

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY

Clifton Newman, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

WAYLAND PURNELL,

APPELLANT

APPELLATE CASE NO. 2014-001501

RECORD ON APPEAL

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THE FOLLOWING EXHIBTS ARE FILE WITH THIS COURT:
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STATE'S EXHIBIT #13 (DVD OF FORENSIC INTERVIEW)

1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF RICHLAND
4 12-GS-40-5044 & 5315, 14-GS-40-1247
5

6 State of South Carolina

7 vs.

8 Wayland Purnell
9
10

11 Columbia, South Carolina

12 July 7-10, 2014

13 Before the Honorable Clifton Newman
14

15 APPEARANCES

16 For the State: Bodman, Steadman

17 For the Defendant: Bell, Grice
18

19 Reported by: Karen Ambroziak

20 Official Court Reporter

21 (Edited by Michael C. Watkins)
22
23
24
25

1 both.

2 MR. BELL: I believe that you are bound by her ruling,
3 however --

4 THE COURT: Even though the trial was continued?

5 MR. BELL: Yes.

6 THE COURT: All right. I'm just asking just to see
7 where you are.

8 MR. BELL: I understand.

9 THE COURT: Okay. Well now, if we select a jury, do
10 y'all -- and these nine or ten pretrial motions some of
11 which may have been resolved, do you all foresee us starting
12 testimony today or because you are waiting for a person to
13 fly in at 5:00, do we need to start early tomorrow and then
14 be prepared to start testimony and opening statements
15 tomorrow, or is it that whatever the pretrial motion that
16 the expert is coming in for can be done at a later -- at
17 some time later in the trial as opposed to prior to starting
18 the testimony.

19 MR. BELL: Well, Your Honor, much of my objection is
20 to -- I understand the State has just today filed a motion
21 to object to the testimony regarding my expert witness and
22 what they think I'm calling her in as in forensic
23 interviewing, in fact I'm not calling her as an expert in
24 forensic interviewing. I believe the State is exactly on
25 point when they say Kromah, the recent case that came out by

1 our Supreme Court regarding forensic interviewing on child
2 cases, I think they're directly on point that forensic
3 interviewing is not an expertise.

4 THE COURT: We're not hearing that motion now as it
5 relates to the defense, we've got to get to the beginning
6 before we --

7 MR. BELL: Well, my dispute is that their expert is not
8 an expert, that this so-called expert in child abuse
9 assessment is not a defined science, is not an expertise.
10 And based on the research that their expert is intending to
11 testify about, my expert would be possibly countering what
12 they believe is an expertise and I believe determining
13 whether or not this is a science and admissible would be the
14 issue. Whether or not the Court wants to address that
15 before they attempt to put her on the stand in pretrial
16 motions I believe might be the best manner addressing that.

17 THE COURT: What is it that you want your expert to
18 hear, which witness is it?

19 MR. BELL: They're expert witness, Your Honor.

20 THE COURT: And you want --

21 MR. BELL: It was originally Lori Harris. Is it still
22 Lori Harris?

23 MS. BODMAN: No, Allison Foster.

24 MR. BELL: Allison Foster is now the expert in this
25 so-called area of child assessment which she discussed in

1 her opening with you.

2 THE COURT: So you want your expert to hear their
3 expert so you're can say that their expert is not an expert.

4 MR. BELL: It's potentially, yes.

5 THE COURT: All right.

6 MS. GRICE: And, Your Honor --

7 THE COURT: Yes, ma'am?

8 MS. GRICE: Yes, Your Honor, if I might further
9 explain. The reason for the continuance in the trial the
10 first time was that we received notice of the State's intent
11 to call an expert in child abuse accommodation syndrome the
12 Thursday or Friday before trial. So we felt we needed in
13 order to do a diligent job representing Mr. Purnell prepare
14 ourselves for this and potentially retain an expert, Judge
15 Lee approved funding and we found such a person. We feel
16 that this is something that would best be resolved pretrial,
17 the jury doesn't need to hear professionals battling this
18 out. Even if it was outside their hearing it would delay
19 the middle of the trial and I think it would help to guide
20 what we do during trial if we know that this witness is
21 coming. Our expert is flying in later this afternoon. She
22 flew in previously, we met with her and then she was turned
23 around because we weren't able to have --

24 THE COURT: Where is she coming from?

25 MS. GRICE: Utah.

MOTIONS

1 THE COURT: All right. I have a jury in the box. What
2 else?

3 MS. BODMAN: I found the copies, I apologize, of our
4 motion to admit the videotapes. Each of those interviews
5 are just about 30 minutes long.

6 THE COURT: Give me a brief refresher on the law
7 regarding admitting these videotapes or not admitting them.

8 MS. BODMAN: Yes, sir. I've outlined within the
9 motion, but essentially the findings that Your Honor would
10 need to make for this, for their admission are laid out.
11 But the statement is given in response to questioning
12 conducted during an investigative interview.

13 THE COURT: You said it's laid out in your motion for
14 admission?

15 MS. BODMAN: Yes.

16 THE COURT: Okay.

17 MS. BODMAN: That it is an audio or visual recording of
18 the statement has been preserved, we have tendered those to
19 Your Honor. That the child is expected to testify at trial,
20 and we are calling both children as witnesses at trial and
21 so they would be subject to cross examination about the
22 elements of the crime and the making of this particular
23 statement. And then it's not an exclusive list, but the
24 factors that Your Honor can consider after reviewing the
25 videotape is whether the statement was elicited by leading

MOTIONS

1 questions. If the interviewer has been trained in
2 conducting forensic interviews of children, and I submitted
3 the CV's of both of the interviewers. Whether the statement
4 contains a detailed account of the offense, and as you
5 listen to these interviews they talk about the details of
6 what they call the different parts of their body, and with
7 what parts of the defendant's body he touched them with and
8 what he did to them. Whether the statement has internal
9 coherence, meaning, you know, does it generally make sense
10 or do they talk about, you know, "I killed him after he did
11 this to me," or "He flew in from the window from outer space
12 and went back," does it generally make sense. And then any
13 sworn testimony that you may wish to hear from. But I
14 believe, Your Honor, with actually just watching the
15 interviews themselves together with the CV's of the two
16 experts, they both clearly lay out in their CV's, how long
17 they have been doing forensic interviews of the children,
18 and actually they are the statewide trainers for giving --
19 certifying forensics interviewers around the state with
20 their thousands of interviews that they have conducted.

21 THE COURT: All right. What says the defense?

22 MR. BELL: Your Honor, I have my motion. This is a
23 pretrial motion I have to exclude admissions of these
24 videotapes based still on Crawford. If I may pass up the
25 handwritten motion, which was previously filed with the

MOTIONS

1 Court when this case was first brought.

2 THE COURT: You said based on Crawford?

3 MR. BELL: Well, there's several -- my motion speaks
4 for itself, you have the opportunity to read it.

5 THE COURT: I was trying to reference -- did you say
6 based on Crawford?

7 MR. BELL: Yes, Your Honor. I did say based on
8 Crawford, as well as based on other issues. Marilyn vs.
9 Craig.

10 THE COURT: So your position is South Carolina law is
11 unconstitutional?

12 MR. BELL: It is, Your Honor.

13 THE COURT: Okay.

14 MR. BELL: Based on the fact that the confrontation --
15 despite this statute the confrontation overrides state law,
16 confrontation clause overrides this law. There is no right
17 to confront. But these are questions from an agency used by
18 law enforcement in this case, elicited in an interview
19 setting which would be typically not admissible except for
20 this statute the legislature has passed.

21 THE COURT: Do you have any authority for the
22 proposition of a state trial court judge ruling a state
23 statute unconstitutional?

24 MR. BELL: I do not, Your Honor, but I still thought, I
25 believe, that Crawford is supreme in this decision.

MOTIONS

1 MS. BODMAN: You don't have any authority for it but
2 you want me to do it anyway.

3 MR. BELL: I don't have any state law authority. I do
4 have the constitutional authority based on the United States
5 Constitution and confrontation clause in Crawford.

6 THE COURT: All right. Is that the sole basis?

7 MR. BELL: No, Your Honor. My other basis is
8 underneath Craig v. Marilyn it set forth ways -- similar
9 statutes in what it could to be constitutional, Craig v.
10 Marilyn, for it to be constitutional the testimony of the
11 child witness occurring outside the presence of the
12 defendant must be under oath with the opportunity for
13 contemporaneous cross examination. Second, even if
14 constitutionally to the application of the South Carolina
15 statute, which 17-23-175, which I refer to is the admitting
16 statute -- South Carolina statute admitting this should only
17 be limited in situations where this Court finds it to be a
18 necessity. We have these alleged victims here today, they
19 will be testifying. The sole purpose of introducing these
20 videotapes is to bolster their credibility.

21 THE COURT: So then if it's bolstering or cumulative
22 then how can I -- if that's your basis, how can I rule on a
23 pretrial basis without hearing what you say that the
24 children will say? Won't I have to hear that testimony
25 before I can make an advanced determination about

MOTIONS

1 bolstering?

2 MR. BELL: In any other situation, Your Honor, if this
3 was a individual who had been interviewed after an armed
4 robbery that was on videotape, it would not be admissible by
5 the police. The sole situation is in this child case. The
6 State of South Carolina has enacted statutes that I believe
7 are unconstitutional for the sole purpose of bolstering
8 these child victim's testimony --

9 THE COURT: Isn't that where the constitutionality of
10 it has been addressed by the Supreme Court?

11 MR. BELL: It has been addressed, yes, Your Honor.

12 THE COURT: Do they agree with you or disagree with you
13 that it's unconstitutional?

14 MR. BELL: They disagreed with me in certain areas.

15 THE COURT: So you want me to overrule the State
16 Supreme Court as well?

17 MR. STEADMAN: Your Honor, I'm laying out my arguments.

18 THE COURT: Well, I understand, but I'm coming into
19 this kind of fresh. I don't know anything about this case,
20 I'm just listening to what you all are presenting.

21 MR. BELL: Well, here is the situation we're going to
22 run into, Your Honor. They're going to put the child
23 witnesses on the stand.

24 THE COURT: Right.

25 MR. BELL: Then child witnesses are going to testify,

MOTIONS

1 we are given the opportunity for cross examination. They're
2 then going to place the forensic interviewers for the sole
3 purpose of introducing these videotapes. I will not be
4 given the opportunity to cross examine these child witnesses
5 on these videotapes which I object to coming in in the first
6 place. If you disagree with allowing these forensic
7 interviews to be played on the statute, you find the statute
8 constitutional and allow them, my argument would be the
9 videos would have to come into play first and then the child
10 witnesses would have to be put on the stand or in the
11 alternative, child witnesses put on the stand, the videotape
12 was played, then I'm given the opportunity to cross examine
13 the children on anything on the tape without having to call
14 them as a witness.

15 THE COURT: You don't have the right to dictate the
16 State's order of proof.

17 MR. BELL: Well, Your Honor, this statute is
18 essentially a new rule of evidence. This statute admits
19 evidence that would not normally be admissible in cases.

20 THE COURT: Well, there are policy reasons for that,
21 for a child under 12, it says admissibility of the
22 out-of-court statement of a child under 12, the
23 determination of trustworthiness, notice to adverse party.

24 MR. BELL: If I may present to the Court a pretrial
25 motion regarding the -- regarding reserving cross

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1 examination of the child witnesses until after the State has
2 presented these forensic interviewers, what I refer to as
3 evidence 17-23-150 --

4 THE COURT: Defer your cross examination of the child.

5 MR. BELL: Yes.

6 THE COURT: That's an alternative argument or an issue?

7 MR. BELL: If it is not -- if they're admissible my
8 alternative argument would be to reserve cross examine until
9 they have actually presented that evidence and given me the
10 opportunity to cross examine these children on that. I do
11 not have the opportunity if they're no longer on the stand
12 and then they play the videotape, Your Honor.

13 THE COURT: Now, these type of trials are conducted
14 throughout South Carolina on a weekly basis, are we blazing
15 a trail here with this case, is that what you're trying to
16 get me to do?

17 MR. BELL: No, not necessarily, Your Honor. In State
18 vs. McCurley, the State moved -- if I read a little history
19 on it, the State moved to admit two videotaped interviews of
20 the alleged child victims. Upon the State's motion the
21 Court conducted a hearing reviewing a two hour videotape,
22 received the transcripts, conducted a follow-up hearing and
23 ruled the State must identify specific portions of the
24 interview intended to introduce at trial. The State
25 identified the portions of the interview it wanted to

MOTIONS

1 introduce and the defendant was given the opportunity to
2 respond.

3 THE COURT: Usually when lawyers read they out pace the
4 capabilities of the court reporters. You were reading a
5 case to me, and what happened? What was the essence of what
6 they decided there?

7 MR. BELL: Well, at that trial the State never sought
8 to introduce the videotapes. So what we're going to run
9 into is that I don't have the opportunity. -- because I
10 object to these videotapes coming in, Your Honor. I don't
11 believe it is constitutional, the statute is constitutional.
12 However, if you disagree we're going to be stuck in a
13 situation where they're going to put the videotape up, yet
14 the child has already testified and I don't have the
15 opportunity to cross examine them on things that I believe
16 shouldn't even be admissible based on the constitution.

17 THE COURT: Well, I've done many of these trials and
18 I'm trying figure out what's unique about this one. If
19 something there is -- of course, I know anytime I come to
20 Richland I get bombarded with ten times the number of
21 motions I get in any other county in the state regarding
22 what's wrong with the law and what's wrong with the
23 procedure and what's wrong with everything that's presented
24 during a trial, and I can appreciate that because then all
25 these things get appealed and we get cases by the Supreme

MOTIONS

1 Court on the issue. So if you have something new on that
2 that you're telling me then I'm good with that, if it's not
3 new and you're just making arguments for the record, I
4 understand. Right now I just sent the jury out to see what
5 you all had to say before bringing them back out and letting
6 them go for the day. I think you both plunged into the same
7 arguments that you left off before the jury came in. Let's
8 bring them in, let's figure out what time we need them
9 tomorrow. We're going to listen to some of these pretrial
10 motions to see what needs to be resolved. Would 10:00 be
11 fine, 10:30 or 11:00?

12 MS. BODMAN: I wouldn't say 10:00 because I'm just
13 thinking with regard to making the findings of the
14 videotape, if they want to put on their expert, some type of
15 testimony --

16 THE COURT: So have them come at 11:00?

17 MS. BODMAN: Yes, sir.

18 THE COURT: All right. We'll start at 9:30, we'll have
19 the jury come in at 11:00. Usually when I tell them 11:00
20 the bailiffs tell them a different time. We won't need them
21 before 11:00 so I'll tell them 11:30. This same motion you
22 keep talking about, the out-of-court statements of the
23 children, do you want as part of this pretrial motion, do
24 you want testimony?

25 MR. BELL: No, Your Honor.

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1 them not reference that statute in opening.

2 THE COURT: Yeah, I read that in your motion. What's
3 the basis of your motion?

4 MR. BELL: My basis is it improperly bolsters the
5 alleged victim's testimony by not saying that regarding
6 other victims. There are other witnesses, you never have to
7 corroborate. Testimony is testimony, that's evidence,
8 nothing has to be corroborated. And they use this statute
9 to improperly bolster this individual's testimony as opposed
10 to other individuals.

11 THE COURT: All right. I deny the motion. The law is
12 the law. I deny that motion. The next is a motion in
13 limine to exclude the qualification of forensic interviewers
14 as expert witnesses in any form and to exclude a forensic
15 interviewer's testimony pursuant to State v. Kromah. Does
16 the State oppose that motion?

17 MS. BODMAN: We are not offering them as experts in the
18 area of forensics interviewing so I agree to that portion of
19 it, the case law is very clear. So they are testifying as
20 fact witnesses regarding doing a forensic interview, but
21 we're not tendering them as experts in the area of forensic
22 interviewing. The second part of it which it says to
23 exclude the forensic interviewer's testimony, Kromah doesn't
24 say that forensic interviewers can't testify, and in fact,
25 the case law out there -- I believe it's McCurley, I could

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1 be wrong but I need to look back, it actually goes into the
2 testimony of the forensic interviewer and how it was done
3 expertly and that it should be a model, that testimony in
4 that case should be a model as to all prosecutors as to how
5 forensic interviewers should testify in the facts that they
6 get in to.

7 THE COURT: That's State v. what?

8 MS. BODMAN: I believe it's McCurley.

9 THE COURT: So that gives you a model to go by is the
10 model you are going to follow?

11 MS. BODMAN: Well, absolutely. But more importantly
12 the case law, he's completely misrepresenting the case law.
13 The case law doesn't say that forensic interviewers don't
14 testify. In fact, the case law says quite the opposite is
15 that they do, you just don't tender them as experts.

16 THE COURT: All right. The State agrees with your
17 first part of your motion to exclude, they agree that it's
18 not an area of expertise, they disagree with your portion to
19 exclude the forensic interviewer's testimony. What do you
20 say about that?

21 MR. BELL: If I may approach with my handwritten
22 motion, Your Honor?

23 THE COURT: When you say handwritten motion --

24 MR. BELL: I mean typed out.

25 THE COURT: They're typed out, they are not

MOTIONS

1 handwritten.

2 MR. BELL: No, they are not handwritten, they are
3 hand-typed.

4 THE COURT: Hand-typed.

5 MR. BELL: They are typed, they are hard copies.

6 THE COURT: They are hard copies. All right.

7 MR. BELL: Your Honor, I don't believe forensic
8 interviewing is an expertise, it's not science, they are not
9 human lie defectors. I think that's what Kromah says.
10 Kromah came out after McCurley.

11 THE COURT: That was a written entry by my best buddy
12 in the judiciary, Justice Beatty, so I believe he may have
13 decided it real closely. Go ahead.

14 MR. BELL: Kromah listed -- I apologize. Yes. Kromah
15 listed a laundry list of statements in which forensic
16 interviewers may not make and then gave a list of items
17 which interviewers may discuss, and I'm asking the Court to
18 hold the solicitor's office to the list of approved
19 questions.

20 THE COURT: Okay. I don't screen testimony in advance,
21 that's what a trial is all about. If anyone asks any
22 question that's objectionable then I expect counsel to
23 object and then I rule on your objection.

24 MR. BELL: I understand, I'm just --

25 THE COURT: So if that's the -- whatever the models are

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1 of what's permissible and what's permissible in the give and
2 take of a trial, I would expect counsel to ask the questions
3 within the rules, and if counsel doesn't do it then you'll
4 be Johnny on the spot objecting.

5 MR. BELL: Just cautionary matters, Your Honor,
6 protecting my client's rights here.

7 THE COURT: All right. Well, the first part of the
8 motion I grant, I deny the second part of the motion. I
9 don't see anything that precludes that person from
10 testifying as a witness and though the person may not
11 testify as an expert witness. Next, motion in limine to
12 preclude the assistant solicitors from asking questions
13 which would lead to improper bolstering or pitting of
14 witnesses. How can I rule on that? She hasn't given --

15 MR. BELL: I believe she's compounded the motions there
16 and this was separately -- Your Honor, my fear is they know
17 what questions they're allowed to ask, what questions
18 they're not allowed to ask. My fear is that they ask
19 questions which open the door and they -- the forensic
20 interviewers answer them not knowing that they're not
21 allowed to answer them in that manner. My request is hear
22 the solicitor's office let their witnesses know these
23 forensics interviewers what they're permitted to say and
24 they're not permitted to say before putting them on the
25 stand, that's my request. I'm solely protecting -- this

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1 case boils down to two individual statements and the
2 solicitor's office's goal --

3 THE COURT: Well, that's typical in this type of case,
4 isn't it?

5 MR. BELL: Yes. And that is why we have that statute
6 and that is what the State relies on to improperly bolster
7 these individuals. That's why forensic interviewers are no
8 longer considered experts because it was improperly
9 bolstering these witnesses.

10 THE COURT: I'm convinced at the end of the day if Mr.
11 Purnell is guilty he'll be found guilty. I'm convinced at
12 the end of the day if Mr. Purnell is not guilty the jury
13 will find him not guilty, and that's the process that we'll
14 go through until we reach that point. All of these
15 discussions right now will be irrelevant to that end
16 determination. But I understand your point, I can't screen
17 questions in advance. To have the solicitor run the
18 prospective questions by me to decide whether or not that
19 might lead to improper bolstering or pitting the witnesses,
20 if the State attempts to pit witnesses you've got to object
21 and I have no doubt that you'll do that. If they ask any
22 inappropriate question I'm sure you'll object. But I deny
23 the motion as written. The next one is a motion in limine
24 to exclude the qualifications of Lori Harris, or as an
25 expert witness regarding child abuse accommodation syndrome,

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1 child abuse assessments or child sexual abuse assessment.

2 All right. What's that about?

3 MS. GRICE: Yes, Your Honor. This is the pretrial
4 motion that we would like to have our expert from now
5 California, previously Utah, available for. It boils down
6 to the fact, Your Honor, that there is no guidance from the
7 courts in South Carolina with regard to whether child abuse
8 accommodation syndrome is something a person can be
9 qualified for. We filed a pretrial motion that we started
10 back in March, on the March 4th trial date with Judge Lee.
11 And once we learned that the State was planning on
12 introducing a former forensic interviewer for that purpose,
13 so we'd like her here for that.

14 THE COURT: So your point in this is that the Supreme
15 Court has gotten rid of forensic interviewers as experts and
16 the State is now trying to backdoor the same thing by
17 bringing in someone called a child sexual abuse syndrome
18 accommodation --

19 MS. GRICE: That's essentially it, Your Honor. I
20 believe previously when forensic interviewers interviewed, I
21 don't know that they were calling it child abuse
22 accommodation syndrome but that's the umbrella title. Our
23 problem -- there are several layers to our problem.
24 Essentially what it boils down to, though, is presentation
25 of a witness presupposes that there has been abuse. Our

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1 theory and what we'll present to the jury is that these
2 stories are fabrication, there was no abuse, in which the
3 witness the State wants to put forward is going to do
4 nothing more than try to explain why the alleged victims
5 behavior, statements, timing, different things supports the
6 concept that there was a crime committed, and that's where
7 our witness would be helpful in terms of having a full
8 hearing.

9 THE COURT: What says the State?

10 MS. BODMAN: Well, this is clearly an area that's
11 gotten a little muddy because of the case law regarding
12 forensic interviewers. There are people that have taken the
13 stand as a forensic interviewer that that is all of their
14 qualifications; maybe they are just a DSS worker, social
15 worker, whatever and they've become qualified to do a
16 forensic interview. There are also people who do forensic
17 interviews, but that's not the be all and end all of their
18 existence. We are calling Dr. Allison Foster in this case.
19 She didn't conduct any of the interviews, while she has done
20 interviews in her career, she has a Ph.D. in clinical
21 psychology. She does therapy with child abuse victims and
22 so consistent with the case law which is an entirely
23 separate body of case law outside of this whole forensics
24 interviewer area, and what they actually interviewed the
25 child should be able to testify about, we have the area of

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1 behavior of sexual assault victims. Nothing has been
2 touched about that area and having an expert be able to come
3 forward and testify in that area.

4 THE COURT: When you say it hasn't been touched, the
5 Court hasn't ruled on whether it's good or bad?

6 MS. BODMAN: The case law is out there that behavior
7 and dynamics is admissible, for instance in post trauma,
8 post traumatic stress or things like that.

9 THE COURT: Are there cases out there that it's
10 admissible in child assault cases?

11 MR. BELL: Yes. There is cases out there that talk
12 about experts discussing delayed disclosure and that sort of
13 thing. That's what this -- I'm not calling her as an expert
14 in child sexual abuse accommodation syndrome, it is not a
15 diagnosis. And, in fact, Dr. Foster explains, you know, how
16 this phrase came about, that it is not a diagnosis, it is
17 merely behaviors in child abuse that are common. And so it
18 explains to the jury, for instance, the delayed disclosure
19 where some people say, "Gosh, I don't understand why this
20 person wouldn't just go run screaming from the room and say,
21 you know, my step-daddy just did this to me," that it's
22 delayed disclosure. Secrecy is a very common thing seen.
23 Tentative disclosures where they may try to test the water
24 and see how a parent or an adult reacts, and it explains to
25 people who may not have any other, you know, exposure to or

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1 understanding of common behaviors that are seen in child
2 sexual --

3 THE COURT: Are there some cases out there that says
4 exactly what you just said, supports what you just told me.

5 MS. BODMAN: I have a whole folder, binder upstairs and
6 I'll bring it down, but I believe there are cases that talk
7 about the delayed disclosure. I know that specifically -- I
8 know that Dr. Foster has testified about the child sexual
9 abuse accommodation syndrome, I know that I've elicited the
10 testimony before in this courthouse actually in State v.
11 Hill, and you know, they objected but it wasn't brought up
12 as a point of error. And I believe right now there actually
13 is a case that we're awaiting the decision that they argued
14 about child sexual abuse accommodation syndrome, so actually
15 that verbiage was used. But there are cases that talk about
16 the witnesses discussing things like delayed disclosure.

17 THE COURT: To the extent the State seeks to introduce
18 expert testimony and there is an objection to the
19 qualifications of the expert, or the area being an area of
20 expertise then I have to conduct a hearing outside the
21 presence of the jury in order to rule. So the arguments I'm
22 getting now really don't -- I have to make my own
23 determination after hearing testimony from this purported
24 expert and the Court in its gatekeeping role has to make
25 that determination, I do it all the time so this case will

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1 not be any different in that respect.

