of the house immediately and went and got into the
13 vehicle. My aunt came out screaming. We knew that they
14 had had a gun in their home. And she told us, you know, if
15 you don't get out of the house, if you don't get out of
16 here now, I'm going to shoot you myself. So we all went
17 outside. My sister had to argumentatively take [REDACTED] MINOR
18 baby from her because she wasn't -- first, she didn't want
19 to give it to -- she didn't want to give [REDACTED] Daughter to us. And
20 then finally, she gave her to us.

21 Q. By she who do you mean?

22 A. My Aunt Angie. She gave her to my sister, [REDACTED] NH
23 Holder. She gave the child to her. We immediately got in.
24 They called an officer. We met him at the gas station.
25 And then we went to the LEC and [REDACTED] MINOR gave her statement

1 there.

2 Q. After that where did [REDACTED] end up living?

3 A. She ended up ultimately living with us.

4 Q. Okay. Before that, did she live with some other
5 family members?

6 A. Well, later on that night we went to my sister's
7 house. And then I think for maybe a couple of weeks she
8 stayed with my aunt and uncle, Ethan and Jennifer Robinson.
9 And then she came back and she lived with us.

10 Q. How long did she live with you?

11 A. Oh, for a good few months.

12 Q. And how did she seem to you? What was her emotional
13 state like?

14 A. She was very, very unstable. She was scared to go
15 outside. She never wanted to go anywhere. She was always
16 so scared that he was going to be somewhere. I mean, just
17 to look her in the face, she wouldn't even look you in the
18 eyes when she was talking to you because she had been
19 cowered and beaten down for so long. She was just a
20 different person. It's like she was so scared all the
21 time.

22 Q. And then did she, did she ever tell you -- go through
23 with you what happened to her?

24 A. Several times.

25 Q. And did she tell you when these things -- around that

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HG [REDACTED] Direct Examination by Mr. Tooker

1 time when they started?

2 A. Yes.

3 Q. And when was that?

4 A. She told me that she had begun to be raped when she
5 was fourteen years old.

6 Q. And did she say if that was a one-time thing or a
7 recurring thing?

8 A. It was repetitively done for the amount of years until
9 we came and got her out of her home.

10 Q. And did she say where those assaults occurred?

11 A. Yes.

12 Q. Where?

13 A. At her home when her mom was working, at her house.

14 Q. Have you stayed in touch with MINOR [REDACTED] since 2007 when
15 she got out of the house?

16 A. Yes.

17 Q. Okay. And would you notice or would you say there's
18 been a change in her personality?

19 A. Yes.

20 Q. What kind of change?

21 A. She's better now. She's trying to rebuild her life.
22 She has a beautiful family. And she's really, you know,
23 just trying to rebuild everything, regain her confidence,
24 to move forward in her life.

25 Q. Okay. Is there anything else important that you

1 remember about all of this that you haven't talked to this
2 jury about?

3 A. Yes. I mean, just several things in her atmosphere
4 when we would be there, you know, in school, like when she
5 was actually pregnant, you know, we would be over there
6 and he would continually talk about her and call her
7 horrible names, call her a whore and say that she'd gotten
8 pregnant by some guy at a party. And that's what she did
9 because that's the way she was. And like she would
10 literally -- like when they would sit down to eat dinner --
11 one day we were over there and she was eating and you could
12 tell she was just sick because she just kept eating and
13 eating, taking little bites. And he stood over her
14 shoulder and made her keep eating until she was just
15 literally sick. He said, you have to clean everything off
16 your plate. And when I would call her to talk to her on
17 the phone, you can't even sit there and talk because he
18 would be commenting on every little thing I would say,
19 listening to our conversation, right there, commenting on
20 things I was saying. I mean, if you're standing that close
21 to somebody, you know, he was standing right over her,
22 listening to every word that she said. We were kids in
23 high school. I mean, talking about little things that
24 girls would talk about, you know. And just to see her have
25 to go through that, it's a really hard thing.

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HG [REDACTED] - Cross Examination by Mr. Abdalla

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1 Q. Thank you for your testimony.

2 THE Court: You may cross-examine the witness.

3 CROSS-EXAMINATION

4 BY MR. ABDALLA:

5 Q. I missed your last name, Ms. Galloway?

6 A. It's Lara. Galloway is my maiden name.

7 Q. Okay. You said you went over to the house. When you
8 went into the house, did you not notice Keith was painting
9 at the time?

10 A. They were actually all in the living room. We walked
11 back to the bedroom all together.

12 Q. Who is we?

13 A. Everybody. It was my aunt, Keith, MINOR [REDACTED] Sister [REDACTED] and
14 myself. We all walked back. They were painting Sister [REDACTED]
15 room, actually, the color pink.

16 Q. Okay. That's when you went in there and you got

17 MINOR [REDACTED]

18 A. Yes. We were all in there together. We walked back
19 together. That's not when we went and got her. That was
20 the day before.

21 Q. All right. You talked about when you went and got

22 MINOR [REDACTED]

23 A. Okay.

24 Q. Didn't you? Did you talk about that or did I
25 misunderstand the two times? Did you go the second time?

- 1 A. Yeah. We went there two days in a row. The first day
2 -- you're talking about two separate times.
3 Q. Okay. They second time when you went to get [REDACTED] MINOR
4 A. Uh-huh (affirmative).
5 Q. When the family went to get [REDACTED] MINOR
6 A. Let me make -- let me explain to you ---
7 Q. Sure.
8 A. --- a better explanation of that. Before [REDACTED] MINOR ever
9 told me anything, the day before, we were at their house.
10 Q. Okay.
11 A. We went over just to visit. This is before I was made
12 aware of anything at all. We were there conversating in
13 the living room, all of us, all the names that I stated.
14 We walked back into the bedroom and we were -- they were
15 back there painting. We were talking, looking at the
16 bedroom. And ---
17 Q. Okay. That's okay. Now, I want to get to the next
18 day, though.
19 A. Okay.
20 Q. Did you go in the next day when your family took
21 [REDACTED] MINOR Were you ---
22 A. Yes, we were there twice that day.
23 Q. Okay. When you took [REDACTED] MINOR did you not testify just
24 a bit ago that somebody took the baby with them?
25 A. Yes. My sister. We were all together.

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1 Q. And your sister took the baby at that point?

2 A. Yes.

3 Q. Okay. Thank you.

4 MR. ABDALLA: I have no further questions.

5 THE Court: Any redirect?

6 MR. TOOKER: No, sir, Your Honor.

7 THE Court: All right. Thank you, ma'am. You
8 may step down.

9 MR. TOOKER: May Ms. Lara be excused?

10 MR. ABDALLA: No objection, Your Honor.

11 THE Court: Without objection, the witness may be
12 excused.

13 Solicitor, you may call your next witness.

14 MR. TOOKER: The State calls Lieutenant J.B.
15 Kelley.

16 THE CLERK: If you would place your left hand on
17 the Bible and raise your right.

18 Do you solemnly swear or affirm that the testimony
19 you're about to give in this case to be the truth, the
20 whole truth and nothing but the truth, so help you God?

21 THE WITNESS: I do.

22 THE CLERK: If you would have a seat. State your
23 name for the record, please.

24 THE WITNESS: James Kelley.

25 J.B. KELLEY,

1 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MR. TOOKER:

4 Q. Lieutenant Kelley, make sure you speak up in that mike
5 so we can hear you all the way at the end here.

6 A. I have a little sinus drainage, so I'm trying.

7 Q. Okay. Just try to pronounce. It's a little hard to
8 hear you, especially over the air conditioning unit. Where
9 are you employed? Where do you work?

10 A. Pickens County Sheriff's Office.

11 Q. Actually, I don't think the mike's on. There we go.
12 Try it again.

13 A. Pickens County Sheriff's Office.

14 Q. Okay. And what do you do for the Sheriff's Office?
15 What's your role? What's your job title?

16 A. Presently, I am the Lieutenant in the Criminal
17 Investigation Division. I supervise criminal domestic
18 violence investigators, school resource investigators and
19 juvenile investigators.

20 Q. Okay. And how long have you been serving in that
21 role?

22 A. I'd say approximately ten years now. I was a
23 Lieutenant in narcotics and special operations before, for
24 eighteen and a half years, before being given this
25 assignment.

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1 Q. Okay. And how long have you been in law enforcement
2 period?

3 A. Thirty-six years, I believe.

4 Q. And were you involved in this case against the
5 Defendant?

6 A. Yes, I was.

7 Q. And, briefly, what is the Defendant's date of birth?

8 A. [REDACTED], I believe it is.

9 Q. No, the Defendant.

10 A. Oh, the Defendant?

11 Q. Yes, sir.

12 A. If you'll bear with me, I'm looking for his booking
13 report. June the 2nd, .

14 Q. Okay. And I guess what capacity did you serve in this
15 case against the Defendant?

16 A. In this case, I was the lead investigator assigned to
17 this case.

18 Q. What does that mean, exactly, lead investigator?

19 A. Once the case was taken initially by the road patrol,
20 and then it was assigned to the juvenile division, I took
21 the lead as the investigator in the case. I took this case
22 to follow-up on.

23 Q. Okay. And are these usually the kind of cases that
24 you investigate?

25 A. Primarily, yes, sir.

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1 Q. Okay. Do you investigate these kind of cases
2 exclusively?

3 A. No. I try all different -- being a lieutenant in the
4 criminal investigation division, I do all kind of case
5 investigations, but my primary responsibility is to child
6 molestation and sexual abuse cases, yes.

7 Q. Okay. So in CID how is it that a case comes into you
8 for investigation?

9 A. We have -- every morning we have a meeting where all
10 the incident reports are reviewed by the CID division. And
11 then cases are assigned to individual investigators as they
12 come through that need follow-up on.

13 Q. Okay. In this case what is it that was reported to
14 you that you were following up on?

15 A. Criminal sexual conduct.

16 Q. Okay. And who was the alleged Defendant in this case?

17 A. Norman Burgess.

18 Q. Okay. And who was the reported victim?

19 A. MINOR [REDACTED]

20 Q. Is that MINOR [REDACTED]

21 A. Yes.

22 Q. So after this report came into you and you were made
23 aware of the allegations, what was your first step in you
24 investigation?

25 A. Well, after reviewing the report, my first step, of

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1 course, is to make initial contact with the victim,
2 MINOR I sat up a meeting to make contact with her at
3 the office. My initial contact with her, when I met with
4 her, she was like a child that had been brought in from the
5 cold, shivering, very timid, shy, head down, very
6 emotional, tearful. I saw right away that her having
7 contact with me as a male investigator would not be the
8 best way to continue with investigating this case. So I
9 made the determination to bring in a female school resource
10 officer, Officer Palis. Based on having knowledge of the
11 contents of the initial report, I made contact with DSS,
12 also, and made arrangements for them to send one of their
13 female investigators over to sit in on the initial
14 interview with me when I talked with the victim.

15 Q. Okay. Why is it that you thought it would be
16 important to have females there?

17 A. Well, to make the environmental setting a little more
18 comfortable for the victim, since she was a victim, based
19 on a report given, by a male adult, throughout her
20 childhood. I felt like it was very imperative to have the
21 setting so that she would feel more at ease during the
22 interview process with some females present.

23 Q. Okay. And while we're on the victim, what is the
24 victim's date of birth?

25 A. [REDACTED]

1 Q. Okay. And what kind of statements did you get from
2 her?

3 A. Well, as a result of my investigation -- I mean, of
4 course, I had the initial statement that was taken from the
5 original responding officer.

6 Q. Is that Deputy Baxley who testified earlier?

7 A. Yes. That was Deputy Baxley who you heard testimony
8 from previously. I advised MINOR that what I would like
9 to do was videotape the interview with her, since the
10 molestation, based on information I had been given,
11 occurred over such a long period of time, and the
12 contextual information would be so much, that I would like
13 to have it on video recording as I interviewed her, which
14 she agreed to do.

15 Q. Okay. And during that interview did she tell you when
16 these events started occurring, about what time?

17 A. About the age of fourteen, yes, sir.

18 Q. Okay. Did she say if they were continuous or if it
19 was a one-time occurrence?

20 A. No, it was a very continuous chain of events that
21 occurred.

22 Q. What was the frequency that she reported?

23 A. Just right before, I think it was March was right --
24 the latest one was right before she had came into the
25 office, based on the report, I believe.

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1 Q. Okay. And did she say where these events happened?

2 A. They happened in the residence while her mother was at
3 work.

4 Q. And did you ever have occasion to speak to her mother?

5 A. Yes, I did. Before speaking to her mother, though,
6 and which the videotape will probably reveal my
7 conversation with MINOR about the chain of events that
8 occurred and as to why, I found it kind of strange at first
9 when she would tell me that her and her sister would be
10 made to sleep ---

11 MR. ABDALLA: Objection, Your Honor, to
12 statements made by -- whose statements are you giving?

13 THE WITNESS: Or maybe I should say, I learned
14 from my investigation that her and her sister were told to
15 -- they were made to sleep with Mr. Burgess.

16 MR. ABDALLA: That's still hearsay, Your Honor.
17 He's still repeating what they were told.

18 THE Court: I sustain the objection.

19 Q. But you talked to MINOR mother and MINOR

20 A. That's correct.

21 Q. Okay. And after you talked to them -- well, let me
22 rewind. Was anybody with you when you talked to -- anybody
23 else with whom you talked to the victim's mother?

24 A. Yes. After having interviewed MINOR then, of
25 course, we went to the victim's mother's house. I had

1 requested Captain Smith to go with me, along with some
2 other officers, to speak with Ms. -- to Angie, the mom,
3 about the chain of events that I had been told that had
4 been occurring through her daughter's childhood, up until
5 the date.

6 Q. And what was your next step in your investigation?

7 A. Of course, I advised her of her rights, gave her
8 Miranda rights, and read those to her. And she signed a
9 waiver of rights. And basically, I learned from
10 interviewing her, she acknowledged ---

11 MR. ABDALLA: Your Honor, again by learning what
12 he interviewed, he's going to get into hearsay. The
13 witness is available and he shouldn't be able to testify to
14 statements made by that witness.

15 THE Court: All right. I'll sustain the
16 objection at this time. Obviously, he can be recalled if
17 necessary. I sustain the objection.

18 MR. TOOKER: Yes, sir.

19 Q. After talking to MINOR mother, did you make a
20 decision as to whether or not you would charge her mom,
21 along with the Defendant?

22 A. Well, based on the totality of the circumstances of
23 the investigation, I found that both MINOR and her mother
24 appeared to have, what I would call, the Stockholm
25 Syndrome. They were very intimidated by ---

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1 MR. ABDALLA: Objection, Your Honor. There's no
2 basis for this conclusion. Lieutenant Kelley, with all
3 respect, is not qualified as a psychologist and somebody to
4 get into Stockholm Syndrome at all. And I don't even
5 believe I understand it. I know of a reference to it, but
6 it's a dangerous thing for -- I think we need to have ---

7 THE Court: I'll allow him to testify as to his
8 investigation.

9 Q. All right, continue, sir.

10 MR. ABDALLA: But Judge, I want to make sure I
11 understand. Is he allowed to testify to that point?

12 THE Court: He can testify as to his
13 observations. I don't know whether he's -- are you
14 planning to offer him as an expert?

15 MR. ABDALLA: No, sir. I'm just asking
16 Lieutenant Kelley about his observations.

17 THE Court: What you observed. You can testify
18 to what you observed.

19 MR. ABDALLA: Can I get a clarification? And I'm
20 not being argumentative. He had said, I observed Stockholm
21 Syndrome. Is he going to be allowed to testify to that?

22 THE Court: Well, just testify to the jury, Mr.
23 Kelley, what you observed from your investigation, if you
24 would, please, sir.

25 Q. Okay. So I asked you whether or not you decided to

1 charge Angie's -- MINOR mother in this case? And why
2 or why not?

3 A. Again, based on the totality of the circumstances, due
4 to the issues, the emotional and mental problems that was
5 stated to me at the time by the mother, that she'd gone
6 through, and plus, MINOR said her mother had gone
7 through, based on learning that the Defendant was very
8 manipulative and controlling of their every move, every
9 association, the way they dressed, what they did, who they
10 talked to. And, of course, consulting with the solicitor's
11 office, based upon my investigation at that point, it was
12 determined that it would be best suited to use the mom to
13 help us in the case as far as bearing the facts of what was
14 going on at that time that was happening with MINOR
15 However, I did learn through my investigation that the
16 mother's emotional state and attachment to the Defendant
17 was stronger than that to her own daughter.

18 Q. So she stayed with the Defendant after this?

19 A. That's correct.

20 Q. For how long?

21 A. To this day, as far as I know.

22 Q. What other evidence was gathered in this case?

23 A. Well, basically, the DNA that we had done.

24 Q. Okay. And I'll show you what's been marked as State's
25 Number 1, a Stipulation to the admissibility of that DNA

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1 evidence. On the second page of this document, it says,
2 the items analyzed are buccal swabs of each of the parties?

3 A. That's correct.

4 Q. Okay. Is that something the sheriff's office got from
5 each party?

6 A. That's correct. Based on my investigation, I
7 requested our ID division collect these buccal swabs.

8 Q. Okay. And what are they, exactly?

9 A. Basically, they're swabs to get DNA from each
10 individual to be analyzed. We send them to SLED for
11 analyzation.

12 Q. Okay. Is that what happened in this case?

13 A. That's correct.

14 Q. Okay. And that revealed that the Defendant was the
15 father of the victim's child?

16 A. That's correct.

17 Q. So all of that occurs. And after you have that
18 evidence, what's your next step as an investigator?

19 A. Well, based on the interview that I had with MINOR
20 mother, I made contact with DSS and had them send a social
21 worker, Patience Johnson, to meet me at Ridgefield
22 because I had great concerns for the safety of the minor
23 child that was in the residence.

24 Q. Okay. And I'm going to stop you with regards to that
25 testimony. After that and after you've talked to everyone,

1 what's your next step as an investigator, bringing charges
2 against the Defendant?

3 A. I presented my probable cause to the Magistrate and
4 obtained an arrest warrant on the Defendant.

5 Q. Okay. After the arrest warrant was issued, what's the
6 next step to bring the case to Court?

7 A. Then we present the case to the Grand Jury for
8 indictments.

9 Q. Okay. And did you summarize the case for presentment
10 to the Grand Jury?

11 A. I did a case presentation to the Grand Jury, which
12 they returned a true bill indictment on these charges that
13 he's here on today.

14 Q. Okay. Now, all the people you talked to originally,
15 those aren't all the people you talked to in this case. Is
16 that correct?

17 A. That's correct.

18 Q. Who else did you talk to?

19 A. Well, there again, I talked to -- I mean, I've got
20 statements from different individuals. But basically ---

21 Q. Specifically, we heard the testimony early in trial
22 from Ms. Kayla Cox Pilgrim and Valerie Buchanan. Did you
23 talk to those individuals?

24 A. Yes.

25 Q. When did you talk to them?

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1 A. After learning the information from follow-up
2 interviews with the victim, MINOR They were like on
3 March the 23rd, I talked to Matt Holder. March the 23rd
4 was MH

5 Q. So you talked to the other family members that were
6 with Ethan and HA that went in and got the baby and
7 MINOR out of the house?

8 A. That's correct.

9 MR. ABDALLA: Leading the witness again, Judge.
10 I know it's already done but ...

11 THE Court: Your objection is noted. Ask your
12 next question, Solicitor.

13 Q. But it was subsequent to all that, that you went to
14 talk to HA and Valerie or no? Excuse me. Kayla and
15 Valerie? Specifically, what I'm asking, when did you go
16 talk to Kayla Cox Pilgrim and Valerie Buchanan?

17 A. As soon as I learned that they may have been witnesses
18 or been talked to by the victim and told what had been
19 occurring throughout her childhood, I went and met with
20 them and obtained statements from them.

21 Q. Okay. And is that in the process of bringing this
22 case to trial?

23 A. Prior to this date, yes.

24 Q. Okay. What else occurred in your investigation that
25 we haven't touched on?

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1 A. Can you be more specific?

2 Q. I'm just asking you if there's anything else of
3 relevance that I haven't ask you about that you think the
4 jury needs?

5 A. Just based on the ---

6 MR. ABDALLA: Well, Your Honor, he has to ask a
7 specific question. He can't just go on a fishing
8 expedition.

9 THE Court: Ask ---

10 MR. ABDALLA: So I object to that.

11 THE Court: Rephrase your question, if you would,
12 Mr. Tooker?

13 Q. Have you conveyed to the jury everything you did in
14 your investigation?

15 MR. ABDALLA: Again, Judge.

16 THE Court: I overrule your objection.

17 A. Basically, yes, sir. I think that without -- I guess,
18 with the testimony of other witnesses as far as to what
19 DSS's involvement is or was in the case, other than that,
20 basically, yes.

21 Q. And you know we can't go into the DSS thing.

22 A. Yes, sir. I found that -- I substantiated and
23 corroborated the information that was given to me by the
24 victim, through my investigation. I believe that she was
25 an emotionally molested child all the way up until ---

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1 MR. ABDALLA: Objection, Your Honor.

2 THE Court: I sustain the objection.

3 Q. So you corroborated your case and presented it for
4 warrants?

5 A. That's correct.

6 Q. And then presented those warrants for indictment?

7 A. That's correct.

8 MR. TOOKER: No further questions.

9 THE Court: You may cross-examine the witness.

10 MR. ABDALLA: All right. Thank you.

11 CROSS-EXAMINATION

12 BY MR. ABDALLA:

13 Q. Lieutenant Kelley, as a matter of fact, you said you
14 -- do you remember when it was you went to the Grand Jury
15 for those indictments? The indictment?

16 A. I would have to see the true bill returned by the
17 Grand Jury to know the date. I don't off-hand, no, sir.

18 Q. It was roughly -- would it be safe to say it was
19 roughly five years ago?

20 A. Without seeing the indictment -- I would not address
21 that issue without seeing the indictment.

22 Q. And isn't it true that it was re-indicted more
23 recently? As a matter of fact, maybe in May of this year.
24 Did you go back before the Grand Jury?

25 A. I believe there was additional indictments, yes, sir.

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1 Q. As a matter of fact, all three indictments were just
2 recently done in May of this year. Is that not correct?

3 A. Without seeing the indictments, again, as to the date,
4 but I believe you're close to that date, yes.

5 Q. I'm sorry. August 21st, 2012, and September 11th of
6 2012.

7 A. If that's the indictments that the solicitor's office
8 presented to me to present, that would be correct.

9 Q. Okay. If you'll just check the dates to make sure.

10 A. August the 21st, 2012. That's correct.

11 Q. And that would be on the criminal sexual conduct
12 second?

13 A. Criminal Sexual Conduct second, yes, sir.

14 Q. And then on the lewd act, August ---

15 A. Lewd act on a child, August the 2nd, 2012.

16 Q. 21st?

17 A. 21st, I'm sorry.

18 Q. And then criminal sexual conduct third degree?

19 A. That one is dated September the 11th, 2012.

20 Q. So you went before the Grand Jury these two additional
21 times in addition to years ago. Is that correct?

22 A. That would be correct, if that's what the indictments
23 state. It's up to the solicitor's office when I ---

24 Q. Oh, I understand. I'm not -- I'm trying to get the
25 evidence in as to when the case was indicted.

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1 MR. ABDALLA: One moment, please.

2 Q. Detective Kelley, do you recall the date,
3 approximately, that Keith turned himself in, Norman Keith?

4 A. I know I made a notation in my report when I was
5 contacted, I think, by you advising me that he was -- you
6 were representing him and he was going to turn himself in.

7 Q. Was it maybe April 7th of 2007? Is that -- I might be
8 off on that date.

9 A. April the 7th, 2007, suspect retained the following
10 attorney.

11 Q. So he did turn himself in on that date; correct?

12 A. That's correct.

13 Q. And you observed none of the acts yourself? This was
14 just told to you by MINOR about what happened?

15 A. That's correct.

16 Q. Thank you.

17 MR. ABDALLA: I have no further questions.

18 THE Court: Any redirect?

19 REDIRECT EXAMINATION

20 BY MR. TOOKER:

21 Q. Do you ever observe the acts themselves when you
22 investigate a sex case?

23 MR. ABDALLA: Objection, Your Honor. That's
24 irrelevant.

25 THE Court: I overrule your objection.

1 A. No, sir. It's very rarely I'm ever on the scene where
2 a sexual act occurs.

3 Q. Okay.

4 MR. TOOKER: No further questions.

5 THE Court: Thank you, sir. You may step down,
6 Officer Kelley.

7 You may call your next witness, Solicitor?

8 MR. TOOKER: At this point, Your Honor, the State
9 rests.

10 THE Court: Ladies and gentlemen of the jury, I'm
11 going to ask if you would go back to your jury room
12 briefly. We have a few matters of law we need to take care
13 of at this time. We'll call you back in just a few
14 moments.

15 While you're back there, I'd like for you to select a
16 foreperson from among the twelve of you. What your
17 foreperson would be is the individual who'll sort of be the
18 liaison with the Court. You may have a question or have a
19 need back there to check on a child, need to use the phone,
20 or need a cup of coffee, whatever it may be, your
21 foreperson will be the one who'll contact the bailiff.
22 Then the bailiff would contact the Clerk's office. And the
23 Clerk's going to take care of the need. Or if it's a
24 matter of law that I need to address you on, then you can
25 let me know that. The foreperson would just write out

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1 whatever needs you have, knock on the door and give that
2 note to the bailiff. And we'll try to get it taken care of
3 as best we can. The foreperson will also have the duty,
4 when all the evidence is in and I've instructed you on the
5 law, to facilitate that discussion that you're all going to
6 have, one with another, to give your view of the facts so
7 that the jury can reach its verdict. And on behalf of the
8 jury would fill out the verdict form that I'll be providing
9 for you after the instruction is given, closing statements
10 and so forth when the case is over. Sort of be the
11 presiding officer. Will be the one who will help us in
12 that aspect, as well. The foreperson, when you come back
13 out, will need to occupy the seat closest to the witness
14 stand here on the front row. That's the designated place
15 for the foreperson, so that we'll know coming and going.
16 The rest of you, as you have, you can certainly sit on the
17 back row, the front row, left side, right side, wherever
18 you'd like to sit. But if you'll just write the name of
19 that person that you do select as the foreperson, and give
20 it to the bailiff. And then when you come back out, just
21 assume that seat, the designated seat.

22 And we'll take a short break and then be ready to
23 proceed. If you'll retire to your jury room. Don't
24 discuss the case. But let us know when you have a
25 foreperson selected.

1 (WHEREUPON, the jury exited the open Court at
2 approximately 11:40 A.M.)

3 THE Court: All right. I need to talk to your
4 client about his rights under the Constitution, Mr.
5 Abdalla. Is there anything else we need to take care of
6 before I do that to settle the record?

7 MR. ABDALLA: I'd just like to make -- yeah, for
8 the record, Your Honor, I'd just like to make a motion to
9 dismiss the indictments, lewd act on a minor, criminal
10 sexual conduct, second degree on a minor, and criminal
11 sexual conduct in the third degree. Move for directed
12 verdict. I said dismiss. I'm sorry.

13 THE Court: Solicitor, I'll be glad to hear from
14 you in response to the motion.

15 MR. TOOKER: Thank you, Your Honor. I believe,
16 taken in the light most favorable to the State, there is
17 sufficient evidence in this case as presented through all
18 the witnesses' testimony to go to the jury and let them
19 hear the case and decide for themselves whether they think
20 the Defendant is guilty of these charges.

21 THE Court: Of course, I don't weigh the evidence
22 at this stage. It's just whether or not there exists any
23 evidence. And I think there is sufficient ---

24 MR. ABDALLA: I have one more objection, Your
25 Honor.

1 THE Court: Yes, sir.

2 MR. ABDALLA: I'd ask that the State elect
3 between the CSC second with a minor and the lewd act,
4 because they cover the same period. And it's an either/or.

5 THE Court: As I was saying on the directed
6 verdict, I believe there is sufficient evidence for the
7 jury to make that decision as to direct evidence and
8 substantial circumstantial evidence.

9 All right. How about the election or the motion to
10 for election, Solicitor?

11 MR. TOOKER: Yes, sir, Your Honor. I think
12 that's almost like a double-jeopardy argument. He's saying
13 that you can't charge him with both. You can only charge
14 him with one because of double jeopardy. And that's not
15 the case. I don't have the juris prudence on hand, but I'm
16 confident the Courts have concluded lewd act is not a
17 lesser included of CSC second with a minor. CSC second
18 with a minor is not a lesser included of lewd act. Lewd
19 act has very specific elements. The Defendant has to be
20 "X" amount of years old. The victim has to be less than
21 "X" amount of years old. He has to do something to her,
22 with her, in front of her, to appeal to her -- I think it's
23 the lusts or prurient interests. Or he needs to do
24 something that appeals to his own lusts or prurient
25 interests.

1 Now, with regards to CSC second with a minor, in this
2 case the allegations are the victim's got to be between
3 fourteen and sixteen. And the Defendant did commit sexual
4 battery upon her, and that he was in a position of some
5 authority over her. And those are the two separate charges
6 for that time frame. There's overlap inasmuch as both
7 charges deal with specific conduct that is related. But
8 the charges themselves are different and have different
9 elements and, therefore, can go to the jury because both
10 charges cannot be encompassed in one charge. If that makes
11 any sense to Your Honor.

12 MR. ABDALLA: I'd just like to analogize it a bit
13 like possession of a drug and possession with intent to
14 distribute the drug.

15 THE Court: Do you agree, Mr. Abdalla, that lewd
16 act is not a lesser included offense in the criminal sexual
17 conduct?

18 MR. ABDALLA: I do, Your Honor. According to the
19 statute and the case law, I do. And I think -- I won't
20 argue with my colleague on the argument he was making. It
21 is semi double jeopardy. And I realize it's not lesser
22 included, but it's next to impossible to commit the
23 criminal sexual battery -- I mean -- yeah -- without having
24 committed a lewd act. But I understand that it's not a
25 lesser included. That's always kind of amazed me that they

1 have a different element.

2 THE Court: All right. As I understand the law,
3 both of those cases would be allowed to go to the jury and
4 it would be up to the jury to determine the facts to
5 warrant, from the record, all three offenses that have been
6 alleged against the Defendant. So I respectfully deny your
7 motion, Mr. Abdalla.

8 Any other matters before we settle the record?

9 MR. TOOKER: Nothing from the State.

10 THE Court: All right. If you would come forward
11 with your client, please, Mr. Abdalla.

12 MR. ABDALLA: Yes, Your Honor.

13 (WHEREUPON, Mr. Abdalla and the Defendant approached
14 the bar.)

15 THE Court: Mr. Burgess, if you would, just stand
16 there. And if you would raise your right hand, please. Do
17 you swear or affirm the testimony you're about to give me
18 will be the truth, whole truth and nothing but the truth,
19 so help you God?

20 MR. BURGESS: I do.

21 THE Court: I'm confident that you've had a
22 chance already to discuss with your attorneys the right
23 that you have under our Constitution, both in South
24 Carolina, the Constitution of the United States. I want to
25 make sure in my own mind that you understand those rights

1 before we proceed. We're at the stage of the trial now
2 where you have a right to put up a Defense. You have a
3 right to claim the protections that you enjoy under the
4 Fifth Amendment to the United States Constitution, Article
5 I of our State Constitution. And both of those documents
6 say that no person can be compelled in any criminal case to
7 be a witness against himself. That means that you could
8 not be required to testify in the case. You have a right
9 to testify in your own behalf, but nobody can make you
10 testify. It's a personal right that you enjoy. You alone
11 make that decision. Nobody can waive that right but you.

12 Now, you may decide to testify in the case, and if you
13 do, you'll be subject to the same rules that govern any
14 other witness. You could be examined and cross-examined on
15 any relevant issue in the case. In addition, if you have
16 any convictions involving dishonesty or false statements or
17 if you have prior criminal offenses that are punishable by
18 imprisonment for more than one year and the Court
19 determines that the probative value of admitting that
20 evidence outweighs any prejudicial effect to you, the
21 Solicitor would be able to introduce your record to attack
22 your credibility if you testify.

23 Now, your decision to testify, if you do, must be
24 voluntarily made by you and intelligently made by you with
25 the knowledge of the protections that you enjoy under the

1 Constitutions of our State and of the United States. You
2 also must make that decision, realizing the consequences of
3 your decision to testify.

4 Now, Mr. Burgess, you may decide not to testify. If
5 you do that, I'll instruct the jury that they can't give
6 the fact that you chose not to testify any consideration
7 whatsoever. There's to be no prejudice brought to you
8 because you exercised your right not to testify. It's left
9 entirely up to you whether to testify or not testify. You
10 can talk with your attorneys. You can talk with family,
11 with friends. The final decision has to be yours as to
12 whether or not you wish to testify.

13 Have you understood what I've explained to you?

14 MR. BURGESS: Yes, sir.

15 THE Court: Do you have any questions of me?

16 MR. BURGESS: No, sir.

17 THE Court: All right, sir. You may return to
18 your seat with your attorney.

19 Any other matters we need to take up? We'll take a
20 short break and let you talk with your client again as far
21 as any testimony that he might want to offer.

22 MR. ABDALLA: What I'd like to do, Judge, as per
23 our conversation earlier, I have instructed the Court, off
24 the record, that I had told my witnesses to be here at two
25 o'clock, so I wasn't prepared to start until two o'clock.

1 I kind of thought it would have run a little later.

2 THE Court: Can you get them here a little
3 earlier?

4 MR. ABDALLA: They're over in Travelers Rest.

5 THE Court: Maybe you can contact them, maybe by
6 one-thirty. We'll just take an earlier lunch break now.

7 MR. ABDALLA: Yeah.

8 THE Court: But, you know, if they can get here
9 earlier, I'm going to ask the jury to be back at one-
10 thirty.

11 MR. ABDALLA: Okay. I'll ask. I mean, all I can
12 do is call. They're all going to be short witnesses, with
13 the possible exception of Keith, if he decides to take the
14 stand. And we've obviously discussed. We've kind of gone
15 back and forth.

16 THE Court: We'll see how long we can. If we
17 have to go into tomorrow to argue and charge, then we will.
18 But if we get to the point that we can present it to the
19 jury today, we'll do that, too.

20 MR. ABDALLA: Okay.

21 THE Court: I certainly won't be charging them
22 too late in the afternoon. We'll see where the testimony
23 ends, at about what time we are.

24 MR. ABDALLA: I fear that this may be one they'll
25 spend a little bit of time on and I would hate to get it to

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1 them right at five o'clock or so.

2 THE Court: We'll see how it works. But I'll --
3 we'll have the jury ---

4 MR. TOOKER: Your Honor, I have one request.

5 THE Court: Yes, sir.

6 MR. TOOKER: Mr. Abdalla's given me a witness
7 list with five names on it. I'd like to see if he couldn't
8 give me those dates of birth so I can run NCIC's.

9 MR. ABDALLA: Oh, I have it. I do have them.
10 I'm sorry.

11 THE Court: We can do that during the break then.
12 What I'll do is I'll split the difference with you, Mr.
13 Abdalla. I'll have them come back at a quarter till two.
14 That'll give us two hours that y'all can get those things
15 done and whatever other matters you have.

16 For the record, the foreperson selected was Debra
17 Phillips.

18 Have our jury come in if they're ready, all right,
19 sir?

20 (WHEREUPON, the jury entered the open Court at
21 approximately 11:54 A.M.)

22 THE Court: Madam Forelady, ladies and gentlemen
23 of the jury, rather than keeping you waiting while we take
24 care of these matters and other matters, scheduling and
25 otherwise, I'm going to let you go on and take an earlier

1 lunch today. Normally, we would go a little later. So
2 that we can get everything ready so that you don't have to
3 wait when we come back, I'm going to ask you to be back at
4 a quarter of two. That's a long lunch hour. I hope that
5 you understand we're -- I'd rather do that than just leave
6 you here, closed up back in the room.

7 I remind you again while you're out for lunch, don't
8 discuss the case and don't let anyone talk to you about the
9 case. Remember the commitment you've made to these
10 parties. I will remind you of that, the process we're in,
11 to maintain that purity that we've started with, hopefully
12 we can finish with, so both parties get the fair and
13 impartial trial that they deserve.

14 Have a good lunch. If you'll be back in your jury
15 room at a quarter of two, we'll be ready, I'm confident, to
16 start at that time. Everyone else, please remain seated
17 while the jury departs.

18 (WHEREUPON, the jury exited the open Court at
19 approximately 11:55 A.M.)

20 THE Court: Yes, sir, Mr. Abdalla?

21 MR. ABDALLA: Oh, I'm sorry. I was going to --
22 if we were at ease, I was going to give Sam the birth
23 dates.

24 THE Court: All right. We'll be at ease until a
25 quarter of two.

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1 (WHEREUPON, the Court stood at recess for a lunch
2 break.)

3 THE Defendant: All right. Ready to proceed,
4 gentlemen?

5 MR. TOOKER: Yes, sir. And, Your Honor, I think
6 before the jury comes in, it's worth noting that I went
7 online while we were on the break, just looking through the
8 Defendant's NCIC. And I saw a fraud check on there that
9 there wasn't a disposition on the NCIC, so I got on the
10 public index. And it looks like there was a conviction in
11 2009 for fraud check where the Defendant pled guilty. I
12 didn't want to blind side him with that if he decided to
13 take the stand.

14 THE Court: All right. Is everybody ready to
15 proceed?

16 MR. ABDALLA: Yes, Your Honor. I need one
17 moment, please.

18 THE Court: All right, sir.

19 MR. ABDALLA: Ready, Your Honor.

20 THE Court: All right. You can have the jury
21 come in if they're ready, First Sarge.

22 (WHEREUPON, the jury entered the open Court at
23 approximately 2:01 P.M.)

24 THE Court: All right. Mr. Abdalla, you may
25 present your Defense.

1 MR. ABDALLA: Thank you. Defense calls Linda
2 Burgess.

3
4 THE CLERK: If you would place your left hand on
5 the Bible and raise your right.

6 Do you solemnly swear or affirm that the testimony
7 you're about to give in this case to be the truth, the
8 whole truth and nothing but the truth, so help you God?

9 THE WITNESS: I do.

10 THE CLERK: If you would have a seat. State your
11 name for the record, please.

12 THE WITNESS: Linda Burgess.

13 LINDA BURGESS,

14 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MR. ABDALLA:

17 Q. Ms. Burgess, I intend to make this quick and painless?

18 A. Okay.

19 Q. I'm not going to ask you your age or anything?

20 A. Thank you.

21 Q. What's your full name?

22 A. Linda Gail Burgess.

23 Q. And where do you live? Not your exact address, but
24 what city?

25 A. I live in Slater.

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- 1 Q. Slater, South Carolina?
- 2 A. South Carolina, uh-huh (affirmative).
- 3 Q. And do you know Keith Burgess, Norman Keith Burgess?
- 4 A. That's my brother.
- 5 Q. And do you see him in Court?
- 6 A. Yes, I do.
- 7 Q. And since he is your brother, what kind of -- would
- 8 you say you have a close relationship, a distant
- 9 relationship?
- 10 A. I would say we have a close relationship.
- 11 Q. And because you have a close relationship, you're
- 12 going to be testifying in front a jury, are you going to
- 13 tell the truth or are you going to say things just to help
- 14 your brother, because I know you want a good outcome for
- 15 your brother?
- 16 A. I love my brother, but I'm not going to lie for my
- 17 brother.
- 18 Q. Do you know the young lady in the case, MINOR
- 19 A. Yes, I do.
- 20 Q. And did you know them in the years 2002 until 2007?
- 21 A. Yes, I did.
- 22 Q. Were you ever over at the house during that period?
- 23 A. Yes, I was.
- 24 Q. And when you went to the home, can you tell the jury
- 25 anything about what you observed when you were there?

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1 A. Nothing out of the ordinary. I know right before she
2 told us she was pregnant, they were real friendly.

3 Q. Did you notice -- so there was nothing out of the
4 ordinary?

5 A. No.

6 Q. Did it seem like a normal situation or was it abnormal
7 to you? Anything bother you?

8 A. No. Everything seemed fine.

9 Q. And talk about the relationship that you observed
10 between Norman and MINOR

11 A. Well, like I said ---

12 Q. Let's go back to the earlier days. I apologize.

13 A. Okay.

14 Q. When you first knew them, what was it like?

15 A. Well, just like any other family. Made them do
16 homework, chores, just an average family.

17 Q. Okay. And then as things got closer, when they had
18 the baby, did you notice a change?

19 A. Yes, I did.

20 Q. And what was that?

21 A. I noticed they were both friendlier with each other.
22 And I thought, well, they're getting along good.

23 Q. And did you notice anything else, just friendly with
24 each other?

25 A. That's about it.

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1 Q. Did you find out after she had her child whose child
2 it was?

3 A. It was after I seen the baby. I said, that baby looks
4 like Norman.

5 Q. And did you ever talk to her about it?

6 A. Yes, I did. She told me two different things.

7 MR. TOOKER: Objection, Your Honor, hearsay.

8 Q. Did you ever talk to her ---

9 THE Court: Wait. I have an objection.

10 MR. ABDALLA: I'm sorry, Judge.

11 THE Court: If you would rephrase your question.

12 Q. After talking to MINOR did you confirm whose child
13 it was?

14 A. Not for a long time.

15 Q. All right. And how did she behave about that?

16 A. She was embarrassed.

17 Q. And what do you think she did -- how embarrassed was
18 she?

19 A. I think that MINOR was embarrassed ---

20 MR. TOOKER: Objection, Your Honor. This is
21 speculation.

22 MR. ABDALLA: It's her personal observations.

23 THE Court: I'll overrule your objection,
24 Solicitor.

25 Q. Tell me about your meetings with her, how she came

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1 across to you?

2 A. Happy.

3 Q. You were talking about the ashamed part. What led you
4 to believe that?

5 A. Well, it was after the baby's born, everybody could
6 tell, that baby looked like Norman.

7 Q. Okay.

8 A. And everybody kept saying, that baby looks like
9 Norman. And I think she become ashamed at that point.

10 Q. Do you still see MINOR even to this day?

11 A. I have not seen MINOR in a long time.

12 Q. And do you continue to have a relationship with her
13 then or not at all?

14 A. No, I have not seen MINOR

15 Q. And did you have cause to go over -- your brother
16 bought a car a few years back, right before this -- his
17 arrest. Isn't that right?

18 A. Yes.

19 Q. Tell the jury about that.

20 A. Well, the came to the house, him and MINOR in the
21 car.

22 Q. What kind of car was it?

23 A. A Corvette. I don't know the model. MINOR stayed
24 there with my ex-boyfriend while my brother took me around
25 the block and came back. Everything seemed fine.

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1 Q. Approximately what year was this?

2 A. This was after the baby was born. Now, what year that
3 was, I don't know.

4 Q. After the baby was born?

5 A. Yes.

6 Q. And what was her demeanor like?

7 A. Cutting up, enjoying the ride, talking about the car.
8 That's about it.

9 MR. ABDALLA: Give me one minute, Your Honor.

10 Q. When you went over to visit or when they were around
11 you, did you ever observe that Norman was controlling?

12 A. Not at all.

13 Q. Did you ever observe him -- I'm sorry.

14 A. Norman never would even discipline those kids. So,
15 no. As a matter of fact, I'd tell him, you need to make
16 them kids mind.

17 Q. Was he controlling of Angie?

18 A. No.

19 Q. And you observed them together?

20 A. No, they seemed like they loved each other.

21 Q. Did **MINOR** ever say anything to you about being
22 controlled?

23 A. Never.

24 Q. Did you ever observe anything that led you to believe
25 that?

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1 A. No. We all got together as a family, you know. I
2 never seen anything.

3 Q. Did MINOR ever admit to you anything about the
4 relationship?

5 A. Never.

6 Q. You know the charges against your brother; right?

7 A. Yes.

8 Q. Really serious charges?

9 A. Yes, sir.

10 Q. Obviously, everybody can't be telling the truth. Why
11 would MINOR say this?

12 MR. TOOKER: Objection, Your Honor. That is
13 speculation.

14 THE Court: I sustain the objection as the
15 question is asked.

16 Q. You testified to the jury that the home life seemed
17 normal to you. Did you see them on a regular basis?

18 A. It wasn't no everyday thing. But, yes, I seen them.

19 Q. Was it a regular for the five-year period?

20 A. Oh, yeah.

21 Q. Were you surprised when the events turned out the way
22 they did in ---

23 A. I was very surprised. I was shocked. I could not
24 believe what I was hearing. And I just feel like that this
25 whole thing snowballed, got out of hand, I think. MINOR

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1 when everybody got to teasing her about the baby looking
2 like Norman ---

3 MR. TOOKER: Objection, Your Honor. I think this
4 is going into the ultimate issue.

5 MR. ABDALLA: I think she can say this. Your
6 Honor, she ---

7 THE Court: I'll allow her to answer the
8 question. Overruled, Solicitor.

9 Q. MINOR was being ---

10 A. I feel like when everybody got to teasing her -- this
11 is after the baby was born. Everything's fine up to this
12 point. When the baby was born, everybody got to teasing
13 her about the baby looking like Norman. And it did. I
14 think she got ashamed. And I think that she tried to cover
15 that. I don't think she realized the extent that this was
16 going to blow out of. I don't think she meant to do this.
17 I think it's something that happened and it's too late to
18 take it back.

19 Q. Thank you.

20 MR. ABDALLA: I have no further questions.

21 THE Court: You may cross-examine the witness.

22 MR. TOOKER: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. TOOKER:

25 Q. You talked to Mr. Abdalla before Court, I take it?

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1 A. Who?

2 Q. Mr. Abdalla, the Defense attorney.

3 A. You mean John?

4 Q. John, yeah. John Abdalla, yeah.

5 A. We spoke.

6 Q. Okay. You spoke to him about this case?

7 A. Yes.

8 Q. Did you ever go talk to law enforcement about the
9 case?

10 A. No.

11 Q. Did you ever go talk to the Solicitor's office about
12 the case?

13 A. No.

14 Q. In fact, this is the first time you've ever said any
15 of this to anybody in a position of authority. Isn't that
16 true?

17 A. Actually, no, that's not true. I know when the DSS
18 came to Norman's and Angie's home, I was asking questions
19 about what is going on. But nobody would tell us anything.

20 Q. Okay.

21 A. Wouldn't tell me anything.

22 Q. When these charges got filed, you didn't come to the
23 cops with your story?

24 MR. ABDALLA: Objection, Your Honor. It's not
25 her duty to come to the cops.

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1 THE Court: I'll allow you to redirect, Mr.

2 Abdalla.

3 MR. ABDALLA: Okay. Can we ---

4 THE Court: I'm going to let him cross-examine
5 and then you can ---

6 MR. ABDALLA: May we approach, though, just about
7 one thing?

8 THE Court: Yes, sir.

9 (WHEREUPON, Mr. Tooker and Mr. Abdalla approached the
10 bar.)

11 Q. So you didn't go to the cops?

12 A. No.

13 Q. Didn't come to our office?

14 A. No.

15 Q. Didn't speak to me?

16 A. No.

17 Q. Didn't speak to anybody in the Solicitor's office?

18 A. No.

19 Q. Okay.

20 MR. ABDALLA: Your Honor, he's -- my objection
21 is, he's shifting the burden. That's ---

22 THE Court: Well, this is a witness. I'll allow
23 him to examine that. And you can redirect examination.

24 Q. Mr. Abdalla, when you guys talked, did he tell you
25 that if you had any criminal history, that could be

1 impeachable?

2 A. Excuse me?

3 Q. That we could talk to you about your criminal history?

4 A. Sure.

5 Q. Okay. And do you have a criminal record?

6 A. Yes.

7 Q. Okay. What for?

8 A. Simple assault, which I was found not guilty of.

9 MR. ABDALLA: May we see the record? I wasn't
10 aware of her having a record.

11 MR. TOOKER: You're the one that called the
12 witness.

13 THE WITNESS: It was -- I was not guilty.

14 THE Court: Hang on, ma'am, just a minute. Come
15 here, gentlemen.

16 (WHEREUPON, Mr. Tooker and Mr. Abdalla approached the
17 bar.)

18 Q. You told him that you have a close relationship with
19 your brother, and you love your brother?

20 A. As most families are.

21 Q. How often would you see your brother?

22 A. Sometimes maybe once a week, sometimes once a month.
23 It just varied.

24 Q. Okay. So y'all see each other regularly?

25 A. Yes.

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Linda Burgess - Cross Examination by Mr. Tooker

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1 Q. And according to what you told Mr. Abdalla and the
2 jury, you think that MINOR made all of this up because
3 she was ashamed that the baby looked like her?

4 A. That is not what I said.

5 Q. What did you say?

6 A. I said I think she was ashamed when everybody got to
7 saying that baby looked like Norman. She told us all it
8 belonged to somebody else.

9 Q. Yeah. She told y'all that it was someone from a
10 party; right?

11 A. Yeah.

12 Q. Okay. And you didn't know that Norman was the father?

13 A. No.

14 Q. In fact, you didn't find out Norman was the father
15 until those DNA results came back; right?

16 A. Correct. Well, I -- like I said, when I seen the
17 baby, everybody knew. And everybody was asking her. Who's
18 the -- that baby looks like Norman. And I think she did
19 get ashamed.

20 Q. Okay. And then so -- I mean, and that was the
21 question I asked you. I asked you whether it's your theory
22 that the victim in this case says that the Defendant
23 started raping her when she was a fourteen-year-old child
24 because she was ashamed that the child that he fathered
25 with her looked like him. Is that not what you said?

1 A. No, you're changing -- no, that is not at all what I'm
2 saying.

3 Q. Again, please explain yourself.

4 A. I'm saying they were very close. They were friendly
5 with each other. I witnessed this. Everybody witnessed
6 it. She was comfortable with Norman. She was comfortable
7 being around, being very friendly. She did not act like
8 anybody that had been raped to me.

9 Q. But, ma'am, that's not the question I asked you.

10 A. I think she was ashamed because people were teasing
11 her that she had slept with her step-father. And you're
12 trying to change my words, and I'm not going to say
13 something that I'm not meaning.

14 Q. No, but I think we're talking past each other. What
15 I'm asking you is you think ---

16 A. No, you're asking if she's ashamed that he done
17 something. No, I think she's ashamed that she got caught,
18 that she was sleeping with her step-dad.

19 MR. ABDALLA: And Judge, I'm objecting to him
20 being argumentative. She's answered the question. He's
21 trying to go somewhere else that the direct examination
22 didn't get into.

23 THE WITNESS: That is the truth.

24 THE Court: Mr. Abdalla, I note your objection.

25 MR. ABDALLA: Okay.

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1 THE Court: You ask the question. She'll give
2 you an answer and then you ask the question, all right,
3 sir?

4 Q. And, again, I think we're talking past each other.
5 What I'm trying to get at, you said it's your theory that
6 the reason that she said all of this stuff is because she
7 was embarrassed to have had a child with him?

8 A. I think she was embarrassed that she had slept with
9 her mother's husband.

10 Q. That's what I'm asking. And so, you're saying because
11 of that ---

12 A. There's a difference.

13 Q. Because of that, she would then come out and tell the
14 whole world this story?

15 A. I think so.

16 Q. So she's embarrassed about it and she tells law
17 enforcement what's been happening?

18 A. Look. All I know, she was friendly with him. She
19 wrote notes telling him she loved him.

20 Q. That's not the question, ma'am.

21 A. I seen those.

22 Q. The question is, do you think that because she's
23 embarrassed she's going to tell the police what happened?

24 A. I think she was embarrassed to ---

25 Q. It's a yes or no question.

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1 A. You're going to let me answer the question.

2 THE Court: Wait just a minute. Just a minute,
3 ma'am. Just a minute.

4 MS. BURGESS: Okay.

5 THE Court: He's going to ask you a question, all
6 right? You answer the question. I'm going to give you a
7 chance to explain your answer, but you need to answer his
8 question. And you need to ask a question concisely for her
9 to answer, all right? Okay. Ask your question again,
10 Solicitor?

11 Q. Your theory is she's embarrassed. So does it make
12 sense to you that if she's embarrassed about doing this
13 thing, that she would tell the police?

14 A. Yes. To cover ---

15 Q. Okay.

16 A. --- why she was embarrassed.

17 Q. Does it make sense to you that she would tell the
18 prosecutors?

19 A. Yes, it does.

20 Q. Does it make sense to you that she would tell twelve
21 strangers that she's never met in her entire life?

22 A. Like I said earlier, I think she didn't realize that
23 this was going to snowball this bad. And I think she said
24 what she said and didn't realize it was going to get this
25 big. And she couldn't take it back.

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Linda Burgess - Cross Examination by Mr. Tooker

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1 Q. And we had DNA done in this case and that's when the
2 Defendant finally admitted that he was the father of the
3 child. Isn't that right?

4 MR. ABDALLA: Objection, Your Honor. There's no
5 presentation that they had a conversation about DNA or
6 anything. This had nothing to do with this.

7 THE Court: I overrule your objection.

8 Q. Isn't that right?

9 A. What was the question now?

10 Q. Didn't you say to this jury earlier that you thought
11 or everyone was under the impression that he was not the
12 father. There was no verification until the DNA came back?

13 A. No, that's not exactly what I said. I said when I
14 seen the baby, I thought.

15 Q. Yeah. Okay. But what I'm asking you, the Defendant
16 never manned up and said, that's my child?

17 A. No.

18 Q. No. Not once?

19 A. Not that I recall. I don't remember.

20 Q. Continued the story that it was an anonymous boy at a
21 party. Isn't that right?

22 A. No, actually her story changed.

23 Q. Okay.

24 A. It was another guy.

25 Q. Right. But it was not a boy -- or it was not the

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Linda Burgess - Cross Examination by Mr. Tooker

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1 Defendant?

2 A. No.

3 Q. And now we know that it was the Defendant; don't we?

4 A. Yes.

5 Q. Okay.

6 MR. TOOKER: No further questions.

7 THE Court: Any redirect.

8 MR. ABDALLA: One moment, Your Honor.

9 MS. BURGESS: Could I please have some water?

10 I've got a flu and a cold. And it's ---

11 THE Court: Yes, ma'am.

12 MR. ABDALLA: I have no further questions.

13 THE Court: All right. Thank you, ma'am. You
14 may step down.

15 THE WITNESS: Thank you.

16 THE Court: You may call your next witness, Mr.
17 Abdalla.

18 MR. ABDALLA: The Defense calls Ernest Barton.

19 Ernie Barton. I'm sorry.

20 THE CLERK: If you would place your left hand on
21 the Bible and raise your right.

22 Do you solemnly swear or affirm that the testimony
23 you're about to give in this case to be the truth, the
24 whole truth and nothing but the truth, so help you God?

25 THE WITNESS: I do.

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1 THE CLERK: If you would have a seat. State your
2 name for the record, please.

3 THE WITNESS: My name is Ernest Barton.

4 ERNEST BARTON,

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MR. ABDALLA:

8 Q. Mr. Barton, just to get this out of the way. Is it
9 true you have an unlawful neglect of child charge from
10 about ten years ago?

11 A. Yes, sir.

12 Q. And a domestic violence?

13 A. Yes, sir.

14 Q. From 2007?

15 A. Yes.

16 Q. And another one from -- oh, no. That's the same one.

17 The probation -- you have a probation revocation?

18 A. Excuse me?

19 Q. Did you have a probation problem with your last
20 charge?

21 A. Well, I failed to comply with probation because I
22 wasn't guilty of what I was charged with. I just didn't
23 feel guilty.

24 Q. But you don't deny that you have that record?

25 A. No.

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Ernest Barton - Direct Examination by Mr. Abdalla

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1 Q. Do you know why I asked you to come here today?

2 A. Yes, I do.

3 Q. Do you know the Defendant in this case, Norman
4 Burgess, Keith Burgess?

5 A. Yes.

6 Q. And do you know the lady in the case who has the
7 allegations against him, MINOR is her name now?

8 A. Yes. I, I -- yes, I know her. Yes.

9 Q. And did you ever see them together?

10 A. Yes.

11 Q. Essentially, what I'm getting at is, is it true you
12 were with Linda when Keith visited you -- when Norman
13 visited you with the car?

14 A. Yes. Yes, I was currently with her then.

15 Q. All right. And tell the jury what happened?

16 A. Well, ---

17 Q. Well, first of all, let me find out. Do you remember
18 about when this was?

19 A. I'm not good with dates. That's why -- you know, I
20 can remember -- I'm not good with dates. It was right
21 around the time that he had gotten the Corvette, that I
22 seen them. But, you know, I don't ---

23 Q. Well, did this story involve the Corvette?

24 A. Yeah. Well, yeah, it does. I mean, it was just the
25 fact of she come up there. They had got out. He had took

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1 me for a ride and then they come back. And he took Linda
2 for a ride. And just the way she sat down there and
3 talked.

4 Q. And then what happened, he took Linda for a ride. And
5 what are you doing when he's taking Linda for a ride?

6 A. I stood on the sidewalk and was chatting with MINOR

7 Q. You were with MINOR at the time?

8 A. Yes.

9 Q. Speak a little louder.

10 A. Yeah. We were on the sidewalk, you know, standing on
11 the sidewalk and they had took a ride around the block.

12 Q. And what happened?

13 A. She was just letting me know that in a way, someway,
14 shape, form, fashion, she's, you know, leading me to
15 believe, you know, she was making the comment that she was
16 going to have the Vette. She wanted that Vette. She
17 wanted it. She was going to have it. She was going to
18 have it. It just made me feel very uncomfortable. I felt
19 uncomfortable and I had spoke with Linda once they had got
20 back about how uncomfortable it made me feel. And that I
21 didn't like it. And I made her aware of it.

22 Q. Okay.

23 MR. ABDALLA: One moment.

24 Q. Did she seem at all intimidated by Norman?

25 A. I didn't get that feeling, at all.

1 Q. She seemed pretty comfortable?

2 A. Yeah. I mean, she seemed comfortable to me. She
3 seemed ---

4 Q. Thank you. I have no further questions. Answer any
5 questions the prosecutor may have.

6 CROSS-EXAMINATION

7 BY MR. TOOKER:

8 Q. Okay. So you said you didn't do that CDV?

9 A. Who said? No, that's the unlawful conduct toward a
10 child.

11 Q. You didn't do the unlawful conduct toward a child?

12 A. No.

13 Q. But you did the CDV second?

14 A. Yeah.

15 Q. Okay. But the unlawful conduct toward the child, you
16 did plead guilty?

17 A. Yeah. They pretty much forced me into it.

18 Q. I mean, you pled guilty and now you're telling the
19 jury you didn't do it?

20 A. Well, because they give me a lesser sentence for
21 pleading guilty.

22 Q. A lesser sentence?

23 A. Yes.

24 Q. Okay. So you're willing to lie to get what you want?

25 A. I didn't lie.

State of South Carolina -vs- Norman Keith Burgess (2007-GS-39-2240-2241 and 2012-GS-39-1770)
Ernest Barton - Cross Examination by Mr. Tooker

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1 Q. Well, that's what you're saying. You're saying you
2 didn't do it.

3 A. No.

4 Q. You get in front of a judge and plead guilty and then
5 say you didn't do it. Isn't that lying?

6 A. Well, I didn't have the money for a lawyer, you know,
7 kind of those things. My child had ran by a heater and got
8 burnt from a heater that was unlawful -- it wasn't even
9 supposed to burn kids. And next thing I know, I'm getting
10 charged with unlawful conduct toward a child because of his
11 mother, which was a vindictive lady. And her grandma which
12 was more vindictive than she was. It just kind of led to
13 -- they pretty much, you know, got me on some allegations
14 that wasn't even true. There were witnesses. They
15 wouldn't even have my witnesses or nothing on the stand.
16 They wouldn't ---

17 Q. I mean, you entered a guilty plea.

18 A. Yeah.

19 Q. You stood up in front of a judge, like this Judge, and
20 said, I'm guilty?

21 A. Yeah.

22 Q. And now you're saying you're not guilty?

23 A. Yeah. To my child that currently lives with me now,
24 so ... If I was that bad of a parent, I don't think I
25 would have full custody of him, now. So ...

State of South Carolina -vs- Norman Keith Burgess (2007-GS-39-2240-2241 and 2012-GS-39-1770)
Ernest Barton - Cross Examination by Mr. Tooker

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- 1 Q. Sure. And you dated Linda?
- 2 A. Yes, sir.
- 3 Q. The lady that just testified; right?
- 4 A. Yes, sir.
- 5 Q. How long did you guys date?
- 6 A. About five years.
- 7 Q. Five years?
- 8 A. Yes, sir.
- 9 Q. And how many times in that five years did you meet
- 10 MINOR
- 11 A. Well, about probably three or four times, I'd say. I
- 12 didn't know her well enough to say ---
- 13 Q. Three or four times in five years?
- 14 A. Yeah. Maybe about four.
- 15 Q. And this incident you're talking about, that would
- 16 have been, that would be, what, back in 2006?
- 17 A. Yeah. Whatever the title said on the Vette.
- 18 Q. Well, in 2006 is when you're saying all this went
- 19 down?
- 20 A. I really can't -- I don't know the date. I don't know
- 21 what year that was.
- 22 Q. You don't know what the year was?
- 23 A. No.
- 24 Q. Okay. How long were y'all at the house that day?
- 25 A. I think he wasn't probably there, probably about

State of South Carolina -vs- Norman Keith Burgess (2007-GS-39-2240-2241 and 2012-GS-39-1770)
Ernest Barton - Redirect Examination by Mr. Abdalla

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1 thirty or forty-five minutes, maybe.