2 MS. GRICE: Your Honor, to follow what Ms. Bodman just
3 said, my review of the case law and speaking with
4 colleagues, the ones who -- my understanding is that is kind
5 of fresh ground that we're breaking here. I don't see any
6 case law or statutory law in South Carolina that
7 specifically says this is permitted. I do have a list of
8 neighboring states, other states that has dismissed it as
9 inadmissible junk science. There is a case in South
10 Carolina, it's State v. Hudnall, 359 Southeast Second 59.
11 That case dealt with a physician testifying with regard to
12 child abuse and the Court found that "it had no probative
13 value and was admitted to bolster the child's testimony that
14 the crime had, in fact, occurred." That's what we're
15 dealing with here because this isn't the kind of case where
16 we know that something has happened and we're trying to
17 backtrack to show that actions consistent when that
18 occurred. This is the kind of thing that because there is
19 no physical evidence, video evidence, it is statements, we
20 have nothing else to conclusively prove that a crime has
21 been committed, therefore anybody who takes the stand and
22 says that this alleged victim's behavior is consistent with
23 what we would expect from this type of crime; whether
24 they've met the victim, whether they've watched the
25 interview, whether -- it's there. Even if it's general

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1 information not specific to this case they can't help but
2 prejudice Mr. Purnell in the jury's eyes and unfairly
3 bolster. It doesn't add anything or contribute to their
4 case in any way.

5 THE COURT: All right. A lot of you are in luck to
6 expect that under Rule 702 and 703 experts and we'll address
7 it in that fashion. All right. The next one is -- we'll
8 delay ruling on that one. Motion in limine to exclude any
9 reference to prior bad acts under 404, Lyle and all that.
10 Does the State oppose that?

11 MS. BODMAN: We do. In fact, we filed a motion
12 specifically to --

13 THE COURT: So with regard to these other bad acts, are
14 there other incidents of other sex abuse?

15 MS. BODMAN: Yes. In the videos the girls talk about
16 the abuse beginning in the home that they shared with him in
17 New Jersey. And so pursuant to the law that I provided in
18 the motion it is a common scheme or plan, it's continuous,
19 illicit relationship with the same two victims, and we
20 believe that the case law supports its admission.

21 THE COURT: All right. You've got a case from 1911,
22 1955, 1984. All right. Any argument by the defense?

23 MS. GRICE: Yes, Your Honor. I apologize. Your Honor,
24 we've just received a copy of this motion earlier today.
25 This wasn't something that was brought up previously at our

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1 bring them in at 11.

2 MS. BODMAN: Okay. With regard to -- when we went
3 through the defense motions Your Honor said we were skipping
4 the ones with regard to the introduction of the video. We
5 are happy to address that now.

6 THE COURT: Okay.

7 MS. BODMAN: We believe that with the CV's that we have
8 submitted to Your Honor with regard to the forensic
9 interviewers that we have shown their qualifications. We've
10 given Your Honor the two copies of the 30 minute videos.

11 THE COURT: One was blank.

12 MS. BODMAN: I apologize. Which one was it?

13 THE COURT: The male interviewer, I saw him, the other
14 was blank.

15 MS. BODMAN: Minor 1 Okay. Do you all have your
16 copy of Minor 1

17 MR. BELL: I believe I do.

18 MS. BODMAN: Can we tender that to the Court right now
19 for time efficiency?

20 MR. BELL: I mean, I object to it being entered.

21 THE COURT: You object to what?

22 MR. BELL: I object to the video being entered.

23 THE COURT: Well, it goes without saying, that's why
24 we're here. It doesn't matter whether you object to it,
25 it's up for me to decide whether it's coming in or not.

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1 MR. BELL: Your Honor, I also object to certain parts
2 of the interview that are not admissible underneath the
3 Rules of Evidence and underneath Kromah.

4 THE COURT: Well, you object to the entire thing.

5 MR. BELL: As well, yes.

6 THE COURT: All right. Well, that's not her question.
7 Her question is do you have a copy for me to look at since
8 her copy was no good?

9 MR. BELL: I believe I do, Your Honor.

10 THE COURT: Well, that's the question she asked you. I
11 don't know whether he does, you don't know whether you do.
12 Do y'all have another copy some place else?

13 MR. STEADMAN: Yes, Your Honor..

14 THE COURT: All right. We'll take a break and maybe
15 y'all can find one.

16 MS. BODMAN: I can send someone to go find one if you
17 want to address the case law and --

18 THE COURT: All right.

19 MS. BODMAN: There were two cases that were left out of
20 the defense's motion to exclude that are directly on point
21 to this, State vs. Whitner and Leon Hill. I believe I
22 submitted a copy of Leon Hill to the Court yesterday, but
23 State vs. Whitner is the other one. There were two basic
24 arguments in his motion, one was based on -- the written
25 motion is the United States Constitution that the other one

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1 was bolstering. Leon Hill directly addresses the United
2 States Constitution and right to confrontation and that our
3 statute resolves that issue and that there is no violation.
4 And State v. Whitner addresses the bolstering issue. As I
5 guess a side related issue under State v. Hill was a request
6 by the defense to hold off on cross-examining the victim
7 until the introduction of the video.

8 MR. BELL: May I approach, Your Honor?

9 THE COURT: Yes, sir.

10 MR. BELL: The videos.

11 MS. BODMAN: And State v. Leon Hill, that was
12 specifically the complaint that the defense was having was
13 that we are putting on the victim first and the video later,
14 and that that was not a denial of confrontation, that they
15 don't have a right to the mode and the time of the cross
16 examination, but just that it is the opportunity for an
17 effective cross examination.

18 THE COURT: Are you still arguing on the admissibility
19 of the videotape or have you moved to a different motion?

20 MS. BODMAN: Well, it's both, they are related --
21 because it's the denial -- it does not deny confrontation.
22 And the confrontation is basically his complaint is that the
23 admission of it in general is a denial of his confrontation
24 and that second, the mode in which we want to introduce it
25 is a denial of his confrontation, so both of these issues

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1 are addressed. In Whitner they talk about that it's not
2 bolstering. I mean, we have numerous hearsay exceptions.
3 An excited utterance potentially is corroborative of the
4 victim, medical records are corroborative of a victim or a
5 witness. So merely because something is consistent with a
6 victim's testimony doesn't make it bolstering, and so
7 Whitner addresses his second argument regarding that. In
8 terms of the specific statute it's clearly -- well, since
9 you haven't seen Minor 2 yet, it is a recording of the
10 statement, we are calling the victims to testify so they
11 would be subject to cross examination. I believe in
12 watching them there are minimal, if any, leading questions.
13 These interviewers are clearly trained. They do contain a
14 detailed account of the crimes in terms of where they were,
15 how it felt, who was in the room, has internal incoherence,
16 so we feel that we've met the burden of 17-23-175.

17 THE COURT: All right. Mr. Bell?

18 MR. BELL: Your Honor, I understand what State v. Hill
19 says. I still believe it's wrong and my position is it
20 violates the confrontation clause. Again, as I stated
21 yesterday --

22 THE COURT: You don't have to restate what you stated
23 yesterday. I guess everything is in violation of the
24 confrontation clause, you probably said that ten times
25 yesterday and once today, so if you have something --

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1 MR. BELL: I don't.

2 THE COURT: -- in addition to saying that.

3 MR. BELL: I don't, Your Honor.

4 THE COURT: Okay. We'll take a break. Let me watch
5 this -- view this video.

6 (A break was taken.)

7 THE COURT: I didn't review any of the video in the
8 format provided on the issue of Seabrook. You can have
9 these three back.

10 MS. BODMAN: We have it downloaded to the smart board,
11 Your Honor. Can we play it for you in the courtroom?

12 THE COURT: All right.

13 (His Honor viewed the videos.)

14 MS. BODMAN: We have nothing else in terms of the
15 admission of the videotape, Your Honor.

16 THE COURT: I deny the motion in limine to exclude the
17 videotape. In both instances I find that pursuant to
18 section 17-23-175, that the proper procedure was adhered to
19 in the interviewing process, that the interview was
20 professionally done by a person qualified to do it. That
21 assuming the proper foundation is made through testimony by
22 witnesses leading up to the introduction of the videotape
23 that the videotape is admissible, that videotape as well as
24 the one for Minor 2 which I have viewed already.

25 MS. BODMAN: Thank you, Your Honor. In support of our

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1 of the jury, that person will have the responsibility of
2 presiding over the jury deliberations, and will also have
3 the responsibility of completing the verdict form
4 representing the unanimous verdict of the jury. I'll do all
5 that I can so that you won't get too worn out sitting for
6 long periods of time; we'll stand, we'll stretch, we'll take
7 a break. If at any point in time it becomes unbearable for
8 you just sitting for a long period of time and you need a
9 break, get my attention and you will -- and we'll make sure
10 that we can keep you reasonably alert with us by taking
11 breaks as it is necessary. We're going to move now to
12 opening statements, and after the opening statements we'll
13 begin the testimony. For the State?

14 MR. STEADMAN: Yes, Your Honor. May it please the
15 Court?

16 THE COURT: Yes, sir, Mr. Steadman.

17 MR. STEADMAN: Wayland Purnell told eight-year-old
18 Minor 2 and nine-year-old Minor 1 not to tell anyone
19 what he did to them. He thought he had enough control over
20 them because he was their stepdad. He thought his secret
21 was safe with them. But ladies and gentlemen,
22 eight-year-old Minor 2 and nine-year-old Minor 1 did tell,
23 they revealed his secret, that he sexually assaulted both of
24 them. As I mentioned, the defendant is the stepfather of
25 the two victims in this case, he married their biological

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1 mother, Kia Muse, in March 2011. They lived in New Jersey
2 for a short period, then moved to South Carolina in
3 September 2011. They moved into a house in the Capital
4 Heights neighborhood of Columbia, South Carolina. It was in
5 this house that the majority of the sexual assaults took
6 place. April 30th, 2012 was the day the defendant's secret
7 was revealed. Minor 1 was attending an afternoon school
8 reading program with another friend named D.H.
9 At some point during a conversation Minor 1 disclosed to
10 D.H. that her stepfather had sexually assaulted
11 her sister, Minor 2 secretly. D.H. was old
12 enough that she had to act on this information immediately.
13 D.H. went and told her mother, Danielle Jackson,
14 and you'll hear from both of them. Danielle Jackson then
15 went immediately to Kia. Kia, upon hearing this, got her
16 daughters together and she asked them one by one had they
17 been sexually assaulted by the defendant, they both said
18 yes. Kia immediately called police. Investigator Coleman
19 with the Special Victim's Unit respond to the house. She
20 will testify and she'll explain to you how she conducted
21 that investigation from that point forward. One of the
22 first things she did in her experience is to send the girls
23 to the Assessment Resource Center in Columbia, South
24 Carolina, that center is designed to deal with child abuse
25 assessment. When the girls went to the Assessment Resource

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1 Center they met with Dr. Luberoff, one of a few nationally
2 certified child abuse pediatricians. Dr. Luberoff
3 physically examined the children. She will take the stand
4 and she will explain to you that there were no physical
5 injuries and how it is completely normal in these types of
6 cases. After they met with Dr. Luberoff they then were
7 interviewed by Ray Olszewski and Allen Benedetto, two
8 forensic interviewers highly trained in the field of child
9 abuse assessment. These interviews are video-recorded and
10 you will see these videos. In these videos the girls
11 describe in detail the sexual assault, how and when it
12 happened. And besides getting to watch these videos, these
13 two girls right here are going to take the stand, they're
14 going to testify, you'll get to see firsthand as they relive
15 those traumatizing moments. Once their child abuse
16 assessment was completed, all of that information was
17 forwarded to Investigator Coleman. Investigator Coleman
18 then on June 21st 2012, arrested the defendant and charged
19 him with two counts of criminal sexual conduct with a minor
20 first degree. In South Carolina criminal sexual conduct
21 with a minor first degree is when another person commits
22 sexual battery on a child less than 11 years old, and sexual
23 battery is defined as sexual intercourse, any intrusion
24 however slight. He is also charged with one count of a lewd
25 act on a minor. Lewd act on a minor is when one person

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1 commits a lewd act on the body of a child with the intent to
2 arouse the desires of that person or of the child. Many of
3 the witnesses you are going to hear from during this trial
4 are leading experts in their field, and what we ask you to
5 do is to set aside any preconceived notions that you may
6 have about sexual assault and merely listen to the testimony
7 that's presented on the stand, and once you've had a chance
8 to hear from all of the witnesses and you've had a chance to
9 view all of the exhibits, all the evidence, we're going to
10 come back before you and we will ask you for a verdict that
11 the evidence supports, and that is to find the defendant
12 guilty of two counts of criminal sexual conduct with a minor
13 first degree and one lewd act on a minor. Thank you.

14 THE COURT: For the defense?

15 MS. GRICE: Thank you, Your Honor.

16 THE COURT: Yes, ma'am.

17 MS. GRICE: Good morning. My name is Jessamine Grice,
18 and I along with my colleague, Mr. Taylor Bell, are here
19 today to fight for the innocence and reputation and freedom
20 of our client, Mr. Wayland Purnell. Now as you just heard
21 from the State Mr. Purnell was accused back in April of 2012
22 with criminal sexual conduct, sexual assault. But let's get
23 real, what he's actually being accused of doing is being a
24 child molester, of inappropriately touching two young girls
25 in a sexual way. This is by far the dirtiest, most

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1 indefensible, deplorable thing that one person can be
2 called, that one person can be found guilty of. Nothing
3 will ruin you financially, professionally, take away your
4 livelihood, alienate you from your friends, your family,
5 your loved ones, people who would normally come to your
6 defense will hesitate on nothing else if not hearing that
7 you've been called a child molester, and that is exactly
8 what Mia Muse, the mother of these two alleged victims was
9 thinking when she picked up the phone April 30th of 2012.
10 This is about revenge and getting back at Mr. Purnell. Now,
11 as you've heard Mr. Purnell, Wayland and Kia, they grew up
12 together in New Jersey, they didn't know each other very
13 well, families lived across the street from each other.
14 They were a couple years apart in school and graduated high
15 school separately. Mr. Purnell went on to get married, he
16 has three grown children and Ms. Muse started a family a
17 little bit later. At some point in 2010 these two kind of
18 reconnected through some kind of classmate finding website,
19 or something like that I believe, and then started talking.
20 They were living in different states so first they started
21 talking by phone, sending messages, then they would start
22 traveling to spend holidays together, Mr. Purnell would come
23 visit her in New Jersey, spend time with her family. At
24 some point they decided after not being in touch in person
25 for very much longer that they were going to get married,

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1 and they got married in March of 2011. Now, they moved to
2 South Carolina in September 2011, it sounds like it was just
3 too many cold miserable, northeastern weathers, they had no
4 family ties down here, no jobs waiting for them, no school
5 prospects, it was just an adventure to say the least. So in
6 September of 2011, Kia and Wayland packed up with her four
7 children and moved down to South Carolina. Now, at first
8 they got off to a fairly promising start. Mr. Purnell
9 quickly went to work as a licensed barber and Kia was
10 primarily responsible for keeping the house, getting the
11 kids enrolled in school and settling their needs in the
12 community, things like that. Wayland worked long hours,
13 five, six days a week in the barbershop, wasn't home much.
14 He had nobody he could go have a drink with, no real
15 opportunity to meet friends outside of work, and he was
16 getting bored, he was unhappy and so he did something he
17 should not have done, he went online and he started looking
18 around. Maybe it was the fact that they had no real
19 community here, maybe it's the fact they rushed into a
20 relationship after not knowing each other very long but they
21 were unhappy and he made the poor decision to become
22 unfaithful. And, of course, he tried to keep this discrete.
23 He was communicating online -- and this is not in dispute --
24 he was on communications online with a woman named Tashura
25 Thompson who lives in Chicago, and this online conversation

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1 turned to phone calls. He did his best to keep this
2 discrete. But at some point, we're not exactly sure when,
3 but Kia Muse found out about this and she was furious. And
4 she was unhappy down here in South Carolina, she was down
5 here in South Carolina, she was married to a man she barely
6 knew and she wanted to go back in time and get her life back
7 to the way it was, and she was furious that he would cheat
8 on her. Now, we expect that you're going to hear, as the
9 solicitor has mentioned, that these allegations came out
10 April 30th, that's the day that Ms. Muse called the police.
11 Mr. Purnell arrived home later that evening and we expect
12 you'll hear that he fully cooperated. He went to the police
13 department with investigators, he sat down and talked with
14 them and told them the only thing an innocent person can
15 say, "I don't know where these allegations are coming from,
16 I want to get to the bottom of this just like you do. What
17 can I do to help?" At that time they say this is an ongoing
18 investigation, we'll get back with you. He tells them,
19 "Look, I need to travel to Delaware, my father is sick, I'll
20 come back and deal with it then," so he left the State with
21 their consent. You'll hear that he left, he stayed in
22 contact with the investigator while he was gone and he came
23 back as promised about a month later. And at that time he
24 did the same thing he did back on April 30th, he sat down
25 with the investigator and he spoke for over an hour saying

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1 the same things, "I did not do this. I am not guilty."

2 MR. STEADMAN: Objection, Your Honor.

3 MS. GRICE: Mr. Purnell cooperated.

4 THE COURT: The objection is overruled.

5 MS. GRICE: Wayland did all he could to defend himself
6 to police, but nonetheless he was charged with two counts of
7 criminal sexual conduct. Now, there's a couple of things I
8 want you to think about during the course of this trial.
9 First and foremost, and the judge will instruct you on this,
10 the burden is on the State to prove that he has committed
11 these crimes, the burden is not on us to disprove them. The
12 burden is not on us to try to convince you beyond a
13 reasonable doubt that he is not guilty. With that in mind,
14 there are several things that I want you to keep in mind as
15 you listen to testimony over the next day or so. If the
16 police were so concerned -- if they took these allegations
17 so seriously, why did it take so long for them to arrest
18 him? There is a second charge, a similar and separately
19 entitled charge called lewd act upon a child. That's not
20 something that he was charged with until over 18 months has
21 passed. So is it that they reconsidered the evidence and
22 thought, "Are there weaknesses here? Maybe we need a plan B
23 of sort." Keep that in mind. Now, it is an undisputed fact
24 that I expect the testimony will reveal to you during the
25 course of the trial that at some point Kia Muse picked up

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1 the phone and called Ms. Thompson in Chicago and gloated,
2 "You're never going to see him again." If these sexual
3 abuse incidents had actually happened, would her priority be
4 to call and -- the mistress, the online mistress of Mr.
5 Purnell and gloat about this, or would her primary concern
6 be getting justice for her daughters and making sure that he
7 stays away? Now, I will submit to you that these two young
8 girls are victims in this case, but they are not victims of
9 anything done by Mr. Purnell, they are victims of their
10 mother's own revengeful nature and her attempts to get back
11 at Mr. Purnell. We expect that you're going to be provided
12 with enough inconsistencies, enough missing pieces of
13 evidence and have enough unanswered questions at the
14 conclusion of this trial that you're going to be compelled
15 to find that he is not guilty beyond a reasonable doubt.
16 Thank you.

17 THE COURT: All right. Your first witness.

18 MR. STEADMAN: The State calls D.H.

19 The witness, D.H., after being duly
20 sworn testified as follows:

21 THE CLERK: Have a seat in the witness box. You're
22 going to state your name and spell it for us. Okay.

23 THE WITNESS: D.H.

25 DIRECT EXAMINATION

D.H.

1 BY MR. STEADMAN

2 Q Good morning D.H. , how are you doing?

3 A Good.

4 Q How old are you?

5 A Fourteen.

6 Q How old? Excuse me.

7 A Fourteen.

8 Q You're going to have to speak up just a little bit so
9 everybody can hear you in the courtroom.

10 A I'm fourteen.

11 THE COURT: Does that mic. move at all that's in front
12 of you? Can you pull it? Okay. Good.

13 Q Are you in school?

14 A Yes.

15 Q Where are you in school?

16 A At C.A. Johnson High School.

17 Q And what grade are you at there?

18 A I'm a freshman, I'm in 9th grade.

19 Q Ninth grade? Okay. Do you know Minor 2 and Minor 1
?

21 A Yes, sir.

22 Q How do you know them?

23 A I know them from reading club and from our church.

24 Q So other than church and reading club, did you know
25 them from the neighborhood?

D.H.

1 A Uh, we used to hang out. I would go over there to
2 their house so we would have someone to hang out with.

3 Q How well would you say you knew them? Did you consider
4 them friends?

5 A Yes, I would call them friends.

6 Q And which one did you hang out with the most?

7 A Minor 1

8 Q Minor 1 was the one you spent the most time with?

9 A Yeah.

10 Q Okay. I want to turn your attention to April 30th,
11 2012. Do you remember what you were doing that day?

12 A Not exactly.

13 Q Here, I have a copy of your statement. May I approach
14 the witness, Your Honor?

15 THE COURT: Yes, sir.

16 MR. STEADMAN: Thank you.

17 Q Please feel free to refresh you're memory if you need
18 to with that statement. Were you at reading club on
19 April 30th 2012?

20 A Yes, we were leaving from there.

21 Q Who had taken you all from reading club that day?

22 A My mom.

23 Q And you were with Minor 1

24 A Uh-huh, and our brother.

25 MR. BELL: Objection, leading.

D.H.

1 THE COURT: Don't lead the witness.

2 MR. STEADMAN: I'm sorry, Your Honor, I didn't hear
3 that.

4 THE COURT: Don't lead the witness.

5 MR. STEADMAN: Thank you, Your Honor.

6 Q Who all was with you that day at reading club?

7 A My -- Minor 1 and my brother.

8 Q And your mom?

9 A Uh-huh.

10 MR. BELL: Objection, leading.

11 THE COURT: Objection is sustained.

12 Q Now, at reading club what exactly do you do?

13 A We learn to read bigger books and bigger words.

14 Q And at some point did you have a conversation with

15 Minor 1

16 A Yes, when we left.

17 Q And was there something alarming about the conversation
18 that you had with Minor 1

19 A Yes.

20 Q What was -- what caught your attention when you began
21 talking with Minor 1 that day?

22 A When she said she knew about a male's private.

23 Q She said she knew about a male's private?

24 MR. BELL: Objection, hearsay.

25 MR. STEADMAN: Your Honor, we're not trying to offer

D.H.

1 this to try to prove the truth of the matter asserted, we're
2 offering it to show how this was disclosed.

3 THE COURT: So it's like a voluntary argument by you?

4 MR. STEADMAN: I'm not exactly sure what you mean.

5 THE COURT: Well, the rules provide that parties should
6 only argue an objection when requested by the Court, not
7 voluntarily by the parties or counsel. The objection is
8 overruled, you may answer the question if you remember what
9 it was. Do you remember the question?

10 Q Would you like me to repeat it?

11 A Yes.

12 Q What exactly was said that alarmed you?

13 A Minor 1 told me that she knew what a male's private was.

14 Q Can you be a little bit more specific about exactly
15 what she said?

16 A She told me she -- we were having a conversation but I
17 can't remember what it was about, but she said that she
18 knows about it. And I asked her how do you know about it
19 and I pulled her out into a walkway and talked to her and
20 that's when she told me what happened.

21 Q So you pulled her off to the side --

22 A Yeah.

23 Q -- away from your brother?

24 A Yeah, away from my brother.

25 MR. BELL: Objection, leading.

D.H.

1 THE COURT: The objection is sustained.

2 Q And what did you do after that, after you pulled her
3 aside?

4 A I talked to her about it and I gave her some advice.

5 Q What advice did you give her?

6 A I told her don't let him come in the room and tell your
7 mom about it, don't let him touch you anymore.

8 Q And after you found out that information, what did you
9 do next? Did you go tell anybody?

10 A I went and told my mother.

11 MR. BELL: Objection, leading.

12 THE COURT: What did you do next? You may answer the
13 question.

14 A I went to go tell my mother, and then that's when she
15 went to go talk to Kia.

16 Q And after that, after you told your mother and she went
17 and told Kia, what did you do next?

18 A Can you repeat that?

19 Q Were you contacted -- after you told your mother and
20 after she told Kia, were you at some point contacted by an
21 investigator in this case?

22 A Yes.

23 Q Were you asked to give a statement?

24 A Yes..

25 Q Did you provide a statement?

D.H.

1 A Yes.

2 Q And was it the truth?

3 A Yes.

4 MR. STEADMAN: Thank you.

5 MR. BELL: Objection.

6 THE COURT: The objection is overruled. Any cross
7 examination?

8 CROSS EXAMINATION

9 BY MS. GRICE:

10 Q Good morning, Ms. Harris.

11 A Good morning.

12 Q I know you must be nervous up here today, I just want
13 to ask you one quick question. You were handed a copy of
14 your statement --

15 THE COURT: The counsel who objected is the examining
16 counsel.

17 MR. BELL: I apologize, Your Honor.

18 MS. GRICE: I apologize, Your Honor.

19 CROSS EXAMINATION

20 BY MR. BELL

21 Q Hey D.H. , my name is Taylor Bell.

22 A Hello.

23 Q You were handed a statement by Mr. Steadman, correct?

24 A Yes.

25 Q Correct?

D.H.