2 Q. Okay. Thirty, forty-five minutes, over six years ago?

3 A. Yeah.

4 Q. Thirty, forty-five minutes, over six years ago, you
5 think, because you can't actually remember the year; right?

6 A. Pretty much, yeah.

7 Q. Okay.

8 MR. TOOKER: No further questions.

9 THE Court: Any redirect?

10 MR. ABDALLA: Yes, Your Honor. One moment.

11 **REDIRECT EXAMINATION**

12 **BY MR. ABDALLA:**

13 Q. A couple of things. Obviously, you said you don't
14 deny you have a memory problem?

15 A. Yes.

16 Q. You don't remember exactly when it happened. I'm
17 going to ask you two things. You did testify or maybe you
18 didn't, was it before or after the baby was born?

19 MR. TOOKER: Objection, Your Honor. This is
20 outside the scope of cross-examination.

21 Q. What car was it that they came over in?

22 A. It was a black Corvette that he had just purchased.

23 Q. And why do you remember what she said? Is there a
24 particular reason you remember?

25 A. I mean, it just struck me odd, just the way she kept

State of South Carolina -vs- Norman Keith Burgess (2007-GS-39-2240-2241 and 2012-GS-39-1770)
Ernest Barton - Recross Examination by Mr. Tooker

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1 -- I mean, she kept emphasizing it. Just, I mean, really
2 did. Regardless of what I can remember or can't remember
3 of dates, I know what was said and I know what was done
4 down there. I know how uncomfortable I felt ---

5 Q. Thank you. I have nothing ---

6 A. --- regardless of anything.

7 Q. That's good. I have no further questions.

8 MR. TOOKER: Your Honor, I have a brief question
9 on recross.

10 **RECROSS EXAMINATION**

11 **BY MR. TOOKER:**

12 Q. So it's your theory that this woman, this girl, said
13 that this man raped her so she could get a Corvette?

14 MR. ABDALLA: Objection, Your Honor. He's gone
15 way beyond ---

16 THE WITNESS: Oh, yeah. No, I didn't say that
17 the raped her.

18 MR. ABDALLA: Wait a minute. Let the Judge rule.

19 THE WITNESS: That ain't what I said.

20 MR. TOOKER: I have no further questions.

21 THE Court: Just a minute. Do you have a
22 question to ask?

23 MR. TOOKER: No, that's fine.

24 THE Court: All right, sir. Please step down.

25 You may call your next witness, Mr. Abdalla.

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Kay Burkhart - Direct Examination by Mr. Abdalla

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1 MR. ABDALLA: Yes, sir. Kayla Burkhart.

2 Judge, we need to come up and talk to you first.

3 (WHEREUPON, Mr. Tooker and Mr. Abdalla approached the
4 bar.)

5 THE CLERK: If you would place your left hand on
6 the Bible and raise your right.

7 Do you solemnly swear or affirm that the testimony
8 you're about to give in this case to be the truth, the
9 whole truth and nothing but the truth, so help you God?

10 THE WITNESS: I do.

11 THE CLERK: If you would have a seat. State your
12 name for the record, please.

13 THE WITNESS: My name is Kayla Burkhart.

14 KAYLA BURKHART,

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. ABDALLA:

18 Q. Kayla, what's your full name, please?

19 A. Kayla Lynn Burkhart.

20 Q. And do you know the parties in this case today?

21 A. I do.

22 Q. Do you know Keith or Norman?

23 A. I do.

24 Q. And how do you know Norman?

25 A. He is my uncle.

State of South Carolina -vs- Norman Keith Burgess (2007-GS-39-2240-2241 and 2012-GS-39-1770)
Kay Burkhart - Direct Examination by Mr. Abdalla

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- 1 Q. And are you related to Linda?
- 2 A. I am.
- 3 Q. How are you related to her?
- 4 A. She is my aunt.
- 5 Q. And do you know MINOR
- 6 A. I do.
- 7 Q. How do you know MINOR
- 8 A. She's my step-cousin. I grew up with her. Also, went
- 9 to school with her.
- 10 Q. And during the time -- when did you know her, roughly?
- 11 A. When did I know her?
- 12 Q. From what age?
- 13 A. When I was young, little. Five.
- 14 Q. Did you know her after that?
- 15 A. Yeah.
- 16 Q. Did you go ---
- 17 A. All through -- yeah. All through my -- yeah, all
- 18 through the years. Yes. Sorry.
- 19 Q. That's all right.
- 20 A. I couldn't understand the question.
- 21 Q. Did you ever go over to their house?
- 22 A. I did.
- 23 Q. And would you tell the jury any impressions you had
- 24 when you went over there?
- 25 A. Clean.

State of South Carolina -vs- Norman Keith Burgess (2007-GS-39-2240-2241 and 2012-GS-39-1770)
Kay Burkhart - Direct Examination by Mr. Abdalla

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1 Q. Why does clean stand out to you?

2 A. I don't know. It just did. I mean, it was clean. I
3 mean, it was calm, collect.

4 Q. What about the relationship between MINOR and
5 Norman?

6 A. A normal step-daughter, father.

7 Q. And how -- did you know her during high school?

8 A. I did.

9 Q. And did you know her to ever have a job?

10 A. I did.

11 Q. And did you know of her to attend school?

12 A. She did attend school.

13 Q. And was she allowed to come and go as she pleased,
14 from what you saw?

15 A. From what I saw.

16 Q. And did she -- how did she react around you? Were you
17 friends, were you acquaintances?

18 A. Yeah. I mean, it was normal. I guess -- I mean, it
19 would be normal cousin relationship. We tried to -- you
20 know, we didn't try to treat each other no different. I
21 mean, we always grew up that she was our cousin.

22 Q. And did you have any interactions with her?

23 A. Meaning?

24 Q. Any kind of experiences with her?

25 A. Like? I mean, I stayed with them overnight.

State of South Carolina -vs- Norman Keith Burgess (2007-GS-39-2240-2241 and 2012-GS-39-1770)
Kay Burkhardt - Direct Examination by Mr. Abdalla

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- 1 Q. You did. And how did that go?
- 2 A. It went good.
- 3 Q. Where would you stay if you stayed there?
- 4 A. I slept in her room.
- 5 Q. Did you -- were you still friends with her when she
- 6 got pregnant?
- 7 A. Yes.
- 8 Q. And did things change then?
- 9 A. A little.
- 10 Q. Did you know -- what about her relationship with
- 11 Norman, with your Uncle; how did that change, if at all?
- 12 A. I noticed that she depended my Uncle Norman more when
- 13 she got pregnant.
- 14 Q. And how did she refer to him?
- 15 A. As Keith.
- 16 Q. Was that always?
- 17 A. Yeah, it's always been Keith to her.
- 18 Q. Okay. Now, when you went to school with her, you said
- 19 you knew she worked jobs. Do you know any particular job
- 20 she had during high school?
- 21 A. I think it was KFC that she was working, I'm thinking.
- 22 I was two classes down from her anyway. She's older than
- 23 me. So I'm like two years older -- she's two years older
- 24 than me or so, I think. I mean, I didn't -- I mean, with
- 25 her being upperclass, I couldn't, you know, hang out, hang

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1 out with her at school. But, I mean, other than that ...

2 Q. Now, in the relationship with her family, did you feel
3 like she was traumatized? Did she get away? How did that
4 go?

5 A. I don't think she was traumatized, no.

6 Q. Did you ever observe her do anything?

7 A. No.

8 Q. Did you have an honest relationship with her? Was she
9 honest with you?

10 A. I thought she was. I know that there was at one point
11 she told my dad ---

12 MR. TOOKER: Objection, Your Honor. That's going
13 to be hearsay, double hearsay, is what it sounds like.

14 MR. ABDALLA: Your Honor, she's ---

15 THE Court: Well, wait, wait, just a minute.

16 MR. ABDALLA: She was talking about an incident
17 of honesty with the victim in the case.

18 MR. TOOKER: She's saying the victim told her dad
19 something.

20 THE WITNESS: Well, I mean, I overheard it.

21 MR. TOOKER: That would have then been relayed to
22 her by her father. That's double hearsay.

23 THE Court: If it's something that she knows
24 first hand, she's allowed to testify to. All right, sir.

25 Q. As a result of the conversation you had with your

State of South Carolina -vs- Norman Keith Burgess (2007-GS-39-2240-2241 and 2012-GS-39-1770)
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1 father, what happened?

2 A. Well, the ---

3 MR. TOOKER: Objection, Your Honor. That's
4 backdoor hearsay.

5 THE Court: No, sir. I overrule your objection
6 on that question. What did you do? Is that ---

7 Q. Yeah. What happened as a result of that conversation
8 with your father?

9 A. With the conversation, I think we went, like, a couple
10 of weeks without speaking. And then finally, you know,
11 made up.

12 Q. Did she say anything to you about it?

13 MR. TOOKER: Objection, Your Honor. Hearsay
14 again.

15 MR. ABDALLA: Well, she can testify to that which
16 the victim in the case has already -- the witness who's
17 taken the stand. She can testify ---

18 THE Court: I'll allow the question. Overruled.

19 A. Well, what she told my dad, I asked her, I did ask her
20 about it. And she said she didn't say it to my dad. So, I
21 mean ...

22 Q. What was the issue?

23 A. I was twelve or so. She said that ---

24 MR. TOOKER: Again, Your Honor, this is hearsay.

25 MR. ABDALLA: She's admitting to what she said.

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Kay Burkhardt - Cross Examination by Mr. Tooker

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1 THE Court: I'll allow the testimony.

2 A. She said that I was sneaking and smoking with my
3 cousin Chelsie. And that wasn't true. When I asked her
4 about it, she said that she did not say anything about it
5 to my dad. But I got in trouble for it. I got my butt
6 tore up for it.

7 MR. ABDALLA: One moment, please.

8 Q. And forgive me if I've already asked you, did you
9 notice a change in the relationship, did you say, once the
10 baby was born?

11 A. Yes.

12 Q. And how was the change?

13 A. Well, other than she, you know, she looked to more for
14 Keith to -- she depended more on him, basically.

15 Q. Did you notice her freedom restricted or anything?

16 A. No.

17 MR. ABDALLA: I have no further questions.

18 THE Court: Solicitor, you may cross-examine.

19 MR. TOOKER: One moment, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. TOOKER:

22 Q. You said they had like a step-daughter, step-father
23 relationship?

24 A. Yes.

25 Q. Okay. So if they had a step-daughter, step-father

*State of South Carolina -vs- Norman Keith Burgess (2007-GS-39-2240-2241 and 2012-GS-39-1770).
Chelsie Burgess - Direct Examination by Mr. Abdalla*

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1 relationship, did it strike you as strange when you found
2 out that he had fathered a child with her?

3 A. Did I find it strange?

4 Q. Yes?

5 A. Yes.

6 Q. Okay.

7 MR. TOOKER: No further questions.

8 THE COURT: Thank you, ma'am. You may step down.
9 You may call your next witness.

10 MR. ABDALLA: Chelsie Burgess.

11 THE CLERK: If you would place your left hand on
12 the Bible and raise your right.

13 Do you solemnly swear or affirm that the testimony
14 you're about to give in this case to be the truth, the
15 whole truth and nothing but the truth, so help you God?

16 THE WITNESS: I do.

17 THE CLERK: If you would have a seat. State your
18 name for the record, please.

19 THE WITNESS: Chelsie Lynn Burgess.

20 CHELSIE BURGESS,

21 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION

23 BY MR. ABDALLA:

24 Q. Good afternoon, Chelsie. Do you know why you're here
25 today?

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Chelsie Burgess - Direct Examination by Mr. Abdalla

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1 A. Yes, sir.

2 Q. And do you know the parties in this case?

3 A. Yes, sir.

4 Q. You know MINOR and Norman both?

5 A. Yes, sir.

6 Q. And are you related to Norman?

7 A. Yes, sir. He's my uncle.

8 Q. Pardon?

9 A. He's my uncle.

10 Q. He's your uncle. And as a family member -- because
11 you're a family member would you -- you'd like to see him
12 successful today. Is that correct?

13 A. Yes. But I would not lie for him.

14 Q. That's what I was just going to ask you.

15 A. Yeah.

16 Q. Would you say anything but the truth?

17 A. No.

18 Q. So this testimony you're going to give to the jury is
19 the whole truth?

20 A. Yes, sir.

21 Q. I want to ask you a few questions. How long did you
22 know Norman and how long, more importantly, MINOR

23 A. I've known MINOR since I was five. I'm now -- well,
24 at the time all this happened, I would have probably been
25 about eighteen.

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Chelsie Burgess - Direct Examination by Mr. Abdalla

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1 Q. At that time, we're talking 2007, roughly?

2 A. I'd be seventeen. So from the time I was five until I
3 was seventeen.

4 Q. And you knew MINOR during that entire period?

5 A. Yes, I did.

6 Q. And during that time, did you ever spend the night at
7 her house?

8 A. Yes, I did.

9 Q. And the times you were over there, did you observe
10 anything that seemed unusual?

11 A. No.

12 Q. What about the relationship between MINOR and
13 Norman?

14 A. Seemed like -- just like a normal family, you know.
15 She wasn't fond of him.

16 Q. Why wasn't she fond of him?

17 A. Having to do chores and cut grass and stuff you have
18 to do as you grow up, you know, trying to teach her
19 responsibility and stuff like that.

20 Q. And as time went on, did things change?

21 A. Right when she got ready to have the baby, before she
22 had her baby, I noticed they became closer. Like they
23 would cut-up and laugh with each other and giggle and tell
24 jokes and stuff like that. So it looked like they had
25 grown closer to each other right before she had her baby.

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Chelsie Burgess - Direct Examination by Mr. Abdalla

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1 Q. And how was it after that?

2 A. They were very close, laughed, very nice to each
3 other.

4 Q. Did you ever observe any -- did she seem to be
5 traumatized or held without -- or not allowed to leave or
6 anything?

7 A. No, not at all. Not at all.

8 Q. Was she allowed to go to school and work, as far as
9 you knew?

10 A. Uh-huh (affirmative). Yes.

11 Q. And was she allowed to date?

12 A. Yes.

13 Q. Are you sure she ever dated?

14 A. Yeah. She would talk to me about her boyfriends.

15 Q. Like when? During what period? How old was she?

16 A. I was, from the time I was -- she's two years older
17 than me. I was fourteen, so that would have made her
18 sixteen.

19 Q. Did she ever tell you about an incident with **Boyfrien**

20 MR. TOOKER: Objection, Your Honor. This goes
21 into the rape shield stuff we talked about yesterday. If
22 he wants to go into it, we've got to proffer it.

23 THE Court: All right. With the limitations,
24 I'll allow her to answer that one question.

25 A. I didn't know the boyfriend, **Boyfrien** personally. I

1 don't know the names of her boyfriends. But she would tell
2 me things that she would do with her boyfriends.

3 Q. Was this before the baby was born or after?

4 A. Yes, sir. It was before.

5 Q. Did it involve sexual relationships?

6 A. Yes, sir.

7 Q. Did you ever observe the relationship between MINOR

8 -- I mean -- I'm sorry. Do you know him as Norman or
9 Keith?

10 A. Norman.

11 Q. --- between Norman and Angie?

12 A. Yes, sir.

13 Q. And how was that relationship?

14 A. Like a loving husband and wife.

15 Q. And what about the relationship between MINOR and
16 Angie?

17 A. Like a mother/daughter relationship?

18 Q. Did that change as she got older?

19 A. No. Not that I knew, no. Angie always loved MINOR
20 She always loved her mama. You know, my uncle always loved
21 Angie.

22 Q. One moment, please. Now, you said it seemed normal,
23 but that things got friendlier between Keith -- I'm sorry

24 -- Norman and MINOR around the time she had the baby?

25 A. Uh-huh (affirmative). Yes.

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Chelsie Burgess - Direct Examination by Mr. Abdalla

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1 Q. Or right before and after; correct?

2 A. Uh-huh (affirmative).

3 Q. When did you find out or suspect that it was his
4 child?

5 A. Well, they would all -- they would come to the house,
6 her and Angie and Norman and the baby. And we all sat
7 around and like just talked like a normal family. And just
8 -- I would notice certain facial expressions that the baby
9 would make, looked like Sister which is my Uncle Norman
10 and Angie's daughter. And I kind of thought, you know,
11 maybe that -- that kid looks like my uncle, you know. Just
12 the facial expressions, the way she'd look at you, the way
13 she acted, even as a baby.

14 Q. So that probably would not be normal then, if he
15 fathered her child; correct?

16 A. Correct.

17 Q. Would you find that acceptable? Would you find that
18 to be acceptable?

19 A. Find what to be acceptable?

20 Q. For the step-father ---

21 A. No.

22 Q. But as far as the controlling, you never observed any
23 controlling behavior from him toward her ---

24 A. No.

25 Q. --- when you were there?

1 A. No.

2 Q. And did you testify that you'd been over there quite a
3 few times?

4 A. Yes.

5 Q. Thank you.

6 MR. ABDALLA: No further questions.

7 Please answer any questions the Prosecutor has.

8 CROSS-EXAMINATION

9 BY MR. TOOKER:

10 Q. How often would you see your uncle?

11 A. We seen him probably about -- either once a week or
12 maybe once every two weeks. More often when my grandfather
13 got sick with cancer ---

14 Q. You say you ---

15 A. --- because they lived in the same area, so we were
16 there.

17 Q. Would you say you love your family?

18 A. Yes.

19 Q. You love your uncle?

20 A. Yes.

21 Q. So did -- and when y'all were kids that MINOR had
22 like the normal gripes with Norman ---

23 A. Uh-huh (affirmative).

24 Q. --- the same thing that a daughter would have with a
25 father?

State of South Carolina -vs- Norman Keith Burgess (2007-GS-39-2240-2241 and 2012-GS-39-1770)
Chelsie Burgess - Cross Examination by Mr. Tooker

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1 A. Yes.

2 Q. Doing chores, cutting the grass?

3 A. Yes.

4 Q. And they appeared to have to you a normal step-
5 father/step-daughter relationship?

6 A. Yes.

7 Q. And the Defendant and Angie Tollison had a normal
8 husband/wife relationship?

9 A. Uh-huh (affirmative).

10 Q. And the victim and her mother had a normal
11 mother/daughter relationship?

12 A. As far as I could tell, yeah.

13 Q. Okay. Do you remember MINOR in School?

14 A. No.

15 Q. You don't remember her going to school?

16 A. Oh, I remember her going to school. I thought you
17 asked if I went to school with her.

18 Q. No, no. I'm sorry.

19 A. No.

20 Q. That was not very clear. I mean, you knew she went to
21 school?

22 A. Yes. Yes.

23 Q. All right. Did she seem to like school?

24 A. Yes. She made very good grades in school.

25 Q. Okay. Did it surprise you that she dropped out?

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Chelsie Burgess - Cross Examination by Mr. Tooker

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1 A. No. Because to me she made it sound like she was
2 dropping out so she could take care of her baby.

3 Q. Okay.

4 A. That way it wouldn't all be on her parents.

5 Q. Okay. And you said that everything seemed normal?

6 A. Yeah.

7 Q. I mean, the whole -- the household seemed normal?

8 A. Uh-huh (affirmative).

9 Q. In fact, you talked about everybody coming over to
10 your house, kind of as one big family?

11 A. Yeah.

12 Q. Norman, Angie, all of them?

13 A. Yeah.

14 Q. When is it you found out that the Defendant, I mean,
15 found out officially because of the DNA that the Defendant
16 fathered the child of the victim?

17 A. It was the day that my uncle had showed up to my
18 house, beaten up, because one of her family members had
19 jumped on him. And he had told us that the baby was his.
20 We didn't know for a very long time. Like we had our
21 speculations, but we were never one hundred percent
22 positive.

23 Q. Okay. Was that after he had already been arrested?

24 A. I do believe so because I had to help him sell his car
25 to pay his bondsman.

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Chelsie Burgess - Cross Examination by Mr. Tooker

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1 Q. Okay. So he found out and he told you what had
2 happened because the DNA results came back?

3 MR. ABDALLA: Objection, Your Honor, no. Facts
4 not in evidence. The DNA wasn't around anywhere near then.

5 THE Court: Rephrase your question if you would,
6 Mr. Tooker.

7 MR. ABDALLA: She testified that she found out it
8 was his father around the time he was arrested.

9 THE Court: Ask your question, Solicitor.

10 MR. TOOKER: Thank you, sir.

11 Q. Defendant's DNA results came back and y'all were aware
12 of that; right, your family?

13 A. We never seen DNA results. He come to my house. Her
14 family, one of her family members had just beat him up. He
15 was bloody, swolled up face. He told us what had happened
16 and told us, you know, the baby was his. We never seen any
17 actual DNA results.

18 Q. Oh, you didn't see the DNA results?

19 A. No.

20 Q. Your cousin testified that she did.

21 MR. ABDALLA: Objection, Your Honor.

22 THE WITNESS: Well, she may have, but I haven't.

23 THE Court: Wait just a minute. What's your
24 objection?

25 MR. ABDALLA: He's pitting witnesses.

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1 THE Court: Okay. Sustain the objection.

2 Rephrase your question.

3 Q. Anyhow, let's just move on. So you said everything
4 seemed normal to you?

5 A. Uh-huh (affirmative).

6 Q. Normal relationship, normal family?

7 A. Uh-huh (affirmative).

8 Q. Did you think it was normal when you found out that he
9 was the father of that child?

10 A. I didn't think it was right, no, I didn't.

11 MR. TOOKER: No further questions.

12 THE Court: Any redirect?

13 MR. ABDALLA: Nothing on redirect, Your Honor.

14 THE Court: All right. Thank you, ma'am. You
15 may step down.

16 MS. BURGESS: Thank you.

17 THE Court: You may call your next witness, Mr.
18 Abdalla.

19 MR. ABDALLA: I call Norman Burgess to the stand.

20 THE CLERK: If you would place your left hand on
21 the Bible and raise your right.

22 Do you solemnly swear or affirm that the testimony
23 you're about to give in this case to be the truth, the
24 whole truth and nothing but the truth, so help you God?

25 THE WITNESS: Yes.

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1 THE CLERK: If you would have a seat. State your
2 name for the record, please.

3 THE WITNESS: My name is Norman Burgess.

4 NORMAN KEITH BURGESS,

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MR. ABDALLA:

8 Q. What's your full name, Norman?

9 A. Norman Keith Burgess.

10 Q. And you go by Keith as well as Norman?

11 A. Yeah.

12 Q. Who calls you Keith?

13 A. Angie does, my wife.

14 Q. Keith, do you know why you're here today?

15 A. Yes, I do.

16 Q. This is all about you?

17 A. Yes, I do.

18 Q. You've heard a lot of things in Court today; right?

19 A. Yes, sir.

20 Q. And the jury is probably waiting to hear your side of
21 the story.

22 A. Yes, sir.

23 Q. Although you're not obligated to testify, you choose
24 to take the stand; correct?

25 A. True.

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1 Q. I want you to do me a favor. Tell the jury a little
2 bit about your living with Angie, when you met Angie and
3 all. Approximately what year it was?

4 A. You talking about when we first met?

5 Q. When you first met and started living together, I
6 guess events of then. I don't know how much time there was
7 between the two?

8 A. That was like sixteen years ago, so ... I don't know
9 exactly -- I don't know what year. It was sixteen years
10 ago when we met. I was coming out of D. Walker's. It was
11 my club. I went out there with my boss man. I stayed
12 maybe an hour and I left. I didn't really want to be
13 there, so I left. And Angie come through in a car with a
14 friend of hers and started waving at me. So they pulled
15 over down to the parking lot and I went down there and
16 started talking to them. And that's how we met.

17 Q. All right. And then when was it you started living
18 together?

19 A. Probably about two months after that.

20 Q. And at the time you were living with her, did she
21 already -- was MINOR already in the picture?

22 A. Yeah.

23 Q. MINOR was already alive and her baby; right?

24 A. Oh, yeah.

25 Q. And tell about how you all lived then?

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1 A. It was good. I mean, everything was fine.

2 Q. What was the house -- home life like?

3 A. It was good. It was good.

4 Q. And what was your relationship like with MINOR when
5 she was young?

6 A. I guess about the same as it was with my own kids.

7 Q. And how was that?

8 A. I cared for her and took care of her just like I did
9 my own kids and tried to be good to her when I could. But
10 her mother always disciplined her because I wouldn't
11 discipline her because she wasn't my child.

12 Q. When you say -- was Angie the one that made the
13 decisions with regard to discipline?

14 A. As far as MINOR went, yeah.

15 Q. What about your relationship with Angie? There was
16 testimony today that -- well, what I want you to answer is,
17 talk to the jury about, was Angie free to come and go as
18 she pleased?

19 A. Yeah. Angie could come and go as she pleased anytime
20 she wanted to. I had no control over her.

21 Q. And what about, how was MINOR life?

22 A. She could come and go as she pleased, too? She dated
23 a couple of guys.

24 Q. I was just going to ask you, was she allowed to date
25 when she was in high school?

1 A. Yeah.

2 Q. And there was testimony about -- well, I don't want to
3 get into that yet. Hold on a minute. Now, did you guys
4 move a few times?

5 A. Yeah. Quite a few times.

6 Q. Tell me about the moving.

7 A. If we would get behind on our rent or something or one
8 of us lost our job, we would have to move because we
9 couldn't make the rent. And so we would move on to another
10 place.

11 Q. Speaking of getting behind on the rent, isn't it true
12 you have a bad check charge from two or three years ago?

13 A. Yeah, I did. I had overdraft protection. They were
14 supposed to pick it up. But evidently, it didn't. So as
15 soon as I found that there was a bad check, I went over
16 there and paid it up, paid it out.

17 Q. Okay. And that's it. So you said you moved around a
18 few times, primarily because of money issues. And then the
19 last place you were at was which place?

20 A. [REDACTED]

21 Q. And how long were you there?

22 A. Probably about seven years.

23 Q. Seven years?

24 A. Seven, eight years.

25 Q. When you were there was Angie working?

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1 A. Yeah.

2 Q. And where was she working?

3 A. Community Health.

4 Q. And how long did she work there?

5 A. She worked there almost eight years.

6 MR. ABDALLA: One moment, please.

7 Q. You said she worked at Community Health Services?

8 A. Yes, sir.

9 Q. And she worked there about seven or eight years, you
10 said?

11 A. Yeah. Between seven and eight years, yeah.

12 Q. And during the time she worked there, did she work
13 different shifts?

14 A. Naw. She worked the same shift.

15 Q. Which shift was that?

16 A. Third.

17 Q. Third shift from -- what years were these, roughly?

18 A. Years?

19 Q. Yeah, was it like 2002, give me ---

20 A. (No verbal response).

21 Q. When did she stop working there, let's put it that
22 way?

23 A. When all this occurred.

24 Q. In 2007?

25 A. Yeah. She worked there, I'd say from '98 to 2007.

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1 Q. All right. Now, Angie worked and you were with the
2 children; right?

3 A. Yeah.

4 Q. Who was in the home?

5 A. Just me, MINOR and Sister

6 Q. You, MINOR and Sister And what were the sleeping
7 arrangements like?

8 A. They all had their own rooms.

9 Q. They did -- everybody had their own room?

10 A. Yeah.

11 Q. All right. And at that time, Angie was going to --
12 not Angie -- MINOR was going to -- when MINOR was in
13 high school, which high school was it?

14 A. Pickens High School.

15 Q. Pardon?

16 A. Pickens.

17 Q. Pickens High School. Did she stay in Pickens High
18 School the entire time?

19 A. No, sir.

20 Q. And what happened?

21 A. When she came up pregnant, when she was going into her
22 senior year, she didn't want to go back to high school
23 because she was having problems with her boyfriend, Boyfriend
24 And so she wanted to go to Easley. So I went up there with
25 her to the high school. And she wanted to get transferred

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1 to Easley because she didn't want to have to deal with Boyfric
2 because Boyfric found out she was pregnant and he was kind of
3 upset about it. And so we went to Easley and they wouldn't
4 let her go to Easley because our address says Easley, but
5 it says Pickens County, so she'd have to go to Pickens. So
6 she didn't want to go there. So when she found out she
7 couldn't get in Easley, she went to Simpson Academy. And
8 that's where she met Luke Shelton, her husband.

9 Q. You mentioned Boyfric

10 A. Yeah.

11 Q. There was an incident with Boyfric about -- after she got
12 pregnant. Prior to that, was there any other incident with
13 Boyfric that's significant?

14 MR. TOOKER: Your Honor, I'm going to have to
15 object to this.

16 THE Court: All right.

17 MR. TOOKER: I think we need to do an in-camera.

18 THE Court: All right. I overrule your
19 objection.

20 Q. Was there any other incident with Boyfric

21 A. Yeah. Boyfric and Luke Shelton got in a fight at school
22 over MINOR Because Luke had grabbed her on the behind
23 and Boyfric found out about it. So they both got into it over
24 that.

25 Q. Okay. I'm talking about when she was fifteen or

1 sixteen?

2 A. Oh, yeah. Josh's mama picked MINOR up at our house
3 when she was fifteen. And they went on a date. And his
4 mom dropped them off at the theater in Easley. And they
5 was supposed to have went to the theater, but they went in
6 the theater and then when his mom left, they went down to
7 ---

8 MR. TOOKER: Objection, Your Honor.

9 THE WITNESS: --- behind the dumpster.

10 THE Court: Wait a minute.

11 MR. TOOKER: He's testifying to stuff that he has
12 no first-hand knowledge of.

13 THE Court: Yes, sir. I sustain the objection.

14 Q. Now, did you tell -- did you ever hear MINOR talk
15 about a relationship she had with Boyfieri physical
16 relationship?

17 A. Yeah.

18 Q. Tell the Court about that.

19 A. She told me and her mom both that she had left the
20 theater that night and went behind the dumpster and ---

21 MR. TOOKER: Objection, Your Honor.

22 THE Court: Okay.

23 MR. TOOKER: Can we approach, please, sir?

24 THE Court: Yes, sir.

25 (WHEREUPON, Mr. Tooker and Mr. Abdalla approached the

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1 bar.)

2 THE Court: Ladies and gentlemen, if you'll just
3 take a short break, we'll call you back in just a few
4 moments. Don't discuss the case while you're out and
5 about.

6 (WHEREUPON, the jury exited the open Court at
7 approximately 3:00 P.M.)

8 THE Court: All right, sir. You can step down.

9 THE WITNESS: Thank you.

10 THE Court: And we'll take a five-minute break
11 and don't discuss your testimony.

12 (WHEREUPON, the Court stood at recess for a short
13 break.)

14 THE Court: If you'll come back around to the
15 witness stand, Mr. Burgess.

16 All right. Is everybody ready to proceed?

17 MR. ABDALLA: Yes, Your Honor.

18 MR. TOOKER: Yes, sir.

19 THE Court: All right. If the jury is ready,
20 First Sarge, you can have them come in.

21 (WHEREUPON, the jury entered the open Court at
22 approximately 3:23 P.M.)