1 A Yes.

2 Q Did you happen to look over it?

3 A Yes.

4 Q Did you happen to notice that there's a mistake in the
5 date, it says May 30th that your mother picked you up?

6 A Yes.

7 Q You noticed that mistake?

8 A (Nods in the affirmative.)

9 MR. BELL: No further questions.

10 THE COURT: Any redirect?

11 MR. STEADMAN: Nothing, Your Honor.

12 THE COURT: All right. Thank you, you may step down.

13 Your next witness?

14 MR. STEADMAN: The State calls Danielle Jackson.

15 The witness, DANIELLE JACKSON, after first

16 being duly sworn, testified as follows:

17 THE CLERK: Have a seat in the witness box, state your
18 name and spell it for us, please.

19 MS. BODMAN: My name is Danielle Jackson,

20 D-a-n-i-e-l-l-e, J-a-c-k-s-o-n.

21 DIRECT EXAMINATION

22 BY MR. STEADMAN

23 Q Ms. Jackson, how old are you?

24 A I'm thirty-six.

25 Q And where do you live?

DANIELLE JACKSON

1 A Columbia.

2 Q And what is your current occupation?

3 A I work at Family Dollar, I'm a cashier.

4 Q Do you know Minor 1 and Minor 2

5 A I do.

6 Q And do you know Kia Muse?

7 A I do.

8 Q How do you know Minor 1 and Minor 2

9 A When Kia and I became friends we got really close
10 really fast and we treated each other's children like
11 family.

12 Q And how did you and Kia become friends?

13 A We initially met at a business networking meeting, and
14 later on that same day we had a community meeting and we
15 just noticed each other's names on the sign-up sheet and
16 recalled that we had met earlier at that business meeting.
17 It was just a coincidence, we had a lot in common and we
18 began to build a friendship.

19 Q And do you have children, as well?

20 A I do.

21 Q How many children do you have?

22 A Six.

23 Q And is D.H. is one of your daughters?

24 A She is.

25 Q And how would you describe the relationship your

DANIELLE JACKSON

1 children had with the children?

2 A They called each other cousins. We spent a lot of time
3 together.

4 Q And I as you just heard, April 30th, 2012 you took the
5 girls to a community reading, correct?

6 A I did.

7 Q Can you describe the community reading program? What
8 exactly that is?

9 A It's a literacy program that's supplied and funded by
10 the Salvation Army, that's where my children go to church
11 and so that's how my children became a part of it. The
12 Salvation Army is -- they have these programs that reach out
13 to I guess lower income families and so they recruit from
14 the two neighborhoods that we live in, Bayberry Muse and
15 Capital Heights and that's how Kia became a part of the
16 program as well.

17 Q How often did you take the girls to the community
18 reading program?

19 A I believe they went three days a week after school.

20 Q And do you remember April 30th, 2012?

21 A I can't say that I'm familiar with the dates exactly
22 but I do know exactly what happened and how it happened.

23 Q Where were you when **Minor 2** came and gave you some
24 information that day?

25 A When **Minor 2** told me we had made it back home when she

DANIELLE JACKSON

1 came and talked to me.

2 Q After -- can you elaborate on that a little bit?

3 A Kia and I would take turns picking the children up and

4 dropping them off, this day it was my turn. Instead of me

5 going straight home that day I had a meeting and an office

6 downtown. I picked the children up from reading club and

7 took them there with me. I went into my meeting and they

8 sat in the lobby, after my meeting was over we went home.

9 After we got home, shortly after we got home **Minor 2** came in
10 my room and told me what she and **Minor 1** talked about.

11 Q And specifically what did she talk about?

12 A She said that --

13 MS. GRICE: Objection.

14 THE COURT: The objection is sustained.

15 Q Did you learn -- did **Minor 2** disclose to you that she
16 had concerns that there might have been a sexual assault --

17 MS. GRICE: Objection, Your Honor.

18 THE COURT: The objection is sustained.

19 Q **D.H.** is your daughter, correct?

20 A Yes.

21 Q And **Minor 2** is one of the victims in this
22 case, correct?

23 A Correct.

24 Q After you talked with your daughter, **D.H.**,
25 what did you do?

DANIELLE JACKSON

1 A I immediately called Kia, I asked her was she on her
2 way to pick the children up and if she wasn't would she come
3 directly to me so that we could talk in person.

4 Q And what happened after you called Kia?

5 A She came directly to my house, it was just she and I in
6 the room. I told her how the conversation transpired
7 between me and D.H. , she then called Minor 1 into
8 the room and she asked Minor 1 to --

9 MS. GRICE: Objection.

10 THE COURT: You need to ask specific questions to the
11 witness.

12 Q When you met Kia, were you in the room when she talked
13 with her girls?

14 A I was.

15 Q Were you there when Kia talked to her girls?

16 A I was there. I was there when Kia spoke to Minor 1 at
17 my house.

18 Q And what happened next after Kia talked to your girls?

19 A She took Minor 1 home. The next thing, maybe an hour
20 had passed, she phoned me and said that she had spoken to
21 police --

22 MS. GRICE: Objection, Your Honor.

23 THE COURT: The objection is sustained.

24 Q At some point did Kia call the police that you're
25 aware?

DANIELLE JACKSON

1 A I didn't see her call the police but she told me that
2 she called the police. We spoke on the phone after she left
3 my house.

4 MR. STEADMAN: Thank you, no further questions.

5 THE COURT: By the defense?

6 CROSS EXAMINATION.

7 BY MS. GRICE:

8 Q Good morning, Ms. Jackson.

9 A Good morning.

10 Q I just have a few questions. You understand we're
11 trying to put together a puzzle here.

12 THE COURT: Now, is that a question or just a voluntary
13 statement?

14 MS. GRICE: Just an introductory statement, Your Honor.

15 THE COURT: All right.

16 Q So Ms. Jackson, you spoke with the police -- let me
17 start here. These allegations came out April 30th, 2012,
18 correct?

19 A My statement says May 30th. It wasn't until I got in
20 here this morning that I heard April 30th. It's been such a
21 long time ago, honestly, I don't remember the dates.

22 Q Oh, I understand. I think we can agree, though, that
23 April 30th is the day that -- or evening that these
24 allegations came out. I think that May 30th date is just a
25 typo, is that your understanding as well?

DANIELLE JACKSON

1 A I understand, that's correct.

2 Q There is another date that I did want to mention here.

3 This says -- on the copy of your statement, you sat down and
4 spoke with Investigator Coleman on the 6th day of June, does
5 that sound roughly familiar?

6 A Again, I can't remember the exact dates.

7 Q Do you recall at that time signing a copy of your
8 statement after you had that conversation with Investigator
9 Coleman?

10 A Yes.

11 Q Okay.

12 MS. GRICE: Your Honor, if I might approach the
13 witness?

14 THE COURT: Yes.

15 Q Yes. Ms. Jackson, I simply want to show you a copy of
16 this. Do you recognize your signature down at the bottom
17 and June the 6th, 2012?

18 A Yes.

19 Q Okay. So do you now believe that June 6th is likely
20 the date --

21 A Right.

22 Q -- that you did speak with Investigator Coleman?

23 A Yeah.

24 Q Thank you. And this is approximately 37 days after
25 these allegations came out? It's April 30th, 31 days in May

DANIELLE JACKSON

1 and then six days.

2 A Right.

3 Q Now, at the time that these allegations came out,

4 April 30th, you told the investigators that you just met Kia

5 in March, the previous month, correct? You hadn't known her

6 or her family for too very long prior to these allegations,

7 correct?

8 A That's probably correct.

9 Q I know it sounds like you kept in touch with her and

10 you're better friends now, but you didn't know her very well

11 at the time, correct?

12 A I didn't.

13 Q Okay. But sounds like you're very loyal to Kia and her

14 family, correct?

15 A We were very close then at that time.

16 Q And you don't have personal knowledge about what

17 happened --

18 A As in?

19 Q -- in the Seabrook home or following your conversation

20 with Kia on the day that these allegations came out,

21 correct?

22 A Did I personally witness anything myself --

23 Q Yes, ma'am?

24 A -- is that what you're asking? No, ma'am, I didn't.

25 MS. GRICE: No further questions. Thank you.

DAVID ROGERS

1 THE COURT: Any redirect?

2 MR. STEADMAN: No, Your Honor.

3 THE COURT: You may step down. Thank you. Your next
4 witness?

5 MR. STEADMAN: The State calls David Rogers.

6 The witness, DAVID ROGERS, was first duly
7 sworn and testified as follows:

8 THE CLERK: Have a seat in the witness box. State your
9 name and spell it for us, please.

10 MS. BODMAN: My name is David Rogers, D-a-v-i-d,
11 R-o-g-e-r-s.

12 DIRECT EXAMINATION

13 BY MR. STEADMAN

14 Q Officer Rogers, where are you employed?

15 A City of Columbia Police Department.

16 Q How long have you been employed with them?

17 A Right at four years now.

18 Q And in what capacity are you employed with them?

19 A I am a patrolman with the north region which is on the
20 north side of town.

21 Q So as a patrolman from north region, what are your
22 duties and responsibilities?

23 A I respond to calls for service, enforce state and local
24 laws as well as city ordinances.

25 Q So on April 30th, 2012, were you working as a patrolman

DAVID ROGERS

1 in the upper region?

2 A Yes, I was.

3 Q How long had you been on the job from there?

4 A When the call came out from this incident it was around
5 6:00 but we come in at 5:30 in the afternoons so we were
6 just in that period of shift change coming on for night
7 shift.

8 Q And at some point on April 30th, 2012, were you
9 dispatched to Capital Heights?

10 A That is correct, more specifically

11 Q And what was the nature of the call that you received?

12 A It came out as a call for service with Ms. Muse being
13 the complainant of a sexual assault.

14 Q And after you got that call, what did you do?

15 A I responded to the location. The way things work with
16 the police department, supervisors monitor the radio and
17 with higher priority calls a supervisor typically responds,
18 as well, so myself and my supervisor responded to the scene.
19 We made contact with Ms. Muse who gave us a general outline
20 of what she was advised happened by her two children.
21 Myself and my supervisor needed to make contact with the
22 children. In order to file a police report we have to have
23 enough elements of a crime to title a report as a certain
24 title. The children were very timid to us, so we actually
25 called a female officer to the location to speak to the

DAVID ROGERS

1 children in hopes that they would feel more comfortable that
2 we could get enough information that we needed to do an
3 incident report.

4 Q And once you got certain information from the children,
5 what did you do next?

6 A Well, my supervisor contacted investigations. It's
7 protocol that certain crime investigators would respond to
8 the scene versus giving a report and following up on it the
9 following day. At that time Investigator Coleman responded
10 to the scene. At this time, the defendant, he still was not
11 at home. He did show up on the scene during that time of
12 Investigator Coleman responding. She came out and from
13 there the defendant agreed to go down to headquarters to
14 speak with an investigator and we gave him a ride to
15 headquarters and Investigator Coleman talked to him from
16 there.

17 Q All right. And after you transported the defendant to
18 headquarters, what was your further involvement in the case?

19 A All I did was witness a advice of rights form, and the
20 advice of rights form, it's an actual sheet of paper with
21 your rights on it, and we physically read out the rights to
22 a defendant or to a person before we speak with them and
23 they sign saying that they understand their rights.
24 Investigator Coleman read the defendant his rights, I was
25 there to witness it, I signed off on that as being a witness

DAVID ROGERS

1 to the rights but I was not involved in the interview at
2 all, that's solely investigations.

3 Q So at that point, everything -- your job was over and
4 it was up to Investigator Coleman to further the
5 investigation.

6 A Correct.

7 MR. STEADMAN: Thank you.

8 MR. BELL: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. BELL

11 Q Is it Deputy Rogers?

12 A Yes, sir.

13 Q Or Officer Rogers?

14 A Officer Rogers, yes, sir.

15 Q All right. Did you have a field mic.?

16 A We do, but we typically only carry them on traffic
17 stops and stuff of that nature where our camera -- because
18 the aggregate with our in-car camera and without your in-car
19 camera being on your mic. would not be on.

20 Q That's activation from your belt, correct?

21 A Right.

22 Q So you can activate your mic. at anytime to report
23 what's going on?

24 A We can.

25 Q Do you have any recordings here?

DAVID ROGERS

1 A We do not.

2 Q Okay. You said a female was called to the scene, you
3 said Investigator Coleman, correct?

4 A Theres a female officer, Officer Church, responded to
5 the scene.

6 Q At this point Minor 1 and Minor 2 where were they
7 spoken to?

8 A They were spoken to in the living room of the resident
9 on

10 Q Who all was there?

11 A Just her mom, the children and Officer Church to my
12 knowledge. I wasn't actually present in the living room.

13 Q But they were all in the living room together?

14 A Yes, sir.

15 Q Okay. The children weren't separated?

16 A I can't speak firsthand on that. Like I said, I was
17 not inside the residence. The children were timid with the
18 male officers around so we stepped out to have a female
19 officer talk to them, so I can't tell you who was in there
20 and how the talking to the children was done.

21 Q So I guess you were outside, then, the living room
22 area? Did you pay attention to what was going on at all in
23 there?

24 A I was outside the house completely.

25 Q Okay.

KIA MUSE

1 MR. BELL: I have no further questions.

2 THE COURT: Anything further?

3 MR. STEADMAN: Nothing on redirect, Your Honor.

4 THE COURT: Thank you, sir. Next witness.

5 MS. BODMAN: State calls Kia Muse.

6 The witness, KIA MUSE, was first duly sworn and
7 testified as follows:

8 THE CLERK: Have a seat in the witness box. State your
9 full name and spell it, please.

10 MS. BODMAN: Kia L. Muse. K-i-a, M-u-s-e.

11 DIRECT EXAMINATION

12 BY MS. BODMAN

13 Q Ms. Muse, if you could tell the jury just a little bit
14 about yourself, where were you born and raised?

15 A I was born in Camden, New Jersey, April 7th 1973. I
16 was raised in a little town called Paulsboro, New Jersey.

17 Q Called what?

18 A Paulsboro, New Jersey.

19 Q And I guess, how long did you live there?

20 A I lived in Paulsboro off and on maybe 30 years now.

21 Q Tell us about your schooling. Where did you go to
22 school?

23 A I went to school at St. Johns Elementary, I attended
24 Paulsboro High School, graduated in '92. I then did a year
25 at Goldey Beacon College in Wilmington, Delaware, I got a

KIA MUSE

1 certificate in business accounting with payroll at Harris
2 School of Business in Cherry Hill, New Jersey, and I just
3 got my associates degree last year from Edwards University
4 for Business Management.

5 Q Do you have children?

6 A I have five children.

7 Q Okay. Let's start with the oldest, their name and how
8 old they are.

9 A My oldest name was Kierra Nitay (phonetically)
10 Blackwell now, she's married, she's 24. B.M.
11 is 14. Minor 1 is 11. Minor 2 is 10. And
12 B.S Jr. is 9.

13 Q And the father of Minor 1 Minor 2 and B.S your
14 youngest, is who?

15 A B.S Sr.

16 Q Is he in the courtroom?

17 A Yes, ma'am.

18 Q Were you all ever married?

19 A No.

20 Q When did, I guess, you and B.S when did you
21 all start your relationship? How old are were you?

22 A When we first started or reconnected?

23 Q Yeah.

24 A When we first started Kierra was about five or six. We
25 dated, we lost contact, we started dating again in 2001,

KIA MUSE

1 January, February of 2001, we were engaged then, we had
2 Minor 1 Minor 2 and B.S We separated and we reconnected
3 April -- no, excuse me, May. Well, we --

4 Q Let me ask you, when did you all separate?

5 A D.J. was born in May, April 2006, so 2007, some time in
6 2007 --

7 Q Okay.

8 A -- I believe it was.

9 Q And then how do you know Wayland Purnell?

10 A I know Wayland Purnell through his family.

11 Q And how is that?

12 A I lived in my first apartment, which was across the
13 street from his mother. His sister and I became really
14 close, I was like her big sister.

15 Q Okay. And at that time when you, I guess, were friends
16 with his family, did you know him that well?

17 A No, I personally didn't know him that well. But we
18 had -- Janay and I, which is his sister, had discussions
19 about him. I believe -- I'm not exactly sure where he was,
20 I think he was incarcerated, I'm not exactly sure.

21 MR. BELL: Objection, Your Honor.

22 THE COURT: The objection is sustained, the jury is to
23 disregard.

24 Q So did you come to marry Wayland Purnell?

25 A Yes.

KIA MUSE

1 Q When did you all get married?

2 A March 18th, 2011.

3 Q Okay. Did he come to live in your home?

4 A Yes.

5 Q And what home was that?

6 A in Carteret, New Jersey.

7 Q When did he come to live in that home?

8 A He first came in January of 2011, he left for a spell
9 to go home, and when we married he took residence in the
10 house as of March 18th, 2011.

11 Q Okay. So from the time that you all I guess began
12 whatever dating relationship that you had that led to your
13 marriage, what type of contact did the defendant have with
14 your children? So prior to I guess -- you said it was
15 January 2011 --

16 MR. BELL: Objection, leading.

17 THE COURT: The objection is overruled.

18 A Prior to January 11th none.

19 Q And so how was it that you all dated? I mean, what was
20 this dating relationship?

21 A We corresponded at the time between text message and
22 Facebook, we spent a weekend in Atlantic City together a few
23 times.

24 Q Before he moved into your home, did he ever come and
25 stay at your home?

KIA MUSE

1 A No.

2 Q Spend extended time in your home?

3 A Prior to January 2012? No -- January of 2011, no. I'm
4 sorry.

5 Q Okay. So then when he comes into your home to begin
6 living, how was it that you introduced him to your children?

7 A He was introduced to the children as my boyfriend at
8 that time.

9 Q Okay. So who all was living in your home in
10 January 2011 when Mr. Purnell joined your home?

11 A All the children that are living with me now;

12 B.M. Minor 1 Minor 2 and B.S

13 Q And describe that home for us.

14 A It was a two story home with a full basement. There
15 was three bedrooms in the main house with a bath. The
16 garage was turned into a master bedroom with a bath. The
17 basement had a bath. There was a front yard with a huge
18 back yard and a back porch.

19 Q And so what were the sleeping arrangements? Where was
20 I guess your bedroom?

21 A My bedroom, which was considered the garage -- there
22 was no garage. The lady who owned it made a store front so
23 the garage was my bedroom. Minor 1 and Minor 2 shared the
24 back room, B.J. had one of the front rooms and B.M. had
25 the other front room.

KIA MUSE

1 Q And how many stories then, or how many different levels
2 did this house have?

3 A Including the basement that would be three. So the
4 basement, the main level, then the upstairs. To get to the
5 garage you would come through the kitchen, step down on the
6 level, you would go down three steps and you would actually
7 be -- the three steps would actually put you on the ground
8 floor of the bedroom and the garage area.

9 Q And so where was it then that Minor 1 and Minor 2 slept?

10 A They slept upstairs in the main house on the second
11 floor in the back bedroom.

12 Q And so was it the same bedroom or different bedrooms?

13 A Same bedrooms.

14 Q Have they always shared a bedroom or has there been a
15 time that they've had separate bedrooms?

16 A No, they've always shared a bedroom.

17 Q During this time period in New Jersey, I guess the --
18 when was it you moved to South Carolina?

19 A September 2nd, 2011.

20 Q Okay. So from January until your move here to South
21 Carolina, did you have a job? Were you working?

22 A In New Jersey?

23 Q Yes.

24 A No, ma'am. I had got let go of the job there so I was
25 unemployed.

KIA MUSE

1 Q Okay. And so what would your day consist of?

2 A Looking for housing down here. I had -- at that time I
3 had decided that I could not afford to stay in that house so
4 I knew I had to move once I had got let go. So my day
5 consisted of searches of housing and search of jobs here in
6 South Carolina once we had decided to move here.

7 Q And so how old was -- during this time period, 2011,
8 prior to moving here, how old was B.M.

9 A B.M. would have been 11 in 2011, because she was
10 born in 2000, she would have turned 11.

11 Q Okay. Was she going to school?

12 A Yeah. She was going to school at Columbia Elementary.

13 Q And what about Minor 2 and Minor 1 what was their
14 schooling situation?

15 A The same. Minor 1 was attending Columbia Elementary.

16 As of that year she was eight, and Minor 2 was
17 seven, of 2011, and she attended the same
18 elementary school.

19 Q Okay. And then what about your youngest, B.S

20 A B.S with you a year younger so Minor 2 was eight,
21 B.S was seven, attending the same school, Columbia
22 Elementary.

23 Q And what about -- what would happen when school was out
24 at either 2:30, 3:00, whatever time the school let out?

25 A The school was basically a block away. They would walk

KIA MUSE

1 home, do homework. Minor 1 would have a reading pow wow with
2 one of her teachers at that time -- I think it might have
3 been that time we were getting her help with her reading.

4 Dinner cooked --

5 Q Were they involved in after-school activities?

6 A At that time, no, we weren't involved in any activities
7 in New Jersey at that time. Oh, excuse me. Yes, we were,
8 Girl Scouts, I'm sorry, Girl Scouts.

9 Q So then you all moved down here to South Carolina.

10 A Yes, ma'am.

11 Q Where was it you moved to?

12 A We moved to Columbia, South
13 Carolina, Capital Heights Subdivision.

14 Q Have you remained at that location or have you moved?

15 A No, I'm still at that location.

16 Q Okay. So are there any other residences that you've
17 lived in here in South Carolina?

18 A No, ma'am.

19 Q So describe that home and the layout of that home.

20 A The layout of the home is basically you walk in, you
21 have your dining area, which there's no separation from the
22 living room area so it's just a open floor plan with the
23 kitchen off to the left. Off of the living room area is the
24 master bedroom with a master bath. When you come in through
25 the door there's a hallway which is the bathroom on your

KIA MUSE

1 right. When you look straight you're looking straight at
2 Minor 1 and Minor 2 room, you hang a left, there's B.J.'s
3 room, B.M. room is the very first room and then the
4 garage is on the other side of that.

5 Q And so where then -- they were also sharing -- Minor 1
6 and Minor 2 were sharing a room?

7 A Yes, ma'am.

8 Q What was the school situation when you had first moved
9 here? School was just started, had already started? What?

10 A They had missed three weeks of school, it had just
11 started. I believe they started the Monday after Labor Day
12 I believe that's when it was, or the Tuesday after Labor
13 Day, something.

14 Q And what schools were they all attending?

15 A B.M. was attending W.A. Perry, she started in the
16 6th grade. Minor 1 and Minor 2 and B.S attended
17 Burton-Pack Elementary, which they was in third, second and
18 first at the time.

19 Q Okay. And at this point when you first moved down
20 here, do you have a job?

21 A I didn't have a job, but I found a job and started
22 working September 13th for Aleph Wine Corporation on Shop
23 Road.

24 Q So within a couple of weeks of moving here.

25 A Yes.

KIA MUSE

- 1 Q Okay. And what hours were you working?
- 2 A From about 1:00 to 5:00 or 6:00 in the evening.
- 3 Q Talk to us then about the after-school situation of
- 4 your kids. Once the bell rang at their school, what was
- 5 their aftercare?
- 6 A School let's out at Burton-Pack at 2:30, they're off
- 7 the bus anywhere between 2:50 and 3:00 p.m. At that time
- 8 they were coming home to Mr. Wayland Purnell.
- 9 Q And so what was his -- was he working when you all
- 10 first moved here?
- 11 A No, ma'am.
- 12 Q Did he eventually secure a job?
- 13 A Yes. I believe that was some time in October.
- 14 Q What was his work schedule hours?
- 15 A He was a barber and he would work all day.
- 16 Q Okay. And was that Monday through Friday, was it also
- 17 the weekends?
- 18 A At the time he was trying to my understanding pursue
- 19 clientele so they would be open on Sundays, so Saturdays and
- 20 Sundays also.
- 21 Q So was he working seven days a week or were there days
- 22 that he was home?
- 23 A No. He was working seven days a week.
- 24 Q What type of after school activities were the kids
- 25 involved in?

KIA MUSE

1 A At that time there wasn't any that I knew of. Let's
2 see, September of 2011. Once time went around and I met
3 Ms. Jackson I found out about the reading literacy program,
4 which Minor 1 was having problems with reading and they only
5 took 3rd grade and up at that time, so it was only her
6 attending that program. I did get them in Girl Scouts also
7 here.

8 Q They were in Girl Scouts?

9 A Yes.

10 Q Is that all three girls?

11 A All three girls.

12 Q What about B.S

13 A Boy Scouts.

14 Q When Mr. Purnell first came to live in your home in New
15 Jersey --

16 A Yes, ma'am.

17 Q -- when he came to join your family, what did the kids
18 call him?

19 A Mr. Wayland.

20 Q And throughout the time that he lived in your home, I
21 guess what -- around what day, if you know the specific day,
22 did he stop living in your home with your family?

23 A April 30th, 2011 when everything transpired.

24 Q Okay. You just said 2011.

25 A I'm sorry, 2012.

KIA MUSE

1 Q Okay.

2 A April 30th, 2012. We actually stayed in a hotel that
3 evening to give him time to get his stuff and then we took
4 residence back that morning of May 1st.

5 Q So from January of 2011 when he first joined your
6 family until April 30th of 2012, did it ever change in what
7 they called him?

8 A No.

9 Q Okay. So was this for all the kids?

10 A Yes.

11 Q And the amount of time that transpired from when you
12 found out -- when you had your conversation with Danielle
13 Jackson to when you called the police, how much time
14 transpired?

15 A I can't say exactly. From the time I got in the car to
16 drive home to ask one child to leave because he was the boy,
17 but when I asked them did anything happen, he left the room,
18 then I asked the older one and she left the room and then I
19 talked to the two together, so I'm not exactly how much time
20 conspired (sic). But as soon as it was confirmed I did dial
21 911.

22 Q Okay. So are you talking -- I guess just in general I
23 was asking is are we talking about a matter of days or --

24 A No.

25 Q -- was it the same day?

KIA MUSE

1 A Same minutes. Because they get out of the program
2 about 5:30, so I probably went around to Danielle's house
3 maybe address 5:35, got home maybe around five minutes
4 later, so it was within at least half an hour.

5 Q Okay. Okay. I'm going to show you what's been marked
6 as State's Exhibits Number 1 and Number 2. All I want you
7 to do at this point is just look at them and see, yes or no,
8 do you recognize what these are?

9 A Yes.

10 Q And you are familiar with them?

11 A Yes.

12 Q Okay. Are they fair and accurate depictions of the, I
13 guess, photo and diagram of what you're familiar with?

14 A Yes.

15 Q Okay. And State's Exhibit Number 1 is a diagram of
16 what?

17 A That is a diagram, floor plan of the current house I
18 lived in, the only difference is it would be flipped.

19 Q Okay. And State's Exhibit 2 is a photograph of --

20 A That is Carteret, the house I
21 resided in in New Jersey.

22 MS. BODMAN: The State offers into evidence State's
23 Exhibits 1 and 2.

24 THE COURT: Any objection?

25 MR. BELL: I do have objections, Your Honor, based on

KIA MUSE

1 what we've previously discussed pretrial based on other
2 rulings.

3 THE COURT: They're admitted over objection.

4 MR. BELL: Thank you, Your Honor.

5 (The diagrams were received as State's 1 and
6 2.)

7 Q So State's Exhibit Number 2, I guess you previously
8 described this home but here -- let me hold it up -- is the
9 garage that you said had been finished.

10 A Yes.

11 MR. BELL: Objection, leading, Your Honor.

12 THE COURT: Don't lead the witness.

13 Q What are we looking at?

14 A This is the house that I resided in in New Jersey.
15 This is the garage which was our bedroom and has a private
16 entrance, this is the front door, this is our living room.
17 This would have been -- this would have been B.J.'s room,
18 B.S. Jr. This is B.M. room, the older one, and
19 then the back one on the wall would be Minor 1 and Minor 2
20 room. Alongside both the steps there would be a bathroom.
21 The full dining area is behind the living room and then the
22 kitchen is off straight to the front door. And it's a full
23 sized basement with a big backyard in the back.

24 Q And how long did Minor 1 and Minor 2 live in this home?

25 A 2000 -- August of 2007 to September 2011.

KIA MUSE

1 Q When you moved here?

2 A Yes, ma'am.

3 Q And the diagram of the house you said you currently
4 live in --

5 A Yes.

6 Q -- you said it basically would be --

7 A Flopped.

8 Q -- just mirror image or flipped over.

9 A Yes.

10 Q And so describe for us then what we're looking at.

11 A Okay. This is the entry way, this is the dining area,
12 that's the living room. That is the master bedroom. This
13 right here would be Minor 1 and Minor 2 room, B.S Jr.'s
14 room and B.M. room, and this is the garage. Minor 1
15 and Minor 2 room was next to the bathroom down the hall.

16 Q From the time that this was reported to the police
17 April 30th, 2012 until the time that Wayland Purnell was
18 arrested, did you have communications with him?

19 A Yes, I did.

20 Q Okay. And tell us I guess how -- was it in person, on
21 the phone?

22 A Keep your friends close, keep your enemies closer. I
23 needed to know where he was at all times. So in the
24 beginning he needed a ride to work, I would take him to
25 work, I would take him to the hotel because I needed to know

KIA MUSE

1 where he was to protect my girls.

2 Q And for how many days did that go on?

3 A That went on until he actually left to go to Delaware
4 to make sure his dad was okay.

5 Q So are we talking about days, weeks?

6 A I think it was about a week maybe.

7 Q Okay.

8 A I can't really remember.

9 Q Okay.

10 A It might have been a week, might have been two, I can't
11 really remember at this time.

12 Q And then once he went to Delaware to his dad's house,
13 did you also maintain phone contact?

14 A Yes, I did. I needed to make sure he was there.

15 Q When was it that you found out that he had been having
16 some type of a communication with another woman?

17 A June 20th -- June 21st, 2012.

18 Q And was that before he was arrested or after he was
19 arrested?

20 A That was after he was arrested.

21 Q Okay. And tell us how was it that you came to discover
22 this.

23 A I came to discover it because I had his pass code to
24 his phone and I knew his dad would be calling him because he
25 talked to his father all day every day and I knew his father

KIA MUSE

1 was sick. So I checked the messages to see if his father
2 had called, and there was a message from a woman on there
3 claiming to be his wife and that's how I found out about
4 that.

5 Q Okay. And so prior to him -- I guess explain a little
6 bit more about you knew that his dad would be calling. At
7 this point do you know if Mr. Purnell has been arrested?

8 A Yes. I had received a phone call from Investigator
9 Coleman telling me -- I can't exactly remember what time it
10 was, but Ms. Jackson and I were in the car, she had called
11 and said they had arrested him.

12 Q Okay. And so what was your, I guess, belief or
13 understanding about his ability to access his voice mails?

14 A I knew he wouldn't be able to access it.

15 Q And so you were looking for -- you said for what?

16 A For his -- to see what was going on with his father.
17 Because he talked to his father at least two, three, four
18 times a day all day long, and his father was at that time
19 diagnosed with stage four cancer.

20 Q Okay.

21 A My concern was his father.

22 Q Okay. And so that's when you then discovered this
23 voice mail.

24 A Yes.

25 Q Okay. What do you do then after listening to the voice

KIA MUSE

1 mail?

2 A I end up phoning that person to find out how she knew
3 Mr. Purnell.

4 Q Okay. And not the substance of what is said during
5 that conversation, but do you recall about how long that
6 conversation you had with her was?

7 A It was around -- I believe around --

8 Q What date did you believe the phone call took place
9 with this woman?

10 A It was late, so it might have been the morning of
11 June 22nd.

12 Q I'm going to show you what is marked as State's Exhibit
13 Number 3. Did you keep your records after your, I guess,
14 phone calls?

15 A I had a Google voice mail so it goes to a Google
16 account where you can go back in Google Voice and you can
17 pull up any phone records.

18 Q What is Google Voice?

19 A It's a free way to call people through the computer and
20 now you actually have an app. to get it on the phone.

21 Q And how was it you called this woman? Did you use that
22 Google Voice or another phone?

23 A No. I used Google Voice because I didn't want her to
24 have my personal number.

25 Q So looking at State's Exhibit Number 3, just yes or no,

KIA MUSE

1 do you recognize that?

2 A Yes.

3 Q Does it refresh you're memory as to the date and time
4 that you made that phone call to this woman?

5 A Yes.

6 Q Okay. And what was the date and time you called this
7 woman?

8 A It was June 23rd, 2012.

9 Q Okay. At what time?

10 A 12:33 a.m.

11 Q So I guess the 22nd going into the 23rd?

12 A Yes.

13 Q Okay.

14 MS. BODMAN: No further questions at this time.

15 MR. BELL: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. BELL

18 Q You've known Mr. Purnell's family for awhile, right?

19 A Yes, sir.

20 Q You went to high school together?

21 A Yes, sir.

22 Q You went to high school with his brother.

23 A Maybe.

24 Q What else do you know about his brother?

25 A Which one?

KIA MUSE

1 Q His oldest brother.

2 A Frank?

3 Q Yes.

4 MS. BODMAN: Objection to relevance.

5 THE COURT: And what's the relevance, Counsel?

6 MR. BELL: Your Honor, it goes to the relationship
7 between the two parties, she has expounded upon it
8 thoroughly during --

9 THE COURT: Expound on what?

10 MR. BELL: The relationship between the families and
11 the knowledge and background to each other, I'm just going a
12 little bit further.

13 THE COURT: All right. Response?

14 MS. BODMAN: I guess it's just a little -- in terms of
15 relevance it's a little vague to tie into this case.

16 THE COURT: I overrule the objection.

17 MR. BELL: Thank you.

18 THE COURT: You don't need to thank me. I overrule the
19 objection.

20 A Can you repeat the question?

21 THE COURT: Respond to the question about your
22 relationship and knowledge about his brother.

23 A I know it's his older brother.

24 Q Do you have any relationship with Frank?

25 A We dated for awhile.

KIA MUSE

1 Q You dated his brother. Did you marry him?

2 A Yes, I did.

3 Q So you knew his family well.

4 A I knew his family.

5 Q You knew him well.

6 A No.

7 Q Getting married is a big decision, though, right?

8 A Yes.

9 Q But you got married to him.

10 A Yes.

11 Q But you didn't know him well?

12 A Apparently not well enough.

13 THE COURT: You can pull that mic. closer to you and
14 also speak louder.

15 THE WITNESS: Yes, sir.

16 Q Now, Ms. Jackson spoke about being business partners.

17 What type of business?

18 A At the time I was direct sales for Party Link.

19 Q What happened with that company?

20 A I did a favor for a friend and someone told me to start
21 my own catering business.

22 THE COURT: Can you all hear her?

23 THE JUROR: No. (Indicating in the negative.)

24 THE WITNESS: I'm sorry.

25 A I was direct sales for Party Link and a friend of mine

KIA MUSE

1 told me to start my own catering business after I did a
2 favor for her.

3 Q How long did you work with the company that you were
4 with when you first moved here?

5 A I worked with Aleph Wines from September 13th, 2011 to
6 December 31st, 2011, I was also going to school for a tax --
7 to be a tax --

8 THE COURT: Is there some reason that you're speaking
9 in a monotone voice? Do you always speak this soft or can
10 you speak where we can hear you?

11 THE WITNESS: Yes, sir. I'm sorry, I'm just a little
12 hoarse today.

13 A I was taking also along with working with Aleph Wines I
14 was also taking classes with Liberty Tax Service at the
15 time. So I left classes with Liberty Tax to go with Aleph
16 Wines in the evening. And once -- there was one of the
17 instructors her name was -- I had instructed a teacher at
18 the time was supposed to be opening her own tax office
19 through Liberty Tax and she was going to employ me, so I
20 left Aleph Wines to work with that tax company.

21 Q Who was that professor?

22 A It wasn't a professor.

23 Q Who was the teacher?

24 A Deresa, Deresa Kennedy.

25 Q Is that with a D or a T?

KIA MUSE

1 A Deresa.

2 Q Kennedy?

3 A Yes.

4 Q Whatever happened with that relationship or that
5 business adventure?

6 A She ended up being a scam artist so the job was --
7 there was no job, there was no tax service. I spent
8 numerous months and hours in preparing and working there and
9 there was no job.

10 Q Did Mr. Wayland ever tell you about that?

11 A No.

12 Q Mr. Purnell, he's not your first husband, is he?

13 A No.

14 Q Now, your first cousin was accused of molesting your
15 older daughter, correct?

16 MS. BODMAN: Objection, Your Honor.

17 THE COURT: Now, ladies and gentlemen, we're going to
18 have you go to the jury room for a moment, let me talk with
19 counsel for awhile. Please do not discuss the case.

20 (The jury left the courtroom.)

21 THE COURT: All right. The basis for the objection?

22 MS. BODMAN: Absolutely irrelevant as to whether or not
23 another child in the home was abused. It doesn't go to
24 prove whether or not these children were abused by this
25 defendant.

KIA MUSE

1 THE COURT: All right. Mr. Bell?

2 MR. BELL: Your Honor, it goes to prior knowledge of
3 intent, plan, motive of the witness.

4 THE COURT: Say what?

5 MR. BELL: Prior knowledge of these types of cases and
6 how to set someone up in these types of cases, Your Honor.
7 She has prior knowledge of the workings of law enforcement
8 in these types of cases based on a previous case regarding
9 her first husband and her oldest daughter, B.M. or her
10 second oldest daughter, B.M.

11 THE COURT: What was the -- go ahead and proffer the
12 testimony and let's see where you're going with it.

13 BY MR. BELL:

14 Q Your first husband was accused of molesting B.M.
15 correct?

16 A No, sir.

17 Q Did your girls go to Post Trauma Resources, did you
18 take them to Post Trauma Resources?

19 A Yes, sir.

20 THE COURT: What girls are you talking about? Now,
21 Counselor when I ask you a question then speak to me.

22 MR. BELL: I'm sorry. I apologize, Your Honor.

23 THE COURT: Yeah, speak to me. And if you need to have
24 a moment to confer with someone then ask the Court
25 permission and then go talk with someone. But if I ask you

KIA MUSE

1 a question and you go in that direction and start talking to
2 Ms. Grice what am I to make of that?

3 MR. BELL: I apologize, Your Honor.

4 THE COURT: All right. So the question is you said
5 your girls went to some place. What girls are you referring
6 to?

7 MR. BELL: Minor 2 and Minor 1

8 THE COURT: All right. So you're changing subject from
9 the abuse complaint of the oldest child, or is this the
10 same --

11 MR. BELL: No. They referenced the complaint in the
12 notes from Post Trauma Resources, Your Honor.

13 THE COURT: All right. So -- go ahead, proceed with
14 this -- you can answer that question.

15 A That is not correct. I mean, yes, Minor 1 and Minor 2
16 did go to Post Trauma.

17 Q They discussed their family history, correct?

18 A Most likely. I wasn't in the sessions with them.

19 Q But they discussed the family history. Did you ever
20 speak with the doctors afterwards?

21 A Yes. But nothing that was discussed in there was
22 discussed with me.

23 MR. BELL: No further questions, Your Honor. I believe
24 that I have the ability to call as a witness the interviewer
25 who they discussed this with, I was just asking her.

KIA MUSE

1 THE COURT: Well, you asked her did she report abuse of
2 her -- of another child by her former husband and she has
3 answered no.

4 MR. BELL: She did.

5 THE COURT: Yeah, I just said that, she answered no.

6 MR. BELL: Yes.

7 THE COURT: And now you're telling me that you have the
8 ability to call another witness about what?

9 MR. BELL: To the statements regarding what occurred
10 during the Post Trauma Resources, if need be. I don't
11 believe I can cross examine her anymore because she has
12 denied it.

13 THE COURT: She answered the question.

14 MR. BELL: I don't believe I can go any further.

15 MS. BODMAN: Okay. Well, we're on the same page then,
16 the answer is no. We'll take a couple of minutes, then
17 we'll press on. You may step down, do not discuss your
18 testimony and practice talking louder while you're taking
19 your break.

20 THE WITNESS: Yes, sir.

21 THE COURT: There is no point in sitting there if no
22 one can hear what you're saying.

23 (A recess was taken.)

24 THE COURT: Now, Mr. Bell, I find that with regard to
25 this issue, you asked whether she was -- whether she made a

KIA MUSE

1 complaint based on a prior resident and she said no, then
2 you asked her whether she took the kids to be examined and
3 all that, then you started talking about you could call a
4 witness concerning something. What good faith basis did you
5 have to ask the question?

6 MR. BELL: If I may present to the Court, Your Honor --
7 if I may approach.

8 THE COURT: Just tell me.

9 MR. BELL: This is the report from Post Trauma
10 Resources. It states, "It is important to note that the
11 CI's second oldest sister 12 years old was also abused at a
12 younger age by their mother's first husband."

13 THE COURT: All right. And whose report is that?

14 MR. BELL: This is Andrea Bradley out of the Post
15 Trauma Resources.

16 THE COURT: Andrea Bradley. And she's a witness?

17 MR. BELL: She is listed on the State's potential
18 witness list.

19 THE COURT: All right. So the status of it is that
20 there is an objection and the Court sent the jury out. I am
21 going to allow her to answer the question and the answer she
22 gave is no, I assume it will be the same answer. And that
23 will be the end of that inquiry with this witness.

24 MR. BELL: I understand that, Your Honor.

25 THE COURT: Okay. Bring the jury.

KIA MUSE

1 (the jury returned the courtroom.)

2 MR. BELL: May we approach?

3 (A bench conference was held.)

4 THE COURT: All right. You may restate the last
5 question.

6 BY MR. BELL:

7 Q Now, one of your eldest daughters was sexually abused
8 by your first husband, right?

9 A Excuse me?

10 Q Now, one of your first husband -- eldest daughters was
11 sexually abused by your first husband.

12 A That's a different question than what you stated prior.

13 Q That's the question I asked.

14 A Repeat the question again, sir.

15 Q One of your eldest daughters was sexually abused by
16 your first husband.

17 A No.

18 Q Now, you made the statement earlier keep your friends
19 close, keep your enemies closer, correct?

20 A Yes, uh-huh.

21 THE COURT: Just answer yes or no.

22 A Yes.

23 Q So Wayland was your enemy, correct?

24 A No.

25 Q Why did you keep him close then, closer?

KIA MUSE

1 A I wanted to know where he was to protect my children.

2 Q But you referred to him as an enemy in that statement,

3 did you not?

4 A It was just a statement.

5 Q Came out of your mouth, right?

6 A Yes, it did.

7 Q So you referred to him as an enemy.

8 A No, I didn't.

9 Q Why did you make the statement?

10 A It was just a statement.

11 Q Well, if you didn't mean it why did you make it?

12 A It was just a reference.

13 Q Now, you mentioned knowing the pass code? When did you
14 figure out the pass code? How long have you had the pass
15 code?

16 A It's his dad's address.

17 Q So you had had the password a long time to get into his
18 phone, right?

19 A Yes.

20 Q And it wasn't on April 30th that you just now -- or
21 June 23rd that you just now entered into his phone.

22 A Yes, it was.

23 Q Do you ever recall a situation where Girl Scout cookies
24 were asked to be sent to Chicago?

25 A To his first or cousin, I couldn't remember the name.

KIA MUSE

- 1 Q So how many friends does he have in Chicago?
- 2 A I don't know.
- 3 Q Did you send those Girl Scout cookies?
- 4 A No, we didn't.
- 5 Q Why didn't you send them to his friend?
- 6 A Because he wouldn't give me the address.
- 7 Q So you had previously knowledge of Tashura Thompson
- 8 before that date, right?
- 9 A I didn't know of that person's name.
- 10 Q You had an address for Chicago --
- 11 A No.
- 12 Q -- you had a name to put on the envelope, correct?
- 13 A No.
- 14 Q He didn't give you a name and address?
- 15 A No, he didn't.
- 16 Q Then how did you know?
- 17 A Because he wanted to send cookies and then he said
- 18 nevermind.
- 19 Q Take a look at this --
- 20 A Uh-huh.
- 21 Q -- call log, please.
- 22 A Yes.
- 23 Q How long was that phone call?
- 24 A An hour and 20 minutes.
- 25 Q At what time?

KIA MUSE

1 A 12:33 in the morning.

2 Q 12:33 in the morning. For an hour and 20 minutes you
3 gloated about how Wayland Purnell was going to prison for
4 the rest of his life, didn't you?

5 A No.

6 Q You told Tashura so that you could get the satisfaction
7 of ruining that relationship and getting the upper hand on
8 him and gloated about it, him going to prison for the rest
9 of his life, didn't you?

10 A I don't recall the whole conversation, but what I had
11 said to her is the findings that I had found out and I
12 wanted to let her know what was going on and if she had any
13 children.

14 Q Now, your children were just -- made accusations that
15 he had sexually molested them, right, and your worry is the
16 girlfriend in Chicago that you have never met?

17 A I didn't know she was a girlfriend at the time until I
18 called and she said that they were engaged.

19 Q Why were you worried about somebody leaving a message
20 when your kids had just accused him of molesting them? Why?

21 A Because I didn't want -- if she had children I didn't
22 want her children to be a victim.

23 Q But you knew where he was, right?

24 A Didn't mean he would be there always.

25 Q You knew where he was, right?

KIA MUSE

1 A I knew where he was.

2 Q You were concerned wasn't your children, your concern
3 was calling his girlfriend, wasn't it?

4 A My concern has always been my children.

5 Q Then why did you call?

6 A To warn her if she had children.

7 Q Do you recognize this envelope?

8 A No, I do not.

9 Q Do you recognize the post office box on it?

10 A No, I do not.

11 Q Now, when you moved to South Carolina you weren't with

12 B.S. Minor 2 and Minor 1 father, were you?

13 A No, I was not.

14 Q But now he's back living with you sitting up there,
15 isn't he?

16 A Yes, he is.

17 Q You're back in a relationship with him now, aren't you?

18 A Yes, we are.

19 Q You're no longer in a relationship with Wayland, are
20 you?

21 A No.

22 Q He's no longer in a relationship with Tashura.

23 A I don't know.

24 MR. BELL: No further questions.

25 THE COURT: Any redirect?

KIA MUSE

1 REDIRECT EXAMINATION

2 BY MS. BODMAN

3 Q This hour and 20 minute conversation that you had
4 with -- what was her name, Tashura?

5 A I don't know.

6 Q Okay. Was it all of you talking --

7 A No.

8 Q -- was it all of her talking --

9 A No.

10 Q -- was it both of you talking?

11 A It was two women having a conversation.

12 Q Okay. And tell me kind of about how you can describe,
13 I guess, either of your demeanor during that phone
14 conversation?

15 A I asked her did she know --

16 Q Well, wait, no. I just said demeanor, not the
17 substance of what was said.

18 A Oh.

19 Q Yelling? Crying?

20 A No.

21 Q Calming talking?

22 A It was just --

23 Q A combination of all those things?

24 MR. BELL: Objection, leading.

25 A Just a conversation.

KIA MUSE

1 THE COURT: The objection is overruled.

2 Q So the demeanor --

3 A It was just a conversation, two women having -- like we
4 are having a conversation.

5 Q Okay. Did you -- prior to making that phone call to
6 her on June 23rd at 12:30 in the morning, did you have any
7 idea who this person was that you were making a phone call
8 to?

9 A No, I did not.

10 Q Okay. And did part of that conversation involve, I
11 guess, giving her information?

12 A Yes, ma'am.

13 MR. BELL: Objection, leading.

14 THE COURT: Objection is overruled.

15 MS. BODMAN: No further questions.

16 THE COURT: Anything further?

17 MR. BELL: No, Your Honor.

18 MS. BODMAN: Thank you. You may step down. And we
19 have made it to lunch today. We're going to break until
20 2:15, that's an hour and 15 minutes, we need you back in the
21 jury room at that time. Please do not discuss the case,
22 please do not mill around the area of the courthouse where
23 you may come into contact with anyone who may be talking
24 about this case. Please leave, then come back. When you
25 come back, come directly to the jury room, do not come

KIA MUSE

1 through the courtroom. We'll see you after lunch.

2 (The jury left the courtroom.)

3 THE COURT: All right. We'll need to select the
4 alternate who will become part of the regular jury panel.
5 In criminal cases this is typically done by lot where the
6 juror is -- out of the two remaining the one that will
7 become one of the 12 will be selected randomly. So the
8 clerk, are you ready to do that?

9 THE CLERK: Yes, sir. I have juror 307 and 11 written
10 on a sheet of paper.

11 THE COURT: All right.

12 THE CLERK: How about I let the bailiff choose?

13 THE COURT: Any objection to that procedure?

14 MS. BODMAN: No objection from the State.

15 MR. BELL: No objection, Your Honor.

16 THE COURT: All right.

17 (The bailiff chose by lot an alternate juror.)

18 THE CLERK: 11.

19 THE COURT: Number 11 will become our 12th juror at
20 this point and will take that empty seat. All right. We'll
21 break then until 2:15.

22 (A lunch break was taken.)

23 MS. BODMAN: All right. Bring the jury.

24 MR. BELL: Your Honor, I have a matter I'd like to
25 address regarding an objection to the prior witness before

KIA MUSE

1 the jury comes in.

2 THE COURT: All right.

3 MR. BELL: I'm moving for a mistrial at this moment
4 based on Kia Muse blurting out he was incarcerated. At this
5 time that's a prior bad act which is not admissible, no
6 foundation for it to come in had ever been laid, and I think
7 my client is now prejudiced by the jury hearing that.

8 THE COURT: All right. Solicitor?

9 MS. BODMAN: Your Honor, it wasn't responsive to my
10 question, it was blurted out. But I believe that your
11 instruction in sustaining the objection and advising the
12 jury to disregard is sufficient at this point.

13 THE COURT: What was the question and what was the
14 answer?

15 MS. BODMAN: The question was a generic question about
16 the contact that she had with him or his relationship and so
17 it was an open-ended -- from the time that she originally
18 knew him until when they got back together again. And in
19 the midst of that she non-responsively was advising us where
20 he was, which was not at all -- I was asking the context of
21 their --

22 THE COURT: What did she say?

23 MS. BODMAN: In the midst of it she said, "I believe he
24 was incarcerated."

25 THE COURT: She didn't know where he was, she thought

KIA MUSE

1 he might have been in jail.