23 THE Court: All right. You may continue your
24 examination of the witness, Mr. Abdalla.

25 MR. ABDALLA: Thank you, Your Honor.

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1 Q. Mr. Burgess, you were testifying right before the
2 break about an incident with MINOR

3 A. Yes, sir.

4 Q. Now, did she ever admit to you that she'd had sex with
5 Boyfriend

6 A. Yes, she did.

7 Q. And would you tell the circumstances -- not exactly
8 where or anything like -- about how old was she when that
9 happened?

10 A. She was fifteen.

11 Q. And where did it occur? No, I'm sorry. Was it before
12 or after the baby?

13 A. It was before.

14 Q. And what did she say to you?

15 A. She told me and her mother both that ---

16 Q. Now, without the detail of where, but ---

17 A. And she told me and her mother both at the same time
18 that she'd had sex with Boyfriend

19 Q. As a result of that, was she disciplined by her mother
20 or you?

21 A. Well, her mother asked me what did I want to do about
22 it. And I left it up to her. I said, she's your daughter.
23 You discipline her.

24 Q. And was she restricted at all after that?

25 A. Yeah. She stopped her from dating for a couple of

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1 months.

2 Q. And how was her school during that period?

3 A. Good, I guess.

4 Q. So there was no problems at school?

5 A. No.

6 Q. Were you aware that she was on birth control?

7 A. Yeah.

8 Q. When did you become aware of that?

9 A. When her mother took her to the health department to
10 get her on birth control.

11 Q. I'm sorry?

12 A. When her mother took her to the mental health -- I
13 mean, the health department.

14 Q. And ---

15 A. Her mother put her on birth control after she came
16 back and said what she did with **Boysmen**

17 Q. Now, there was testimony that some of Angie's family
18 wasn't allowed to come over, Sheri and some other people.

19 Can you comment about that at all?

20 A. They came over any time they wanted to. But when they
21 did come over, all they did was make fun of Angie.

22 Q. Who is they?

23 A. Sheri, mostly.

24 Q. How so?

25 A. They said Angie's elevator didn't go all the way to

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1 the top.

2 Q. Talk a little bit louder.

3 A. They said her elevator didn't go all the way to the
4 top.

5 Q. They said that about MINOR

6 A. About Angie.

7 Q. And as a result of that, did you really want them in
8 your home?

9 A. Not really because they was making fun of my wife and
10 I didn't like that. So I told Angie, I said, you can do
11 what you want. I said, but when they come, I said, you can
12 have a relationship with them. You can talk to them, but I
13 said, I don't want to be around them if they're going to
14 talk about you like that.

15 Q. And who's in that family, which ones?

16 A. That was Sheri, HIA And sometimes she'd bring
17 some people with her.

18 Q. Now, your relationship, you probably heard MINOR
19 testify, that began with a strip poker incident. And you
20 were doing things to MINOR when she was fourteen years
21 and having sex in front of her prior to that. Would you
22 tell the Court about that?

23 A. No, that's not true.

24 Q. That's not true at all. Nothing ever happened like
25 that?

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- 1 A. No, nothing ever happened like that, no.
- 2 Q. Never had sex in front of her when she was young?
- 3 A. No. No.
- 4 Q. Well, now, what about the fact that there was
- 5 testimony from her that you forced her to have sex?
- 6 A. That's not true.
- 7 Q. You never forced her to have sex?
- 8 A. No.
- 9 Q. Did you ever have sex with her?
- 10 A. Yes, I did.
- 11 Q. Would you tell the jury about that, how that happened?
- 12 A. Well, when her mother worked third shift when she was
- 13 like seventeen, and about four or five months later, she
- 14 asked me if I wanted to be friends with benefits. And I
- 15 didn't know what that was. So I asked her, I said, what
- 16 you mean, friends with benefits. She said we could be
- 17 friends ---
- 18 Q. Slow down. She said she wanted to be friends with
- 19 benefits?
- 20 A. Friends with benefits. She said -- I said, what does
- 21 that mean? She said, well, we can have sex ---
- 22 MR. TOOKER: Your Honor, this is all hearsay.
- 23 THE WITNESS: --- and still be friends.
- 24 THE Court: I overrule your objection.
- 25 A. She said that that meant that we could be friends and

1 still have sex with no strings attached.

2 Q. Sex with no strings attached. That's what friends
3 with benefits are?

4 A. Yeah. I didn't know what that meant. I asked her
5 what do you mean.

6 Q. And so what happened as a result of that conversation?

7 A. Well, I didn't do nothing at that time. I just, I
8 didn't want to because I didn't feel right about it. But
9 as the time went by, she kept, every two or three months,
10 she'd ask me, have you thought about it? Have you thought
11 about it? And finally, one day, you know, I'm only human,
12 you know, I was at a weak moment and I allowed it to
13 happen. But she was seventeen and a half years old at the
14 time.

15 Q. She was over seventeen?

16 A. Yeah.

17 Q. And are you proud of the fact you had sex with her?

18 A. No, I'm not. No, I have to deal with it the rest of
19 my life. I don't feel good about it. I was weak and I
20 made a mistake. If I had time to go over, I'd never have
21 done it.

22 Q. So you had sex with her for a period of time, from
23 when until when, from she was seventeen until when?

24 A. From about seventeen and a half up until she was
25 nineteen.

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1 Q. And when was the baby born? How old was she when the
2 baby was born?

3 A. She was about eighteen and a half, somewhere in there.

4 Q. And during that time in the relationship, did you ever
5 force her?

6 A. No, sir.

7 Q. What was the relationship like with you, was she
8 friendly?

9 A. Yes. She was always hugging on me, telling me she
10 loved me. Even in front of her mom.

11 Q. Did she ever make any other comments to you about her
12 and her mom?

13 A. Yeah. She did ask me a lot when her mom was at work
14 who did I love better, like better, her or her mom. And I
15 said, you don't want me to answer that question.

16 Q. And why was that?

17 A. Because I didn't know what I felt towards her mom.
18 Since she wanted me to compare her to her mom, I couldn't
19 because I was in love with her mom. And I told her, I
20 said, we just -- you remember now, you said we were going
21 to be friends with benefits. That's no strings attached.
22 I said, you're starting to get feelings for me. And I
23 said, you know I love your mom.

24 Q. But you were having sex with her daughter?

25 A. Yeah. I'm not proud of it. But, yeah, I did.

1 Q. Did you ever go on vacation, any big vacation?

2 A. Yeah.

3 Q. Where did you go?

4 A. We went to Gatlinburg, Tennessee for two weeks. And
5 then when we left there we came back home, washed our
6 clothes and the next morning we left out for Myrtle Beach
7 and stayed down there for two weeks.

8 Q. And what happened when you were at Myrtle Beach?

9 A. MINOR wanted me to tell her mom that we needed to go
10 get Allie's stroller out of the hotel room. So when we was
11 at the beach, she went in there and we had sex then too.

12 Q. Well, no, I was referring to you had sex with her
13 then?

14 A. (Affirmative nod).

15 Q. But was there a house down there?

16 A. Oh, yes. Yes.

17 Q. You were thinking of buying property down there?

18 A. Yeah. I was thinking about property so I seen a
19 realtor while I was down there. And I was trying to find
20 something in the price range that what money I had in the
21 bank that I'd got back from my disability, and which --
22 plus we had other money too we were saving. But we found a
23 -- I was looking for a place. Well, MINOR found a place
24 in the book for thirty-four-nine that Century 21 had. So I
25 was interested in getting it. It was a double-wide on a

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1 small lot for thirty-four nine. Which I had plenty enough
2 money to pay cash for that at the time. But I didn't buy
3 it. But when we came back home she wanted me to buy that
4 for her. And I wouldn't do it. She wanted me to leave her
5 mother and take the Corvette and me and her move to the --
6 go to the beach. But I would not do that neither.

7 Q. And approximately when was this?

8 A. This was between -- it's going off and on from between
9 eighteen and nineteen.

10 Q. And where does the Corvette fit into that time frame?

11 A. That's when my back money came from my disability. I
12 went and paid cash for it. And she wanted the car. And
13 she wanted me to give it to her. She said that she
14 deserved it, that car, for being my lover. And I said,
15 you're the one that wanted to -- this anyway. You know,
16 what we done. I said, I regret it. I said, but you, you
17 wanted to do this. But now you want me to give you a car.
18 I said, if anybody deserves a car, it would be your mother
19 because she's helped me out all these years. And I'm in
20 love with your mother. And she's helped me pay child
21 support. She's helped me with bills. We've helped each
22 other. I said, if anybody deserves the car, it's your
23 mother. She blowed up and got mad.

24 Q. When was that, roughly?

25 A. She was almost nineteen.

1 Q. When was that in relation to when you got arrested?

2 A. That was before I got arrested.

3 Q. How much before? A day, a month?

4 A. About six months.

5 Q. Six months before you got arrested?

6 A. And then about three months before I got arrested she
7 fussed about it again with me when her mother was at work.

8 Q. So she was fussing at you because she wanted you to
9 buy her things?

10 A. No. She wanted me to sign the Corvette over to her.

11 Q. Did she ever give you cards or anything for birthdays,
12 Father's Day?

13 A. Yeah. She gave me -- she made me a Father's Day card
14 with our -- which I found out it's my daughter now, I found
15 out it's my daughter. She gave me a Father's Day card
16 telling me how much she loved me and how much she
17 appreciates what I done for her and Daughter

18 MR. TOOKER: Your Honor, the Defense has just
19 shown me something. I've got an objection to it.

20 THE Court: All right. Let me see it, see the
21 Exhibit.

22 (WHEREUPON, Mr. Tooker and Mr. Abdalla approached the
23 bar.)

24 THE Court: You may proceed, Mr. Abdalla.

25 MR. ABDALLA: One moment, Your Honor.

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1 Q. You said she gave you a card?

2 A. Yes, sir.

3 Q. And what kind of card was it?

4 A. It was a Father's Day card.

5 Q. And what was the general gist of the card?

6 A. Just let me know that she appreciates everything I
7 done -- I've been doing for her and Daughter And that they
8 love me.

9 Q. And when was that?

10 A. That was after the baby was born, probably -- Daughter
11 was probably about fifteen months old when she gave me
12 this, somewhere in there.

13 Q. There was testimony that MINOR wasn't allowed to
14 come and go as she pleased. Tell the jury about her
15 conditions in the home and out of the home.

16 A. She was allowed to date and go where she wanted to go
17 when she wanted to, as long as she was back home at a
18 certain time.

19 Q. How did she get around?

20 A. She had her own car.

21 Q. She had her own car?

22 A. She bought it from us.

23 Q. Pardon?

24 A. She bought one from me.

25 Q. So she had her own car and was allowed to come and go?

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1 A. Yeah.

2 Q. Where did she stay when she was in the house?

3 A. Her bedroom was in the back room, the other end of the
4 house.

5 Q. Okay. And what about her relationship with the baby
6 and your's and Angie's relationship with the baby? Who
7 took care of the baby?

8 A. Me and Angie did.

9 Q. And where was she when you were taking care of the
10 baby?

11 A. She would be either in her bedroom, listening to
12 music, jogging in motion, or she would be out on a date or
13 something like that.

14 Q. Norman, you're being charged with very serious
15 criminal offenses. You understand that?

16 A. Yes, sir.

17 Q. Criminal sex -- your sexual offenses involve your
18 behavior toward MINOR from the time she was fourteen
19 until the time she turned sixteen. But once she turned
20 sixteen she's an adult for purposes of South Carolina, as
21 far as the criminal statute.

22 A. Yes, sir.

23 Q. I want you to tell this jury whether you touched her
24 in any way sexually, whether by consent or force or
25 coercion, from the time she was fourteen onward?

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1 A. No, I did not.

2 Q. You never touched her sexually?

3 A. No.

4 Q. By force or coercion?

5 A. No, I did not.

6 Q. Did you ever touch her voluntarily during that time
7 when she was fourteen and sixteen?

8 A. No, I did not.

9 Q. And the first time you testified that you touched her
10 sexually was when she was seventeen years old. Is that
11 what you said earlier?

12 A. Yeah. Seventeen, maybe four or five months older.

13 Q. She was over seventeen?

14 A. Yeah. She was over seventeen.

15 Q. And you said that was consensual?

16 A. Yeah, it was consensual. She knows it was.

17 Q. And are you proud of that?

18 A. No, I'm not proud of it.

19 Q. Are you ashamed of it?

20 A. I'm ashamed of it, yes, sir.

21 Q. Answer any questions the Prosecutor has.

22 THE Court: All right. Solicitor, you may cross-
23 examine the witness.

24 MR. TOOKER: Thank you, Your Honor.

25 CROSS-EXAMINATION

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1 BY MR. TOOKER:

2 Q. These are pretty serious charges; aren't they?

3 A. Yes, they are.

4 Q. And you know they are?

5 A. Yes, sir.

6 Q. Okay. Let's start with the stuff that you agree that
7 the victim said that is correct. That you met Angie about
8 sixteen years ago?

9 A. Yes, sir. Yeah, somewhere around there. Yeah.

10 Q. How old was MINOR then?

11 A. About eight. Eight or nine.

12 Q. She was a small child when y'all met?

13 A. Yes.

14 Q. Okay. And like she said, y'all met at D. Walker's?

15 A. Yes.

16 Q. She was actually in the car?

17 A. No. MINOR wasn't in the car. It was ---

18 Q. She wasn't in the car?

19 A. No, sir. There was Angie ---

20 Q. Did you get in the car?

21 A. No, sir.

22 Q. Okay. So how do you know?

23 A. Because I went down to the car and talked to her.

24 Q. You talked to MINOR

25 A. No, Angie.

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1 Q. Okay. And after y'all moved in together, you moved
2 into that apartment, was it above a shop?.

3 A. It was above a -- Tri-City Body Shop off of Number 8.

4 Q. Off Highway 8, going toward Easley?

5 A. Yes, sir. Yes, sir.

6 Q. And then you moved several times?

7 A. Yes, sir.

8 Q. And you moved into a yellow house for some time. Is
9 that right?

10 A. Yeah. That was in Pickens off of -- I think 209 Wolf
11 Drive.

12 Q. Okay. And then you moved to that -- was that 116 --
13 what was that address?

14 A. Well, we didn't move there then. When we moved out
15 the yellow house, we moved down there next to Sheri, which
16 was two trailers down from her.

17 Q. That's right. Okay. So it's the yellow house and
18 then it's that house by Sheri?

19 A. Yeah.

20 Q. And then y'all moved to that address ---

21 A. Chaparral Way, yeah.

22 Q. Okay. Just like MINOR said?

23 A. Yeah.

24 Q. And you heard her testimony. So that part is true and
25 accurate?

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1 A. Yeah.

2 Q. And that Angie was working third shift when y'all
3 would have sex. That part was true?

4 A. Yes, sir.

5 Q. And the sleeping arrangements in your house, it's not
6 really controverted, is it?

7 A. What do you mean?

8 Q. Well, it's not in dispute? Isn't it true that you
9 slept in the same bed with MINOR and Sister and the baby?

10 A. No, sir.

11 Q. That's not true?

12 A. No, sir.

13 Q. You didn't sleep in the same bed with MINOR Sister
14 and the baby?

15 A. No. MINOR slept in the floor beside the bed on
16 maybe two occasions when they got scared. Someone tried to
17 break in our house once, and I can prove that. And they
18 come running and got in the bed with us. Sister jumped in
19 the bed with us. That's my youngest daughter. And she got
20 in between me and her mom. And Angie made her pallet on
21 the floor on her side of the bed.

22 Q. Why would her mom be in bed if she's working third
23 shift?

24 A. Because she wasn't working that night.

25 Q. Okay.

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1 A. Okay. She didn't work like three days out of the
2 week.

3 Q. So you're saying that that part is not true?

4 A. (No verbal response).

5 Q. I mean, that part doesn't mean that you raped anybody.
6 But you're saying that part is not true, too?

7 A. What, about sleeping in the bed?

8 Q. Yeah. They would sleep in the bed with you. That you
9 would sleep in the bed with your daughters and your baby?

10 A. My youngest daughter slept in the bed with us but not

11 MINOR

12 Q. MINOR never slept in the bed with you?

13 A. No.

14 Q. Okay.. You're having sex with her, but she won't sleep
15 in the bed with you?

16 A. Well, it's because at the time she was of age when me
17 and her was having sex.

18 Q. What does that have to do with the sleeping
19 arrangements?

20 A. Because she didn't want her mother to know what we was
21 doing.

22 Q. Okay. So you're saying that she's lying about the
23 sleeping arrangements, not about the fact that y'all had
24 sex?

25 A. Yeah.

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1 Q. What sense does that make, Mr. Burgess?

2 A. I don't know. Ask her.

3 Q. Okay. Homebound. You said she went on homebound
4 after she delivered the baby?

5 A. Okay.

6 Q. Okay. You heard that?

7 A. Yeah. I heard that.

8 Q. And that's the truth?

9 A. Yeah, for a while. But I never seen no teachers come
10 to my house. I wasn't there when she came.

11 Q. You're saying ---

12 A. I've never met that lady before in my life, except one
13 time in school when she went to enroll her senior year, I
14 talked to that lady. And we was -- MINOR was wanting to
15 get transferred to Easley because she didn't want to be
16 around Boyfrien

17 Q. Okay. So you're saying Ms. Watson is lying?

18 A. I met Ms. Watson once and that was at school.

19 Q. Okay.

20 A. And then she asked to talk to MINOR alone. And she
21 talked to MINOR alone that day. And I left the room.

22 And then MINOR -- we went to Easley after that. And
23 Easley wouldn't accept her because our address was a

24 Pickens County address, but it said Easley address. But
25 they said since it was Pickens County, she had to go to

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1 Pickens.

2 Q. She was on homebound; right? [REDACTED] was on
3 homebound?

4 A. Yeah. Yeah.

5 Q. You're on homebound, you've got a homebound teacher?

6 A. Yeah.

7 Q. Okay. Ms. Watson was the homebound teacher?

8 A. Yeah.

9 Q. And you're saying Ms. Watson is lying about what she
10 testified to?

11 A. About?

12 Q. About you being in the house when she was in the house
13 when she would visit [REDACTED] for homebound?

14 A. No, I wasn't in the house.

15 Q. You weren't? Okay. All right.

16 A. No.

17 Q. And you were aware that [REDACTED] was taking birth
18 control?

19 A. Yeah.

20 Q. Okay. If she's taking birth control and you're having
21 sex with her, that's good for you; isn't it? You don't
22 have to worry about her getting pregnant; do you?

23 A. You can make this out to be whatever you want to make
24 it out to be, but she was ---

25 Q. Answer the question, Mr. Burgess.

1 A. I had sex with her when she was over seventeen, but
2 you're trying to making it appear like it's before. But
3 she was on birth control when she was fifteen years old.
4 And she wasn't fooling with me then. She was ---

5 Q. And you're saying ---

6 A. --- seeing **Boyfriend**

7 THE Court: Let him finish his answer.

8 MR. TOOKER: Well, I'm not sure it's an answer,
9 Your Honor.

10 THE Court: Well, you let him finish responding.
11 The Court reporter can't get two of you at one time. You
12 wait until he asks the question then you give your
13 response.

14 A. She was seeing **Boyfriend** at the time, at that time.

15 Q. And you're saying that the family, you didn't want
16 them coming around because they'd make fun of Angie,
17 because Angie wasn't real bright?

18 A. That's true. They made fun of her all the time.

19 **MINOR** knows they did. She didn't like it when Sheri and
20 them made fun of her neither.

21 Q. Angie wasn't real bright; was she?

22 A. Yes, she is.

23 Q. She is real bright?

24 A. I think so.

25 Q. You heard Lieutenant Kelley's testimony; didn't you?

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1 MR. ABDALLA: Objection, Your Honor. He's
2 pitting witnesses. He already answered the question. He
3 thinks she's bright. Now, he's trying to say something ---

4 THE Court: Ask the question that you want him to
5 answer without referring to who else testified. This
6 witness is testifying. You ask him what questions you want
7 to, Solicitor.

8 Q. You know that she wasn't charged because they didn't
9 think she was smart enough to know what was going on.
10 Don't you know that?

11 A. No, they didn't charge her because they knew that she
12 was lying.

13 Q. Okay. They knew that she was lying, but they charged
14 you?

15 A. Yeah. Because she didn't get what she wanted from me.

16 Q. Okay. So they know that MINOR lying. They don't
17 charge her mom, but they charge you?

18 A. Yes, sir.

19 Q. What sense does that make, Mr. Burgess?

20 A. Because she didn't get what she wanted. And that's
21 the truth. You can twist it all you want to.

22 Q. Okay. And you're saying this girl, who moved into
23 your house at eight years of age, came to you as a teenager
24 and said, I want to be friends with benefits?

25 A. When she was seventeen, yes.

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1 Q. Said I want to have sex with you?

2 A. Yes.

3 Q. Her step-father?

4 A. Yeah.

5 Q. You don't think that's disgusting?

6 A. I do think it's disgusting.

7 Q. You don't think you're disgusting?

8 A. Yes, I do.

9 MR. TOOKER: No further questions.

10 THE Court: Any redirect?

11 MR. ABDALLA: Yes, sir. One moment, Your Honor.

12 **REDIRECT EXAMINATION**

13 **BY MR. ABDALLA:**

14 Q. Your relationship with Angle ---

15 A. Yes, sir.

16 Q. --- you said you think that she's fine. There's
17 nothing wrong with her mentally; right?

18 A. Yeah.

19 Q. And she's not living with you anymore; right?

20 A. No, sir.

21 Q. Living with another man?

22 A. Yes, sir.

23 Q. And you've already told the jury you're ashamed of
24 what you did. Isn't that correct?

25 A. Yes. I am ashamed of it.

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1 MR. ABDALLA: No further questions, Your Honor.

2 THE Court: All right. Thank you, sir. You may
3 step down.

4 MR. TOOKER: Your Honor, I briefly have something
5 on recross.

6 THE Court: Based on those two questions?

7 MR. TOOKER: Yes, sir.

8 THE Court: All right, sir, briefly.

9 RE CROSS-EXAMINATION

10 BY MR. TOOKER:

11 Q. You're not with Angie anymore?

12 A. No, sir.

13 Q. That's what he said. You married her after these
14 charges came out. Isn't that true?

15 A. It is true.

16 Q. Okay. Where did you marry her?

17 A. I got married on a car lot.

18 Q. Okay.

19 MR. TOOKER: No further questions.

20 THE Court: All right. Thank you. You may step
21 down.

22 MR. ABDALLA: Can we approach?

23 THE Court: You may, yes, sir.

24 (WHEREUPON, Mr. Tooker and Mr. Abdalla approached the
25 bar.)

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1 THE Court: All right. Mr. Abdalla, you may call
2 your next witness.

3 MR. ABDALLA: Your Honor, that's the Defense
4 case.

5 THE Court: Is there anything in reply from the
6 State?

7 MR. TOOKER: No, sir.

8 THE Court: Madam Forelady, ladies and gentlemen,
9 you've heard all the evidence in this case. Testimony has
10 been given, stipulations have been made. You have not
11 heard my instructions on the law, however. Before I
12 instruct you on the law, the attorneys are going to have a
13 chance to address you in their closing statements. The
14 hour of the day is probably at the point where those
15 matters would take well beyond the time we would normally
16 be leaving here. So rather than us doing that late this
17 afternoon, we're just going to take care of that first
18 thing in the morning. The attorneys will have a chance to
19 address you, then I will give you the law of the case. The
20 case will then be yours to make a decision. So we'll break
21 for the afternoon. And if you'll be back at nine o'clock
22 in the morning, we'll be ready to proceed with that --
23 those final stages of the trial.

24 I remind you again, I want to make sure that even now
25 you understand the case is not concluded. The case is not

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1 concluded until I've instructed you on the law. Don't
2 discuss it while you're out and about. Don't discuss it
3 with each other. You fulfill the obligation you've made to
4 these parties. I know you will.

5 Have a good evening, ladies and gentlemen. We'll be
6 ready to start back at nine o'clock in the morning.
7 Everyone else, please remain seated while the jury departs
8 for the day.

9 (WHEREUPON, the jury exited the open Court at
10 approximately 3:53 P.M.)

11 THE Court: All right. Any matters we need to
12 take care of as far as charges or proposed charges or any
13 other ---

14 MR. ABDALLA: No. I just need to renew my motion
15 for directed verdict, just to preserve the record, Your
16 Honor.

17 THE Court: I respectfully deny your motion.

18 MR. TOOKER: I have two requests to charge.

19 THE Court: All right, sir.

20 MR. TOOKER: First is that when charging the jury
21 about criminal sexual conduct with a minor and lewd act,
22 that Your Honor specify that those are charges for which
23 consent is not a Defense. Because I believe he'll ask for
24 consent as a charge, as consent can be a Defense for CSC
25 third. However, I mean, and that is the crux of the

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1 Defense's argument. And so just to clarify for the jury,
2 the State would request ---

3 THE Court: That's part of my charge.

4 MR. TOOKER: It is.

5 THE Court: On the criminal sexual conduct with a
6 minor. That's part of my charge on that one.

7 MR. TOOKER: Okay. And then the second request
8 to charge I have, and I don't actually, I don't have my
9 file with the case law in it, but I've got it down in my
10 office. It's, requests to charge in criminal sexual
11 conduct cases that corroboration is not necessary, that you
12 can convict based solely on a victim's statement. And that
13 would be my second request to charge. And if Your Honor
14 would bear with me, I can bring that case law in the
15 morning.

16 THE Court: I know the -- I know what you're
17 talking about. It's even in the statute, if I'm not
18 mistaken.

19 MR. TOOKER: Yes, sir.

20 MR. ABDALLA: I'd ask for an aggravated assault
21 charge as a lesser included.

22 THE Court: Aggravated assault?

23 MR. ABDALLA: Assault and battery, ABHAN, that's
24 the lesser ---

25 THE Court: That's a lesser included to?

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1 MR. ABDALLA: Of CSC.

2 THE Court: Of the CSC?

3 MR. ABDALLA: Of either -- I believe of both
4 CSC's ABHAN is lesser -- wait.

5 MR. TOOKER: Your Honor, I think the Defense is
6 entitled to an instruction on a lesser included offense if
7 there is some evidence that it was a lesser included
8 offense and not the more substantial charge that was what
9 was committed. In this case, I think it's an either/or.
10 You know, either the jury believes the victim's story that
11 this happened when she was underage and continued to happen
12 against her will until she got out of that house. Or they
13 believe the Defense's theory of the case, and that is that
14 it was a consensual relationship that didn't happen until
15 she turned seventeen years old. So if they buy the
16 Defense's argument, then there is no lesser included. I
17 mean, if consent is the Defense, there's not a lesser
18 included for CSC because there's no facts, there's no
19 evidence that indicate that a lesser included is warranted.

20 So the State would oppose the Defendant's motion for a
21 lesser included charge on any of the offenses, inasmuch as
22 the Defense has failed to show that any of the facts
23 indicate that a lesser charge would have occurred as
24 opposed to the charge as indicted.

25 MR. ABDALLA: Judge, obviously, we don't believe

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1 my client is guilty of anything and we don't expect the
2 Court is just going to not charge on any of the
3 indictments. I believe the Defendant is entitled to the
4 lesser included offense since the common law ABHAN is still
5 a lesser included offense since the charge has been
6 codified. And the jury could believe that other things
7 that could have happened, that everything didn't have to be
8 CSC second or third. Because as it is, the Prosecutor has
9 chosen to indict for lewd act on a minor. And my objection
10 earlier was that was, for all intents and purposes, double
11 jeopardy charging. He would have to elected -- I realize
12 that the Court recognizes two different charges to run
13 concurrent. So I'm saying what's good for the goose -- if
14 they could have CSC second running concurrent with lewd
15 act, I believe the Court should instruct on ABHAN, as well,
16 for the entire period.

17 THE Court: All right. Let me make sure I
18 understand your motion, Mr. Abdalla. You're wanting ABHAN
19 as a lesser included for the third degree criminal sexual
20 conduct?

21 MR. ABDALLA: The second and the third, Your
22 Honor. The second and the third.

23 MR. TOOKER: Your Honor, again, I don't think
24 there's any testimony in the record to support a lesser
25 charge. There has to be something that the jury can take

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1 back to conclude that this smaller thing happened as
2 opposed to the big thing.

3 In this case, you have one story from the victim and a
4 contradictory story from the Defendant. And that
5 contradictory story is alleging consent. So the Defense is
6 consent. And that would mean if the jury believes that,
7 that they would come back not guilty on all charges.
8 There's no evidence indicating that, well, maybe he groped
9 her when she was fifteen, but he did not, you know,
10 sexually assault her. The facts in evidence from the State
11 are that, you know, this stuff happened when she was
12 fourteen until she got out of the house. The Defense is
13 saying, you know, that there was a consensual act. And so
14 I don't see how he can request a lesser charge when there's
15 no evidence on the record to support that lesser charge.

16 THE Court: Any other matters we need to take
17 care of as far as the charge or anything else?

18 MR. ABDALLA: No, Your Honor.

19 MR. TOOKER: Your Honor, if I may read your
20 charge at some point just to familiarize myself with it
21 before I start talking to the jury about the law.

22 THE Court: My charge is not a -- except for the
23 charge on the statute, it's not going to be any different
24 from what you've heard before, Mr. Tooker, as far as
25 presumption of innocence, credibility of witnesses,

1 reasonable doubt.

2 MR. TOOKER: And, really, what I wanted to look
3 at was the individual offense.

4 THE Court: Okay. I'll try to go over those with
5 both of you, maybe even this afternoon before we leave.

6 MR. TOOKER: Thank you, sir.

7 THE Court: All right. Anything else?

8 MR. ABDALLA: No, sir.

9 THE Court: All right. We'll be at ease until
10 nine o'clock in the morning. I'll let you know something
11 -- maybe if y'all can hang around a little bit we'll try to
12 make sure the verdict forms will be in the right order so
13 we can get that done today and be ready to hit the ground
14 running in the morning.

15 (WHEREUPON, the Court stood at recess for the day.)

16 December 19, 2012

17 (WHEREUPON, Court convened with all parties present
18 and the following proceedings were had.)

19 THE Court: Are you ready to proceed, gentlemen?

20 MR. ABDALLA: Yes. Your Honor, I have a few
21 matters I have to take up with the Court.

22 MR. TOOKER: And the State has one matter.

23 THE Court: Okay.

24 MR. ABDALLA: Go ahead.

25 MR. TOOKER: Thanks. Mr. Abdalla and I, you

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1 know, the stipulation about Greg Cumbee, we signed this
2 yesterday and we didn't actually admit it. But it's a
3 formalization of the stipulation we gave to the jury early
4 on in the State's case. And so at this point, the State
5 would just want to introduce it into evidence so that we
6 can talk about it with the jury.