2 MS. BODMAN: Correct.

3 THE COURT: Is that what he said?

4 MR. BELL: My understanding was she said he was
5 incarcerated at that point, I think that's the response that
6 I got.

7 THE COURT: All right. Well, since you all can't agree
8 on the response I'm going to need to find the question and
9 the response. Let's see who is the closest to accurately
10 representing what she said.

11 (The question and answer were read
12 back.)

13 THE COURT: Anything else on that issue?

14 MR. BELL: It's hard to unring that bell once it's been
15 rung.

16 THE COURT: Which bell?

17 MR. BELL: The fact that she's saying he was
18 incarcerated.

19 THE COURT: Well, you continually misrepresent the
20 record. She said she didn't know where he was, he may have
21 been incarcerated.

22 MR. BELL: I think my answer was I believe she said
23 that she believed he was incarcerated. I didn't mean to
24 intentionally do that, but I think they are close synonyms.

25 THE COURT: Well, words are important. You're saying

KIA MUSE

1 that she told the jury that he was incarcerated and
2 therefore she has testified to a prior bad act. She said
3 that she doesn't know where he was, she thinks he may have
4 been incarcerated. Is that the same thing or not?
5 Solicitor?

6 MS. BODMAN: Not the same thing. That's what my
7 recollection was that it was some sort of, you know, I
8 believe, I think, it's not the same thing. I think that
9 your instruction to sustain the objection and to disregard
10 is appropriate.

11 THE COURT: It's important that if the witness said he
12 was locked up, he was in prison. Okay. Well, that's
13 totally improper. I don't know where he was, maybe he was
14 locked up, he might have been in prison or I think he may
15 have been in prison, is that the same thing? Does it reach
16 the same level that should cause me to grant a mistrial,
17 which means that you all have started this case in April and
18 quit and came in May and didn't get started and quit, and
19 now you're here in June and the defense wants a mistrial,
20 and you want to come back when?

21 MR. BELL: Your Honor, I'm just protecting my client's
22 rights.

23 THE COURT: Well --

24 MR. BELL: Additionally, I --

25 THE COURT: -- sometimes people -- I'm sorry. Go

KIA MUSE

1 . ahead.

2 MR. BELL: I believe the inference is the same to the
3 jury. I understand y'all's see a difference, I respectfully
4 don't.

5 THE COURT: When you say y'all, who are you talking
6 about?

7 MR. BELL: The solicitor agreed with Your Honor and in
8 reference to Your Honor and the solicitor seem to agree, I
9 disagree respectfully.

10 THE COURT: Well, I have no problems in granting
11 mistrials and moving on with my life aside from this case,
12 it's not a problem granting a mistrial and sending the jury
13 home and sending you all back to wherever you came from.
14 The question is whether it's the proper thing to do under
15 the law, whether or not it constitutes the proper use of
16 judicial resources or an abuse of judicial resources by
17 needlessly granting a mistrial. One of the problems when
18 lawyers just randomly asks questions that calls for
19 witnesses to grant narrative answers is that they cannot
20 control what they say. The witnesses are obviously not
21 schooled in the law so they don't know what's proper or
22 improper in many instances. This witness, I don't know how
23 she got from the question that was asked to concluding in
24 her mind that he was incarcerated without any -- without any
25 certainty, she said she doesn't know where he was, he might

KIA MUSE

1 have been. I don't know whether he was or not. Is that a
2 fact or not a fact? Was he in jail? Is that something that
3 was bourne out by some fact or is it a malicious statement
4 on her part? Was he, in fact, in jail before coming to live
5 with her? I mean, what are the facts?

6 MS. BODMAN: He has been incarcerated from time to time
7 but without knowing the exact date that she was referring to
8 in terms of when she lost contact with him and got contact,
9 I wouldn't know if, in fact, on that particular timeframe he
10 was incarcerated but --

11 THE COURT: Then the examination -- after the Court
12 gives a curative instruction, the examination continued on,
13 I think the testimony probably was around 12:30 maybe and
14 the objection is sustained. The jury is to disregard the
15 testimony and here two hours later as if somewhat as an
16 afterthought counsel says I want a mistrial because of what
17 she blurted out.

18 MR. BELL: My I respond, Your Honor?

19 THE COURT: To what?

20 MR. BELL: The reason I asked for it at the end after
21 testimony concluded, you didn't ask for argument on my
22 objection so I did not present argument until the witness
23 was concluded.

24 THE COURT: Well, the testimony was inappropriate. I
25 think the curative instruction addresses it because of the

KIA MUSE

1 uncertain nature of the testimony, and I deny the motion for
2 mistrial. Bring the jury in.

3 (The jury returned the courtroom.)

4 THE BAILIFF: All accounted for, Your Honor.

5 THE COURT: All right. Juror number 11, you've moved
6 on up, she's part of the first 12 at this point, pretty
7 good. Ladies and gentlemen, welcome back. Before we broke
8 for lunch, one of the questions to the last witness, in
9 responding the witness says, "I don't know where the
10 defendant was, he may have been incarcerated." There is no
11 evidence of that, there is no evidence to support that fact
12 as being true, it's speculation that is totally unfounded
13 based on the evidence in the case and you are to disregard
14 that statement in its entirety, erase it from your minds.
15 Next witness.

16 MS. BODMAN: State calls Minor 1

17 The witness, Minor 1 was first duly
18 sworn and testified as follows:

19 THE CLERK: Okay. Have a seat in that box. You're
20 going to state your name and spell it for us, okay.

21 MS. BODMAN: Minor 1

22

23 DIRECT EXAMINATION

24 BY MS. BODMAN

25 Q And Minor 1 how old are you?

Minor 1

- 1 A Eleven.
- 2 Q Okay. When is your birth date?
- 3 A .
- 4 Q Okay. Can you tell us a little bit about your family?
- 5 Who is your mom?
- 6 A Kia Muse.
- 7 Q Okay. And who is your dad?
- 8 A B.S
- 9 Q And do you have brothers and sisters?
- 10 A Yes.
- 11 Q Okay. Who is your oldest sister?
- 12 A Kierra.
- 13 Q Kierra. And how old is Kierra?
- 14 A She's 24.
- 15 Q And does she have any children?
- 16 A Yes.
- 17 Q And what's her name?
- 18 A Alana.
- 19 Q Is it a girl?
- 20 A Yes.
- 21 Q How old is Alana?
- 22 A Four.
- 23 Q Okay. If you don't know just tell me you don't know,
- 24 okay. That's all right. And what about your next oldest
- 25 sister after Kierra?

Minor 1

1 A B.M.

2 Q B.M. And how old is B.M.

3 A She's 14.

4 Q And what about your -- the next brother or sister that
5 you have?

6 A Me.

7 Q Okay. You're the next one in line. And who's after --

8 A Minor 2

9 Q Minor 2 And how old is Minor 2

10 A She's ten.

11 Q And any other brothers and sisters?

12 A Yes. My brother, B.S

13 Q B.S How old is B.S

14 A He's nine.

15 Q Okay. Do you know where you live right now?

16 A Yes.

17 Q Do you know the address?

18 A Capital Heights, Way.

19 Q And who all lives in your house with you?

20 A My mom and my brothers and sisters.

21 Q Okay.

22 A And my dad.

23 Q Is that all your brothers and sisters? Does that
24 include Kierra?

25 A No.

Minor 1

- 1 Q Where does Kierra live?
- 2 A New Jersey.
- 3 Q Where did you live before you moved here to
- 4 Way?
- 5 A New Jersey.
- 6 Q Do you remember anything about that place, if it was a
- 7 house or a --
- 8 A It was a house.
- 9 Q Okay. And what do you remember about that house?
- 10 A It was brown and white.
- 11 Q Okay. Was it just one story or more than one story?
- 12 A More than one story.
- 13 Q Do you know how many levels there were?
- 14 A There was a basement and then stairs to another story.
- 15 Q Okay. So how many stories in all? There's a
- 16 basement --
- 17 A Three.
- 18 Q Three stories? Okay. Who all do you remember lived in
- 19 that house with you in New Jersey?
- 20 A B.M. B.J., me, Minor 2 my mom.
- 21 Q Okay. You said B.J. Who is that?
- 22 A My brother, B.S
- 23 Q Okay. So B.S goes by B.J.?
- 24 A We call him B.J., II.
- 25 Q II? Okay. And do you remember, did you live in that

Minor 1

1 house in New Jersey for a long time or for a short time?

2 A I don't know.

3 Q Just before you moved here to South Carolina, who all
4 lived in that house with you?

5 A My brother, my mom, me, Minor 2 and Mr. Wayland.

6 Q Okay. Do you see Mr. Wayland here in the courtroom?

7 A Yes.

8 Q Okay. Can you point to Mr. Wayland and describe I
9 guess maybe what he's wearing or where he's sitting so we
10 know you're talking about?

11 A He's sitting over there.

12 Q Okay. And what is he wearing?

13 A He's wearing a blue shirt.

14 Q Okay. And does he have glasses on or no glasses?

15 A Glasses on.

16 Q Okay.

17 MS. BODMAN: May the record reflect that the witness
18 has identified the defendant?

19 THE COURT: It does.

20 Q What do you remember -- well, let me ask you, who was
21 Mr. Wayland when he came to live in your house, who did you
22 understand that he was?

23 A My stepdad.

24 Q Okay. Before he came to live in your home, did you
25 know him?

Minor 1

1 A No.

2 Q When do you first remember meeting him then?

3 A I don't know.

4 Q Was it somewhere outside of your house or when he came
5 into your house?

6 A I don't know.

7 Q When you lived in New Jersey, did you have a bedroom by
8 yourself or with somebody else?

9 A With someone else.

10 Q And who did you share a bedroom with?

11 A My sister.

12 Q Which one?

13 A Minor 2

14 Q I'm going to back up just a little bit and let's talk
15 just a little bit about, where do you go to school -- I
16 guess right now it's the summertime.

17 A (Nods in the affirmative.)

18 Q Where have you gone to school?

19 A Burton-Pack.

20 Q And did you go there last year?

21 A Yes.

22 Q And where are you going to school this next year?

23 A W.A. Perry.

24 Q Are you excited about starting a new school?

25 A Yes.

Minor 1

- 1 Q What are you doing this summer?
- 2 A Playing outside and watching TV.
- 3 Q Are you going to go -- do you go swimming or anything?
- 4 A Yes.
- 5 Q Where do you go swimming?
- 6 A At my friend's house sometimes.
- 7 Q Are you going to go to any summer camps?
- 8 A Yes. I have been to some summer camps.
- 9 Q You have already been to some?
- 10 A (Nods in the affirmative.)
- 11 Q And what did you do at summer camp?
- 12 A We went to a pool, we eat breakfast, we stay there from
- 13 Monday to Saturday and we go to lunch. We go to canteens
- 14 and we play outside.
- 15 Q Did you like summer camp?
- 16 A Yes.
- 17 Q Tell me about your brothers and sisters. Do you get
- 18 along with **Minor 2**
- 19 A Yes.
- 20 Q Yeah. Do you get along with **B.S**
- 21 A Yeah.
- 22 Q Okay. Do you like sharing a room with **Minor 2**
- 23 A No.
- 24 Q Why do you not like sharing a room with **Minor 2**
- 25 A Because sometimes she mess up the rooms and stuff.

Minor 1

1 Q Are you neat and she's messy?

2 A Kind of.

3 Q Okay. I want to talk to you a little bit about the
4 parts of your body. Okay. I'm going to show you -- we'll
5 start with this diagram. Do you know what that is?

6 A (Nods in the affirmative.)

7 Q Okay. Is it a boy or a girl?

8 A A girl.

9 Q Okay. And what can you tell me about -- I guess what's
10 this called?

11 A Her nose.

12 Q Her nose? What is this called?

13 A Her knee.

14 Q Knee? What is this called?

15 A Her belly button.

16 Q Okay. So what do you call these?

17 A Her breasts.

18 Q Okay. What do you call this part?

19 A Private parts.

20 Q Okay. Is that what you call it on your own body?

21 A (Nods in the affirmative.)

22 Q Your private part? Okay. And then what do you call
23 this back here?

24 A Her butt.

25 Q Okay. Is that what you call it on your body?

Minor 1

- 1 A (Nods in the affirmative.)
- 2 Q Okay. And here is a diagram of -- is that a boy or a
- 3 girl?
- 4 A A boy.
- 5 Q Okay. And what do you call these?
- 6 A His fingers.
- 7 Q What do you call these?
- 8 A His feet.
- 9 Q Okay. What do you call this part on a boy?
- 10 A His chest.
- 11 Q Okay. And what would you call this part on a boy?
- 12 A His private parts.
- 13 Q Okay. **Minor 1** has anybody ever touched your private
- 14 part?
- 15 A Yes.
- 16 Q Okay. And who touched your private part?
- 17 A Mr. Wayland.
- 18 Q And where -- excuse me. What did he touch your private
- 19 part -- what was he touching it with?
- 20 A With his private part.
- 21 Q Okay. Has anybody touched your butt?
- 22 A Yes.
- 23 Q Okay. Who touched your butt?
- 24 A Mr. Wayland.
- 25 Q And what did he touch your butt with?

Minor 1

1 A His private part.

2 Q Can you tell us one memory that you have of when it
3 happened in New Jersey?

4 MS. GRICE: Objection. Your Honor, at this time I'd
5 simply like to reinforce our pretrial motions and our
6 objection to this line of questioning.

7 THE COURT: The objection is sustained as to lack of
8 foundation.

9 Q How many different homes did Mr. Wayland live in with
10 you?

11 A Two.

12 Q Okay. And what were those two homes?

13 A In New Jersey and South Carolina.

14 Q Okay. And which of these two homes did this -- was
15 your private part touched?

16 A In South Carolina.

17 Q Okay. Did Mr. Wayland ever do anything to you in New
18 Jersey?

19 MS. GRICE: Objection, Your Honor. I believe this is a
20 leading question.

21 THE COURT: The objection is sustained.

22 Q Tell us about one of your memories that you had -- that
23 you have then here in South Carolina.

24 A In my bedroom, one time he told me to pull down my
25 pants and underwears and then he did it.

Minor 1

1 Q Okay. And then you say --

2 THE COURT: Have her speak into the mic.

3 MS. BODMAN: Okay. Move up a little closer to the
4 microphone. Okay.

5 Q And you said he did it. What did he do?

6 A He put his private part into my butt.

7 Q And do you remember how it felt?

8 A Yes. It didn't hurt.

9 Q Did he say anything to you when he did this?

10 A No.

11 Q In New Jersey did you ever see Mr. Wayland's private
12 part?

13 MS. GRICE: Objection, Your Honor. These are leading
14 questions.

15 THE COURT: Objection is overruled.

16 Q When you were in the home in New Jersey, did you ever
17 see Mr. Wayland's private part?

18 A Yes.

19 Q Okay. And tell us about that.

20 A He tried to -- he tried to put his private part in my
21 butt but he didn't.

22 Q Okay. And where in the house were you?

23 A In my room.

24 Q And do you have a memory of how that happened, like how
25 you both got into the room or anything?

Minor 1

1 A No.

2 Q And when he tried to do this, were your clothes on or
3 off?

4 A On.

5 Q Okay. And you said that you saw Mr. Wayland's private
6 parts, so were his clothes on or off?

7 A Off.

8 Q Do you have memories of this happening in New Jersey
9 this one time or more than one time?

10 A One time.

11 Q And then here in South Carolina, what other memories do
12 you have of this happening to you?

13 A More than one time.

14 Q Other than the bedroom that you already talked about,
15 what other memories of where you were in the house?

16 A Behind the couch.

17 Q And do you remember -- what do you remember about that
18 time behind the couch?

19 A He -- when we were playing he pulled me behind the
20 couch and then he put his private part behind my butt.

21 Q Do you remember where your mom was when this would
22 happen?

23 A In the store, I think.

24 THE COURT: At where?

25 MS. BODMAN: The store, I think.

Minor 1

1 Q What about your other brothers and sisters? Do you
2 remember where they may have been?

3 A My brother was watching TV.

4 Q And what about Minor 2

5 A I don't know where she was.

6 Q Did you ever see anything happen to Minor 2

7 A Yes.

8 Q Okay. What did you see happen to Minor 2

9 A He put his private part in her butt.

10 Q And where was Minor 2 when you saw this?

11 A In the room.

12 Q Okay. You said this room, which room?

13 A In me and Minor 2 room that we share.

14 Q Okay. Who was the first person that you told this to?

15 A D.H.

16 Q Okay. And do you mean Minor 2 your sister, or another

17 D.H. ?

18 A Another D.H.

19 Q Okay. Do you remember where you were when you told

20 D.H. ?

21 A No.

22 Q Do you know why you never told your mom?

23 A No.

24 Q Did Mr. Wayland ever say anything to you about what he
25 was doing to you?

Minor 1

1 A No.

2 Q Did he ever tell you not to tell?

3 A Yes.

4 Q Okay. Do you remember what he would tell you about not
5 telling?

6 A Nothing. He just said don't tell.

7 MS. BODMAN: No further questions at this time.

8 THE COURT: Ms. Grice?

9 MS. GRICE: Yes, sir.

10 CROSS EXAMINATION

11 BY MS. GRICE:

12 Q Hi, Minor 1 My name is Jessamine, and I don't want to
13 make you feel scared while you're up here but I have a few
14 questions I want to ask you. Okay. Are you nervous being
15 up here testifying?

16 A (Indicating in the negative.)

17 Q Okay. Have you had a chance to think about and talk
18 over what you were going to say today?

19 A Yes.

20 Q Have you had a chance to prepare?

21 A Yes.

22 Q And I'm not sure if you call her Margaret or
23 Ms. Bodman, but the woman that was just asking you
24 questions, you talked to her about preparing and knowing
25 what to expect when you come to court today, too, correct?

Minor 1

1 Right?

2 A Yes.

3 Q And have you talked to your mother also about what you
4 were going to say in court today or what to with expect
5 today?

6 A Yes.

7 Q And you met with -- I'm not sure who exactly you met
8 with, but I know maybe five or six months ago you might have
9 met at a place called Post Trauma Resources to talk and
10 prepare with some other people for court today, correct?

11 A Yes.

12 Q Okay. So you've kind of gone through this a lot in
13 your mind about what you were going sit here and tell the
14 people in this courtroom.

15 A Yes.

16 Q Now, Minor 1 obviously you love your mother, correct?

17 A Yes.

18 Q And she's probably one of the people you're closest to
19 in the whole world.

20 A (Nods in the affirmative.)

21 Q And I know that when you did sit down and talk with a
22 woman named Alecia about what you're saying happened back
23 two years ago, June 2012, I know at that time you talked
24 about how your mom would do your hair, make sure you have
25 clothes and food, those kind of things, right?

Minor 1

1 A (Nods in the affirmative.)

2 Q And she takes good care of you, right?

3 A (Nods in the affirmative.)

4 Q And so obviously you want to make your mom happy, is
5 that true?

6 A (Nods in the affirmative.)

7 THE COURT: I didn't hear a response.

8 THE WITNESS: Yes.

9 Q Now, I know you were just asked about your house in New
10 Jersey and what you're saying happened there, right?

11 A Yes.

12 Q You've never spoke to a police officer about anything
13 that you're saying happened in New Jersey, right? You've
14 only talked with the police in South Carolina.

15 A Yes.

16 Q Okay. And I don't know if you've traveled back home to
17 New Jersey since you moved to South Carolina to visit family
18 or friends, but you've never when you were in New Jersey
19 talked to -- gone to court to talk about anything like
20 you're talking about today; is that right?

21 A No.

22 Q This is the first time you've had to sit in front of a
23 bunch of people to talk about this, right?

24 A Yes.

25 Q Now, I know this was a long time ago, right?

Minor 1

1 A Yes.

2 Q And are you having trouble remembering today what you
3 said happened in 2012?

4 A No.

5 Q Okay. You feel pretty comfortable with what you're
6 saying in court?

7 A Yes.

8 Q I want to just ask you a little bit more about what
9 Margaret, or Ms. Bodman was just asking you. You've lived
10 in the same house here in Columbia since you moved to South
11 Carolina, right?

12 A Yes.

13 Q

14 A Yes.

15 Q Have you had the same bedroom that whole time?

16 A Yes.

17 Q If I showed you a big picture of what your -- the
18 inside of your home looks like, do you think you would
19 recognize it, would be able to tell me who stays in which
20 room?

21 A Yes.

22 Q Okay.

23 MS. GRICE: Your Honor, I'm just holding up State's
24 Exhibit Number 1.

25 Q Can you see this okay?

Minor 1

- 1 A (Nods in the affirmative.)
- 2 Q Yes?
- 3 A Yes.
- 4 Q Okay. Minor 1 does -- I don't know if you've seen one
- 5 of these before, but does this look familiar to any place
- 6 you've ever been?
- 7 A No.
- 8 Q You can read, though. I know you can, right?
- 9 A Yes.
- 10 Q You can read words. What does this say?
- 11 A Dining.
- 12 Q And what does this say?
- 13 A Living.
- 14 Q And then what does this say?
- 15 A Master bedroom.
- 16 Q Master bedroom? Okay. And then here we have?
- 17 A Bedroom number two.
- 18 Q Bedroom number two. And then here is?
- 19 A Bedroom number four.
- 20 Q All right. And here?
- 21 A Garage.
- 22 Q Okay. By looking at this, does your house have all of
- 23 these types of rooms? A master bedroom, three bedrooms, a
- 24 living room and a garage, does your home have all of those
- 25 things?

Minor 1

1 A Yes.

2 Q If I told you this was a floor plan or kind of a map of
3 your home but maybe flipped over, does that sound accurate
4 to you?

5 A Yes.

6 Q Would you -- by looking at this -- well, let me ask you
7 this: When you walk in your home is there a front door that
8 you use, a side door? How do you get in your house?

9 A Front door.

10 Q Okay. And is the front door, does it go through a
11 garage?

12 A No.

13 Q It's just a front door right off the house.

14 A Yes.

15 Q Okay. Is it to the right of the garage? Like when you
16 walk up to that front door, is the garage to your left?

17 A Yes.

18 Q Okay. So when you walk in that front door, how do you
19 get to your bedroom?

20 A I had to go up through the dining room --

21 Q Okay.

22 A -- and then go this way.

23 Q Which way is that?

24 A The left.

25 Q Left?

Minor 1

- 1 A Yes.
- 2 Q Okay.
- 3 A And then go straight and then take a little turn and
- 4 then keep going.
- 5 Q Okay.
- 6 A When I turned left I've got to keep going straight and
- 7 then to my room.
- 8 Q This is a little confusing to me, too, because I think
- 9 it's a mirror image. Let me ask this, is your bedroom at
- 10 the front of the house or is it in between two other
- 11 bedrooms, or where is it?
- 12 A It's like close to the bathroom.
- 13 Q Close to the bathroom. So if you walked out of your
- 14 bathroom door, whose bedroom is next to yours?
- 15 A My brother's.
- 16 Q Okay. If you pass by your brother's bedroom, do you
- 17 get to another bedroom?
- 18 A Yes.
- 19 Q Whose bedroom is that?
- 20 A B.M.
- 21 Q Okay. So B.M. bedroom is at the front of the
- 22 house?
- 23 A Yes.
- 24 Q Okay. Does she have a window that looks out the front?
- 25 A Yes.

Minor 1

1 Q So yours I think on this picture would be bedroom
2 number two when you walk out the door and the bathroom is
3 right there, does that sound correct?

4 A Yes.

5 Q Okay. Now, Mrs. Bodman was just asking you about some
6 times where you're saying that Mr. Purnell touched you. You
7 mentioned a couch. Where was the couch in your house? Or
8 where was it -- I don't know if it has been move around, but
9 where was the couch in your house a couple of years ago when
10 Mr. Wayland lived with you?

11 A The TV was like right across from it. The couch was
12 like right here and the TV is like over there.

13 Q Was the couch up against a wall or was it in the middle
14 of the room?

15 A In the middle of the room.

16 Q Okay. From this picture it looks like the living room
17 and the dining room, there's a wall in between them, one
18 room just kind of flows into the next, right? So that if
19 you're in the living room you can see everything in the
20 dining room and if you're in the dining room you can see
21 everything in the living room, right?

22 A Yes.

23 Q And the couch is kind of in the middle of those two
24 rooms?

25 A Yes.

Minor 1

1 Q So that you can face the TV but you've got your back to
2 the dining room?

3 A Yes.

4 Q Is there more than one TV in your home?

5 A Yes.

6 Q Okay. When you say that your younger brother, B.S.
7 was watching TV, was he watching TV in the living room or
8 somewhere else?

9 A Living room.

10 Q Okay. You still live in this house right now, right?

11 A Yes.

12 Q It's the same house. How old is B.S

13 A Nine.

14 Q Nine. Does he make a lot of noise?

15 A Yes.

16 Q Yeah. I have a little boy, and can be very rowdy and
17 loud. Does he play and make a lot of noise?

18 A Yes.

19 Q If he was in the living room watching TV loud or
20 playing or playing with a friend or something, would you be
21 able to hear him in your bedroom?

22 A Yes.

23 Q Minor 1 I know it's kind of a difficult thing to talk
24 about, but you talked about how Mr. Wayland at one time put
25 what you call his private parts on your butt, correct?

Minor 1

1 A Yes.

2 Q You just said that. And you said it didn't hurt.

3 A Yes.

4 Q Do you remember what you were wearing at the time?

5 A No.

6 Q Do you remember whether it was nighttime or daytime?

7 A No.

8 Q Do you remember what B.S. was watching on TV any of
9 the times?

10 A No.

11 Q Do you remember -- you don't know where your mom was,
12 though?

13 A No.

14 Q You don't know where your older sister, B.M. was?

15 A She was in her room.

16 Q She was in her room which was the front bedroom in the
17 house.

18 A Yes.

19 Q So if you were in your bedroom just down the hall she
20 would have been just a short distance two rooms away, right?

21 A (Nods in the affirmative.)

22 Q And B.M. never came in at any point while
23 Mr. Purnell was touching you.

24 A No.

25 Q And B.S. Jr. never did either, right?

Minor 1

1 A No.

2 Q Okay. All right. Minor 1 your father's name -- B.S

3 Jr. is your brother but B.S Sr. is your father, right?

4 A Yes.

5 Q And he's back living in your house right now, right?

6 A Yes.

7 Q And I know he's sitting here in court in support of you

8 up there in the blue shirt, right?

9 A Yes.

10 Q I imagine you're probably pretty happy having your dad

11 back in your house. Are you?

12 A Yes.

13 Q Yes.

14 MS. GRICE: No further questions, Your Honor.

15 THE COURT: Anything further?

16 MS. BODMAN: Nothing.

17 THE COURT: Thank you. You may step down. And your

18 next witness?

19 MS. BODMAN: The State calls Minor 2

20 The witness, Minor 2 after being duly

21 sworn, testified as follows:

22 THE CLERK: Have a seat in the witness box. Then

23 you're going to state your name and spell it for us.

24 MS. BODMAN: Minor 2

25

Minor 2

1 BY MS. BODMAN:

2 Q So how old are you?

3 A Ten.

4 Q And what's your birth date?

5 A

6 Q And where are you going to school?

7 A I'm going to school next year to Watkins-Nance.

8 Q Watkins?

9 A Nance.

10 Q Okay. And what grade are you going to be in?

11 A Fifth.

12 Q And is that going to be a new school for you?

13 A Yes, ma'am.

14 Q Are any of your friends going to at that school or --

15 A I don't know.

16 Q So are you excited about going to a new school?

17 A Yes.

18 Q Are you scared?

19 A Excited.

20 Q Excited? Well, tell us a little bit about this summer

21 and what you're doing this summer. What are your plans?

22 A At the end of July I'm going to camp. We had got

23 what -- we had a graduation party.

24 Q And what camp are you going to be going to?

25 A Camp Walker Johnson.

Minor 2

1 Q And who are you going to be going to Camp Walker

2 Johnson with?

3 A It's like a Girl Scout group at the Salvation Army, I'm
4 going with like a sunbeam group.

5 Q A sunbeam group?

6 A Yes, ma'am.

7 Q So some of your friends from that group are going to go
8 with you?

9 A Yes, ma'am.

10 Q Are you excited about that?

11 A Yes, ma'am.

12 Q So tell us a little bit about -- what do you remember
13 about the house that you lived in in New Jersey?

14 A I remember that I shared a room with Minor 1 my
15 brother's room was like right next to us.

16 Q Okay.

17 A And then next to B.J.'s room was my sister's room.

18 Q Okay. So who all do you remember living in that house
19 in New Jersey with you just before you moved to South
20 Carolina?

21 A Me, Minor 1 my mom, my sister B.M. and my
22 brother.

23 Q Did you have a dad that lived in the home --

24 A No.

25 Q -- just before you moved to South Carolina?

Minor 2

1 A No.

2 Q Okay. Was there anybody staying in the same room with
3 your mom?

4 A No, ma'am.

5 Q Okay. Do you know Mr. Wayland?

6 A Yes, ma'am.

7 Q Okay. When do you remember meeting Mr. Wayland?

8 A When he came home after they got married.

9 Q Okay. And so then did he start living with you when
10 they got married?

11 A Yes, ma'am.

12 Q Okay. So what room did he stay in in that house in New
13 Jersey?

14 A With my mom.

15 Q And do you remember if it was a long time or a short
16 time that you all lived together in New Jersey?

17 A Short time.

18 Q Then where do you live now in South Carolina?

19 A Capital Heights,

20 Q Do you like your neighborhood?

21 A No.

22 Q No. Do you have any friends that you play with in the
23 neighborhood?

24 A Yes, ma'am.

25 Q What do you remember about before Mr. Wayland came to

Minor 2

1 live with you? Do you remember how you met him or spending
2 any time with him?

3 A No, ma'am.

4 Q And what did you call him? When he first came to live
5 at your house what did you call him?

6 A Mr. Wayland.

7 Q And up until the day that he left your house, the last
8 day that he stayed there, what did you call him?

9 A Mr. Wayland.

10 Q We're going to talk a little bit about private parts to
11 find out what you call your private parts. Okay. Okay.
12 We'll start here. Is this a boy or a girl?

13 A A girl.

14 Q And what's, I guess, right here?

15 A The middle with the other side of your elbow.

16 Q Okay. What's this?

17 A Belly button.

18 Q What's this right here?

19 A The chin.

20 Q And what do you call this?

21 A Your breast.

22 Q What do you call this?

23 A The middle part.

24 Q The middle part? Did I get that right?

25 A Yes, ma'am.

Minor 2

1 Q Is that what you call it on your body, you call it your
2 middle part?

3 A Yes, ma'am.

4 Q Oops. Okay. And then what I guess is this area?

5 A The part -- the part underneath your head.

6 Q Okay. What do you call this whole area I guess right
7 here?

8 A Your back.

9 Q Your back. Okay. And what do you call this area?

10 A Your butt.

11 Q And is that what you call it on your body?

12 A Yes, ma'am.

13 Q And then is this a boy or a girl?

14 A A boy.

15 Q Okay. Let's see. What do you call this?

16 A Knees.

17 Q What do you call these?

18 A Toes.

19 Q What do you call this on a man, on a boy?

20 A Chest.

21 Q And what do you call this?

22 A Middle part.

23 Q Minor 2 has anyone touched your middle part?

24 A No, ma'am.

25 Q Has anybody ever touched your butt?

Minor 2

- 1 A Yes, ma'am.
- 2 Q Okay. And who touched your butt?
- 3 A Mr. Wayland.
- 4 Q Do you see Mr. Wayland in the courtroom today?
- 5 A Yes, ma'am.
- 6 Q Okay. And can you point to him and tell us what he is
- 7 wearing so we know who you're talking about?
- 8 A He's over there with the blue shirt.
- 9 MS. BODMAN: May the record reflect the witness has
- 10 identified the defendant?
- 11 THE COURT: It does.
- 12 Q And what did he touch your butt with?
- 13 A His middle part.
- 14 Q And what did he do with his middle part and your butt?
- 15 A He sticks his middle part in my behind.
- 16 Q Do you remember, did this happen one time or more than
- 17 one time?
- 18 A More than one time.
- 19 Q And where -- what houses did this happen in?
- 20 A The one in New Jersey and the one in South Carolina.
- 21 Q And did it happen once or more than once in New Jersey?
- 22 A Once.
- 23 Q Okay. And did it happen once or more than once in
- 24 South Carolina?
- 25 A More than once.

Minor 2

1 Q Can you tell us about a memory that you have of it
2 happening in New Jersey, in your home in New Jersey?

3 A Minor 1 was playing with Mr. Wayland. She told me that
4 Mr. Wayland --

5 Q Okay. Slow down. Slow down, Minor 1 --

6 MS. GRICE: Your Honor, I'm sorry. I just simply
7 object recalling our pretrial motions regarding this line of
8 questioning.

9 THE COURT: Well, I couldn't understand anything she
10 was saying, but is the objection related to her testimony or
11 the question?

12 MS. GRICE: It was related to the question and
13 potential testimony stemming from our motions in limine.

14 THE COURT: Okay. The objection is overruled. You can
15 restate the question and try to get her to speak where we
16 can hear her.

17 Q Okay. So I'm asking you to tell one of your memories
18 of it happening in New Jersey. Okay. I want you to
19 slowdown, you're kind of a fast talker. Okay. So where
20 were you? What were you doing?

21 A My sister, Minor 1 was playing with Mr. Wayland.

22 Q Do you remember where they were playing?

23 A In me and Minor 1 room.

24 Q Okay. And then what happened?

25 A Minor 1 came downstairs and told me that Mr. Wayland --

Minor 2

1 MS. GRICE: Objection, Your Honor, hearsay.

2 THE COURT: Response to the objection?

3 MS. BODMAN: It's not for the truth of the matter
4 asserted, it's why she then did her next action.

5 THE COURT: The objection is sustained.

6 Q Okay. You said **Minor 1** and Mr. Wayland were in your
7 room?

8 A (Nods in the affirmative.)

9 Q Okay. And where were you in the house?

10 A Downstairs.

11 Q And not what was said, but did someone come downstairs?

12 A Yes, ma'am.

13 Q Who came downstairs?

14 A **Minor 1**

15 Q And then where did you go after **Minor 1** came downstairs?

16 A In my mom's room.

17 Q And who was in your mom's room?

18 A Mr. Wayland.

19 Q And where was **Minor 1** at that point?

20 A I don't know.

21 Q Okay. And then what happened with you and Mr. Wayland
22 in your mom's room?

23 A He pulled my pants down and stick his middle part in my
24 butt.

25 Q Do you remember if he said anything to you?

Minor 2

1 A He said, "Did that hurt?" And I said, "No."

2 Q Do you remember where your other -- where your brother
3 and your other sister were when this happened?

4 A My sister, B.M. was in her room, and my brother
5 B.J. was watching TV.

6 Q And do you remember where your mom was?

7 A She was out of the house somewhere.

8 Q Okay. Then in your home here in South Carolina, can
9 you tell the jury about one of your memories of it happening
10 here at your house?

11 A Well, my mom was -- my mom was going somewhere, and
12 Mr. Wayland, he was like fake playing with me and my sister
13 tickling us and so as we got to our room he pulled my pants
14 down and stuck his middle part in my behind.

15 Q And when you said that you got to your room, what room
16 are you talking about?

17 A Me and my sister's room.

18 Q Okay. Did he ever say anything to you about telling or
19 not telling?

20 A Yes, ma'am.

21 Q What did he say?

22 A Don't tell no one.

23 Q Do you know why you didn't tell your mom?

24 A I was scared he was going to do something.

25 Q Before today, did you have a chance to take a look at

Minor 2

1 your interview that you had at the Child Advocacy Center?

2 A Yes, ma'am.

3 MS. GRICE: Objection, Your Honor.

4 THE COURT: Basis for the objection?

5 MS. GRICE: Your Honor, I believe this is going to
6 refer to evidence that's not yet been produced at trial.

7 THE COURT: The objection is overruled.

8 Q And in looking at that video, were there some things
9 that you wanted to correct that was said on the video?

10 A Yes, ma'am.

11 Q Okay.

12 A I said that he was my grandfather, but he wasn't, he
13 was my stepdad.

14 Q Do you know why on the video you said that he was your
15 grandfather?

16 A Because I probably forgot and I didn't know.

17 Q And was there anything else that you remember that you
18 corrected or clarified?

19 A No, ma'am.

20 Q Okay.

21 MS. BODMAN: No further questions at this time, Your
22 Honor.

23 THE COURT: All right. Cross examination?

24 CROSS EXAMINATION

25 BY MS. GRICE:

Minor 2

1 Q Hey Minor 2 my name is Jessamine and I want to ask you
2 some questions. Were you sitting out there with your family
3 when your sister was just here talking?

4 A Yes, ma'am.

5 Q Were you able to hear me?

6 A Yes, ma'am.

7 Q Okay. Well, I want to ask you some of those same
8 questions. All right. I'm not trying to trick you, I just
9 want to get a few answers. Are you nervous being here
10 today?

11 A Yes, ma'am.

12 Q Okay. That can be a little hard with all these people
13 looking at you, I know. Have you had a chance prior to
14 today think about what you were going to say in court today?

15 A No, ma'am.

16 Q You haven't? Okay. Have you spoken with Ms. Bodman,
17 or Margaret, I'm not sure what you call her, the woman that
18 just asked you questions, you met with her prior to today?

19 A Yes, ma'am.

20 Q Probably a number of times, three or four or five
21 probably, right?

22 A (Nods in the affirmative.)

23 Q Yes?

24 A Yes, ma'am.

25 Q Okay. And when you've met with her in her office and

Minor 2

1 you had a chance to speak with her or other people in her
2 office about what you were going to say in court today.

3 A No, ma'am.

4 Q So this is the first time you've talked about Mr.
5 Wayland touching you in a long time?

6 A No, ma'am.

7 Q You have talked to someone about this recently?

8 A Yes, ma'am.

9 Q Who did you speak with?

10 A Ms. Margaret.

11 Q Ms. Margaret? Okay. You do call her Ms. Margaret.

12 Okay. So you have talked to Ms. Margaret recently before
13 today to get ready for court, right?

14 A Yes, ma'am.

15 Q Did you talk to your sister, Minor 1 about court today?

16 A No, ma'am.

17 Q Did you talk to your mother about what you'd say in
18 court today?

19 A No, ma'am.

20 Q Okay. Now, you had never met Mr. Wayland until he
21 moved into your house, right?

22 A No, ma'am.

23 Q So you weren't present when he and your mom, Kia Muse,
24 got married, right?

25 A No, ma'am.

Minor 2

1 Q You were told one day that he was coming to live with
2 you and he was your stepfather, right?

3 A Yes, ma'am.

4 Q You probably weren't able to see when I held up the
5 picture of your house, but I spoke with your sister, Minor 1
6 about what your house looked like on the inside and you and
7 she shared a bedroom, right?

8 A Yes, ma'am.

9 Q And that bedroom is the one that's kind of in the
10 middle of the house closest to the bathroom I guess?

11 A Yes, ma'am.

12 Q And is it in that shared bedroom where you're saying --
13 when you lived in South Carolina here on Way,
14 it's that bedroom that you shared with your sister where
15 you're saying Mr. Wayland came in and touched you with his
16 middle part?

17 A Yes, ma'am.

18 Q Do you remember what you just told the Court when
19 Ms. Margaret asked you the questions just now? You said the
20 one thing you remembered was that you ran into the bedroom
21 and he pulled your pants down and he touched with his middle
22 part, right?

23 A Yes, ma'am.

24 Q Do you remember what you were wearing that day?

25 A No, ma'am.

Minor 2

- 1 Q Do you remember whether they were jeans or other pants?
- 2 A No, ma'am, I don't remember.
- 3 Q It's okay if you don't remember. Do you remember what
- 4 your brother B.J. was watching on TV?
- 5 A No, ma'am.
- 6 Q You said your sister B.M. was in her room at the
- 7 time, right?
- 8 A Yes, ma'am.
- 9 Q And her bedroom you said is -- it sounds like if you
- 10 walked out of your room you would pass by B.J.'s room and
- 11 then come to B.M. room?
- 12 A Yes, ma'am.
- 13 Q So her room is about two doors down.
- 14 A Yes, ma'am.
- 15 Q But she never came in and saw anything.
- 16 A No, ma'am.
- 17 Q All right. You don't know where your mom was.
- 18 A No, ma'am.
- 19 Q Now, you know that Mr. Wayland -- well, do you know
- 20 where he was working when he lived with y'all?
- 21 A Yes, ma'am.
- 22 Q Was he a barber?
- 23 A Yes, ma'am.
- 24 Q Did you ever visit his barber shop?
- 25 A Yes, ma'am.

Minor 2

1 Q And I know you're a Girl Scout, right?

2 A Yes, ma'am.

3 Q Were you a Girl Scout a couple of years ago?

4 A Yes, ma'am.

5 Q Were you selling cookies?

6 A Yes, ma'am.

7 Q Okay. Do you recall ever going to his barbershop
8 selling cookies there?

9 A Yes, ma'am.

10 Q Do you recall your brother B.J. ever getting his hair
11 cut at the barber shop?

12 A Yes, ma'am.

13 Q Do you recall whether Mr. Wayland worked a lot, whether
14 he was out of the house at work a lot or just a little bit?
15 Or it's okay if you don't remember.

16 A I don't remember.

17 Q Okay. Now Minor 2 it's been about two years ago since
18 you first sat down to talk to somebody about all of this and
19 I don't expect you to remember everything that was said two
20 years ago in 2012, but you do remember sitting down and
21 talking to somebody here in South Carolina about Mr. Wayland
22 touching you, right?

23 A Yes, ma'am.

24 Q And I know when Ms. Margaret asked you some questions
25 now she asked you about New Jersey, right?

Minor 2

1 A Yes, ma'am.

2 Q And the first answer that you gave Ms. Margaret about
3 New Jersey when she asked if anyone had ever touched --
4 excuse me, when she first asked you if anyone else was
5 staying at your home in New Jersey, you said no at first,
6 right?

7 A Yes, ma'am.

8 Q And then from there she asked if -- I guess she asked a
9 couple -- asked it a different way maybe and you recall that
10 Mr. Wayland did live in your house in New Jersey, right?

11 A Yes, ma'am.

12 Q Is it hard remembering things that happened that long
13 ago?

14 A Yes, ma'am.

15 Q Now, have you gone back to New Jersey in the past few
16 years? Do you have family up there?

17 A Yes, ma'am.

18 Q Okay. When you went up there -- since you've moved to
19 South Carolina when you've gone back to New Jersey, you've
20 never met with a police officer or anybody to talk about
21 Mr. Wayland touching you up there, right?

22 A No, ma'am.

23 Q And you've never sat in the courtroom like you are
24 today in New Jersey or anywhere else to talk about
25 Mr. Wayland touching you, right?

Minor 2

1 A No, ma'am.

2 Q Okay.

3 MS. GRICE: No further questions. Thank you, Minor 2

4 THE WITNESS: You're welcome.

5 THE COURT: Anything further?

6 MS. BODMAN: Nothing from the State.

7 THE COURT: Thank you. You may step down. We're going
8 to take a break. Go to the jury room, do not discuss the
9 case.

10 (The jury left the courtroom.)

11 THE COURT: All right. We'll take about 10 minutes.

12 (A recess was taken.)

13 THE COURT: Ready for the jury?

14 MS. BODMAN: Yes, sir.

15 THE COURT: All right. Come on in.

16 (The jury returned to the courtroom.)

17 THE COURT: Next witness.

18 MS. BODMAN: The State calls Dr. Susan Luberoff.

19 The witness, SUSAN LUBEROFF, was first duly
20 sworn and testified as follows:

21 THE CLERK: Have a seat in the witness box, state your
22 name and spell it.

23 MS. BODMAN: My name is Susan Luberoff,
24 L-u-b-e-r-o-f-f.

25 DIRECT EXAMINATION

Minor 2

1 BY MS. BODMAN

2 Q And where do you work?

3 A I work a?

4 A At the Assessment and Resource Center which is a
5 facility that evaluates children who are suspected of having
6 been physically or sexually abused or significantly
7 neglected, that sort of thing.

8 Q And in what capacity do you work for the Assessment
9 Resource Center?

10 A I'm the pediatrician there, so I do the medical part of
11 the evaluations of children that come through.

12 Q How are children referred to the Assessment Resource
13 Center?

14 A They are referred either by law enforcement or the
15 Department of Social Services most of the time.

16 Q Please tell the jury then a little bit about your
17 educational background that brings you here to be a forensic
18 pediatrician.

19 A Okay. I'm a pediatrician so I graduated medical school
20 and I attended medical school here in Columbia, I graduated
21 in the third class to graduate in 1993. Then I complete a
22 three year pediatrics residency here at Children's Hospital
23 at Richland Memorial. And since then I've been affiliated
24 with the hospital and affiliated with the University of
25 South Carolina. I have had particular training in the field

Minor 2

1 of child abuse pediatrics. I've attended numerous seminars
2 and trainings over the course of my career and that's where
3 most of my professional experience has been concentrated.
4 I'm board certified in pediatrics and also board certified
5 in the subspecialty of child abuse pediatrics. And my
6 employer is the University of South Carolina School of
7 Medicine Department of Pediatrics.

8 Q Have you done some teaching as well at the medical
9 school?

10 A Yes, I do.

11 Q And what do you do?

12 A Sometimes I teach about child abuse, but for the third
13 year medical students who are just starting to do their
14 rotations in the hospital, I teach their lectures on child
15 development and on poisonings. So I have some other things
16 that I teach besides child abuse.

17 Q And you said that you have a board certification in
18 pediatrics as well as child abuse pediatrics?

19 A Yes.

20 Q Okay. How many pediatricians have that subspecialty,
21 the child abuse pediatrics in South Carolina?

22 A Seven.

23 Q Okay. And do you know how many have them nationally?

24 A Around 300.

25 Q And when did you get that subspeciality board

Minor 2

1 certification?

2 A 2011.

3 Q And so then how many years have you been working I
4 guess just with the Assessment and Resource Center?

5 A Gosh. Well, that clinic started before the Assessment
6 and Resource Center was established, it started over at the
7 hospital, so going back that far since about 1989 or 1990.
8 I took a break for about nine years and worked with
9 handicapped children. And in that nine years I didn't
10 directly examine children for child abuse but I assisted
11 with investigators having to kind of think through medical
12 aspects of a case they have, defense attorneys, solicitors
13 and someone might ask me to sit down and look through a case
14 with them, so I stay involved in it but not up front as far
15 as doing exams. But for most of the last 25 years -- well,
16 for at least 16 of the last 25 years I've been doing
17 primarily child abuse pediatrics.

18 Q And have you testified before in courts in South
19 Carolina as an expert in the area of I guess either forensic
20 pediatrics or child abuse pediatrics?

21 A Yes, I have.

22 Q And how many times do you think you have been qualified
23 as an expert in one of those areas?

24 A Over 100 times.

25 MS. BODMAN: Your Honor, at this time I offer Dr.

Minor 2

1 Luberoff as an expert in the area of child abuse pediatrics.

2 THE COURT: What December the sentence?

3 MR. BELL: Without objection.

4 THE COURT: She is admitted without objection. Ladies
5 and gentlemen, an expert witness, as opposed to a lay
6 witness, an expert witness can offer opinions on matters
7 that lay witnesses cannot subject to the rules of evidence.
8 She is an expert in the field of -- say it again.

9 MS. BODMAN: Child abuse pediatrics.

10 THE COURT: Child abuse pediatrics. You may proceed.

11 MS. BODMAN: Thank you.

12 BY MS. BODMAN:

13 Q So did you have occasion to examine both Minor 2 and
14 Minor 1

15 A Yes, I did.

16 Q Okay. And did you prepare reports in relation to those
17 examinations?

18 A I did.

19 Q And do you have copies of those documents in front of
20 you?

21 A Yes.

22 Q If you need to at all refer to those to refresh you're
23 memory please do so.

24 A Thanks.

25 Q Were they prepared at or near the time of the

Minor 2

1 examination?

2 A Yes, they were.

3 Q And so what day was that that you examined these two
4 girls?

5 A On May 22, 2012, so a little over two years ago.

6 Q And did you -- you examined them then both on the same
7 day?

8 A Yes.

9 Q Talk to us, I guess, first generally about your
10 examination is what is your process and procedure when a
11 child comes in?

12 A Usually I'm not the first person to meet the child in
13 the exam room. Usually one of the other employees, either
14 our nurse or someone called a child life specialist brings
15 the child back and introduces the child to the exam room,
16 explains the exam to the child, explains everything that I'm
17 going to be doing, any positions that I might need the child
18 to be in. Shows the child and let's the child feel -- for
19 example, if I'm going to need to use a Q-tip for part of my
20 exam then the child life specialist or the nurse will let
21 the child feel the Q-tip and if it's going to feel wet
22 she'll feel the wet Q-tip so nothing is going to be a
23 surprise. Because it's really important in my exam that I
24 have a very cooperative child who is comfortable and can let
25 me do a really good comprehensive exam of everything that I

1 need to look at. So ordinarily the child spends some time
2 in the exam room first, and once that employee or that
3 coworker of mine feels like the child understands and is
4 comfortable, then she'll tell me that it's my turn to come
5 in and see the child and then I do my exam. And my exam
6 really consists of just a very good head to toe physical
7 exam with particular attention paid to certain parts of the
8 body. Since children come to the Assessment and Resource
9 Center for all different kinds of abuse we look for any kind
10 of abuse while we are examining no matter which kind they
11 came from. So we do a very careful exam of the skin looking
12 for any evidence of physical abuse. We look for evidence of
13 neglect. So we're looking head to toe, looking in ears,
14 looking in mouths, listening to the heart, looking at the
15 genitalia very carefully. I'll often use an instrument for
16 that part called a colposcope, which is kind of like a pair
17 of binoculars so it makes things bigger and I can see things
18 more clearly, and it has a really strong light source so
19 it's nice and bright so I can see real well in the vaginal
20 and anal area. And we'll get a height and weight on the
21 child, really just a good head to toe physical exam. And
22 depending on why the child is there and depending on what I
23 find, I might take a sample from the child's vagina or from
24 urine to do testing for sexually transmitted infections, or
25 I may order other tests depending on why the child is there.

Minor 2

1 Q So did you then follow that procedure that you just
2 described with both Minor 2 and Minor 1

3 A Yes.

4 Q Okay. And so I guess first we can talk about Minor 1
5 Was there anything of note just in your general physical
6 exam?