7 MR. ABDALLA: And what I have, Your Honor,
8 involves a ---

9 THE Court: What about that? Is there any
10 problem with the stipulation?

11 MR. ABDALLA: I don't have a problem with that.
12 Hopefully, he'll feel the same way.

13 THE Court: All right. Anything else from Mr.
14 Tooker?

15 MR. TOOKER: No, sir. That's it.

16 THE Court: Okay. Now, I'll move to you, okay.

17 MR. ABDALLA: Thank you.

18 THE Court: I don't want to get myself confused
19 with two things going on.

20 MR. ABDALLA: I apologize for my confusing ways.

21 THE Court: All right, sir.

22 MR. ABDALLA: I'm asking at this point to reopen
23 our case. I have to do a couple of things. One is we had
24 an argument at the bench yesterday that wasn't put on the
25 record regarding the card that my client received, that he

1 claimed he received from MINOR a Father's Day card. We
2 had a discussion up there and it was determined -- I tried
3 to introduce this and the State objected. None of that was
4 on the record.

5 THE Court: Because of discovery; right?

6 MR. ABDALLA: The discovery.

7 THE Court: Right. It had not been given to the
8 State.

9 MR. ABDALLA: What happened was, I was looking
10 through my things trying to figure out what happened. I
11 had a photocopy of it and I thought I received that from
12 them. I don't remember ever making a photocopy. However,
13 after consulting with my client yesterday and this morning,
14 I realized this morning, actually, that I made a mistake in
15 making the hasty decision I made and I should have fought
16 the issue harder and gotten forward another way to get the
17 card in. So I'm concerned about me having an issue on down
18 the road on this. So I'm asking an optional thing. I'm
19 asking to just see if the State has an objection to
20 introducing it, seeing if his witness denies that she in
21 fact sent it. If she didn't, I'd ask it to be introduced
22 into evidence. If she does, then I'd ask the Court for
23 another remedy, to just let her take the stand and deny it.
24 So I'm asking for the reopening on that point only. It
25 shouldn't prejudice -- I know it's inconvenient, but it

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1 shouldn't prejudice anybody. The time factor is very
2 short. And I know technically my case is closed. But I
3 know the Court has discretion to reopen. And I'm hoping
4 the State will not object.

5 THE Court: What's the State's position?

6 MR. TOOKER: The State does object, Your Honor.
7 We -- you know, Mr. Abdalla files a discovery request with
8 us. You know, we continue to give him documents as we get
9 them. I don't know how long Mr. Abdalla has had that
10 document, but part of our reciprocal discovery request
11 requires that he turn over to us all tangible documents
12 that he has.

13 Had he given us that card, had we known about the
14 existence of some Father's Day Card, we would have gone
15 into it in our direct of the victim. We would have asked
16 her, you know, about that card. And so I don't -- well, I
17 think it muddies the waters. I think it puts undue
18 influence in the jury's eyes on that particular piece of
19 evidence. We've not segregated it and separated it from
20 the rest of the trial. We come back and now all of a
21 sudden the last thing they hear right before we get into
22 closing statements is a bunch of stuff about some card.
23 And I think, just in 403 what it's really going to do is
24 muddy the waters and result in a lot of confusion in the
25 jury. And I think its probative value is relatively

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1 insignificant in relation to how potentially prejudicial it
2 could be to the jurors' ability to see the case clearly.

3 And so I don't think it should be admissible, (a)
4 because of Mr. Abdalla's, you know, failure to provide it
5 to our office in discover. And then (b) because of that
6 failure, I think, per 403, it's going to result in
7 confusion and I think because of that the probative value
8 of that evidence is dramatically decreased and its
9 prejudicial effect is increased.

10 MR. ABDALLA: Your Honor, just for the time sake,
11 just so you understand when I got it, Linda had given this
12 to me right after the other trial was continued. And I
13 admit that I screwed up. But I still contend that the
14 Court has discretion to open this. And as far as
15 prejudicial and probative value, I think it's a no-brainer
16 that it's very important for the case and I think the jury
17 should have it. I don't understand how this is so
18 prejudicial because it's isolated. I mean, if the case
19 continued until today and we held Mr. Burgess until today,
20 it could be argued that that would be too prejudicial.
21 That's the last thing they saw. There's always a beginning
22 and an end point. And he will have the last opportunity to
23 argue. He'll be the last one in front of the jury. And if
24 it's the truth, it's the truth. If it's not the truth, it
25 wouldn't go in front of jury. And I do think that that

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1 should be the stronger argument, Your Honor.

2 THE Court: All right. Mr. Abdalla, you aren't
3 asking -- are you asking that your client be allowed to
4 testify again about it or just to admit the document?

5 MR. ABDALLA: I'm asking to just clearly -- I
6 mean, merely admit the document. If the Court rules that
7 the State is right in its objection, sustains its objection
8 to it coming in, then I'd ask that whatever the Court would
9 accept. It was offered yesterday and I hastily decided,
10 without consulting with my client, that his witness get to
11 take the stand and I merely ask if this is a document, in
12 fact, she prepared. And she will either accept or deny it
13 and that could be it.

14 MR. TOOKER: The victim in this case has already
15 taken the stand. Mr. Abdalla had the opportunity when she
16 was on the stand. And she was on the stand for some two
17 and a half hours. Well, that would be an exaggeration.
18 Maybe two hours. But he had the opportunity while she was
19 on the stand to ask her about this card and say, MINOR
20 did you give this card to the Defendant? To pull it out at
21 that point. We could have had this thing, at least out in
22 the open, early on in this trial instead of springing it at
23 the last second when none of us know its coming. He could
24 have asked her specifically if she'd written it. If she
25 had denied it at that point, he can then rebut that

1 testimony with the testimony of another witness. That is
2 how that would be admissible. The card itself is not
3 admissible. I mean, it's hearsay and that's clear. What
4 he can do is say, victim, did you write a card and give it
5 to this man on this day; right? If she says, no, then he
6 can take the stand, the Defendant can take the stand and
7 say, yes, she did write a card and give it to me on this
8 day. That is how that evidence should play out.

9 Anything else -- I mean, the card is essentially a
10 hearsay document. I mean, the contents of the
11 communication are irrelevant. Did you give a card? If she
12 says, no, then fine. Then all of a sudden you can have the
13 Defendant take the stand and explain, you know, yes, she
14 did. But, again, he had the opportunity to cross-examine
15 her about this. I mean, this is essentially like -- every
16 time I sit down after a witness has left the stand, I think
17 of a couple of things I should have asked them. I mean, I
18 think that's nature of trying cases, is you sit down and
19 you're like, man, I should have asked about this. Man, I
20 should have asked about that. Every time you have an issue
21 where you think, I forgot to ask something, if the Court
22 indulges those whims and allows us to recall witnesses
23 every time, I think, (a), again, the potential for
24 confusion in the jury is so substantial that any probative
25 value of that evidence, whatever it is, is entirely negated

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1 by that confusion, by that potential undue influence and by
2 that extremely negative prejudicial effect. And so I don't
3 think that he should be allowed to reopen his case with
4 regards to this card and to submit this evidence.

5 MR. ABDALLA: Your Honor, could I respond?

6 THE Court: Yes, sir.

7 MR. ABDALLA: I appreciate the lesson in juris
8 prudence from my adversary, but the reality is I'm not
9 obligated to show it to the Defendant first-- yes -- I
10 mean, the victim. Yes, the victim when she was on the
11 stand. I concede I made an error in not supplying it to
12 the Prosecution. However, it isn't a hearsay document. My
13 witness could identify the card. The remedy, as we
14 discussed yesterday, was to put the victim back on the
15 stand. That could have been my option to call her back.
16 And I'm asking to do that again. I have more confidence in
17 the jury that they're not going to be so swayed by the
18 timing of this as to think that this is unduly prejudicial.
19 If the verdict speaks the truth, and that's part of the
20 truth, they should have that.

21 THE Court: May I see the letter again?

22 MR. ABDALLA: The actual card, Judge?

23 THE Court: Well, a copy, either way.

24 MR. ABDALLA: Either one.

25 MR. TOOKER: I wouldn't mind getting a copy

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1 myself.

2 MR. ABDALLA: I have a copy. Here's a copy. And
3 I apologize.

4 THE Court: As I recall the testimony, I've
5 reviewed my notes and what I recall, I'm going to allow the
6 Defendant to have this marked as a Defense Exhibit and
7 introduced. The State, if it wishes to have any testimony
8 related to that, I'll be glad for the State to call the
9 witness. I believe without it's admission, based on my
10 remembrance of the testimony, the jury could be confused.
11 And I believe this will clarify for the jury, in light of
12 the testimony as I recall it, and the events that took
13 place. If you want to talk to your ---

14 MR. TOOKER: Yes, sir. So you're saying you're
15 going to mark it as Defense 1 and admit it into evidence.

16 THE Court: Right.

17 MR. TOOKER: Don't we need to recall the
18 Defendant to at least just verify it? I mean, it's just my
19 understanding with a hearsay document, you know, she would
20 have to deny making it and the Defendant would have to say,
21 no, she made it and gave it to me. And then he would
22 introduce it through the Defendant.

23 THE Court: He discussed that he received it, he
24 said.

25 MR. TOOKER: He said he received a Father's Day

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1 card from her.

2 THE Court: Right. From her.

3 MR. TOOKER: Okay. And I guess, in terms of the
4 evidentiary process, it's my understanding that she would
5 have to deny it. He would have to confirm it and then
6 introduce it through him.

7 THE Court: If you would like to call her back to
8 verify that, then that's fine ---

9 MR. TOOKER: Okay.

10 THE Court: --- in order to explain it or
11 whatever she wishes. But ---

12 MR. TOOKER: Can I get ten minutes to talk to my
13 witnesses, Your Honor.

14 THE Court: Yes, sir. We'll take some time.

15 (WHEREUPON, the Court stood at ease for a brief
16 recess.)

17 THE Court: Is the stipulation marked as a
18 State's Exhibit?

19 MR. TOOKER: State's Exhibit. Yes, sir.

20 THE Court: Okay. Do you intend to put up your
21 witness?

22 MR. TOOKER: Yes, sir, I do.

23 THE Court: When the jury comes back, I'll just
24 tell them that there was one other matter based upon -- an
25 evidentiary matter that needed clarifying and that we -- so

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1 you understand ---

2 MR. ABDALLA: It will be a reply witness
3 essentially?

4 MR. TOOKER: Yeah.

5 MR. ABDALLA: I guess that's a tidy way to do it.

6 THE Court: Right. It'll be a reply witness as
7 to -- so basically, I'm letting both of you sort of reopen
8 to clarify that matter that I'll let you get in, Mr.
9 Abdalla.

10 MR. ABDALLA: Sure.

11 THE Court: Okay. Y'all are ready for your
12 arguments after that; correct, with another break?

13 MR. ABDALLA: Yes, sir.

14 MR. TOOKER: Yes, sir. Well, I'm going to run to
15 the bathroom real quick. We might be a while.

16 THE Court: Okay.

17 (WHEREUPON, the Court stood at ease for a brief
18 recess.)

19 THE Court: Are you ready to proceed, gentlemen?

20 MR. ABDALLA: Yes, sir.

21 THE Court: All right. Let's have them come in.
22 Wait a minute. Okay. We'll wait a minute for him.

23 (WHEREUPON, the Court stood at ease for a brief
24 recess.)

25 MR. TOOKER: Your Honor, I've got a request. Can

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1 we have the card marked as State's Number 3, instead of
2 Defendant's 1?

3 THE Court: You're offering ---

4 MR. TOOKER: Yeah. I'll offer it into evidence
5 through MINOR

6 MR. ABDALLA: Well, I'd object to that. That's
7 bizarre because I tried to enter it as a Defense Exhibit.

8 MR. TOOKER: Yeah. And, again, I think the
9 proper way is through MINOR I'm not sure how much it
10 prejudices him, given this is such a strange request. He
11 sprung this on me at the last moment. I think a little
12 leeway is appropriate.

13 MR. ABDALLA: I think the leeway he's getting is
14 his client's getting up there ---

15 THE Court: Why don't we mark both of them as
16 Court Exhibits, the stipulation and the letter.

17 MR. ABDALLA: That's fine.

18 MR. TOOKER: Okay. That's fine.

19 THE Court: Can you just redo those and make them
20 Court Exhibits?

21 MADAM Court REPORTER: Sure.

22 THE Court: Okay. The stipulation and the
23 letter. Are y'all both all right with that?

24 MR. TOOKER: That's fine with the State, sir.

25 (WHEREUPON, Court Exhibit Numbers 1 and 2 were marked

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1 for identification.)

2 THE Court: All right. Have the jury come in if
3 they're ready, Mr. Schumacher.

4 (WHEREUPON, the jury entered the open Court at
5 approximately 9:47 A.M.)

6 THE Court: Thank you for being patient with us.
7 We had some more legal matters to take care of this
8 morning. Before the attorneys address you in their
9 closings, we're going to allow a brief reply testimony. If
10 you'll just listen carefully to this. As soon as this
11 testimony is over, we'll be ready for the closing
12 statements of the attorneys.

13 All right. Solicitor.

14 MR. TOOKER: Thank you, Your Honor. The State
15 calls MINOR

16 THE Court: Let me remind you, ma'am, you're
17 still under oath. If you'll just take a seat, please.

18 MINOR

19 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. TOOKER:

22 Q. All right. MINOR do you know why I've recalled you
23 to the stand?

24 A. Yes, sir.

25 Q. There was some testimony yesterday by the Defendant

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1 about a Christmas -- or excuse me -- a Father's Day card.

2 A. Yes, sir.

3 Q. Do you recognize what's been marked as Court Exhibit

4 Number 2?

5 A. Yes, sir.

6 Q. Would you look at that document and tell me what it

7 is?

8 A. It is a Father's Day card. My mom and me and my

9 sister were all sitting at the table and we were making

10 cards.

11 Q. So who did you give it to?

12 A. I gave it to Keith.

13 Q. You gave it to Keith?

14 A. Yes, I did.

15 Q. I want to look at that card real quick.

16 A. Okay.

17 Q. In this card you thank him for everything that he

18 tries to do for you. What do you mean when you're saying

19 that?

20 A. In the mist of the abuse, there was a father -- kind

21 of a father/daughter relationship in the aspect of teaching

22 me responsibility, things such as that. And I just was

23 telling -- we were all making him cards. So I was just

24 trying to be nice, and tried to keep peace in my household.

25 Q. And the second sentence is the one that's kind of

1 interesting to me.

2 A. Yes.

3 Q. You say, I'm sorry I'm always too stupid to listen.

4 What does that mean?

5 A. He would -- they would -- he would always call me a

6 whore and call me stupid and stuff. And that was just kind

7 of -- I started feeling ashamed, thinking that maybe I was

8 stupid. And so I just put that in there.

9 Q. And then you say, I hope you have a wonderful Father's

10 Day. And me and Daughter -- and that's your baby with him --

11 and you included a picture in there?

12 A. Yes.

13 Q. You say, me and Daughter love you. Is that right?

14 A. Yes. That's true.

15 Q. All right. So the question I've got and I'm sure it's

16 the question that's on the jury's mind. You know, if you'd

17 been subject to this abuse for years and years and years,

18 why are you going to write him a Father's Day card saying

19 that you love him?

20 A. Well, once again, we were all doing it. My mom was

21 present at the time, as well. And I just did it mainly to

22 keep peace in the household. And I did try to love him,

23 even though the abuse that he subjected me to, I tried to

24 keep peace in my household. Like I said, during the abuse

25 and stuff, I would actually bring up God and stuff. And I

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1 tried to make him see what he was doing was wrong. So I
2 tried -- I feel like I tried my best to try to get him to
3 treat me like a father so that he would stop what he was
4 doing.

5 Q. We heard some testimony yesterday ---

6 A. Yes.

7 Q. --- about y'all having like a father/daughter
8 relationship.

9 A. Yes.

10 Q. Would you say that was accurate?

11 A. Yeah. I mean, it -- outside of the abuse.

12 Q. He would treat you like a daughter?

13 A. Not, I mean, not as adequate as his own daughters.

14 But, I mean, he was the only ---

15 Q. What I'm saying is, would he treat you like a
16 girlfriend? Would he treat you like a lover? Or would he
17 treat you like a child?

18 A. Like a child.

19 Q. And is that what everyone else saw?

20 A. Yes.

21 Q. Is that how the relationship was?

22 A. Yes.

23 Q. And, again, I mean, if he's been raping you since you
24 were fourteen years old, I mean, how is it that you would
25 write, you know, that you love him in a card?

1 A. I tried.

2 Q. You tried what?

3 A. I mean, I thought maybe if he heard the words, I love
4 you. I love you. Do you not realize, you know, the pain
5 that you're putting me through. Because he started raising
6 me from a young child.

7 Q. Yeah.

8 A. And it was just kind of my way of, you know, hoping to
9 open his eyes and let him see.

10 Q. And you said your mother and your sister were there
11 making cards, too?

12 A. They were.

13 Q. Did they give cards to the Defendant?

14 A. They did. Yes.

15 Q. Were y'all making them out of what, construction paper
16 and crayons?

17 A. Yeah.

18 Q. Everybody made them?

19 A. Yes.

20 Q. Did you make cards for anybody else?

21 A. Well, it was Father's Day. So I did make a card for
22 my legitimate father.

23 Q. Your biological father?

24 A. Yeah.

25 Q. Is there anything else about that card you need to

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1 tell the jury?

2 A. No.

3 Q. Okay.

4 THE Court: Any cross-examination?

5 MR. ABDALLA: Yes.

6 CROSS-EXAMINATION

7 BY MR. ABDALLA:

8 Q. Ms. Shelton, I appreciate that the situation you were
9 in wasn't a -- always a situation that you enjoyed. But
10 this card does say you thanked him. And you did just
11 testify that you tried to love him.

12 A. Yes.

13 Q. As a matter of fact, isn't it true that you were
14 jealous of the relationship he had with your mother?

15 A. That not correct.

16 Q. And you loved him because you said you tried to love
17 him. And the reason this relationship broke off was when
18 your mother caught you, he decided he couldn't go on doing
19 this anymore. And you got angry. You tried to love him
20 and it failed.

21 A. Sir, ---

22 Q. You got angry -- let me finish. You got angry and
23 your response was to turn him in because he wouldn't love
24 you the way you wanted to be loved. I realize it was a
25 horrible situation for you to be in. But the reality is,

1 it was a consensual relationship, and when things went
2 south, and that he couldn't love you anymore because he
3 felt guilty, you then turned on him and decided the only
4 way out of there was to turn to the authorities. Once you
5 turned to the authorities, you couldn't back down ---

6 MR. TOOKER: Objection, Your Honor. He's asked
7 like ten questions in a row. He's testifying.

8 THE WITNESS: Sir, may I please say something?

9 THE Court: Wait just a minute.

10 MR. ABDALLA: Sorry. Sorry. I'm sorry.

11 THE Court: Ask your question.

12 Q. Isn't it true that you tried -- you admitted there you
13 tried to love him?

14 A. As a daughter, yes.

15 Q. However you want to phrase it. As a daughter. And
16 then when he turned on your love as a lover, you turned him
17 in?

18 A. That is incorrect. I turned him in for the abuse that
19 he put me through.

20 MR. ABDALLA: No further questions.

21 THE Court: All right. Thank you, ma'am. You
22 may step down.

23 MS. SHELTON: Thank you, sir.

24 THE Court: All right. Ladies and gentlemen,
25 we're now going to hear from the attorneys in their closing

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1 statements. This is not evidence. The evidence is part of
2 the record now. You will have that to decide. You listen
3 to the attorneys as they address you. After that, I'm
4 going to instruct you on the law. The case will then be
5 yours to decide.

6 Mr. Abdalla, you may address the jury in your closing?

7 MR. ABDALLA: Thank you, Your Honor.

8 **CLOSING STATEMENT**

9 **BY MR. ABDALLA:**

10 Ladies and gentlemen of the jury, this is the last
11 time you'll have to see me. I realize this has been a very
12 contentious trial and I do want to apologize for some --
13 the way things have gone in this case. So if you have any
14 feelings toward the attorneys I ask you to not take that
15 into account. This trial is far more important than
16 anything I've done. This is all about my client and about
17 the State's witnesses. This is about a trial to try and
18 determine what the issue is here.

19 The Judge is going to instruct you on the law after I
20 talk to you about the facts. The other thing I want to say
21 is this. I am not going to intentionally misstate anything
22 to you. So if I make a mistake, please understand I'm
23 human. I mistake things sometimes. I make mistakes. But
24 I'm not going to lie to you because you'll know I'm lying.
25 So you remember what you've heard from the testimony and

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1 you go back and talk among yourselves.

2 This whole -- it's a shame that this happened.

3 There's no way around it. I'm not trying to paint a pretty
4 picture and say that my client is an absolute innocent.

5 But I've known him as Keith now for over five years, five
6 and a half years. And Keith may be a lot of things, but
7 forcibly raping his step-daughter is not something he's
8 guilty of. You had a lot of evidence before you, a lot of
9 testimonial evidence. You had, essentially, folks from
10 their side to talk to you about how things seemed odd and
11 peculiar. And you had folks from our witnesses testifying
12 how they thought it was a typical relationship until the
13 baby came. And that was the line of demarcation when all
14 of a sudden things shifted from father/daughter
15 relationship to people noticing they seemed a little more
16 lovey dovey.

17 The important distinction here is it's certainly
18 improper. It's bad morally to father a child with your
19 step-daughter. But she was over seventeen. The legal age
20 of consent is sixteen. I say that because he's on trial
21 now for crimes committed involving forcible rape and non-
22 consensual sex before she was sixteen. And, of course,
23 we're saying none of that happened. We agree that the
24 parties lived together at various locations for over ten
25 years. They were a family. MINOR testified she was

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1 there from seven until she got out of the relationship. I
2 remember her saying, until I got out of the relationship.
3 And then she kind of hesitated like it was a Freudian slip.
4 Oops. MINOR saw this as a relationship. She was in love
5 with Keith. He was wrong for fathering a child with her,
6 but she was in love with him. This is more about the scorn
7 of a jilted lover than it is about a child who was
8 molested. A child wasn't molested.

9 Angie worked third shift over at the -- the other
10 thing we'll agree is Angie, the mother, worked third shift
11 for the period -- for six or seven years. Norman and
12 MINOR had a child when she was over eighteen. MINOR
13 used birth control when dating, before the child was born.
14 This is all stuff that was unrefuted. MINOR attended
15 school. She did well. She worked. She dated. And she
16 had a car. She had a boyfriend at sixteen. She denied
17 having sex before the baby was born with anyone, other than
18 the father.

19 Norman was charged with a warrant in April of 2007,
20 arrested for criminal sexual conduct second with a minor.
21 The Judge will instruct you on CSC with a minor.
22 Essentially, it's that the person uses -- has sex with
23 somebody under the age of consent, under sixteen. It
24 doesn't matter. It cannot be consensual if it's under
25 sixteen. There's no way to consent when you're under

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1 sixteen, for a child to consent. So what did the State do
2 then? The State charges him, as Detective Kelley
3 testified. He came here and turned himself in, I believe
4 it was April 2nd, 2007. Five and a half years ago. It
5 doesn't make sense. I would hope you're asking yourselves,
6 why the wait?

7 Now, in all honesty, I have to give the State a break
8 on one thing. I had a scheduling problem this summer. But
9 if you give the State from April of 2007 until the summer
10 of 2012, you have over five years. So please ask
11 yourselves why they waited for over five years to bring
12 this case? Did they believe their witnesses? Isn't
13 justice supposed to be swift? If you think Keith is such
14 -- if the State thought Keith was such a horrible person,
15 why did they leave him out on the streets. You heard him
16 testify he had to sell his Corvette to make bond. There
17 was no evidence that he did anything like this before or
18 since. So how dangerous is he? And now they're coming in
19 to prosecute him today.

20 They also did another thing. He was charged with
21 criminal sexual conduct with a minor. As I said earlier,
22 he had an inappropriate relationship with somebody under
23 the age of sixteen and that went on for approximately,
24 according to their theory, over a year. I might be off on
25 the time, a year or two.

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1 May I see the indictment? They're contending from
2 November 2nd of 2001 until November 1st of 2003, which is
3 essentially the period when MINOR was under the age of
4 sixteen. That he engaged in sex and it didn't have to be
5 -- there's no way for her to have consented to that. And
6 that was what he was originally charged with. I'll ask you
7 to think about this. Detective Kelley testified that he
8 came back before the Grand Jury much later, August of 2012
9 and September of 2012, five and a half years after Keith
10 was originally arrested. Five and a half years. Now, what
11 was he indicted for September 11th? Forcing her to have
12 sex between November 2003 and March of 2007. He was never
13 indicted for that prior to September of this year. The
14 State expanded its theory of the case and decided, he's
15 guilty of having forcible sex with her. Not just what was
16 called commonly accepted as statutory sex, but forcible
17 sex. Why did they wait five and a half years to indict him
18 for a new count? It's their right to go before the Grand
19 Jury and present the evidence. The Grand Jury indicted
20 him. They think the officer presents everything, but then
21 it's just an officer saying here's our case. The Grand
22 Jury will either indict or not indict. It's a common
23 expression, the Grand Jury will indict a ham sandwich, but
24 that's neither here nor there. The evidence before this
25 Court is what they have to show you, proof beyond a

1 reasonable doubt.

2 Each of you jurors have to believe, beyond a
3 reasonable doubt when you go back there that Mr. Burgess,
4 Keith Burgess, is guilty of what she said he was guilty of,
5 beyond a reasonable doubt. If the State hasn't convinced
6 every one of you, I ask that you hold out for what you
7 believe to be true. This isn't rule by majority. This is
8 sticking to your beliefs. If it doesn't pass the smell
9 test there's something wrong. It just doesn't make sense.
10 You have to ask yourself, is this reasonable?

11 Things we don't agree on obviously are the fact that
12 she claimed she was raped forcibly from the time she was a
13 child. She also said that she did get some -- she was
14 asked about some statements that were inconsistent. She
15 said she was tired that first day she was there and may
16 have gave some things that were not totally accurate.
17 Okay. Keith has held the same story. He's denied this
18 since day one. There's a stipulation in there that he
19 admits it's his child. They have a blood test to confirm
20 it. He admits it's his child. The family knew it was his
21 child. So if they want to make that a point of contention,
22 fine. The child was born during a legal period. If
23 **MINOR** is going to school, going to work, driving a car,
24 and dating, please ask yourselves, okay, I understand a
25 fourteen-year-old being intimidated, I understand a

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1 fifteen-year-old being intimidated, I understand a sixteen-
2 year-old maybe. Maybe I could see a seventeen-year-old,
3 but an eighteen-year-old, a nineteen-year-old who's leaving
4 the house and saying that they can't get away. It doesn't
5 make sense. Waiting until she's nineteen. They had an
6 expert up here, a fine lady, testifying about people who
7 are victims of sexual assault. It has nothing to do with
8 this case. She admitted she never spoke to MINOR They
9 were trying to get in the fact that, well, people delay
10 reporting sexual abuse. She deals with children under
11 twelve. That's what she said. This never started,
12 according to their theory, until she was fourteen. Do you
13 ever wonder what wasn't presented to you? Did you ever see
14 a picture of any bruises? Did you ever see medical
15 information about forced sex? Did you ever hear from a
16 counselor, a therapist, who spoke to her and said this poor
17 girl is suffering from trauma? Why didn't you get any of
18 that information? Who's got the burden of proof? They do.
19 They didn't give it to you because they don't have it.
20 They want you to take her word. This is a classic he
21 said/she said. Yes, we both have witnesses behind our
22 clients that will say -- that will support it. Oh,
23 especially their witnesses are saying, oh, yeah, she told
24 me she was having sex when she was fourteen with this man,
25 he was forcing her to have sex. From fourteen until

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1 nineteen, five years. When were those witnesses told this?
2 When she was leaving at the age of nineteen. How credible
3 is that information? Not one witness came forward and said
4 when she was fourteen she told me she was abused. Not one
5 witness came forward when she was fifteen and said that
6 when she was fifteen she told me about this. Not one
7 witness when she was sixteen, seventeen, or eighteen. When
8 she turns nineteen and she says she has to get out of the
9 house, that she's being held there. Or maybe because she
10 was in love with the father of her child as this card says.
11 And you can accept the card for what it says. And you can
12 accept her word that she was trying to love him. And you
13 can accept Keith's word. They're not inconsistent. That
14 she asked him, who do you love, me or her? And he told
15 her, you don't want to know the answer to that because I'm
16 in love with your mother. Yes, he was in love with her
17 mother and he committed adultery. He's being tried here
18 for committing adultery. They're trying to force it --
19 turn it into sex with a child.
20 You know, when Keith's sister was up there, the
21 Prosecutor was questioning her and wanted to know why she
22 waited to tell anybody that this didn't happen. And she
23 had the ability to all of a sudden make this go away. It
24 isn't her burden to do that. That's her opinion.
25 Everybody has opinions. People get arrested. You can't go

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1 down there and say to the police, oh, he didn't do it.
2 They're going to let him out of jail. What planet do
3 people live on to think that things work that easily. When
4 the criminal justice system gets you, they're going to take
5 the evidence they have and go forward. You come to Court.
6 That's where you have your fight. You work it out in Court
7 before a jury and a group of citizens like yourselves, sit
8 there and say, I think this happened or I don't think that
9 happened at all. That's what you're here for, to the
10 protect the rights of our citizens and to determine what
11 the truth is.

12 The truth is, two people know the real truth here.
13 Keith and MINOR The rest of us have been told what they
14 believe or what they want us to believe. I believe my
15 client. But I'm not standing before you telling you I know
16 the absolute truth. But I am standing before you saying
17 this doesn't pass the smell test. They waited five and a
18 half years. They had an expert testify, Ms. Galloway,
19 about delayed reporting. Why didn't they get an expert to
20 testify for delayed prosecution, explain why it took them
21 five and a half years to prosecute the case. That would
22 have made more sense.

23 These things sometimes get a bit emotional for
24 attorneys when we believe what's going on is an injustice.
25 And it's on both sides. None of us has a monopoly on

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1 justice or injustice. We see things, we make an evaluation
2 and we go forward with that. MINOR is not a fool. She's
3 very intelligent. You heard her on the stand yesterday and
4 today -- or Monday and today. She had access to the
5 police, to the schools, to people at her job, to boyfriends
6 she dated. That was all admitted. And a year plus after
7 the child is born, she starts telling people she's been
8 held captive and abused. Anything is possible. We're not
9 dealing with possible here. We're dealing with truth
10 beyond a reasonable doubt. That's the State's burden. We
11 don't hide behind these things. These are American tenets
12 of law. This is how our system is based. Otherwise, you
13 would just convict people on your gut feeling. Well, I
14 just don't think he looks right. I think he's guilty. You
15 need proof. You need evidence.