7 A No. She appeared healthy and there was nothing
8 abnormal that I noted on her physical exam.

9 Q And then the genital exam, I guess, do you know what
10 position -- do you remember what position you had her be in?

11 A Yes. She was in the common position that we use for
12 children. These children's ages is called a frog legged
13 position where they lie on their backs and they put the
14 soles of their feet together and their knees out to the side
15 and that kind of spreads the genitals apart a little bit so
16 that I can see, and then I'll also have to use my hands to
17 kind of move the labia or the lips out of the way and be
18 able to see a little bit more internal structures, so that's
19 what we do. That's the position both of these children
20 choose to use. And on Minor 1 exam, first of all she was
21 what we call prepubertal, which means that she didn't have
22 any signs of puberty at all. She didn't have any breast
23 development or any hair in her pubic area, that kind of
24 thing, so she was a prepubertal child. Her genital exam was
25 normal except that her hymen, which is a piece of tissue

Minor 2

1 that's near the opening of the vagina, was a little bit red
2 enough that I made a note of it in my exam, in my notes
3 rather. She didn't have any injuries to that area or any
4 injuries that were visible to her anal area either.

5 Q And then what about Minor 2 First I guess head to
6 toe, is there anything of note and then moving to the
7 genital exam?

8 A Same thing with Minor 2 One of the girls had a
9 birthmark, I don't remember which one. But nobody had
10 anything abnormal on their genital exams. And Minor 2 also
11 was examined in that frog legged position and everything was
12 normal about her genital exam. And she did not have the
13 redness of her hymen that her sister had.

14 Q So then let's talk about the significance or
15 insignificance of not seeing any kind of injury. First of
16 all the redness. What if anything did the redness -- or
17 does the redness tell you?

18 A Redness is very nonspecific. It can be from lots of
19 things. It can be from infection. It can be from
20 irritation like from a bubble bath. It can be because the
21 child has been itching because she was allergic to something
22 in her panties. It's very nonspecific.

23 Q And then also with -- you mentioned it specifically
24 with Minor 1 that there was also no injury to the anus. What
25 about Minor 2 any injury?

Minor 2

1 A No.

2 Q Okay. So let's talk about that. When a child reports
3 a penetrating act to the anus, tell us the significance or
4 insignificance of not seeing any injury?

5 A Yeah. It's actually very rare to see injury to the
6 anus even when there is a report of penetration, even when
7 penetration has happened for lots and lots of reasons. One
8 reason is that children don't usually tell right as soon as
9 it happens and if there is an injury that part of the body
10 and the vagina, both parts heal very, very fast, within a
11 matter of days to at the outside two weeks or so. So if we
12 don't see the child immediately after it happens there's a
13 lot less chance that we'll see an injury. But also injuries
14 even when we do see children immediately afterwards they're
15 relatives uncommon. Typically when children are being
16 sexually abused, especially if it's someone that knows the
17 child, some amount of care is taken with that sexual abuse
18 and it'll be done in a way that doesn't tear the child or
19 cause the child pain. Also just anatomically the job of the
20 anus, if you think about it, the anus is a muscle and the
21 job of it is to open and allow the passage of a solid
22 object, and in children that's usually about once a day and
23 it's usually the bowel movement that's coming from inside
24 the body to outside the body, but it's a solid object. And
25 I know as a pediatrician and as a mother that the size of

Minor 2

1 that bowel movement that can come out of a child sometimes
2 can be pretty impressive and that doesn't cause injury.
3 That area is made to stretch and be able to allow something
4 of that size. So if a finger or even a penis is placed into
5 that area there is enough room anatomically to accommodate
6 passage of that object without necessarily having injury.

7 Q So even with a report close to the event, would it be
8 common or uncommon to see an injury?

9 A Even if the report is close to the event it's still
10 uncommon to see an injury, but it's more common than if it's
11 been weeks or months.

12 Q And then you're saying even if there was an injury with
13 the passage of time --

14 MR. BELL: Objection, leading.

15 Q Is it a correct statement that with the passage of time
16 and injury would heal?

17 A Yeah. And almost never does an injury in that area
18 need to make a scar to heal. That area, if it is injured
19 it's usually very shallow and superficial and the skin
20 usually heals and doesn't need to have scar formation, so it
21 will go back to looking the way it was before it was injured
22 usually.

23 Q Then when we're moving to penetration in the vagina and
24 potential injury that would happen to a hymen, what can you
25 tell us about that and whether we would expect some type of

Minor 2

1 busting of the hymen or injury or visible indication that
2 there was penetration?

3 A Sure. Okay. First of all, the hymen is not like the
4 opening to the female genitalia. It's part of the female
5 genitalia but it's part of the vagina, and some of the
6 vaginal introitus actually is outside of the hymen. So you
7 don't have to get past the hymen to have had penetration.
8 But the hymen itself, it doesn't completely cover the
9 opening of the vagina, it has a hole in it, it has an
10 opening in it in most girls, and that's to allow the passage
11 of the normal mucus and blood when a child is old enough to
12 start having periods. So girls are born most of them with
13 an opening already in the hymen. The hymen itself doesn't
14 have any kind of magical recording properties, it's made of
15 normal living human tissue, it can stretch some. If it does
16 get injured it heals very quickly. It's one of the tissues
17 that's a mucus membrane type of tissue meaning that it's
18 constantly moist, it's constantly bathed in fluid, and those
19 mucus membrane tissues heal really, really quickly similar
20 to an injury in the mouth. People get mouth injuries not
21 uncommonly and those tend to heal really, really quickly so
22 that you can go back to eating your pickles two or three
23 days later and it doesn't hurt anymore, so that area has
24 plenty of properties. And also the sexual abuse itself
25 often does not cause injury, and when it does it heals very,

Minor 2

1 very quickly usually.

2 Q So to make sure I understand is there can be a
3 penetrating act without the object that is doing the
4 penetration reaching the hymen, correct? You were saying
5 there's other parts to the female genitals even prior to the
6 hymen.

7 A Yes.

8 Q Is there -- is it normal or abnormal for a woman to
9 have an opening in their hymen?

10 A Yes.

11 Q Okay.

12 A Well, it is normal for a woman to have an opening in
13 her hymen.

14 Q Yeah, sorry about that. And so explain that to us.

15 A The opening in the hymen, it's actually not normal to
16 not have an opening. If a girl was born without an opening
17 in the hymen then certainly by the time they are to have
18 periods and often even earlier than that, because even
19 normal mucus can't go anywhere, we have to actually do an
20 operation to make a hole in the hymen so that the normal
21 things that need to get out of the body can get out of the
22 body. So under ordinary circumstances if everything else
23 about a child's genitalia is normal there's going to be an
24 opening already in that hymen at the time the child is born.

25 Q And are -- I guess are all the openings in hymens the

Minor 2

1 same? Are there different shapes?

2 A No, hymens come in different shapes. Some hymens
3 are -- we describe them as circular, which means they make a
4 circle around the inside of the vagina. Some don't go all
5 the way around and they're what we call crescent shaped or
6 arc shaped in they might be sort of like a sling down more
7 at the bottom of the vagina. They can come with two holes
8 in them so that there's a little band in between. There are
9 lots of different shapes that hymens can have, and those
10 different shapes just because of the shape might have
11 actually a different size opening in it. A hymen that's
12 completely circular, that opening might be a little smaller
13 than a hymen that's arc shaped or crescent shaped, it
14 doesn't have any hymen at the top, but that tends to have a
15 little bit larger opening in it than a circular hymen.

16 Q And so how when we're talking about I guess prepubertal
17 children -- and were both Minor 2 and Minor 1 both
18 prepubertal?

19 A Yes.

20 Q Okay. So when we're talking about those children, is
21 a -- is it common or uncommon to see an injury when you have
22 a penetrating act to the vagina?

23 A It's uncommon, especially if some time has passed.

24 Q And then just talking about, I guess is there research
25 out there -- have there been studies examining females

Minor 2

1 regarding this -- the existence of an injury or seeing an
2 injury when we know there is a penetrating act?

3 A Yes.

4 Q Okay. Can you tell us a little bit about those
5 studies?

6 A Well, those studies really mirror the experience I've
7 had also. The studies show that the likelihood of injury is
8 relatively low even with a report, even with a credible
9 report of penetration and that time makes a difference of
10 whether an injury is seen, that's it's in the children that
11 are seen very, very early that we tend to see injuries, if
12 we see them at all. But still, we actually go into these
13 exams really expecting the exam to be normal because most of
14 them are in my experience and in the experience of
15 literature.

16 Q Okay. And some of this research when you say a
17 credible report of a penetration, what types of people are
18 they studying in these -- in this research?

19 A Well, they've even actually done studies of children --
20 these are not prepubertal children obviously, but children
21 who are pregnant and even pregnant teenagers the hymen is
22 usually completely normal and we know by the fact that
23 they're pregnant that something has penetrated something.

24 MS. BODMAN: No further questions at this time.

25 CROSS EXAMINATION

Minor 2

1 BY MR. BELL:

2 Q Hey Dr. Luberoff, how are you?

3 A Fine.

4 Q So you said there was a normal exam on both girls?

5 A Both girls.

6 Q So you really hadn't told us anything here today if you
7 expected a normal exam, right?

8 A Correct.

9 Q So if you would have had seen injury, would you say
10 that was caused by abuse?

11 A Well, it would depend on the injury and the history --

12 Q You saw injury to the anal area, the anus, would you
13 say that's abuse?

14 A Not necessarily.

15 Q Explain more.

16 A Well, there are other things that can cause injury to
17 the anus besides abuse. Surgery. There can be temporary
18 very shallow injury from really bad constipation. Sometimes
19 gastrointestinal disorders like Crohn's disease can cause
20 injury or abnormalities involved in the anus. So there are
21 other things besides abuse that can cause injuries.

22 Q So your general idea is that whether there's an
23 injury or no injury it doesn't mean anything.

24 A Well, it means a great deal to the family and to the
25 child to know --

Minor 2

1 Q Whether it occurred or not, if abuse occurred it
2 doesn't mean anything.

3 A I'm sorry, I don't understand the question.

4 Q You said injury, no, it doesn't normally. You said if
5 there's no injury it doesn't necessarily mean it didn't
6 happen either. You're saying both ways, right?

7 A I'm saying that children who have been abused usually
8 do not have injury, and if we see injury that doesn't
9 necessarily mean abuse.

10 Q Okay. So you're having it both ways, right?

11 A I still don't understand what that means.

12 Q Okay. We'll move on. About how large is the average
13 male penis?

14 A I don't know.

15 Q You studied male anatomy at med. school, didn't you?

16 A I did..

17 Q What's the average?

18 A I don't know.

19 Q Five or six inches be a guess?

20 A It would be a guess, I don't know.

21 Q Five or six inch erect penis, would you consider that a
22 blunt object?

23 A An erect penis would be an example of a blunt object,
24 yes.

25 Q And how large is the anus of on eight or nine-year-old?

Minor 2

1 A Well, it depends on what's happening to the anus at
2 that moment. As I explained earlier it's made to stretch or
3 dilate to allow the passage of an object so it will
4 accommodate up to a certain point whatever size it needs to
5 accommodate.

6 Q Passes an object outward, correct, not inward?

7 A Either way.

8 Q So we're meant to have objects up our anal cavity?

9 A No. But I don't think the anus knows which direction
10 it's coming from when it decides to stretch, it's stretching
11 circumferentially.

12 Q When you're doing a colonoscopy, do you use lubricant
13 to put something up an individual's anus?

14 A When a person doing a colonoscopy does one, then yes,
15 they do generally use a lubricant.

16 Q Why is that?

17 A For comfort and for --

18 Q For comfort.

19 A -- ease of injury.

20 Q So it should hurt if something is going up an
21 individual's anus, right?

22 A Well --

23 Q A blunt object. You just said an erect penis is a
24 blunt object, right?

25 A It is.

Minor 2

1 THE COURT: Just a moment, sir. What is the question?

2 Q My question is it should hurt, correct?

3 A It may hurt.

4 Q And again, there were no injuries identified, correct?

5 A Correct.

6 Q I do want to clarify one thing. You mentioned the

7 hymen. If I may draw a couple of pictures. You talked

8 about two hymens. It's sort of a circle with a film,

9 correct, a piece of material, skin, correct?

10 A Tissue, yes.

11 Q Tissue. I'm not a doctor.

12 A That's okay, I'm here to help you.

13 Q You talked about a crescent. Would that be considered

14 a crescent?

15 A Yes, sir. That's not usually the direction that it's
16 in but I'm glad you were listening. Good. Just like that.

17 Q Do you consider it a circle?

18 A Yes.

19 Q So in the middle.

20 A That's a very common shape also.

21 Q And then you talked about possible there being multiple
22 holes, correct?

23 A There can be.

24 Q Okay. So over periods of time in individuals that it
25 is constantly penetrated, those tissues eventually wear

Minor 2

1 away, right?

2 A No.

3 Q So you're telling me an older individual who has had
4 numerous accounts of sexual intercourse doesn't break away
5 some of the tissue?

6 A A person, a female who has had numerous instances of
7 intercourse still has a hymen.

8 Q It does, but parts of the hymen wear away, correct?

9 A It may. It may --

10 Q Thank you.

11 A -- but not usually.

12 Q Quickly. There is nothing you saw in these exams that
13 would distinguish these individuals from any other normal
14 individual that you would examine, correct?

15 A Correct.

16 MR. BELL: Thank you.

17 THE COURT: Any redirect?

18 MS. BODMAN: No, sir.

19 THE COURT: Thank you. You may step down. Your next
20 witness.

21 MR. STEADMAN: State calls Investigator Barbara
22 Coleman.

23 The witness, BARBARA COLEMAN, after being duly
24 sworn testified as follows:

25 THE CLERK: Have a seat in the witness stand and state

BARBARA COLEMAN

1 your name for the record and spell it, please.

2 MS. BODMAN: My name is Barbara Coleman, B-a-r-b-a-r-a,
3 C-o-l-e-m-a-n.

4 DIRECT EXAMINATION

5 BY MR. STEADMAN

6 Q Investigator Coleman, where are you employed?

7 A Columbia Police Department.

8 Q And how long have you been employed with the Columbia
9 Police Department?

10 A Twenty-four years in August.

11 Q What is your current position at the Columbia Police
12 Department?

13 A I'm currently a burglary investigator.

14 Q Can you briefly describe to the jury your career with
15 the Columbia Police Department and what training you have
16 received?

17 A I've gone to several classes, detective classes,
18 renewing, burglary, robbery. I investigate burglary crimes.
19 I was once a special victims investigator where I worked sex
20 crimes, juvenile, kidnappings. I've done a bunch of other
21 assignments over the years; school resource officer, patrol
22 the community.

23 Q How long were you a special victims unit investigator?

24 A Three years.

25 Q Do you remember from what date to what date, an

1 estimate?

2 A I want to say it was maybe September of 2009 until
3 January of 2012.

4 Q Were you a special victims -- well, how does a special
5 victim's unit investigator --

6 A I mean 2013, I'm sorry.

7 Q Okay. How do special victims unit investigators get
8 assigned cases?

9 A The supervisor goes through the cases and they assign
10 them. During this particular time that I was assigned this
11 case I was on evening shift, and the evening shift
12 investigator responds to all the calls dealing with either
13 special victims, which is where I was assigned that time. I
14 handled kidnapping, missing persons, any juvenile crimes.

15 Q So when you're on evening shift you get assigned
16 whatever cases get called.

17 A Just for my particular specialty in that unit, for that
18 unit. So if it was a burglary then an investigator assigned
19 to the burglary unit would come out, or property crimes
20 would take that, or a homicide, a homicide investigator
21 would come out and take that.

22 Q Okay. So were you working April 30th, 2012?

23 A Yes, I was.

24 Q All right. Did you receive a call about some sexual
25 assault allegations that evening?

BARBARA COLEMAN

1 A Yes, I did.

2 Q Would you briefly describe the call you received and
3 what you did next?

4 A It was on April 30th, probably about 6:45 --

5 MR. BELL: Objection, Your Honor. Is she reading from
6 her report?

7 THE COURT: Your objection is what?

8 MR. BELL: She hadn't said that she doesn't remember.

9 Reading from the report can only be used to refresh the
10 recollection, if she's sitting there reading from the report
11 I don't believe it's been properly done.

12 THE COURT: The objection is overruled. Ma'am, please
13 speak louder.

14 THE WITNESS: Yes, sir.

15 THE COURT: Or speak into the mic.

16 A April 30th around 6:45 I responded to
17 here in Columbia which is in the Capitol Heights Subdivision
18 off of Farrow Road. Upon arrival I was briefed by the
19 officer that there were some allegations made by two younger
20 individuals of sexual assault. At that time I spoke with
21 the mother who explained to me that her daughters had made
22 an allegation that they had been touched by their
23 stepfather, Mr. Wayland Purnell, and he was not present at
24 the residence at that time. I did continue to speak with
25 Ms. Muse to let her know not to interview the girls anymore

BARBARA COLEMAN

1 in reference to the assaults since the report had already
2 been started. I told her we would be referring the girls to
3 the Assessment Resource Center where they would have a
4 forensic interview as well as a medical interview there and
5 we didn't want her to taint it, once that was done to
6 follow-up with her primary care physician.

7 Q Let me go back just a little bit. Where was this
8 location in Columbia?

9 A

10 Q Is that in Richland County?

11 A It is.

12 Q So one of the first things you did was tell Kia to
13 stop --

14 MR. BELL: Objection, leading.

15 Q After you told Kia to stop the conversation with the
16 girls, what was the next step to your investigation?

17 A The next step in the investigation, I did meet with the
18 girls but I didn't ask them any questions. And like I said,
19 I explained to her, you know, to not interview them any
20 further, to let the Assessment Resource Center finish the
21 interviews with her daughter.

22 Q Is that typical with your investigation of these types
23 of cases?

24 A Yes, sir.

25 Q And did you know about the whereabouts of the defendant

BARBARA COLEMAN

1 at that point?

2 A The defendant, Mr. Purnell, at that time was supposed
3 to be at work with his G.Q. Barbershop, I think it's on
4 Farrow Road.

5 Q Did he come home at some point that evening?

6 A He did.

7 Q What did you observe about him and what was your
8 interaction with him?

9 A When he returned home -- Ms. Muse normally picks him up
10 from work around the evening, she said he would probably be
11 wondering where she was. So when we saw him walking up to
12 his residence he was curious to know what was going on at
13 his house with the number of officers that were there. I
14 then spoke with him briefly, you know, that we were
15 conducting an investigation there, there was a report that
16 was made. Mr. Purnell wanted to know more and I had no more
17 to offer him at that time. He voluntarily stated he wanted
18 to come to police headquarters and talk to me in person. At
19 that time I was not sure since I couldn't -- I didn't have
20 enough information as to what actually happened to the girls
21 until after they were interviewed. So he did come to police
22 headquarters, I Mirandized him with Officer Rogers present
23 in the room. At that time he wanted me to give him
24 information, I couldn't give him any information about the
25 allegation that the girls had stated. At that time he was

BARBARA COLEMAN

1 concerned about where he would be staying, he had no family
2 here. I explained to him that we had some shelters that
3 were in town, Salvation Army and some things of that nature,
4 he said he didn't want to stay at any of the shelters that
5 were here. During that time we asked Ms. Muse, they were
6 packing up to leave for the night, another officer that was
7 present did pay for her to stay in a hotel that evening so
8 that they wouldn't have to be around each other. I believe
9 I then explained to Mr. Purnell if he wanted to stay that
10 night at the house they would not be there, but he did need
11 to leave shortly before they came back.

12 Q Did you arrest him that evening?

13 A I did not.

14 Q So after you briefly spoke with the defendant, what did
15 you do next?

16 A After speaking with Mr. Purnell on that evening, one of
17 the officers gave him a ride back to the residence so that
18 he could either stay there or gather his property. I then
19 looked over the report. I faxed a copy of the report to the
20 Assessment Resource Center so they could make an appointment
21 for the girls to come in and have the interviews done, made
22 some notes at that time.

23 Q So is it protocol to go ahead and set them up
24 appointments at the Assessment Resource Center, then wait
25 for that information to be forwarded to you?

BARBARA COLEMAN

1 A Yes, sir.

2 Q Okay. Did you keep in contact with the defendant? Did
3 you know where he was?

4 A Yes. During that time Mr. Purnell stated to me, he
5 called and said that he wanted to go back home to Delaware,
6 his father was sick and had cancer, he said he was at a
7 pretty bad stage. During that time the girls' interview
8 hadn't been set up at that time, so he agreed to keep in
9 contact, call on a weekly basis, which he did, to let me
10 know, you know, the status of his father, because that was a
11 primary concern for him as well as me that his father was
12 okay. When he said his father would be okay that he would
13 come back to South Carolina so that we can discuss the
14 interviews.

15 Q So you scheduled the ARC interviews. And what did you
16 do after the girls completed their assessment at the ARC?

17 A After the assessment at the ARC was completed I
18 reviewed the video, I made contact with Mr. Purnell still
19 checking to make sure his father was okay and we just kept
20 in touch like that until June when he said his father was
21 doing much better and he would like to come back and be
22 interviewed.

23 Q So he indicated that he wanted to come back and be
24 interviewed.

25 A Right. I believe he also kept in contact with his wife

BARBARA COLEMAN

1 at that time, Ms. Muse.

2 Q So when he came back to be interviewed what did you do?

3 A When he came back to be interviewed he did -- I picked
4 him up from the bus station or at the Exxon, took him down
5 to police headquarters on Devine Street where we have like a
6 substation office there, Mirandized him and he was
7 subsequently arrested.

8 Q So he was arrested on June 21st, 2012?

9 A Yes, sir.

10 Q And after that point in the investigation, the
11 defendant is arrested, did you go and talk to witnesses?

12 A Yes, sir, I did.

13 Q And did you obtain witness statements from several
14 people?

15 A Yes, sir, I did.

16 Q Who all did you obtain witness statements from?

17 A Ms. Kia Muse. D.H. Minor 2 mother, I'm
18 not sure what her name is.

19 Q Did you obtain a statement from Danielle Jackson?

20 A Danielle Jackson, that's correct, sir.

21 MR. STEADMAN: Your Honor, may I approach the witness?

22 THE COURT: Yes.

23 Q I'm showing you Danielle Jackson's statement. Please
24 take a look at that. Tell me when that statement was
25 obtained.

BARBARA COLEMAN

1 A This statement was obtained June 22nd.

2 Q How can you tell that?

3 A By the date at the top of it.

4 Q Is there a date at the bottom?

5 A Yes, sir, that was error.

6 Q That was an error made by you?

7 A Yes, sir, it was.

8 Q Okay. Thank you.

9 MR. STEADMAN: Thank you. Answer any questions the
10 defense has.

11 THE COURT: Yes, sir.

12 MR. BELL: Thank you, Your Honor.

13 CROSS EXAMINATION

14 BY MR. BELL

15 Q Good morning. Afternoon now actually.

16 A Yes, sir.

17 Q You're the lead investigator, right?

18 A Yes, sir.

19 Q Okay. You spoke with Mr. Purnell on April 30th, 2012,
20 right?

21 A Yes, sir, I did.

22 Q Okay. He arrived home from work because he didn't have
23 a ride?

24 A Yes, sir, that's correct.

25 Q The police were there and he wanted to know what was

BARBARA COLEMAN

1 going on.

2 A Yes, sir, he did.

3 Q He voluntarily talked to you.

4 A Yes, he did.

5 Q He denied the allegations, right?

6 MR. STEADMAN: Objection, Your Honor, hearsay.

7 THE COURT: All right. Ladies and gentlemen, we're
8 going to have you step out for a moment, please. And when
9 you return I'm going to get my foreperson appointed at this
10 time, she is still sitting down. Ms. Starks?

11 THE JUROR: Yes.

12 THE COURT: I'm appointing you to serve as the
13 foreperson of the jury, if you'll take the foreperson's
14 seat. Your responsibility as foreperson will be to serve as
15 a spokesperson for the jury, to preside over the jury
16 deliberations and to complete the verdict form at the end of
17 the case.

18 THE JUROR: Okay. Yes, sir.

19 (The jury left the courtroom.)

20 THE COURT: All right. How about the admissibility of
21 this hearsay denial by the defendant, Mr. Bell?

22 MR. BELL: I don't believe it's hearsay, Your Honor.

23 THE COURT: You don't believe it's hearsay.

24 MR. BELL: I don't believe -- the basis that he denied
25 it, I don't think I'm going into the words that were said in

BARBARA COLEMAN

1 his statement.

2 THE COURT: You don't believe it's hearsay.

3 MR. BELL: No.

4 THE COURT: Okay. State?

5 MR. STEADMAN: Your Honor, I believe it's pretty
6 clearly a statement, the fact denying allegation that
7 implies a statement. And under 801D1 -- D2, admission by a
8 party opponent, the statement requires that the statement is
9 offered against the party. He's offering it and he is the
10 party, Your Honor. He's not offering it -- he's offering it
11 for the party, the party opponent and he doesn't qualify,
12 and that's the exception to the hearsay under D2. The
13 statement is not hearsay if it is a statement -- if the
14 statement is offered --

15 THE COURT: All right. We're going to take a few
16 minutes so I can get some complete thoughts from both sides.
17 We'll be at ease a few minutes. You may step down, Madam,
18 please do not discuss your testimony with anyone.