16 The other thing MINOR wasn't totally forthright
17 about that we disagree on is she had testified that she
18 didn't have sex with anyone before the baby was born, other
19 than Keith. Now there was evidence presented that that's
20 not true. A couple of witnesses testified that she had had
21 sex with a fellow named Boyfrien This isn't offered to make
22 you think she's bad for having sex. There's nothing wrong
23 with that. What's wrong is whether she lied about it. If
24 she lied about that, what else would she lie about? And
25 that's for you to make a determination. The Judge will

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1 tell you, you can believe all of what a witness says or
2 none of a witness says. That's your duty. But I'm
3 offering to you that she didn't tell the truth about her
4 other boyfriends. And that she's not telling the truth
5 about what's going on or went on during that five-year
6 period in 2002 until 2007. You have to ask yourself, do
7 I feel comfortable writing the word guilty or checking off
8 the word guilty on charges this serious if I'm not pretty
9 much totally convinced that it's true? They had the school
10 teacher come and what did she testify to? She testified to
11 what she felt was a strange living condition. Now Keith
12 doesn't remember her, other than the school encounter. But
13 for the sake of argument, let's say the teacher did get a
14 bad vibe from there. The teacher also appears to be
15 friends with the Defendant -- I mean, the victim in the
16 case, the alleged victim, with MINOR This was in, if
17 I'm not mistaken, 2007 -- 2006 or 2007 when she was there,
18 long after the child was born. So if anything was going on
19 then, it is irrelevant. They may offer it for relevance
20 and say, oh, if it was going then, it was going on the
21 whole five years. I wasn't in the house at that time and I
22 can't stand before you and offer evidence. I can just ask
23 you to think about the evidence that was presented and see
24 if it passes the smell test. It doesn't. The other
25 witnesses we presented were pretty much friends and

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1 relatives of MINOR and of Keith. What did Keith's
2 witnesses testify to? They testified that they saw nothing
3 out of the ordinary, that she seemed very happy, very
4 loving. Then there was a fellow, Ernie, that testified.
5 Ernie was dating his sister at the time, five years ago.
6 Said they came there in the Corvette, and what did he
7 testify to? He said Keith took Linda, his sister, for a
8 ride and I was stuck there with MINOR She said, I'm
9 going to have that car. Does this seem like a person that
10 was held captive?

11 One moment, please. MINOR had a child with Keith
12 and she was apparently ashamed of that later on when people
13 started asking questions. That's something we can all
14 sympathize with. I'm not pointing a finger at her or
15 judging her for that. She was embarrassed about that. She
16 said she loved him and was trying to get him to love her.
17 Her mother caught them having sex together. The
18 relationship broke off shortly thereafter and she turns him
19 in. This is a vendetta.

20 Now, five and a half years after that, and ten years
21 after -- eleven years after the allegations of sex, they
22 want you to convict Keith Burgess of criminal sexual
23 conduct in the second degree with a minor, lewd act with a
24 minor and criminal sexual conduct in the third degree. I
25 guess they figure it's like a catch-all. Well, we'll try

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1 this. If the jury doesn't like this, maybe they'll go to
2 this. If they don't like this, we'll go to that. Multiple
3 choice. Don't fall for it.

4 Again, if a lie is told often enough it becomes
5 accepted as the truth. Just because people repeat a story,
6 you have no first-hand knowledge, it does not make it true.
7 If they haven't offered you evidence beyond a reasonable
8 doubt that this was going on for those five years, they
9 haven't proven their case, and you have a duty to return a
10 verdict of not guilty on all counts. I ask you to do that.
11 And I appreciate your attention. Thank you.

12 THE Court: Mr. Tooker, you may address the jury
13 in your closing.

14 MR. TOOKER: Thank you, Your Honor. May it
15 please the Court, Defense Counsel.

16 CLOSING STATEMENT

17 BY MR. TOOKER:

18 I'm going to clear something up real quick. There was
19 a lot of talk about indictments, five years ago this
20 happened and now we're only going to trial. And Mr.
21 Welborn, may I see those indictments again?

22 These indictments are signed by me. We're in trial
23 today because I brought these indictments to trial. If you
24 have a problem with the fact it is five years later, that
25 is on me. That has nothing to do with our case, nothing to

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1 do with MINOR and nothing to do with whether or not she
2 was telling the truth. If you'll notice on these
3 documents, they say amended. Amended documents. Amended
4 documents. Amended document. If you notice at the top of
5 them it says 2007. 2007-GS-39 and then the number. Now,
6 granted, they're not indicted until 2012, that's because
7 they were amended. I had to change the indictments because
8 they were wrong. That's on me. That's my fault. That has
9 nothing to do with MINOR nothing to do with the State's
10 case, nothing to do with why we're here today. And I
11 apologize for getting riled up about that, but that's
12 confusion of the issues.

13 MR. ABDALLA: Objection, Your Honor. I have to
14 make one point.

15 THE Court: What's your objection?

16 MR. ABDALLA: He's saying they're amended
17 indictments. There was no indictment for CSC third prior
18 to this year.

19 THE Court: Well, I'll allow him to argue his
20 case on the indictments. And we need to move on to the
21 evidence.

22 CLOSING STATEMENT CONTINUED

23 BY MR. TOOKER:

24 So we have amended indictments here and that's my
25 fault. We're here today because I'm the Prosecutor on the

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1 case. Again, the State and our evidence isn't at all
2 affected by the fact that I brought this case to trial when
3 I did. So if that is an issue for you, blame me. Do not
4 blame MINOR [REDACTED] had nothing to do with that.
5 MINOR [REDACTED] had nothing to do with when I chose to take the
6 case to trial.

7 Now, I -- this case has bothered me. I try a lot of
8 cases. I do a lot of work here. And they usually don't
9 stick with me. And this one has stuck with me and has
10 really, really bothered me. And I couldn't sleep very well
11 last night and my wife and I started talking about it. And
12 I was just explaining to her what I thought and what I
13 thought the Defense was trying to do. And she said
14 something that really kind of resonated with me. She said,
15 well, that's a real cynical outlook of them. And I was
16 like, yeah. Yeah, I guess you're right. It is a cynical
17 outlook. And I actually, before I came in, I made sure I
18 looked that word up on Google so I didn't use it wrong.
19 But it means contemptuous and with a notion that things are
20 false. That people lie. It's a jaded outlook. And I
21 think it is extremely common now in our world, in our
22 society, to see folks who are cynical. You know, we hear
23 this stuff in the news. You hear about Bill Clinton and
24 Dominique Strauss Kahn, and Kobe Bryant and Ben
25 Roethlisberger, and we become cynical about these cases.

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1 You know, instead of worrying about whether the Defendant
2 did anything wrong, we start prosecuting the victim, you
3 know. And that's not right. It's not why we're here. We
4 prosecute Defendants we believe have done something wrong
5 because that is justice. That is what we're here to do.
6 That's what you're called to do as jurors. That's the oath
7 that you've sworn to do, is to do justice. And at the end
8 of this case that's what we'll request.

9 Now, I want to go over something real quick, too. Mr.
10 Abdalla touched on this, but I think these charges
11 sometimes can be confusing. You hear a lot of words about
12 these offenses and you're like, what does that mean? What
13 is that offense specifically? And because I am a visual
14 learner -- I don't know if you are -- but I've got the
15 elements of each offense on this piece of paper right here.
16 The first charge is CSC second with a minor. And
17 essentially what that amounts to is you've got to have a
18 sexual battery. That's the first element. So sexual
19 battery is any kind of sexual contact. It can be oral sex
20 or traditional sex or anal sex or some sort of digital
21 penetration. But no matter what, that's sexual battery.
22 That doesn't imply any other sort of force or coercion, but
23 it just means sex. That means sex.

24 The second element is the victim has to be between the
25 ages of fourteen and sixteen. In this case, the testimony

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1 was that MINOR was born in November of 1987. The
2 indictments are for from the time she turned fourteen until
3 the day before she turned sixteen. So the indictment for
4 both the CSC second with a minor and the lewd act covers
5 that period of her life. The Defendant must be older than
6 the victim or in a position of authority over her. There's
7 no question that the Defendant is older than the victim.
8 The Defendant, I believe, was born in 1962, if I remember
9 correctly. Much older than the victim. And in a position
10 of authority over her. What was it? He was her step-
11 father. You know, that's an interesting thing, all the
12 witnesses they called to testify on the Defendant's behalf
13 talked about how he was such a good step-father. You know,
14 he was the step-father. He's the step-father. A step-
15 father having sex with his step-daughter.

16 This is important, too. For both CSC with a minor and
17 lewd act, consent is not a Defense. You cannot consent if
18 you are a minor child. It is a legal impossibility. The
19 second charge is lewd act and that covers the same time
20 period, but it's different elements. Lewd act is all about
21 intent. The victim has to be under sixteen. Again, the
22 same time period the victim is under sixteen. The
23 Defendant has to be over fourteen. That, again, is not
24 disputed. The Defendant must then commit a lewd act on the
25 victim's body. Effectively, what that means is any kind of

1 touching, sex, kissing, petting, hugging, rubbing, any of
2 that. And if it's to gratify the Defendant's or the
3 victim's lusts or passions. So if it's of a sexual nature,
4 then that satisfies the element. Again, consent is not a
5 Defense.

6 The third indictment in this case is CSC third. And
7 the way these indictments play out is you have the CSC
8 second with a minor and lewd act carries the time frame
9 from when she's fourteen until she's sixteen. CSC third,
10 from when she's sixteen until she's nineteen and she gets
11 out of the house. We've done one indictment for numerous
12 acts, for years of abuse, because that makes it, I think,
13 cleaner and easier and simpler and more comprehensible.
14 But two elements, two elements for this offense. There's
15 got to be a sexual battery. So that is sex. Any sort of
16 sex. In this case, we've got prima facie evidence that sex
17 occurred. We have DNA that he fathered the child with her
18 during this time frame. So sexual battery is not an issue.
19 He admits to that. He has to admit to it. And I'll get to
20 that later. The second element, is there's got to be force
21 or coercion. Now, you take the Judge's instruction, you
22 know, over mine. But my understanding of this is that it's
23 got to make the victim follow a prescribed and dictated
24 course to inflict or impose or force one's will upon
25 another. It doesn't have to be any sorts of aggravation.

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1 You don't have to use a weapon. You don't have to beat the
2 person up. But if you intimidate them into doing something
3 they don't want to do, that's force or coercion.

4 Now, I mentioned this in the beginning and this is
5 important, as well. Sex crimes are different. These are
6 different kinds of crimes than other crimes. I mean, they
7 are isolated in our entire system of law from all of
8 others, from drug crimes, from driving under the influence,
9 from financial crimes; sex crimes are special and unique.
10 All right. And they're special and unique in two ways.
11 One is in terms of evidence. This is the only charge or
12 the only type of offense where the Judge will charge you
13 that you only need to take into account the victim's
14 testimony. If the victim's testimony convinces you of the
15 Defendant's guilt, you need nothing else. There is no
16 other offense in our state law where that charge is charged
17 to the jury. It is the only one where there need not be
18 corroboration.

19 And it's interesting, you know, you think of a DUI,
20 right? You've got some video of a guy kind of staggering
21 around in front of his car. You think of a burglary, maybe
22 we got some fingerprints or you got a shoe print or
23 something like that outside the house. You've got an
24 incident that occurs and then immediately after, the person
25 says, this thing happened. So we can grab that evidence,

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1 we can snatch it up right then and there. But not in these
2 sex cases. As Shauna Galloway-Williams testified, and I
3 take issue with Defense's issue characterization of her
4 testimony. She testified as an expert in sexual abuse.
5 She said as an expert in sexual abuse, people who start
6 getting abused as children, sixty to seventy-five percent
7 of the time, delay in disclosing. Sixty to seventy-five
8 percent of the time. That is most of the time. MINOR
9 delay in disclosure, that is consistent with the vast
10 majority of people who are sexually abused in this country.

11 Now, there's a moral difference, too; the moral
12 difference between these sex crimes and other types of
13 crimes. You've got a drug crime, and people feel
14 differently about drugs. You think, well, maybe that's not
15 such a bad deal. You know, I don't necessarily think that
16 person should get in trouble for doing something that
17 doesn't hurt anybody else, right? Reasonable people
18 disagree about that kind of thing. But there is no
19 disagreement in this country as to the violence, the
20 disgusting and absolutely atrocious conduct committed by
21 somebody willing to do what the Defendant did to the victim
22 in this case.

23 Now, Mr. Abdalla is right about something. The only
24 two people who knew what was going on in this case, the
25 victim and the Defendant. So what you have to do as a jury

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1 when you go back to deliberate, is determine credibility.
2 And the Judge will give you instructions on credibility.
3 But what credibility amounts to is why is it that we
4 believe some people when they tell us things? Why do we
5 believe somebody when they meet us at the store and they
6 say, you know, my name is Jim and I drive a truck. I mean,
7 why do you believe them? Well, why would he lie about
8 that? He's got no reason to lie about that. So that's one
9 reason you can believe people. If they don't have a reason
10 to lie, then you can believe, well, they're not lying. We
11 look at why somebody would lie. You know, what is it that
12 would make somebody lie? What reason would somebody have
13 for lying? There are really two instances that you tend to
14 see. And y'all are all reasonable folks. And this is kind
15 of thinking, you know, for you, but people lie to get what
16 they want. They lie to get something. You don't lie for
17 no reason. You lie to get something or you lie to get out
18 of trouble. Those are the two reasons why folks lie. And
19 that's what you need to examine and think about when you're
20 back in your jury room deliberating on the testimony of the
21 witnesses.

22 Now, I'm going to go through one-by-one the witnesses
23 that testified and why I think they're credible, the
24 State's witnesses. First off, we've got her family. We've
25 got her family. Her family came in and testified and I'm

1 positive they love MINOR and care about MINOR but
2 nothing they said is indicative of falsity. What did all
3 of them say? You know, we thought it was kind of weird,
4 you know, but inconsistent with the Defense's witnesses,
5 you know, we didn't know for sure anything bad was going
6 on. You know, we all suspected something funny was up, but
7 we didn't know for sure. Had they known, I'm sure they
8 would have done something. Just like had the Defense's
9 witnesses known, I'm sure they would have done something.
10 But nobody was made aware yet. Nobody was made aware until
11 2007 when the victim finally cracked. When the victim had
12 finally had enough and revealed to a woman at her work,
13 then to her family, and then to law enforcement what had
14 been happening to her. And then there's the teacher, Ms.
15 Watson. And I thought Ms. Watson's testimony was
16 particularly probative. She testified that she knew
17 MINOR for some time. She taught her for two years and
18 then taught her in homebound. A good student, good kid,
19 not one to go out. When she heard that MINOR had gotten
20 pregnant, and that the story was she'd gotten pregnant at a
21 party by a random boy, she was like, you know, that didn't
22 add up. That didn't make sense. She does the homebound
23 thing, goes and visits them at the Defendant's home. What
24 did she say? He is lurking around the whole time. You
25 can't get a moment's peace with this girl to teach her her

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1 school work because he's always there. He's always
2 hovering. He's always intimidating and dominating the
3 victim. A good example of that. She meets them at
4 Walmart, randomly. MINOR is still pregnant at this point
5 in time. Sees them at Walmart. The Defendant won't let
6 MINOR talk to her. The Defendant immediately comes up
7 and starts answering the questions she has of MINOR for
8 MINOR Why is he doing that? Intimidation and
9 domination.

10 Now, some of the most important testimony, I believe,
11 and Mr. Abdalla didn't addressed this, the two girls from
12 the neighborhood. Remember Valerie and Kayla. Valerie and
13 Kayla are cousins and they were living together down the
14 street from the victim and the Defendant. And Kayla said,
15 yeah, we knew that she had a baby and we would hang out
16 with her some, but we didn't get to hang out with her very
17 much. And one day we were hanging out and we comment on
18 how much like the Defendant the baby looks. The Defendant
19 loses his cool, freaks out, kicks them out. Says, I could
20 be one of your fathers for all you know. MINOR then
21 comes and tells them what's happening. Now, this is when
22 she's still living with him. This is before she's revealed
23 anything to Angie Smith. This is before she's revealed
24 anything to her family. This is before she's revealed
25 anything to law enforcement. She's still living in the

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1 home. Before, before their motive to falsify has arisen,
2 before this reason that they've concocted that she would
3 come up with this elaborate, this elaborate lie, before
4 it's arisen, she tells two girls in the neighborhood. What
5 did those girls say? We told our mom. We told mom. And
6 mom said, don't go over there. Mom didn't call the police.
7 Mom didn't contact DSS. Mom didn't do anything. But these
8 girls did the right thing. They told their parent what had
9 been going on and nothing happened.

10 Now, what do you suppose that does to MINOR
11 MINOR finally tells somebody what's been going on, she
12 tells somebody what's been happening to her, and nothing
13 comes of. Nothing comes of it. Maybe they don't believe
14 me. Maybe nobody cares. Maybe this is normal. Maybe this
15 is what my life is. Maybe this is what my life will be.

16 There's Angie Smith. And Angie Smith was that nice
17 little lady that used to work at April Valley with the
18 victim, said the victim came in very upset, very emotional.
19 And she said, I know what's been going on. I understand
20 what's been happening. You need to tell me what's wrong so
21 I can help you. And she tells her. She tells her, I've
22 been being abused. I've been being abused and it's been
23 going on since I was thirteen or fourteen years old. She
24 tells her this before she tells her family, before she
25 contacts law enforcement. If the grand plan is to get

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1 Keith in trouble because she's mad at him, why did she tell
2 this woman first? Why not tell her family immediately or
3 why not get in her car and drive to the law enforcement
4 center? Instead, she tells a woman that she works with
5 because she's comfortable with that woman. She's
6 comfortable in that environment. She feels safe there, and
7 she feels like if she tells that woman, maybe something
8 will happen. Maybe, maybe she'll finally be safe.

9 There's the testimony of law enforcement. And I don't
10 think that there's any issue with law enforcement's
11 testimony. I mean, there's no allegation that law
12 enforcement would lie in this case. I mean, they've
13 reported to you pretty explicitly what they did from the
14 beginning. You know, meeting them at the scene, take
15 statements, go to the LEC, do further investigation, talk
16 to the family, talk to the mother, talk to all of these
17 people. And after talking to these people then come up
18 with an assessment as to whether or not they have enough
19 evidence to present for a warrant. That's what they do in
20 every case. It's what they did in this case. There's no
21 reason for them to lie about that.

22 Now, most importantly, in determining credibility in
23 this case, credibility of MINOR and the credibility of
24 the Defendant. Like the Defense said, it's one or the
25 other. It's one or the other. She either consented to all

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1 of that or the Defendant, for a period of five years,
2 intentionally and systematically raped her in her home
3 where she's to feel safe. Now, MINOR took the stand, and
4 I'm sure y'all remember her testimony. She was candid and
5 honest and clearly emotional. And I don't think there's
6 any doubt about that. And she says what she said from the
7 beginning, that between thirteen and fourteen years of age,
8 she's been raped by the Defendant. She has been raped by a
9 man that she knew as her step-father. A man that had
10 raised her since she was seven or eight, seven or eight
11 years old. Now, what motive would MINOR have to lie?
12 Why would she lie? In determining her credibility, what
13 reason would she have to lie? The Defense has some
14 interesting theories. One of them, which I thought was
15 particularly interesting, was that she was lying to get a
16 car. Now, she tells law enforcement that this man's been
17 raping her for five years, somehow she's going to get a
18 Corvette? I mean, come on. Come on. That she was going
19 to get her baby, that she'd be able to get her baby and run
20 away with her baby. I believe that was one of their
21 witnesses' theories. She needed her baby. Yeah, that's
22 why she would lie. Because she wanted to get her baby.
23 What happens when the family comes over to the house? The
24 family comes over to the house, the first thing she does is
25 she bolts. She didn't even grab her child. And you could

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1 tell when she testified to that fact, she was embarrassed.
2 Did not even take her own child, her flesh and blood, out
3 of that situation she was so scared, so concerned for
4 herself. She runs and leaves the child. Why, if she wants
5 to get that baby, would she leave it in the house? A
6 trailer in Myrtle Beach. They went to the beach, according
7 to the Defendant, and met with a real estate agent. He
8 could maybe buy a trailer. And she wanted that trailer and
9 wanted to live there. And so she fabricated this story
10 because somehow that's going to put her in a trailer in
11 Myrtle Beach. What sense does that make? The Judge is
12 going to charge you that y'all use your common sense. You
13 rely on your everyday experiences. And does that pass the
14 smell test? Do those Defenses, those allegations of lying,
15 do they pass the smell test? It's a reasonableness thing.
16 Y'all are reasonable people. And you're charged that the
17 State has the burden of proof, things beyond a reasonable
18 doubt. It's all reasonable. If that stuff doesn't sound
19 reasonable, well, that's because it's not. That's not a
20 reasonable -- a reasonable reason for someone to fabricate
21 a story.

22 Now, again, this case turns on MINOR testimony.
23 On MINOR testimony and the Defendant's testimony,
24 because those are the two stories that you have to decide
25 between. Which one is the reasonable story? Which one is

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1 the believable story? Which one is the story that you
2 heard and thought, damn, that's awful. That's absolutely
3 terrible. I can't believe that happened. Which one is the
4 story that puts you in fear, that makes you concerned, that
5 gives you reason to pause? Is it MINOR story or is it
6 the Defendant's?

7 Now, he said, we paraded all of these witnesses in and
8 they were testifying to stuff, but they weren't there.
9 They weren't there. And that's true. Nobody was there.
10 The Defendant's there, the victim's there. Like I said
11 before, these are cases that occur behind closed doors.
12 They occur in secret. They are crimes of shame and
13 secrecy. There aren't eyewitnesses to these rape cases.
14 They just don't happen. What we do have is DNA. We have
15 DNA in this case. You're talking about the Defendant's
16 credibility, he didn't assume responsibility for that child
17 at the time it was born. He didn't say, yeah, that's my
18 baby, family. I fathered a child with this girl. I know
19 it sounds gross, but I did it and she was of legal age, so
20 it's okay. No, he didn't say that. You know when he
21 started saying that, after the DNA results came back.
22 After he gets charged -- we get DNA from him, from the baby
23 and from MINOR We send it to SLED and the DNA results
24 come back. All of a sudden his story changes. Why does it
25 change? Because that is the only explanation he can give

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1 to explain away the fact that he fathered a child with his
2 step-daughter. There is no other way that he can account
3 for that DNA than to say, oh, yeah, yeah, yeah, yeah, it
4 was consensual. It was consensual and I waited until she
5 was sixteen. I waited until she was of age. I'm willing
6 to have sex with my step-daughter, but I'm going to wait
7 until she's of age. Does that sound reasonable? Is that a
8 reasonable explanation of that DNA? MINOR gives a story.
9 She tells you what's happened. She talks about the abuse,
10 starting around thirteen or fourteen, that it occurs at
11 these residences. That she met the Defendant when her mom
12 brought him back and they moved in with him when she's
13 seven or eight years old. She tells a story that piecemeal
14 accounts for some eleven years of her life; right? Now,
15 again, the stuff that happens behind closed doors, we don't
16 have eyewitnesses to. But what do all of those witnesses
17 do who are around for things that didn't happen behind
18 closed doors. All those witnesses corroborate MINOR
19 statement. All those witnesses can explain to you that the
20 things she said are things they've seen, too. He's
21 controlling, he's dominate. They saw that. They testified
22 to that. He had her in one place, moved her to another,
23 then he moved her to another, then he moved her to another.
24 For some time they lived by Sheri Aiken. Those are all
25 things that she said in her story that her family

1 corroborates, that the Defendant can't not corroborate,
2 that he must corroborate because if he does not, well, then
3 he's a liar.

4 And speaking of liars, we talked about Ms. Watson; the
5 Defendant called her a liar. The woman who came into
6 Court, had not seen the victim since she was on homebound
7 in 2007, she comes into Court, testifies as to what she
8 recalls. Has been in this man's house repeatedly, has met
9 him, has met him at Walmart. He says, I've never seen her
10 in my life. She must be lying. She's the liar. Is that
11 reasonable? Is it reasonable that she's the liar or is it
12 more reasonable that he was afraid of her testimony and had
13 to negate it somehow. Had to accuse her of lying. Had to
14 accuse the one person that doesn't have a dog in this fight
15 with making this stuff up. Does that sound reasonable?

16 Now, MINOR gives you an account of those eleven
17 years. Starts when she's seven or eight. They meet at D.
18 Walker's. They move to that place on Highway 8. They move
19 to the yellow house. They move to the trailer by Sheri.
20 They move to the place where they ended up, Ridgefield
21 Circle. Everybody verifies that. They verify the
22 controllingness of the Defendant. They verify her account
23 of how she got out of the house. It's not like she says, I
24 got out one way and the events transpired another. That
25 would indicate to you that she were lying about that stuff.

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1 If she were lying about that stuff, maybe she lied about
2 other stuff. But her testimony matches the testimony of
3 all the other witnesses. Then she went to live with them.
4 She got out. And I think this is extremely profound. She
5 got out of the house and went to live with several of her
6 family members. And how do they describe her? They say
7 she's in constant fear. She's looking out the windows.
8 She won't look you in the eye. She is -- I believe the
9 words were, she was like a cowered individual, that she had
10 been beaten down. That she had been so abused and
11 neglected and assaulted and wounded by this man that she
12 was like an injured animal. She was fearful. What else
13 did they say? You know, this was five years ago. She's
14 gotten better each day. She's continuing to get better.
15 She's still getting better. But they have noticed a
16 change. She was one way when she was living with him.
17 She's been away from him for five years now, she's a
18 different person. Her personality has changed. Why would
19 it change if he is not the controlling, demeaning,
20 disgusting, violent rapist that she's accusing him of
21 being?

22 Now, Shauna Galloway-Williams testified at some
23 length. And I think her testimony is important,
24 particularly with regards to what she said about core
25 details and contextual details. She said what makes one of

1 those statements really add up to her, you know, when she's
2 investigating these cases, is whether or not those core
3 details and those contextual details add up. So what are
4 the core details in this case? It's the who, the what, the
5 where? Who was it? It was the Defendant. It was Norman
6 Keith Burgess. What was it? It was rape from the time
7 that she was a young teenager until she got out of her
8 house. Where was it? It was always at home. Her mom
9 wouldn't be there and it was at home. Those are the core
10 details. And now those details have remained unchanged.
11 Those details have stayed the same throughout the entirety
12 of the progression of this case, from charge to trial.
13 They have not altered.

14 And what are the contextual details? Contextual
15 details are how you can really pick up on somebody if
16 they're lying. If somebody's lying, then you ask them,
17 okay, did you go to the baseball game? Like, yeah, I went
18 to the baseball game and the Braves won. You're like,
19 okay. Well, what seat were you in? Seat 4. And where was
20 that? Well, that was behind third base. The contextual
21 details, if they're compelling, are what make the statement
22 compelling. So MINOR testified to some pretty explicit
23 stuff. She talked about the first time it happened. She
24 talked about, she talked about the Defendant starting by
25 kissing her. What did Shauna say? These guys, these

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1 predators, when they target somebody, it's a slow thing;
2 right? You don't just all of a sudden rip somebody's
3 clothes off and start raping them. You know, it's slow.
4 You kind of make sure the child's comfortable with you.
5 You kiss them so they know what you're doing. And if
6 there's no response to that, you take it a little further.
7 You take it a little further. You take it a little
8 further. And all of a sudden, you've got criminal sexual
9 conduct. She also testified, and this is one of those
10 contextual details, she cut off her hair. She wanted him
11 to think she was ugly, so she cut off her hair. She cut
12 off her hair so he wouldn't want to rape her anymore. She
13 would go to bed and tie her pants as tight as possible so
14 he couldn't get his hands into them. She mentioned going
15 to the bathroom on herself so that he wouldn't do this.
16 Then she prayed with him. She said, Norman, God doesn't
17 want you to do this. This isn't right. I'm your step-
18 daughter and you're doing these things to me. Those are
19 contextual details. Those are the compelling details that
20 help you as a jury understand not only is she alleging
21 specific conduct, but she has the details to back it up.
22 One more thing about Shauna Galloway-Williams, and
23 I'll wrap it up. She talked about grooming. She said
24 these guys, they groom; right? They want to expose their
25 victims to sexualized acts at an early age to desensitize

1 them, you know. You show them pornography. And all of a
2 sudden, oh, okay, well, that's something normal. You know,
3 kids don't know any better. A kid doesn't know what's
4 normal at that point in their life. You start exposing
5 them slowly to sex. And then, all of a sudden, when you
6 finally do the thing, the ultimate deed, it's not as
7 offensive to them. They've been made aware of sex and are
8 less repelled by it at that point. What does he do? He
9 plays strip poker with her mother in front of the victim.
10 Oh, it's okay to get naked. Adults get naked all the time.
11 Me and your mom get naked. It's fine. He has sex with her
12 mother in front of her. Oh, no, no, it's just what normal
13 adults do. Adults have sex. Adults have sex with one
14 another. It's okay. He has her dress up. He has her
15 dress up in little outfits and lingerie and he takes
16 pictures of her. He takes pictures of her. And it's okay
17 that you're a child. It's okay to be sexual if you're a
18 child. Oh, no, no, that's fine. That's fine. And then he
19 can finally make his move. She starts getting a little
20 older. She starts to feel a little more attracted to him.
21 She's thirteen, fourteen years old. And he decides, hey,
22 my wife's not here. Why not? Why not?

23 The Judge is going to charge you on the law. He will
24 give you an instruction on the law and if any of that stuff
25 that I said about the law is incorrect, you defer to the

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1 Judge, of course, because he's the expert. But before he
2 charges you on the law, I'd like to charge you. I would
3 like to charge you to do right in this case. I would like
4 to charge you to do the right thing. I'd like to charge
5 you to achieve justice for MINOR I'd like to charge you
6 to protect innocence and to punish guilt. I'd like to
7 charge you to look this man in the face. To tell him we
8 will not tolerate this conduct in our county.

9 MR. ABDALLA: Objection, Your Honor. He's
10 appealing to the jury's passions. This is way over the
11 top.

12 THE Court: If you would, address your statements
13 to the jury if you would, Mr. Tucker.

14 MR. TOOKER: Yes, sir.

15 CLOSING STATEMENT CONTINUED

16 BY MR. TOOKER:

17 Tell him, we're holding you accountable. We're
18 holding you accountable for what you did to MINOR for
19 the pain you put her through, for what you caused her for
20 five and a half years of her life. We are holding you
21 accountable here today. And I ask you, jury, to find him
22 guilty on all charges. Thank you.

23 MR. ABDALLA: Your Honor, can we approach?

24 THE Court: Yes, sir.

25 (WHEREUPON, Mr. Tooker and Mr. Abdalla approached the

1 bar.)

2 CHARGE

3 BY THE Court:

4 Madam forelady, ladies and gentlemen of the jury, it's
5 now my responsibility to instruct you on the law. The
6 Defendant in this case is charged with three separate
7 offenses. Those indictments charge him with lewd act upon
8 a child and criminal sexual conduct with a minor second
9 degree and criminal sexual conduct third degree. The fact
10 that he's been arrested and charged and indicted is not
11 evidence. I want you to understand that that doesn't
12 create any presumption of guilt. The indictments are
13 merely the papers by which the formal charges are brought
14 to this Court for disposition. There are three separate
15 charges in this case. And, of course, each of those are
16 three different indictments and there's law applicable to
17 each of them. You must make a decision on each of the
18 three charges, uninfluenced by your decision on the others.
19 In other words, the Defendant can be convicted or acquitted
20 on any or all of the offenses and you'll be asked to write
21 separate verdict forms on each of those charges.

22 Mr. Burgess has entered a plea of not guilty to each
23 indictment. That puts the burden on the State to prove his
24 guilt. A person charged with committing a criminal offense
25 in South Carolina is never required to prove himself

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1 innocent. That's an important rule of law. In a criminal
2 trial, no matter how serious the charge may be, an
3 individual will always considered innocent unless guilt has
4 been proven by evidence satisfying you of that guilt beyond
5 a reasonable doubt. Presumption of innocence doesn't end
6 when you begin your deliberations. It stays with the
7 Defendant throughout the trial until you've reached a
8 verdict of guilt, based upon evidence satisfying you of
9 that guilt beyond a reasonable doubt. Presumption of
10 innocence isn't a mere legal theory. It's not a legal
11 phrase. It is a substantial right, which every Defendant
12 is entitled unless you, the jury, are satisfied from the
13 evidence of that guilt beyond a reasonable doubt.

14 Now, you may ask, what is reasonable doubt in the law?
15 A reasonable doubt is the kind of doubt that would cause a
16 reasonable person to hesitate to act. Some of you may in
17 the past have served as a juror in a civil case and you
18 were instructed that it was only necessary to prove a fact
19 that was more likely true than not true, such as a standard
20 called the greater weight of the evidence or the
21 preponderance of the evidence. In criminal cases, the
22 state's proof is more powerful than that. It must be proof
23 beyond a reasonable doubt. That would be proof that leaves
24 you firmly convinced of the Defendant's guilty.

25 Now, very few things in this world, ladies and

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1 gentlemen, do we know with absolute certainty. And in
2 criminal cases, the law doesn't require proof that
3 overcomes every possible doubt. If, based upon your
4 consideration of the evidence, you're firmly convinced that
5 the Defendant is guilty of the crime charged, then you must
6 find him guilty. On the other hand, you think there's a
7 real possibility that he's not guilty, you must give him
8 the benefit of that doubt and find him not guilty.

9 Now, during the trial, you and I have had certain
10 duties to perform. As the Trial Judge, it's been my
11 responsibility to preside over the trial of the case, to
12 rule on the admissibility of evidence that's offered during
13 the trial. You can consider only the competent evidence
14 that's before you. The testimony that's been given, the
15 Exhibits, the stipulation that has been made a part of this
16 record. That and that alone are you to consider.

17 My job also is to charge you the applicable law in the
18 case. As the Presiding Judge, I'm the sole Judge of the
19 law. It is your duty as jurors to accept the law, apply
20 the law just as I state it to you. Some of you may already
21 have an idea of what the law is or what the law ought to be
22 in a case of this nature. But if you have such a notion
23 and it's not in agreement with what I now tell you the law
24 is, then you must abandon such an idea. Because under your
25 oath, you've sworn to accept the law and apply the law just

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1 as I state it to you.

2 Every case that's tried in this Courtroom before a
3 jury, that jury becomes the sole, exclusive judge of the
4 facts of a case. A Trial Judge can't comment on or
5 intimate or state -- make any statement whatsoever to a
6 trial jury about the facts in the case. Since you, the
7 jury, are the sole judges of the facts, you're not to infer
8 from what I've said during the progress of the trial, any
9 rulings I've made on the admissibility of evidence or
10 otherwise, anything I say to you now in the course of this
11 instruction to you, that I have an opinion about the facts.
12 The law, our Constitution in South Carolina doesn't allow
13 me to have an opinion about the facts. That's a matter
14 solely for you. You make that determination based upon the
15 effect and the value, the weight and the truth of the
16 evidence that's been presented to you.

17 Now, in trials, normally there's two types of
18 evidence. There's what's called direct evidence and
19 circumstantial evidence. Direct evidence is the testimony
20 of a person who claims to have actual knowledge of a fact
21 such as an eyewitness. It's evidence which immediately
22 establishes the main fact to be proved. Circumstantial
23 evidence is proof of a chain of facts and circumstances
24 that would indicate the existence of a fact. It's evidence
25 which immediately establishes collateral facts from which

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1 the main fact may be inferred. Circumstantial evidence
2 then is based on inference and not on personal knowledge or
3 observation. The law makes absolutely no distinction
4 between the weight or the value to be given either direct
5 evidence or circumstantial evidence. Nor is a greater
6 degree of certainty required of circumstantial evidence
7 than of direct evidence. You should weight all the
8 evidence in the case. And after weighing that evidence, if
9 you're not convinced of the guilt of the Defendant beyond a
10 reasonable doubt, then you must, of course, find the
11 Defendant not guilty.

12 Necessarily, ladies and gentlemen, you must determine
13 the credibility of the witnesses who've testified in the
14 case. Credibility simply means believability. It's your
15 duty as jurors to analyze and evaluate the evidence,
16 determine which evidence convinces you of its truth. In
17 determining the believability of witnesses who've
18 testified, you can believe one witness over several
19 witnesses. You can believe several witnesses over one
20 witness. In your discretion, you can believe part of the
21 testimony of a witness and you can reject the remaining
22 part of the testimony of that very same witness. You can
23 believe the testimony of a witness in its entirety. You
24 can reject the testimony of a witness in its entirety. You
25 can consider whether any witness has exhibited to you any

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1 interest or bias or prejudice or other motive in the case.
2 You can consider the appearance of the witness while on the
3 witness stand. Was the witness straight forward or
4 hesitant in answering? Was the testimony of that witness
5 consistent or inconsistent? Was the testimony of a
6 particular witness strengthened or weakened by other
7 testimony or other evidence? It's your prerogative and
8 yours alone to determine the credibility of the witnesses,
9 ladies and gentlemen.

10 Now, the rules of evidence ordinarily would not permit
11 a witness to testify to opinions or conclusions, but there
12 is an exception for witnesses that we call expert
13 witnesses. And a witness who by education and experience
14 has become an expert in some art or science or profession
15 or calling, may state an opinion as to any relevant and
16 material matter in the case in which that witness claims to
17 be an expert. And may also state the reasons for that
18 opinion. Now, you should consider any expert opinion
19 received in evidence in the case, and like other evidence,
20 give it the weight that you think it deserves. If you
21 decide the opinion of the expert witness is not based on
22 sufficient education and experience or that you conclude
23 the reasons given in support of that opinion are not sound
24 or if the opinion is outweighed by other evidence, you may
25 disregard the opinion entirely. An expert witness

1 testimony is to be given no greater weight than that of any
2 other witness merely because the witness is an expert.
3 You're not required to accept an experts opinion, even
4 though it may be uncontradicted.

5 In order to establish criminal liability, criminal
6 intent is required and must be proven by the State beyond a
7 reasonable doubt. Criminal intent is always a matter that
8 must be determined by the jury from the circumstances
9 surrounding the situation. There's no way to prove intent
10 to a mathematical certainty. There's no way medical
11 science can dissect a person's brain and determine what
12 that person had in mind. So the law says that criminal
13 intent may be inferred from the circumstances shown to have
14 existed at the time. It's not necessary to establish
15 intent by direct and positive evidence, but intent may be
16 established by inference in the same way as any other fact,
17 by taking into consideration the acts of the parties and
18 all the facts and circumstances of the case. Criminal
19 intent is a mental state. It's a conscious wrongdoing.
20 It's up to you to determine what the Defendant intended to
21 do based upon the circumstances shown to have existed.

22 Now, Madam Forelady and ladies and gentlemen of the
23 jury, the charges in this case, first of all the Defendant
24 is charge with committing a lewd act upon a minor. The
25 State must first prove beyond a reasonable doubt that the

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1 Defendant was over the age of fourteen. Next, the State
2 must prove that the Defendant willfully and lewdly
3 committed or attempted a lewd or lascivious act on or with
4 the body or the parts thereof of a child under the age of
5 sixteen years, with the intent to arouse, appeal to, or
6 gratify the lusts, passions or sexual desires of the
7 Defendant or of the child.

8 Now, willfully means voluntarily and intentionally
9 with the specific intent to do something the law forbids.
10 Lewd means obscene or lustful, indecent or lecherous.
11 Lascivious means tending to incite lust or lewd, indecent,
12 obscene or tending to deprave the morals in respect to
13 sexual relationships.

14 Now, the Defendant is also charged with second degree
15 criminal sexual conduct with a minor. The State must prove
16 beyond a reasonable doubt that the Defendant engaged in a
17 sexual battery with the victim. A sexual battery is sexual
18 intercourse, cunnilingus, fellatio, anal intercourse or any
19 intrusion, however slight, in any part of a person's body
20 or of any object into a genital or anal openings of another
21 person -- another person's body, except when such intrusion
22 is accomplished for medically recognized treatment or
23 diagnostic purposes. The State must then prove beyond a
24 reasonable doubt that the victim was less than sixteen
25 years old, but at least fourteen years old. And that the

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1 Defendant was either in a position of familial, custodial
2 or official authority to coerce the victim to submit or
3 that the Defendant was older than the victim. Consent,
4 willingness, indifference, or ignorance on the part of the
5 minor, if any, as to what was taking place does not, in any
6 way, affect the charge of criminal sexual conduct with a
7 minor.

8 Now, in order to prove third degree criminal sexual
9 conduct, the State must prove beyond a reasonable doubt
10 that the Defendant engaged in a sexual battery with the
11 victim. I've explained to you already what a sexual
12 battery is, that being sexual intercourse or any intrusion,
13 ever how slight, into the person's body or any part of that
14 body. Now, if you find that a sexual battery did occur,
15 you must then decide whether the State has proven beyond a
16 reasonable doubt that the Defendant used force or coercion
17 to accomplish the sexual battery. Using force or coercion
18 means to make the victim follow a prescribed, dictated
19 course, to inflict or impose or to force one's will upon
20 someone. Now, under the law of South Carolina, testimony
21 of a victim need not be corroborated in prosecutions under
22 -- for these two sections relating to the criminal sexual
23 conduct.

24 Now, if you find that the State has not proven all the
25 elements of criminal sexual conduct with a minor in the

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1 second degree or criminal sexual conduct in the third
2 degree, you may consider whether or not the State has
3 proven a lesser included offense on each of those of
4 assault and battery of a high and aggravated nature.
5 Assault and battery of a high and aggravated nature is the
6 unlawful act of violent injury to the person of another
7 accompanied by circumstances of aggravation. An assault
8 occurs when a person unlawfully attempts or offers to
9 commit a violent injury upon another person and has the
10 present ability to complete that attempted injury. An
11 assault is the intentional creation of a reasonable fear of
12 immediate bodily harm. It's not necessary that the
13 attempted injury or harm actually take place. An example
14 often given, if I were to walk up to any of you and within
15 arm's reach drew back my fist as if to strike you, then
16 that would be an assault. A battery is the unlawful
17 touching of another person by a person who has committed
18 that assault. An unlawful touching can be caused by a part
19 of the accused body or any object that the accused puts in
20 motion. A battery is the completion of the assault by
21 using or applying force to another person, however slight,
22 in a rude or angry or resentful manner without legal
23 justification for doing so. Using my earlier example, if I
24 carry through the assault by hitting you, that would be a
25 battery. The State must also prove a circumstance of

1 aggravation. Circumstances of aggravation include several
2 examples, including using a deadly weapon or a great
3 disparity between the ages or physical conditions of the
4 parties. A difference in the gender of the parties.
5 Taking indecent liberties or familiarities with a female
6 through the use of force. The purposeful infliction of
7 shame or disgrace. These are only examples of
8 circumstances of aggravation. You must make that
9 determination..

10 Now, Madam forelady and ladies and gentlemen, I've
11 prepared verdict forms -- I believe they'll be self-
12 explanatory for you -- on each of these charges. You
13 either find that the State has met its burden of proof.
14 The verdict, of course, would be guilty. If you find the
15 State has not, the verdict would be not guilty. There's no
16 significance whatsoever in the order in which those options
17 are listed on the verdict form. One has to be listed
18 before the other so there's no significance whatsoever in
19 that. For the criminal sexual conduct charges, both with
20 the minor, and criminal sexual conduct in the third degree,
21 the lesser included offense of assault and battery of a
22 high and aggravated nature are also included. If you find
23 the State has not met its burden of proof, you can find not
24 guilty on either of those charges, then you can consider
25 whether or not the state has met the burden of proof on the

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1 lesser included offense.

2 All twelve of you must agree upon a verdict. Your
3 verdict must be a unanimous one. Your verdict can't be
4 based upon sympathy or passion or prejudice or emotion or
5 any other consideration not in evidence in the case.

6 And, Madam Forelady, I'll remind you that while you're
7 free to ask me any question concerning the law of the case,
8 remember it's impermissible for me to answer any questions
9 you have regarding the facts in the case. That's your
10 prerogative and yours alone to determine just what the
11 facts are. You're the sole fact finders.

12 I'm going to ask if you would, please, to go back to
13 your jury room. Don't start your discussions just yet. In
14 a few moments, hopefully, I'll send you the verdict forms
15 back with the Exhibits and with instructions to begin your
16 deliberations. There's a final matter of law I need to
17 take care of with the attorneys. After which, hopefully,
18 we can let you begin your deliberations. So, if you'll go
19 back to your jury room. Don't start talking about the case
20 just yet. We'll let you know if we need to call you back.
21 You may retire to your jury room.

22 (WHEREUPON, the jury exited the open Court at
23 approximately 11:13 A.M.)

24 THE Court: Any exception to the charge, from the
25 State?

1 MR. TOOKER: Nothing from the State, sir.

2 THE Court: From the Defense?

3 MR. ABDALLA: No, Your Honor.

4 THE Court: All right. If y'all will get your
5 Exhibits together. I've got the verdict forms here for
6 them. We'll be at ease until we hear from our jury. You
7 can tell them they can begin their deliberations.

8 (WHEREUPON, the verdict forms and exhibits were
9 delivered to the jury at approximately 11:14 a.m.,
10 after which Court stood at recess awaiting the verdict
11 of the jury.)

12 THE Court: All right. I understand the jury's
13 reached a verdict. Are there any matters we need to take
14 care of before the jury is called back in? From the State?

15 MR. TOOKER: None from the State, sir.

16 THE Court: From the Defense?

17 MR. ABDALLA: No, Your Honor.

18 THE Court: If they're ready, you can have them
19 come in, First Sarge.

20 (WHEREUPON, the jury entered the open Court at
21 approximately 11:52 A.M.)

22 THE Court: Madam Forelady, I understand the jury
23 has reached a verdict. Is that correct?

24 MADAM FORELADY: Yes, sir.

25 THE Court: Is it a unanimous verdict as to all

State of South Carolina -vs- Norman Keith Burgess (2007-GS-39-2240-2241 and 2012-GS-39-1770)
Charge

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1 the charges?

2 MADAM FORELADY: Yes, it is.

3 THE Court: If you would, please, hand the
4 verdict form to the bailiff.

5 Mr. Clerk, you may publish the verdicts.

6 THE CLERK: This is indictment number 2007-GS-39-
7 2240, The State versus Norman Keith Burgess. We, the jury,
8 unanimously find the Defendant, Norman Keith Burgess, as to
9 the charge of lewd act upon a child, guilty.

10 This is indictment number 2007-GS-39-2241, The State
11 of South Carolina versus Norman Keith Burgess, as to the
12 charge of criminal sexual conduct with a minor second
13 degree, guilty.

14 Indictment number 2012-GS-39-1770, we, the jury,
15 unanimously find the Defendant, Norman Keith Burgess, as to
16 the charge of criminal sexual conduct third degree, guilty.

17 Is this your verdict and still your verdict, so say
18 you all by raising your right hand?

19 (WHEREUPON, all jurors raised their right hands.)

20 THE CLERK: Thank you very much.

21 THE Court: Any matters we need to take care of
22 with the jury before they're discharged in this case?

23 MR. ABDALLA: No, Your Honor.

24 MR. TOOKER: No, sir.

25 THE Court: Ladies and gentlemen, thank you very

1 much for your service. This is a tough time of year to be
2 doing jury service, but you've been a conscientious group.
3 You've been a receptive group. You've paid attention. I
4 appreciate so much having the honor to work with you. It's
5 been an honor for me. I judge the law and you've made your
6 decision on the facts. And I appreciate so much your
7 service.

8 You may never get a chance to serve as a juror again.
9 I hope you understand the value that your service is to our
10 community, to our State. You've directly participated in
11 your government. You may remember from Civics class that
12 there were three branches of government, the Legislative,
13 the Executive and the Judicial branch. Unless you're
14 fortunate enough to go to Washington one day and pass laws
15 or go to Columbia and pass State laws, get on county
16 council or city council and pass those laws, you'll never
17 get to do that. The same with the Executive branch. You
18 may run for mayor of your town one day or Governor of South
19 Carolina and get to execute the laws. As citizens we can
20 petition those people and write them letters and say, let's
21 pass this law or let's do away with that law, about the
22 enforcement of it. But we can't do anything. But you've
23 been a judge this week. You've been a direct participant
24 in the judicial process, the third branch of government.
25 And I'm grateful for that.

State of South Carolina -vs- Norman Keith Burgess (2007-GS-39-2240-2241 and 2012-GS-39-1770)
Charge

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1 You may remember from Monday when I told you that the
2 law does not require you to serve as a juror more than once
3 every three years. You can be exempted from service. If
4 you were to get summoned in the next couple of years, I
5 hope that you'll waive that exemption, that you'll come and
6 serve again. I'm sure that if one day you're sitting at
7 one of these tables with a lawsuit against you on a
8 contract or a charge that you have criminally, you're going
9 to want some good, sound jurors of your capability to hear
10 your case. And thank you so much for serving. It's a high
11 calling. And as I told you on Monday, I think it's what
12 keeps our system strong, is citizen input, such as you.

13 We have another trial scheduled for tomorrow. We have
14 a full panel of jurors to hear that case. I'm going to
15 excuse you for the week. You've got some other things, I'm
16 sure, that you can be taking care of this week, so you
17 don't need to call back tonight after six o'clock. The
18 other jurors will about getting a panel of them to come in
19 and get selected for the next case. But you certainly
20 don't need to do that. You've been a good group to work
21 with. I hope you all have a wonderful Christmas
22 celebration this year. You're all dismissed at this time.

23 Madam Forelady, I would ask, if you would, just remain
24 in the hallway for a moment. The clerk needs to get you to
25 sign some additional documents. The rest of you are

1 dismissed. You may retire with Mr. Schumacher at this
2 time.

3 (WHEREUPON, the jury exited the open Court at
4 approximately 11:58 A.M.)

5 THE Court: We'll wait a moment until the
6 Clerk gets back.

7 (WHEREUPON, the Court stood at ease for a short
8 break.)

9 THE Court: All right. Any matters we need to
10 take care of before sentencing is imposed? Anything from
11 the State?

12 MR. TOOKER: No, sir.

13 THE Court: Anything from the Defense?

14 MR. ABDALLA: No, just waiting, Your Honor.

15 THE Court: Come forward.

16 MR. ABDALLA: Are we ready for sentencing, Judge?

17 THE Court: Yes, sir.

18 MR. ABDALLA: Do we just stay here or do we go up
19 there?

20 THE Court: Come up here, please.

21 MR. TOOKER: The State would like to be heard
22 with regard to sentencing, sir.

23 THE Court: Everybody can come up.

24 (WHEREUPON, Mr. Tooker, Mr. Abdalla and the Defendant
25 approached the bar.)

State of South Carolina -vs- Norman Keith Burgess (2007-GS-39-2240-2241 and 2012-GS-39-1770)
Charge

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1 THE Court: All right. Mr. Tooker, I'll be glad
2 to hear from -- anything the State has to say. And then
3 I'll be glad -- Mr. Abdalla, I'll be glad to hear from you
4 and your client, anyone else that would like to address me,
5 I'll be happy to hear from you. Mr. Tooker.

6 MR. TOOKER: Yes, sir, Your Honor. I appreciate
7 the opportunity. I mean, you heard the facts and what the
8 Defendant's been convicted of is extremely disturbing and
9 heinous and he put the victim through a living hell for
10 four or five years of her life. What the State would like
11 to do in this case, he is looking at, in aggregate, forty-
12 five years. The State would like to request forty-five
13 years on this case. In reality, the State would really
14 like to request more, but there is not more. There's
15 twenty on the CSC second, ten on the CSC third, fifteen on
16 the lewd act. The State would request ten years for every
17 year that she had to put up with this man and his sexual
18 abuse. And that would amount to over fifty years for the
19 Defendant. Again, we're limited by statute, of course.
20 The State would request forty-five years of incarceration.

21 THE Court: Mr. Abdalla, I'll be glad to hear
22 from you and certainly your client.

23 MR. ABDALLA: All I can say, Judge, is you can't
24 argue with the verdict. I would ask for concurrent time
25 and not ... And I would say that he has no record. He's

State of South Carolina -vs- Norman Keith Burgess (2007-GS-39-2240-2241 and 2012-GS-39-1770).
Charge

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1 not going to be a danger for the community if he gets out.

2 I don't know if my client has anything he wants to say.

3 THE Court: Anything you want to tell me, sir?

4 MR. BURGESS: I'm sorry about everything. That's
5 all I've got to say.

6 THE Court: This is case 2007-GS-39-2241, the
7 sentence of the Court is the Defendant be committed to the
8 State Department of Corrections for a period of two hundred
9 months.

10 Case 2007-2240, the sentence is commitment for one
11 hundred and fifty months to be consecutive to that
12 previously imposed on 2241.

13 Case 2012-GS-39-1770, the sentence is confinement to
14 the State of Corrections for a period of one hundred
15 months, it's to be consecutive to the sentence on 2007-
16 2240.

17 I certainly hope there's a healing that can take place
18 because of this incident. Court's adjourned.

19

20 [END OF REQUESTED TRANSCRIPT OF RECORD]

State of South Carolina -vs- Norman Keith Burgess (2007-GS-39-2240-2241 and 2012-GS-39-1770)
Certificate of Reporter

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1 CERTIFICATE OF REPORTER

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I, the undersigned Danette P. Hanks, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Pickens County, South Carolina, on the 17th day of December, 2012.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 22, 2013



Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Pickens)Full name and prison number (if any) of Applicant: Norman Keith Burgess 353672)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2014-CP 39 909

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Corr Inst., Columbia, SC
2. Name and location of Court which imposed sentence Pickens County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Criminal Sexual Conduct (CSC) 3rd - 12-LS-39-1770
 - (b) Lewd Act Upon A Child - 07-OS-39-2240
 - (c) CSC with a minor 2nd degree - 07-OS-39-2241
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) December 19, 2013 - 450 months
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal dismissed _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. June 25, 2014 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2014-LP-239 _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) ineffective assistance of trial counsel
- (b) fundamentally unfair trial tactics by the
~~State~~ State in submitting a two(2) - see attached
Sheets
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) - see accompanying brief -
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? yes no ^(N/A)
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. N/A
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) direct appeal is improper venue for ineffective-assistance of counsel claims.
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? pro se

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. John Abdalla, Esq., Greenville, SC
 - ii. David Alexander, Esq., Office of Indigent
 - iii. Defense, Columbia, SC
- (b) the proceedings at which each such attorney represented you:
- i. Abdalla = trial, sentencing and arraignment
 - ii. Alexander = direct appeal
 - iii. _____

19. State clearly the relief you seek in filing this application: new trial
dismissal of charges because of "actual innocence"
20. Are you now under sentence from any other court that you have not challenged?
No

APPLICATION FOR POST-CONVICTION RELIEF

- p. 8

Burgess v State, CS No.: _____

July 21, 2014

Question 10 continued: five (5) - year - old indictments the day before my jury trial.

(6) the trial court did not have personal jurisdiction of me to try me for these offenses because there was no actual evidence proving the charges and, as such, my conviction violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

2014-CP-39- 909

STATE OF SOUTH CAROLINA)

County of Pickens)

VERIFICATION

Norman K. Burgess

I, Norman K. Burgess, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Norman K Burgess

SWORN to and subscribed before me this 23rd
day of July, 2014.

Susan H. Ivie (L.S.)
Notary Public

My Commission Expires: _____

Commission Expires

July 5, 2018

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2014 JUL 29 A 11:32

7 (NKB)
#

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

2014 CP-39-39-909

Norman K. Burgess

I, N, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Norman K Burgess
Applicant

SWORN or affirmed to and subscribed before me this
28th day of July, 2014.

Austen N. Zipe
Notary Public

My Commission Expires
March 5, 2018

My Commission Expires: _____

2014 JUL 29 A 11:32

CLERK OF COURT
HICKENS COUNTY
SOUTH CAROLINA

8 (NK8)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2014-CP-39-909
COUNTY OF PICKENS	)	
	)	
Norman Keith Burgess,	)	
S.C.D.C. No. 353672,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed July 29, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Pickens County Grand Jury indicted the Applicant at the November 2007 term of General Sessions for lewd act upon a child (2007-GS-39-2240) and second-degree criminal sexual conduct (CSC) with a minor and at the August 2012 term for third-degree CSC with a minor (2012-GS-39-1770). John Abdalla, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On December 19, 2012, the Honorable G. Edward Welmaker sentenced the Applicant to consecutive terms of 150 months for lewd act upon a child, 200 months for second-degree CSC with a minor, and 100 months for third-degree CSC with a minor.¹

¹ This is an aggregate sentence of 37 years and 6 months.

A notice of appeal was filed at the South Carolina Court of Appeals. David Alexander, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal in the form of an Anders² brief. The Court of Appeals dismissed the appeal. State v. Burgess, Op. No. 2014-UP-239 (S.C. Ct. App. filed June 25, 2014). The Remittitur was sent on July 11, 2014.

Attached herewith and incorporated herein by reference are the records of the Pickens County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel.
2. "[F]undamentally unfair trial tactics by the State in submitting a two (2) five (5)-year-old indictments the day before my jury trial."
3. "[T]he trial court did not have personal jurisdiction of me to try me for these offenses because there was no actual evidence proving the charges and, as such, my conviction violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial

² Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an

evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV,

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

January 8, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

2014-CP-39-0909

NORMAN KEITH BURGESS, 353672)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

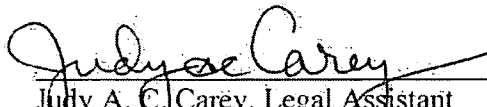
STATE OF SOUTH CAROLINA,)

Respondent.)

4. I am an employee of the Respondent in the above-captioned action.
5. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
6. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Norman Keith Burgess, 353672
Broad River Correctional Institution
4460 Broad River Road
Columbia SC 29212

DATED this 8th day of January, 2015.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
 COUNTY OF PICKENS)

Norman Keith Burgess,)
)
 Plaintiff,)
 v.) Case No. 14-CP-39-0909
)
 State of South Carolina,)
)
 Defendant.)

TRANSCRIPT OF HEARING

The within HEARING in the above-captioned matter was held December 16, 2015, before The Honorable Perry H. Gravely in Courtroom 6 of the Greenville County Courthouse, East North Street, Greenville, South Carolina; attended by counsel as follows:

APPEARANCES:

Mills Arial, Esq.
 Appearing for Applicant

Karen Ratigan, Esq.
 OFFICE OF ATTORNEY GENERAL
 ... Appearing for State of South Carolina

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
 P O Box 27145
 Greenville, South Carolina 29616
dgarrison@sccourts.org

Norman Keith Burgess v State
Case No. 14-CP-39-0909
PCR Hearing of December 16, 2015
Before The Honorable Perry H. Gravelly

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(None Entered)

Norman Keith Burgess v State
Case No. 14-CP-39-0909
PCR Hearing of December 16, 2015
TESTIMONY OF APPLICANT - DIRECT EXAMINATION

3

1 THE COURT: You are here on
2 Norman Burgess?

3 MS. RATIGAN: Yes, Your Honor. Mr.
4 Burgess was convicted and sentenced to on a
5 charge of criminal sexual conduct with a
6 minor and sentenced to thirty-seven (37.5)
7 and a half years.

8 THE COURT: All right. Mr.
9 Arial?

10 MR. ARIAL: Uh, yes, Your Honor,
11 we would call Mr. Burgess to the witness
12 stand.

13 THE COURT: Okay.

14 (WITNESS TAKES STAND)

15 NORMAN KEITH BURGESS, having been
16 sworn to tell the truth, and nothing but the
17 truth, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. ARIAL:

20 Q. Mr. Burgess you were convicted and,
21 as Ms. Ratigan, said were sentenced to about
22 thirty-seven and a half years; is that right?

23 A. Yeah.

24 Q. How long after you were arrested did
25 you. I guess you obtained the services of

Norman Keith Burgess v State
Case No. 14-CP-39-0909
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TESTIMONY OF APPLICANT - DIRECT EXAMINATION

4

1 Mr. Abdulla. Is that correct?

2 A. Yeah.

3 Q. So how long were you represented by
4 him?

5 A. I think I was out on bond for about
6 five and a half years.

7 Q. You were out on bond for five and a
8 half years?

9 A. Yeah.

10 Q. Okay. So during that period of time

11 ---

12 A. As soon as I got on bond -- not, I
13 hired him before I got out on bond.

14 Q. So at some point in time you hired
15 him and he started representing you?

16 A. Yeah.

17 Q. Did y'all discuss the case in
18 regards to, you know, what the evidence was
19 against you?

20 A. Yeah, but it's hard to remember
21 everything that we discussed.

22 Q. I understand that. We've got to go
23 back and recreate this the best that we can.

24 A. Okay.

25 Q. But you feel like you discussed and

Norman Keith Burgess v State
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1 had adequate conversations with Mr. Abdulla
2 prior to the trial?

3 A. Yeah.

4 Q. I mean, did you go over your
5 discovery, your statements, ---

6 A. Not really. He did there towards
7 the end. But when I talked to him, he came a
8 couple of times before we got to trial. Then
9 all of sudden when we got to trial, two days
10 before trial, then there were more
11 indictments -- they didn't even indict me on
12 those while I was out on bond for five and a
13 half years. Those hit me two days before we
14 got to trial, I never saw them until two days
15 before we got to trial.

16 Q. Okay. You filed this PCR
17 application, the judge has it, we've got the
18 trial transcript. What we need to go through
19 to get a full understanding of exactly what
20 you were saying that Mr. Abdulla did that was
21 ineffective.

22 A. (Affirmative nod).

23 Q. So I want to take it step by step
24 just to get some kind of understanding of
25 what the items are.

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1 A. Okay.

2 Q. Can you tell us -- and you submitted
3 a brief with this, so we've got some
4 information here that's attached. But can
5 you tell us exactly what Mr. Abdulla did that
6 was ineffective in your case?

7 A. Well, he didn't call all my
8 witnesses that should have been there to
9 testify on my behalf.

10 Q. Let's go through that. Who was a
11 witness that you wanted to be there at the
12 trial to testify?

13 A. Angela Tollison.

14 Q. What would Ms. Tollison have
15 testified to?

16 A. She would have testified that her
17 daughter was lying.

18 Q. Angela Tollison is the victim's
19 mother?

20 A. Yes.

21 Q. Now, when you say that she was
22 lying, she was lying about being sexually
23 assaulted about you?

24 A. Yes.

25 Q. What specifically would she have

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1 said that shows what the victim was saying
2 was not correct?

3 A. She would say that nothing happened
4 between me and her daughter, what she said
5 happened. It was a time factor.

6 Q. Okay.

7 A. The time factor for what I -- what I
8 done was more than wrong, and I admitted that
9 in court. But she was seventeen years old,
10 age of consent, but she tried to claim that
11 it'd happened before then when it didn't.

12 Q. So that was the theory of the case,
13 that basically you -- that it was consensual
14 at some point in time, when she got to
15 seventeen, but she was alleging that before
16 -- that it was before that and that it was
17 not consensual?

18 A. Right.

19 Q. Or that her age wouldn't have
20 allowed it to be consensual.

21 A. Right. And the mother, when she --
22 it's hard to -- unless you were there, it's
23 hard to understand what happened. When she
24 was nineteen, she -- it's hard to explain to
25 somebody. I wish it'd never happened, but it

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1 did. But I got myself into something that I
2 shouldn't have gotten into.

3 Q. Okay.

4 A. She was real sexually active. She
5 wanted to fool around and -- since I nineteen
6 -- I mean, it's hard to go through all this,
7 it's going to take awhile.

8 Q. We don't have to get into the
9 details. What I want to know is what he
10 should have done that was ineffective to
11 bring these things out.

12 A. Well, see, if the mother had been
13 there to testify, she -- she caught us red-
14 handed one time.

15 Q. When was that? When she was
16 nineteen?

17 A. When she was nineteen years old.

18 Q. All right.

19 A. She had a talk with her daughter
20 about what happened and her daughter admitted
21 that it was consensual.

22 Q. And you're saying that witness would
23 have testified that she was basically lying
24 about the testimony that it was not consented
25 to -- consensual?

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1 A. Yes.

2 Q. All right. What other witnesses did
3 you want to have called that could have
4 helped you?

5 A. In the transcript, we got on the
6 stand and said that she couldn't go nowhere,
7 that I kept her in the house under lock and
8 key, that she couldn't go nowhere, that she
9 was scared for her life, etcetera, etcetera,
10 all that junk. Yet she had her own car and
11 she had two jobs and was going to the school
12 at the same time. At the trial she claimed
13 she couldn't leave the house. She got up
14 there and lied. We proved that she did leave
15 the house.

16 Q. Who were the witnesses that would
17 have proven that ---

18 A. Josh Smallet (phonetic) was her
19 boyfriend.

20 Q. Who?

21 A. Yet she claimed at the trial that I
22 was the only person that she'd ever had sex
23 with. But, see, on account of the rape
24 shield thing that she was claiming; at the
25 time we couldn't bring up certain issues.

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1 Q. You're saying that you couldn't
2 bring the issues up, but that was not his
3 fault; was it?

4 A. No, I know that. But, still, he
5 could have had Josh Smallet in there to
6 testify as to her credibility. She said that
7 she wasn't active sexually and Josh was
8 having sex with her way before I did.

9 Q. All right, so we've got those two
10 witnesses. Any other witnesses that you
11 wanted him to call that he didn't call?

12 A. No, that's the only two that I
13 really needed, right there.

14 Q. Okay, well tell me this, what other
15 things -- what I am trying to understand is,
16 I'm trying to give the judge an understanding
17 of what you are saying. 'Look, I wouldn't
18 have been convicted had he done' or 'he
19 didn't do something that I believe that he
20 should have done.' What is that?

21 A. Well, those two. It would have been
22 a whole different outcome if the jury had
23 been able to see that on credibility.

24 Q. Okay.

25 A. Plus, he allowed an expert witness

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1 to testify that knew nothing to do with me
2 and/or the victim in the case.

3 Q. Tell me what you mean by that. What
4 expert -- what did the expert witness say?

5 A. Well, by her testimony, it swayed
6 the jury. She was only talking about cases
7 in the past, other cases, not my case.

8 Q. You think he should have objected to
9 that?

10 A. She shouldn't have testified,
11 period.

12 Q. So you think he should have
13 objected, to her out and not let her testify?

14 A. Yes.

15 Q. Did he make any Motions to do that,
16 anything to try to exclude her?

17 A. No, he said something like -- 'well,
18 is she going to testify to her knowledge of
19 certain things in the past, like other
20 cases.' There was nothing wrong with that
21 because I don't know nothing about them, but
22 by allowing her to testify about cases in
23 general that persuaded the jury.

24 Q. Okay. What other items do you want
25 this court to be aware of that you believe

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1 are necessary to consider?

2 A. (No verbal response).

3 Q. We've got the transcript and
4 everything in regards to it to be able to
5 review it. I just want you to highlight
6 those items.

7 A. Well, I don't really know nothing
8 about the law. You know that, and I've only
9 talked to you for five minutes in five
10 minutes over eight months, on the telephone.

11 Q. Well, tell me what -- we
12 corresponded a lot.

13 A. I don't know nothing about this, the
14 process of doing this. I only know that I am
15 innocent of the charges. But ---

16 Q. This is your chance, and we've
17 talked a lot about this. You believe that he
18 was ineffective, that he didn't do things
19 that he should have done during the trial and
20 that that rose to the level of prejudicing
21 him.

22 A. (Affirmative nod).

23 Q. You've got the knowledge of what he
24 did or what he said that he was going to do
25 that he didn't do. So what were those items,

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1 other than the ones that you've said
2 right now?

3 A. He should have done an investigation
4 about the girl's character, to start with.

5 MR. ARIAL: I have no further
6 questions.

7 THE COURT: Ms. Ratigan.

8 CROSS EXAMINATION

9 BY MS. RATIGAN:

10 Q. So you admit to having sex with the
11 victim but your testimony is that it happened
12 after she was seventeen?

13 A. Yes, ma'am.

14 Q. And you admit that she became
15 pregnant after having sex with you?

16 A. Yes, ma'am.

17 Q. And your testimony is that you
18 wanted Angela Tollison to testify because she
19 would have been able to say that the victim
20 was lying?

21 A. Yeah.

22 Q. But how could Angela know that
23 nothing ever happened between you and the
24 victim before she was seventeen? How could
25 she know that?

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1 A. Because the victim went with her
2 mother to work on the weekends. At the time,
3 Angela was working and ---

4 Q. So Angela and the victim were
5 together twenty-four hours a day between the
6 ages of thirteen and seventeen?

7 A. Yes.

8 Q. You're sure about that?

9 A. Oh, yeah, she would have been able
10 to testify about that. See, she only worked
11 on the weekends, on Saturdays and Sundays.
12 Any other time she was home when her daughter
13 was there, and on the weekends when the
14 mother went to work her daughter went with
15 her to work.

16 Q. Okay. And this expert witness who
17 testified, she testified about abuse victims
18 who don't disclose the abuse right away.
19 Correct?

20 A. Something like that, yeah.

21 Q. And your testimony today is that Mr.
22 Abdulla should have objected, that she should
23 not have testified.

24 A. Exactly.

25 Q. Why?

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1 A. Because it persuaded the jury,
2 prejudiced against me because the jury got
3 persuaded.

4 Q. Because the jury got what?

5 A. Persuaded.

6 Q. You also testified that Mr. Abdulla
7 should have investigated the victim's
8 character?

9 A. (Affirmative nod).

10 Q. How so?

11 A. Investigate things, like the place
12 where she worked at and the things that she
13 was doing. You could see that she wasn't
14 what she painted -- the goody-goody that she
15 painted for the court. The mother could have
16 told them that, too, if she had testified.

17 Q. Did you ask Mr. Abdulla to talk to
18 Angela?

19 A. Yeah.

20 Q. And what did he say when you asked
21 him to do that?

22 A. Well, he wanted her to testify at
23 first. But, then, towards the end he didn't
24 really want her to testify. I asked him why
25 and he didn't ever really give me a good

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1 answer. He said that maybe he could trip
2 her up. Trip her up with what?

3 MS. RATIGAN: That's all that I
4 have, Your Honor.

5 MR. ARIAL: Nothing further, Your
6 Honor.

7 THE COURT: All right. You may
8 step down.

9 (WITNESS STEPS DOWN)

10 THE COURT: Anything else from the
11 ---

12 MR. ARIAL: No, Your Honor,
13 that's our case.

14 THE COURT: Ms. Ratigan?

15 MS. RATIGAN: We would call Mr.
16 Abdulla.

17 (WITNESS TAKES STAND)

18 JOHN ABDALLA, having been sworn to
19 tell the truth, and nothing but the truth,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MS. RATIGAN:

23 Q. Mr. Abdulla, do you recall
24 representing Mr. Burgess on these charges?

25 A. Yes, I do.

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1 Q. How did you become involved?

2 A. I was first representing his wife in
3 a DSS case. I think that's the way that it
4 was. Then he called me when he was on the
5 run for an allegation -- they had warrants
6 against him. I think that I have the order
7 correct. I convinced him to meet me and
8 drove him to Pickens and turned him in. I
9 said that he was the best way for him to --
10 he said that he was afraid that they would
11 shoot him if they saw him, given the
12 allegations. We took him in to the police, I
13 was with him.

14 Then the next morning -- or that evening
15 they gave him a bond that was kinda high and
16 he called me and said that he didn't want to
17 be in jail. I said, 'let me get in touch
18 with the magistrate in the morning, I think
19 that I have a good chance of getting it
20 reduced.'

21 Well, he sold his car, paid a bondsman
22 and got out that night. So, anyway, I've
23 been representing him since the beginning.

24 Q. So you were retained on the case?

25 A. Yes.

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1 Q. Now, when you say that Mr. Burgess
2 was on the run from allegations, were those
3 these allegations or were there other ---

4 A. These.

5 Q. Okay.

6 A. He was afraid that they thought that
7 he did something that he didn't do and was
8 just afraid that he'd get shot, so he agreed
9 that it would be best to turn himself; that
10 with me there, nothing would happen to him.

11 Q. Did you file the usual *Brady* and
12 Rule 5 discovery Motions?

13 A. Yes, I did.

14 Q. To the best of your knowledge, did
15 you receive full discovery from the State?

16 A. To the best of my knowledge I did.

17 Q. Did you review the material with
18 your client?

19 A. I would assume that I reviewed
20 everything with him. I can't remember
21 anything that I didn't review. If he said
22 that I didn't review something, I won't call
23 him a liar. I don't recall anything that I
24 didn't review -- of substance.

25 Q. Did he kind of tell you his version

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1 of what happened in this case?

2 A. Yes. He said that they were having
3 sex and that his wife caught him in the act.
4 She had a baby when she was eighteen or so.
5 Anyway, it was within the legal parameters.
6 The allegation by her was, of course, that
7 it'd started much earlier. That was the
8 difference in what was going on.

9 Q. Okay. Did he ever ask you to talk
10 to Angela Tollison about these charges?

11 A. Yes, he did.

12 Q. And did you do so?

13 A. Yes, I did.

14 Q. What were the results of that
15 conversation or conversations?

16 A. Well, you know, as a lawyer you make
17 certain judgment calls. Angie is a really
18 nice lady but she is one of the weakest
19 people I've ever known. She is just very
20 submissive and -- and the reason I didn't
21 call her as a witness, and maybe I didn't
22 explain it well enough to Mr. Burgess, was
23 that I thought that she would hurt more than
24 she would help. I thought that with her
25 submissive nature and with the allegations it

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1 would be easy to paint her, if I were the
2 prosecutor, I would paint her as someone who
3 allowed this to happen and just turned other
4 way. I am not saying that is what happened,
5 at all. I'm just saying -- I've been a
6 prosecutor and if I were the prosecutor, I
7 would have painted her as that. I thought
8 that would hurt more than help.

9 Q. Did you and Mr. Burgess ever discuss
10 a Josh Smallet?

11 A. Honestly, I don't recall. We
12 probably did and I just don't remember. What
13 he said seemed to give me some recollection
14 that we had a conversation about that, but
15 I'm not certain.

16 Q. And just in case the name has thrown
17 you, did you discuss with him the victim's
18 prior boyfriend that she may have had before
19 they became involved?

20 A. He may have. I don't remember for
21 sure. I know that in general I don't tend to
22 favor trashing a victim because it tends to
23 backfire. Because of what was going on in
24 this case, I realized that if I caught her in
25 a lie that would have helped to prove that

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1 she was lying about everything but I didn't
2 think that that was going to work. It was a
3 judgment calls.

4 Q. Did you explain to Mr. Burgess the
5 idea and the purpose of the rape shield law?

6 A. I believe that I did. The fact is
7 -- he said that anything that happened was
8 consensual and that she was of age, so
9 consent wasn't an issue -- since she alleged
10 that it started when she was fourteen.

11 Q. Right. Did you have any basis to
12 object to the expert witness? I believe that
13 it was Shana Galloway-Williams' testimony
14 about delayed disclosure?

15 A. My recollection is that I objected
16 to her, but I -- I can't remember what I
17 objected to. Obviously I was overruled, if
18 she testified. My recollection was that I
19 objected, certain to the content of what she
20 was testifying to. I remember having a
21 conversation with the court -- or thought I
22 did -- where she had no specific knowledge
23 and shouldn't be allowed to testify. But ---

24 Q. Did you know prior to trial that the
25 State was going to use her as an expert in

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1 delayed disclosure?

2 A. I can't recall.

3 Q. Now, did Mr. Burgess ever ask you to
4 investigate the victim's character?

5 A. I mean, within the -- he wanted me
6 to go over some of her history. I did check
7 into some things but nothing that I checked
8 into -- and, remember, this was a few years
9 ago. My memory isn't perfect. I don't
10 remember finding anything that I thought
11 would be helpful.

12 I certainly wouldn't intentionally not
13 call someone that I thought wouldn't be
14 helpful. I was representing Mr. Burgess, no
15 one else.

16 MS. RATIGAN: That's all, Your
17 Honor.

18 CROSS EXAMINATION

19 BY MR. ARIAL:

20 Q. Mr. Abdulla, it seems like the root
21 of this case is whether or not -- actually
22 whether or not there were any type of sexual
23 allegations that took place when she was a
24 minor.

25 A. Correct.

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1 Q. Was there anybody -- I know that
2 we've got this Angie Tollison and this Josh
3 Smallet, but did anybody provide you
4 information saying, 'hey, she is lying about
5 this and this didn't begin until she was the
6 age of seventeen.'

7 A. He did, but I don't remember
8 anything specific about -- how do you
9 disprove a negative.

10 Q. Well, what I heard him say was that
11 'the mother said that this didn't happen
12 until later.'

13 A. Yes, and I've explained why I
14 thought the mother would be counter-
15 productive.

16 Q. Okay.

17 A. Obviously he got convicted and
18 everything I did didn't work.

19 Q. Right. Did you ever hear the mother
20 say, 'well, my daughter told me that this
21 sexual allegations (sic) didn't begin until
22 she was seventeen'?

23 A. I don't recall the mother saying
24 that but I can't honestly say -- I had a lot
25 of conversations with her mother because I

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1 represented her on a couple of other matters.

2 Q. Right. But if you would have heard
3 that -- I know that there are certain times
4 that you don't call witnesses because in your
5 professional judgment ---

6 A. I imagine that I wouldn't have
7 called her under any circumstance. I thought
8 that she would be that bad of a witness.

9 Q. That if she had some information
10 that may ---

11 A. Unless he had a picture, subject
12 objective.

13 Q. Okay. But this was pretty much
14 whether or not the jury was going to believe
15 the alleged victim or believe him?

16 A. Right, and that's the crap shoot
17 part of trial. But if you ask my opinion as
18 to what the difference was in the trial, I
19 can tell you that it had nothing to do with
20 Ms. Tollison and had everything to everything
21 with do with the teacher who testified.

22 Q. What did the teacher testify about?

23 A. The teacher testified to the fact
24 that she saw him and her in maybe K-Mart,
25 WalMart or some place like that, ran into

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1 them randomly, and she recalled that she knew
2 the daughter from -- not home school. What
3 do you call it when you're out pregnant ---

4 Q. Maternity leave?

5 A. It's not maternity leave but it's
6 that you are homebound, or whatever. That
7 teacher would go to where they were living
8 and instruct her.

9 Q. Okay.

10 A. She said that he stood in between
11 them, that 'he didn't want me to have a
12 conversation, was very domineering.'
13 Furthermore, she testified that that is the
14 way that he was at the house, that he never
15 left her alone with the daughter -- I thought
16 that was the thing that we couldn't get out
17 from under.

18 Q. But there was not evidence that you
19 found that what the victim as saying was not
20 credible.

21 A. I have to believe my client, no her,
22 if that's what you're asking.

23 Q. Correct, but ---

24 A. It's up to the jury.

25 Q. There wasn't a third party outside

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1 of those two that could ---

2 A. Not that I'm aware of, other than
3 the mother who may have said something like
4 that; but, again, I think calling such a weak
5 person to testify would have hurt more than
6 it would have helped.

7 Q. Mr. Abdulla, just a couple of extra
8 questions. Do you remember questioning the
9 victim about telling her mother certain
10 things during the trial, that she told her
11 mother?

12 A. I'm sorry, I have no recollection of
13 the questions that I asked. I'm sorry. I
14 don't remember.

15 MR. ARIAL: Your Honor, I would
16 say that it's in the transcript, if in your
17 review you would look at it.

18 THE COURT: Okay.

19 MR. ABDULLA: The problem with the
20 woman who I thought would be such a bad
21 witness for my client, is that when I asked
22 him about her he denied that he'd ever met
23 her or knew her or anything. I said that's
24 not going to go well with the jury.

25 MR. ARIAL: Your Honor, no further

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1 questions.

2 THE COURT: Any follow-up on that?

3 MS. RATIGAN: I have nothing further
4 from Mr. Abdulla. The State would rest,
5 Judge.

6 THE COURT: You may step down.

7 (WITNESS STEPS DOWN)

8 THE COURT: In reviewing the
9 transcript and the application, basically the
10 issues are whether Ms. Galloway-Williams
11 should have been allowed to testify as an
12 expert. Even though every defense counsel
13 has objected to her since she first showed up
14 on the scene, the Supreme Court has clearly
15 said that she can serve as an expert.
16 Actually, I had a case with her as the expert
17 and I said that she clearly could -- that
18 that was permissible. In fact, that case
19 went up to the Court of Appeals. The Supreme
20 Court has looked at that issue and said that
21 she can testify. I understand your concerns
22 and your objection to that, but that's what
23 our Supreme Court who interprets the laws for
24 this state has said. So that's not a basis.
25 The other two things were the

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1 discussions about witnesses. It sounded
2 like that you said that your attorney should
3 have called these witnesses. You are dealing
4 with a jury in trying to decide strategy and
5 you want to make sure that you do everything
6 possible to believe the defense. Sometime
7 you have to weigh that strategy to determine
8 whether you are going to call a witness or
9 not. Mr. Abdulla, like I said, developed a
10 strategy. It may have, based on other
11 things, it could have made a difference on
12 that but maybe not.

13 I don't believe that any of the
14 basis that you've indicated have shown that
15 Mr. Abdulla was ineffective as counsel or did
16 anything that caused you prejudice.

17 I understand -- it sounds like more
18 of your beef is that you professed your
19 innocence and you don't feel like the jury
20 came back with the proper verdict. I
21 appreciate that but at this particular type
22 hearing, we are here to consider whether
23 anything that Mr. Abdullah did was
24 ineffective and whether ineffectiveness
25 caused this result. I don't believe that has

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1 been shown. Based on that, I have no choice
2 but to deny the petition for post-conviction
3 relief.

4 MS. RATIGAN: Thank you, Judge. I
5 will draft an Order.

6 (HEARING CONCLUDED)

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STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 13th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the post-conviction relief hearing held in the within action heard on December 16, 2015, before The Honorable Perry H. Gravely;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Deborah Garrison
Deborah Garrison

Greenville, South Carolina
April 2, 2016

COUNTY OF PICKENS

Norman Keith Burgess,
S.C.D.C. No. 353672,

Applicant,

y.

State of South Carolina,

Respondent.

C.A. No. 2014-CP-39-909
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

ORDER OF DISMISSAL

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2016 JAN 15 AM 10 09

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 29, 2014. The Respondent made its return on January 8, 2015. An evidentiary hearing was held on December 16, 2015 at the Greenville County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, John Abdalla, Esquire. The Court had before it the trial transcript, the Pickens County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Applicant was indicted at the November 2007 term of the Pickens County Grand Jury for lewd act upon a child (2007-GS-39-2240) and second-degree criminal sexual conduct (CSC) with a minor and at the August 2012 term for third-degree CSC with a minor (2012-GS-39-1770). He was represented by John

PH

Abdalla, Esquire and Brandt Rucker, Esquire.¹

After the State called the case to trial, the Applicant was found guilty. On December 19, 2012, the Honorable G. Edward Welmaker sentenced the Applicant to consecutive terms of 150 months for lewd act upon a child, 200 months for second-degree CSC with a minor, and 100 months for third-degree CSC with a minor.

A notice of appeal was filed at the South Carolina Court of Appeals. David Alexander, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal in the form of an Anders² brief. The Court of Appeals dismissed the appeal. State v. Burgess, Op. No. 2014-UP-239 (S.C. Ct. App. filed June 25, 2014). The remittitur was sent on July 11, 2014.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel.
2. “[F]undamentally unfair trial tactics by the State in submitting a two (2) five (5)-year-old indictments the day before my jury trial.”
3. “[T]he trial court did not have personal jurisdiction of me to try me for these offenses because there was no actual evidence proving the charges and, as such, my conviction violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their

¹ This Court notes the PCR application did not contain any allegations related to Mr. Rucker and the Applicant did not make any allegations against Mr. Rucker at the PCR hearing.

² Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he hired trial counsel before he was released on bond. The Applicant stated he had adequate conversations with trial counsel prior to trial. The Applicant admitted he had sex with the victim but stated occurred after she was 17 years old. The Applicant stated trial counsel should have called Angela Tollison and Josh Smollett as witnesses. The Applicant stated Tollison (his girlfriend and the victim’s mother) could have testified the victim was lying and Smollett could have testified he had sex with the victim prior to the

Applicant. The Applicant stated trial counsel should have objected to the State's expert witness because she did not know anything about this case. The Applicant stated trial counsel should have investigated the victim's character.

Trial counsel confirmed he was retained in this case. Trial counsel testified the Applicant called him when he was "on the run" from these allegations and that he drove the Applicant to turn himself in. Trial counsel testified they reviewed the discovery materials with the Applicant, as well as his version of events. Trial counsel testified he spoke to Angela Tollison at the Applicant's request. Trial counsel testified Tollison was very weak and submissive and he thought she could hurt their case because she could very easily be made to appear as someone who allowed the abuse to happen. Trial counsel testified he believed they discussed Josh Smollett but that he does not favor attacking the victim. Trial counsel testified the Applicant wanted him to look into the victim's history but that he did not find anything that would be helpful.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have called Angelia Tollison and Josh Smollett as witnesses. Trial counsel testified he spoke to Tollison but would not call her as a witness "under any circumstance" based on the harm her testimony could cause. Trial counsel also testified he did not believe calling Smollett to testify about his history with the victim would have been favorable. This Court finds trial counsel's testimony is credible and that he provided strategic reasons why he did not call Tollison or Smollett as witnesses. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel). Regardless, as neither of these individuals testified at the PCR hearing, any discussion regarding what they would have testified

about at trial is purely speculative. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court “has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness’ failure to testify at trial.”) (emphasis in original).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to testimony from the State’s expert witness in delayed disclosure (Shauna Galloway-Williams) because she did not know anything about this case. This Court finds the Applicant has failed to articulate a valid reason for trial counsel to have objected to Galloway-Williams’ testimony. The recent appellate decision in State v. Brown, 411 S.C. 332, 768 S.E.2d 246 (Ct. App. 2015) is instructive (and, in fact, deals with the same expert witness testifying about the same topic of delayed disclosure of abuse by minors). This Court finds Galloway-Williams’ testimony in the Applicant’s case was permitted under the holding in Brown. This Court finds there was no basis for trial counsel to have made an objection to the expert’s testimony.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have investigated the victim’s character. Trial counsel testified he did not favor attacking the victim’s character. Trial counsel testified, however, that he did not find anything in the victim’s history that would have been helpful in this case. This Court finds trial counsel had a strategic reason for not presenting information about the victim’s background at trial. Regardless, the Applicant failed to meet his burden of proof because he did not present any evidence or testimony at the PCR hearing regarding (1) what information about the victim could have been obtained upon further information and (2) any potential impact that such could have had upon his

trial. See Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

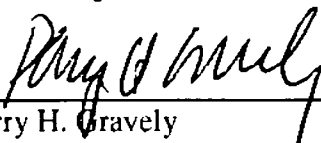
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 14th day of January, 2016.



 Perry H. Gravely
 Presiding Judge
 Thirteenth Judicial Circuit

CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

2016 JAN 15 AM 10 09

Pickens, South Carolina.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No.2014-CP-39-0909

Norman Keith Burgess,..... Appellant,

v.

State of South Carolina Respondent.

CERTIFICATE OF SERVICE

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on January 21, 2016, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

Karen C. Ratigan, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211

Pickens County Clerk's Office
Pickens County Courthouse
214 East Main Street
Pickens, SC 29671

Norman Keith Burgess SCDC# 353672
Broad River Correctional Institution
4460 Broad River Road
Columbia, South Carolina 29210

SC Commission of Indigent Defense
Division of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433

Denise Tanner LaBeck
Denise Tanner LaBeck

January 21, 2016

DOCKET NO. 2007-GS-39-2240
PT
The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

November TERM 2007

THE STATE

vs.

NORMAN KEITH BURGESS

WITNESSES

Jan Kelley

Pickens County Sheriff's Office

4/2/2007

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

ACTION OF GRAND JURY

FILED
APR 6 2007

William M. ...
Foreperson of Grand Jury

VERDICT

Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-0140

Foreperson of Petit Jury Date:

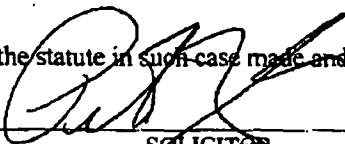
STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on November 6, 2007 the Grand Jurors of Pickens
County present upon their oath:

That NORMAN KEITH BURGESS did in Pickens County, between the dates of 2002 and 2007, being over the
age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or
its parts, of M.L.T., a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying
the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of the South
Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

DOCKET NO. 2007-GS-39-2241
PT
The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

November TERM 2007

THE STATE

vs.

NORMAN KEITH BURGESS

Indictment for

0396

CRIMINAL SEXUAL CONDUCT WITH A MINOR
2ND DEGREE (11-14)

VIOLATION § 16-03-0655(B)

WITNESSES

Jan Kelley

Pickens County Sheriff's Office

4/2/2007

ARREST WARRANT NUMBER

1687502

ACTION OF GRAND JURY

RUE BRL

late NOV 6 2007

Norman Keith Burgess
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury Date:

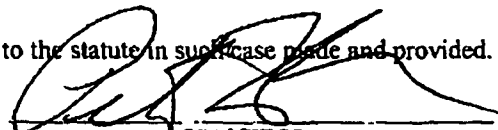
STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE
COUNTY OF PICKENS	)	(11-14)

At a Court of General Sessions, convened on November 8, 2007 the Grand Jurors of Pickens

County present upon their oath:

That NORMAN KEITH BURGESS did in Pickens County, sometime between the dates of 2002 and 2007, commit a sexual battery on M.L.T., who was fourteen years of age or less but who was at least eleven years of age. This is in violation of § 16-3-655(B) [formerly § 16-3-655(2)] of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

Jan Kelley

Pickens County Sheriff's Office

4/2/2007

ARREST WARRANT NUMBER
Ref: 1687502

ACTION OF GRAND JURY

AUG 21 2012

1000 PM

Foreperson of Grand Jury

[Signature]

VERDICT

[Signature]
Foreperson of Petit Jury
Date:

AMENDED
DOCKET NO. 2007-GS-39-2241
SBT

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

AUG 21 2012 TERM 2012

THE STATE

vs.

NORMAN KEITH BURGESS

Indictment for

0396

CRIMINAL SEXUAL CONDUCT WITH A MINOR
2ND DEGREE (14-15)

VIOLATION § 16-03-0655(B)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)

AMENDED INDICTMENT FOR
 CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE
 (14-15)

At a Court of General Sessions, convened on

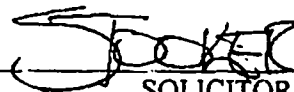
AUG 21 2012

the Grand Jurors of Pickens

County present upon their oath:

That NORMAN KEITH BURGESS did in Pickens County, on or about or between November 2nd, 2001 and November 1st, 2003, engage in sexual battery with M.L.T., who was at least fourteen years of age but who was less than sixteen years of age, and that he did so in a position of familial, custodial, or official authority to coerce the victim to submit, and/or he was older than the victim. This is in violation of § 16-3-655(B)(2) [formerly 16-3-655(3)] of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

—  —
 SOLICITOR

DOCKET NO. 2012-GS-39-1770
SBT
The State of South Carolina
County of Pickens

COURT OF GENERAL SESSIONS
AUG 21 2012
TERM 2012

THE STATE
vs.
NORMAN KEITH BURGESS

Indictment for
2468
CRIMINAL SEXUAL CONDUCT THIRD DEGREE
VIOLATION § 16-15-140

WITNESSES
Jan Kelley
Pickens County Sheriff's Office
4/2/2007

ARREST WARRANT NUMBER
DIRECT PRESENTMENT
DOB: 6/2/1968

ACTION OF GRAND JURY

TRUE BILL
Date
AUG 21 2012
Foreperson of Grand Jury
VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT THIRD DEGREE

At a Court of General Sessions, convened on

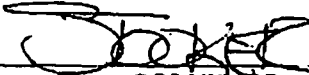
AUG 21 2012

the Grand Jurors of Pickens

County present upon their oath:

That NORMAN KEITH BURGESS did in Pickens County, on or about or between the 2nd of November, 2003 and the 23rd of March, 2007, engage in sexual battery and used force or coercion to accomplish this sexual battery in the absence of aggravating circumstances, and/or knew or had reason to know that M.L.T. was mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish this sexual battery. This is in violation of §16-3-654 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State. and contrary to the statute in such case made and provided.


SOLICITOR