19 (A break was taken.)

20 THE COURT: All right. Mr. Solicitor?

21 MR. STEADMAN: Your Honor, I'll try to resume where I
22 left off. He's trying to get in a statement -- he argued it
23 wasn't a statement but it's clearly an oral assertion that
24 the person denying the allegations, that is a statement, and
25 it is offered -- to qualify this as hearsay it's a statement

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1 other than the one made by the declarant while testifying at
2 trial offered into evidence to prove the truth of the matter
3 asserted. He's trying to prove that the allegations were
4 denied by the defendant. And then you go to the exception
5 under 801D, Your Honor, it doesn't fall under any of these
6 exceptions, specifically the admission by a party opponent.
7 In order for that exception to apply that would be us
8 offering the defendant's statement, he's offering it for his
9 own party, Your Honor, therefore it doesn't fall under any
10 exception and it should be disallowed.

11 THE COURT: All right. Mr. Bell?

12 MR. BELL: Your Honor, I'm not offering it for the
13 truth of the matter asserted.

14 THE COURT: You're not offering his denying, being not
15 guilty for the truth of the matter asserted?

16 MR. BELL: No. He asked for a trial, that's your
17 assertion of not guilty.

18 THE COURT: I'm not talking about his plea of not
19 guilty, I'm talking about the testimony being offered.

20 MR. BELL: I'm going into the integrity of the
21 investigation regarding what statements were taken at that
22 point in the investigation, no written statements taken at
23 that point and that's what I'm going towards.

24 THE COURT: Integrity of the investigation?

25 MR. BELL: I'm not arguing -- I'm saying it's not

BARBARA COLEMAN

1 hearsay underneath --

2 THE COURT: Well, now you're throwing me for a loop.
3 You were talking about hearsay and now you jumped in saying
4 something about the integrity of the investigation.

5 MR. BELL: Well, that's why I don't believe it falls
6 under hearsay is because I'm going -- it's going to the
7 integrity of the investigation and not to the truth of the
8 matter asserted.

9 THE COURT: What about the integrity of the
10 investigation?

11 MR. BELL: What was done, what she went off of, what
12 she didn't go off of.

13 THE COURT: That's your best argument?

14 MR. BELL: That's my argument, Your Honor.

15 THE COURT: All right. Your response, Mr. Solicitor?

16 MR. STEADMAN: Your Honor, it's clearly being used to
17 prove -- he just said it's not being used to prove the truth
18 of the matter asserted. Why else would he be -- he's trying
19 to prove that his client denied these allegations, therefore
20 he is eliciting that statement to prove the truth of the
21 matter asserted, it's clearly hearsay, Your Honor.

22 THE COURT: Well, if it was clear I wouldn't have taken
23 a break.

24 MR. BELL: Your Honor, could we consider present sense
25 impression based upon the fact there were a bunch of police

BARBARA COLEMAN

1 at his house trying to figure out what was going on?

2 THE COURT: That's getting more bizarre. Let's see, an

3 out of the court admission of a criminal defendant is

4 admissible, State v. Goode. You basically have an issue of

5 whether or not in effect self-serving statement by a

6 defendant to a police officer where it's admissible, where

7 that can be used as a substitute for the defendant being

8 required to testify be subject to cross examination on the

9 question before the Court. So where a defendant testifies

10 then the statement is not hearsay. Out-of-court statement

11 is not hearsay because he is subject to being cross

12 examined. At this point in the proceedings to introduce the

13 statement by the defendant would not be proper unless the

14 defendant testifies and is subject to cross examination. At

15 this point we don't know whether he will or whether he

16 won't, but it's a very convenient way of avoiding the

17 defendant having to testify by getting in through this

18 witness, "He denied that he committed the crime, he told you

19 he didn't do it." So if he is allowed to do that through

20 this witness then there would be no need for him to testify

21 and it would in effect have his statement into evidence and

22 the State would be deprived of the opportunity to cross

23 examine, so that's the -- that's why hearsay is hearsay and

24 hearsay statements are not allowed because they're not

25 subject to being cross examined. If you all know something

BARBARA COLEMAN

1 else, if you have some other authority among the vast
2 resources that you all have saying that an out-of-court
3 denial of guilt by a defendant in a statement to a police
4 officer is admissible I would need to hear that. I think
5 this is the second objection by the State to efforts by the
6 defense to get in prior statements by the defendant, and
7 statements would constitute hearsay under the literal
8 definition of hearsay. A statement -- hearsay is a
9 statement other than one made by the declarant while
10 testifying at the trial of the hearing offered into evidence
11 to prove the truth of the matter asserted. The only basis
12 under which the question would be posed to the witness is to
13 prove that he's not guilty, if that's not for the truth of
14 the matter asserted then when would there ever be? So I
15 think it's not admissible and I sustain the objection.
16 Let's bring back the jury.

17 MR. STEADMAN: Your Honor, quickly, we would ask for a
18 curative instruction, whatever you think is appropriate.

19 THE COURT: I sustain the question, that's curative
20 enough. She didn't answer the question, did she?

21 MR. STEADMAN: No, Your Honor.

22 THE COURT: He is cross examining. Questions are not
23 evidence. The jury will be instructed clearly that what the
24 lawyers say is not evidence. Bring them on.

25 (The jury returned to the courtroom.)

BARBARA COLEMAN

1 THE BAILIFF: All here, Your Honor.

2 THE COURT: Already. The objection is sustained.

3 BY MR. BELL

4 Q After you spoke with Mr. Purnell he informed you that
5 he had to leave the state, correct?

6 A He informed me that his father was sick and that he
7 would like to leave the state, yes, sir.

8 Q And he gave you phone numbers to contact him.

9 A Yes, sir, he did.

10 Q And he stayed in contact with you when he went to
11 Delaware, didn't he?

12 A Yes, sir.

13 Q And when you contacted him back on I guess April 30th
14 he came down and talked to you, correct?

15 A Yes, sir, he did.

16 Q Voluntarily, correct?

17 A Yes, sir.

18 Q So twice he voluntarily spoke with you.

19 A He voluntarily spoke with me from April 30th until he
20 was arrested on 6/21.

21 Q Okay. Never tried to flee.

22 A I don't know, I can't answer that, sir.

23 Q He did come back.

24 A He did come back.

25 MR. BELL: Okay. No further questions.

BARBARA COLEMAN

1 THE COURT: Anything further?

2 MR. STEADMAN: Yes, Your Honor, briefly.

3 REDIRECT EXAMINATION

4 BY MR. STEADMAN

5 Q Did you notify the defendant when you obtained the
6 warrants?

7 A No, sir, I did not.

8 Q How did that process go serving him with the warrants?

9 A After he returned the warrants were done and served on
10 him.

11 Q Okay.

12 MR. STEADMAN: No further questions?

13 MR. BELL: Briefly?

14 THE COURT: Yes, sir.

15 RECROSS EXAMINATION

16 BY MR. BELL

17 Q So you didn't even want to talk to him and he
18 voluntarily still spoke to you.

19 A Yes. I did want to talk to him, yes, sir.

20 Q You already had arrest warrants, correct?

21 A We got them.

22 Q And he voluntarily met with you to speak with you,
23 correct?

24 A Yes.

25 MR. BELL: Thank you.

ALICIA BENEDETTO

1 THE COURT: All right. You may step down. Next
2 witness?

3 MS. BODMAN: Your Honor, may we approach?

4 THE COURT: Yes.

5 (A bench conference was held.)

6 MS. BODMAN: The State calls Alicia Benedetto.

7 The witness, ALICIA BENEDETTO was first duly
8 sworn and testified as follows:

9 THE CLERK: Have a seat in the witness box. State your
10 name for the record and spell it, please.

11 MS. BODMAN: My name is Alicia Benedetto, A-l-i-c-i-a,
12 B-e-n-e-d-e-t-t-o.

13 DIRECT EXAMINATION

14 BY MS. BODMAN

15 Q And with whom are you employed?

16 A With the South Carolina Department of Mental Health.

17 Q And what division or in what capacity with the
18 Department of Mental Health?

19 A Sure. I'm a clinical psychologist and I work at the
20 Assessment and Resource Center known as the ARC.

21 Q And what exactly is the ARC?

22 A The ARC is a children's advocacy center. We take
23 referrals from law enforcement and child protective services
24 and then provide interviews and examinations of children
25 when there are referrals for child abuse allegations.

ALICIA BENEDETTO

1 Q And what specifically is your position at the ARC?

2 A I'm the program manager and the director at the ARC.

3 Q And how long have you been working at the ARC?

4 A I've been at the ARC since 2001 initially as chief
5 psychologist and then it will be two years in December that
6 I've been the director there.

7 Q Okay. And can you tell the jury about your educational
8 background that brings you to be the director and
9 psychologist at the ARC?

10 A Sure. My undergraduate degree is in Psychology from
11 New York University, and my Masters and Doctorate are from
12 St. Johns University, which is also in New York. After I
13 completed my education there I came to the William S. Hall
14 Psychiatric Institute here in South Carolina with the
15 Department of Mental Health and completed a one year
16 internship there. After that I was hired by the Department
17 of Mental Health as a coordinator of treatment services for
18 their child and adolescent division and was with them in
19 that capacity for a year, after which I took the position at
20 the ARC and I've been there ever since.

21 Q And so what are just your daily duties and
22 responsibilities at the ARC?

23 A I maintain oversight of the entire program. In
24 addition to administrative duties, though, I have clinical
25 duties. I complete forensic interviews and evaluations.

ALICIA BENEDETTO

1 The ARC is also a training center. I provide a lot of
2 training statewide for child abuse professionals in the
3 areas of forensic interviewing of children.

4 Q How many interviews do you think that you have done --
5 forensic interviews you have done throughout your career?

6 A A rough estimate would be 2,000, somewhere in that
7 neighborhood. A lot.

8 Q Aside from your job at the Assessment Resource Center,
9 do you also have a private practice?

10 A I do. I maintain a small private practice where I
11 provide consultation to attorneys and guardians ad litem on
12 matters related usually to family law and custody
13 evaluations, that sort of thing.

14 Q So let's go specifically to forensic interviewing. Is
15 there a training that you go through in order to become a
16 forensic interviewer?

17 A Yes. Actually the ARC provides that training, as I
18 said, statewide to professionals. So I went through the
19 training obviously myself and have been on the faculty
20 since 2002, I believe. I've been on the faculty teaching
21 the forensic interview model that we teach statewide to
22 individuals who may have in the course of their duties
23 occasion to interview children about child abuse.

24 Q And what types of individuals are those?

25 A Law enforcement officers, child protective services.

ALICIA BENEDETTO

1 So DSS case workers, solicitors, forensic interviewers at
2 children's advocacy centers throughout the state. That
3 would be most of our participants.

4 Q Does the ARC hold any -- do y'all belong to any
5 associations or hold any certifications in order to conduct
6 forensic interviews?

7 A Yeah. We are nationally accredited by the National
8 Children's Alliance which is the accrediting body for CAC's,
9 children's advocacy centers, nationally. And in order to be
10 fully accredited -- there are different levels of
11 accreditation, we are fully accredited. And in order to
12 have that designation we have to meet other stringent
13 criteria regarding our practices; that we have peer review
14 of our interviews, that we provide evidence based services
15 as far as therapy services or referral services to children
16 who come through our center. So we get accreditation
17 standards through the NCA.

18 Q Talk to us then a little bit about the interview
19 process itself. Is there a particular protocol that you
20 follow?

21 A Sure. So we teach a semi-structured interview model
22 that takes into account developmental considerations for
23 children, because obviously we interview children from the
24 age of three to 18, and occasionally as well we'll interview
25 vulnerable adults or adults with some developmental delays

ALICIA BENEDETTO

1 that might make it difficult for the police to interview
2 them. So we take into account developmental parameters,
3 teach developmental considerations, teach about memory and
4 suggestibility. So all of those components become part of
5 the interview process that we use at the ARC. As I said,
6 it's a semi-structured model so it responds to the needs of
7 the particular child that we're interviewing, but all of the
8 components are based on what we know about child
9 development, memory and suggestibility, children's attention
10 span and various other factors.

11 Q Are there various protocols out there that may not all
12 be called the same but I guess are fairly similar?

13 A Yes. There are actually several naturally recognized
14 models and the one that the ARC uses is one of those. The
15 thing about the models is that they really have much more in
16 common than they do not. So even though a model might be
17 different than something that is done in Texas or California
18 or something, if you look at the components of that model
19 they all include a lot of the same elements. For example,
20 building a rapport with the child, asking developmental
21 appropriate non-leading questions to elicit information, all
22 of those kinds of things are really the same models.

23 Q Did you have occasion to interview **Minor 1** in
24 this case?

25 A I did.

ALICIA BENEDETTO

1 Q Okay. And did you prepare a report in connection with
2 that interview?

3 A Yes.

4 Q Okay. What date was it that you interviewed Minor 1

5 A Minor 1 was interviewed on May 22nd of 2012.

6 Q And do you have a name of the protocol that you
7 followed when you interviewed Minor 1

8 A Sure. It's the Childfirst South Carolina model, it's
9 also sometimes called the RATAAC model which is just an
10 acronym for the components of the model. But it's the
11 Childfirst South Carolina model.

12 Q You said it's called RATAAC?

13 A Yes.

14 Q Did I get that right?

15 A You did.

16 Q Pressure up here. Can you then walk us through the
17 different components of the model?

18 A Sure. It's important, as I said, to remember that it's
19 a semi-structured model, so the fact that they're in this
20 order doesn't necessarily mean that in every interview we
21 follow exactly that order. But these are components that
22 are -- you can go back to one or maybe in some cases you
23 don't need one. But the R stands for rapport building,
24 which is a very important part of interviewing anyone,
25 certainly a child. They're coming to the center not really

ALICIA BENEDETTO

1 understanding necessarily why they're there or what's going
2 to happen, and the kind of interview that we conduct is very
3 different from any other kind of conversation that they had
4 with someone, it's just a completely different kind of
5 experience. So we want to build a rapport with the child.

6 Q And what does that entail?

7 A So that entails finding out a little bit about them,
8 starting with just some neutral conversation, building their
9 ability to provide narrative responses. So we want children
10 to talk in the room, we want them to be the ones doing most
11 of the talking, but as you might imagine with young children
12 meeting someone for the first time and being brought into a
13 room they can kind of clam up or not want to say very much.
14 Some children come from families where you speak when you're
15 spoken to kind of thing. So children have different ideas
16 about talking to adults. Our goal is to try to get children
17 talking in the room, so we do what we can to build that
18 capacity. And also just to test out the capacity. What
19 kind of child is this? Can I understand what they're
20 saying? You know, sometimes a three year old might be very
21 difficult. Mom might understand or dad might understand but
22 it might be hard for the interviewer. So you want to get
23 familiar with their speech patterns and make sure that you
24 can comprehend what they're talking about.

25 Q And then what's the next --

ALICIA BENEDETTO

1 A Is the anatomy identification phase. And that involves
2 introducing drawings of a child that are anatomically
3 correct and just asking what the child calls different parts
4 of the body. So this is not related to abuse allegations,
5 it's just part of the way we generally introduce it is
6 sometimes I -- another part of what I do is ask children
7 what they call different parts of their body and to just get
8 their language, because children have different language and
9 I need to know what parts they're referring to when they're
10 talking. When I find my words I want them to use theirs.
11 So that's the anatomy ID.

12 Q And I'm going to show you what is marked as State's
13 Exhibit 5 and see if you can look at that and recognize it.

14 A Sure. Yes.

15 Q Okay. And was that used in your interview **Minor 1**

16 A Yes. These are the drawings that we used, or copies of
17 them.

18 MS. BODMAN: Okay. I offer into evidence State's
19 Exhibit 5.

20 MR. BELL: Without objection, Your Honor.

21 THE COURT: It's admitted.

22 (The drawing was admitted as State's 5.)

23 Q And so this is -- when is this done then during this
24 interview process?

25 A So after I built some rapport with the child and they

ALICIA BENEDETTO

1 appear to be comfortable with me in the room, then I'll say
2 something to the effect of -- another part of what I do is
3 find out what kids call different parts of the body, then
4 I'll go through this. As you can see, it's not just, you
5 know, private parts of the body that are on there, it's eyes
6 and mouth and all different parts, so neutral parts of the
7 body including the genitals on both drawings. So again, we
8 do a boy and a girl, we just ask what they call parts on the
9 body.

10 Q Okay. So once you go through this information, what is
11 kind of the next step?

12 A Sure. Then I'll tell the child that we want to find
13 out about different kinds of touches that they sometimes get
14 and this is sort of an inventory of touch, it gets the child
15 comfortable and gives them a context of what they're doing
16 in the room. I'll ask -- So one kind of touch is hug, "Did
17 somebody ever give you a hug?" And we'll go through and ask
18 them about hugs. And again, keeping in mind the age of the
19 child so that would be appropriate with the younger child
20 and we wouldn't necessarily do that with a teenager
21 obviously. We go through some neutral touches, positive
22 touches like hugs and kisses and tickles, and then move to
23 what are considered maybe not so pleasant touches. Like
24 sometimes kids get touches that hurt or don't feel good,
25 like if somebody hits you, spansks you or something like

ALICIA BENEDETTO

1 that. Usually kids will chime in with some experience they
2 had like that and talk about a touch that's perhaps more of
3 a negative kind of touch. And once they talk a little bit
4 about that and give me an experience of something they had
5 that was not so pleasant as far as a touch, then I'll ask
6 them about parts on the body that people are not supposed to
7 touch, "So are there some parts of the body people are not
8 supposed to touch on you?" And some children will have an
9 answer on that, yes or no and others don't. But it helps me
10 to know what they know about personal boundaries and whether
11 they've learned anything about personal safety, sometimes in
12 school or from a parent, that sort of thing. So I'll ask
13 them about if they can show me on the drawing parts that
14 people are not supposed to touch, and then that's followed
15 by a question, has somebody ever touched or done something
16 to you on one of those parts that you said was private.

17 Q Okay. And then what happens I guess depending on their
18 response?

19 A Right. Depending on their response we move into the
20 second A which is abuse scenario. If the child says well
21 yes, there was something, or if the child says no, there
22 wasn't, then we would ask it a couple of different ways to
23 try to establish, "So has anybody ever touched you? Has
24 somebody ever asked you to them on any private parts?" And
25 inquire about some different sorts of things like that. But

ALICIA BENEDETTO

1 at that point we're trying to figure out if there is
2 something that the child needs to disclose regarding an
3 allegation or not at that point. So that's the abuse
4 scenario, if there is a disclosure that involves getting
5 very detailed information about whatever that disclosure is
6 as much as the child based on their development, based on
7 their comfort talking about it at that particular moment
8 with a stranger, we'll get as much information as we
9 possibly can about it at that point. And then the second C
10 is closure, which is just providing a respectful end to the
11 conversation with the child and checking about safety, what
12 their child knows about it. "If somebody ever did touch you
13 on your private part, who could you tell? Who would be the
14 people you could go to?" And usually we'll try to end with
15 some positive neutral conversation, something that is not
16 abuse related.

17 Q And prior to your testimony today, have you had
18 occasion to review your interview with **Minor 1**

19 A I did, yes.

20 Q And did you generally follow with this semi-structured
21 protocol that you just talked about?

22 A Actually yes, yes, I did. Uh-huh.

23 Q And I'm going to show you what's been marked as State's
24 Exhibit Number 12. And is that your interview with **Minor 1**
25 Seabrook?

ALICIA BENEDETTO

1 A Yes. That's my handwriting, yes.

2 Q Okay.

3 MS. BODMAN: Your Honor, at this time, I'd offer into
4 evidence as State's Exhibit Number 12.

5 MR. BELL: I have an objection, Your Honor, based on
6 all prior previous arguments, pretrial motions in limine,
7 specifically based on the entirety of the video and
8 particular parts of the video, if the Court would recognize
9 my prior objections.

10 THE COURT: It's admitted over the objection, over
11 objection.

12 MR. BELL: Thank you.

13 MS. BODMAN: Your Honor, at this time, we would publish
14 this interview to the jury.

15 THE COURT: Okay.

16 MS. BODMAN: Can you see okay?

17 THE COURT: Yes, I can see.

18 MS. BODMAN: All right.

19 (The video was received as State's 12 and
20 was played for the jury.)

21 MS. BODMAN: I have no further questions at this time,
22 Your Honor.

23 THE COURT: All right.

24 CROSS EXAMINATION

25 BY MR. BELL

ALICIA BENEDETTO

1 Q Your job really is just to ask questions, right? Your
2 job is really just to ask questions, right?

3 A That is a large part of what I do is ask questions.

4 MR. BELL: No further questions.

5 THE COURT: Any redirect?

6 MS. BODMAN: No, sir.

7 THE COURT: All right. Thank you. You may step down.

8 And we'll call it a day. And ladies and gentlemen, there
9 are some other things going on in the morning, let me speak
10 with counsel a minute regarding scheduling.

11 (A bench conference was held.)

12 THE COURT: All right. Ladies and gentlemen, as I
13 indicated, there are some other things I have to do in the
14 morning. Conferring with counsel, we think we will be ready
15 for you all at 11:45 tomorrow, so that's the time that you
16 will need to come in tomorrow morning, at 11:45. So have a
17 good evening and we'll see you all tomorrow at what time?

18 THE JUROR: 11:45.

19 MS. BODMAN: Okay. Everybody has got it, 11:45. If
20 you all will hold up just a few minutes, she will take an
21 order for you tomorrow.

22 THE CLERK: In the room.

23 THE COURT: In the jury room.

24 (The jury left the courtroom.)

25 THE COURT: Okay. We are done.

1 (Court recessed for the evening and resumed on
2 July 9, 2014 at 11:20 a.m.)

3 THE COURT: Grand jury qualifications took longer than
4 I thought it would, but we are through that and ready for
5 this. I'll hear from the State.

6 MS. BODMAN: Thank you, Your Honor. I'd call Dr.
7 Allison Foster to the stand.

8 MS. GRICE: Your Honor, if I may, Your Honor, this is
9 our motion so there's a couple of things I'd like to put on
10 the record prior to Dr. Foster taking the stand. Your
11 Honor, we filed -- I'm assuming, does the Court have a copy
12 of our motion to exclude the qualification of any expert
13 regarding this topic? We filed it previously and I believe
14 one was filed Monday of this week.

15 THE COURT: Well, I'm not looking at it.

16 MS. GRICE: Yes, sir.

17 THE COURT: If somebody will give it to me.

18 MS. GRICE: Yes, Your Honor. It was handed up on
19 Monday, we can produce a copy if you need one.

20 THE COURT: Okay.

21 MS. GRICE: Essentially, Your Honor, the State gave us
22 notice back in May -- or excuse me, back in March, the
23 Friday before that Monday of trial that they intended to
24 call an expert to talk generally about the behavior that
25 children can exhibit following some kind of abuse.

1 THE COURT: Is that the motion in limine to exclude the
2 qualifications of a forensic interviewer? It's not that
3 one.

4 MS. GRICE: Well, that's not the title of my specific
5 motion, no, sir.

6 THE COURT: Well, is it the motion to exclude the
7 qualifications of any expert regarding child sexual abuse
8 allegation syndrome?

9 MS. GRICE: Yes, sir.

10 THE COURT: I'm looking at that.

11 MS. GRICE: Back in May we had asked Judge Lee just to
12 leave this out entirely because we received limited notice,
13 which she felt it was something that we should be given an
14 opportunity to research, possibly get our own expert or have
15 a hearing on the matter which is the reason the case was
16 continued. Your Honor, our objection generally is twofold.
17 The first part of that argument is that any person being
18 called to testify to the way children behaved, this is in
19 Your Honor's words a backdoor attempt to go around State v.
20 Kromah.

21 THE COURT: That's whose words?

22 MS. GRICE: Well, Your Honor, Monday of this week when
23 we just generally summarized it was Your Honor's words, you
24 said, "so you're saying this is a backdoor attempt to go
25 around Kromah, have someone else take the stand to talk

1 about how children behave." Because as Kromah states, a
2 interviewer cannot give an opinion as to whether a child's
3 testimony is compelling, cannot be qualified as an expert
4 with regard to this type of behavior. So, Your Honor, our
5 argument first primarily is that through Kromah no one
6 should be allowed to take the stand during a trial to
7 explain to the jury how a child may behave following this
8 abuse. Specifically where I'm looking in Kromah and the
9 cite I'm looking at is 410SC340, it's on page 360 of that
10 case. It says, "The kind of statements that a forensic
11 interviewer should avoid at trial," and there's a serial
12 list of them. One of them is an opinion that the child's
13 behavior indicated the child was telling the truth. I don't
14 expect that the State is planning on putting on Dr. Foster
15 to review the facts of this specific case and make a
16 determination on the facts of this specific case. Instead,
17 it's the State's intention that she speak generally about
18 research of what you might typically see in a child's
19 behavior following allegations of abuse. However, I feel
20 that there's no other inference that the jury could draw but
21 that this is the value of this person talking to us, it's
22 that they connected the dots whether they're saying it or
23 not and they find this child's compelling. So our first
24 argument simply is that under State v. Kromah nobody should
25 be permitted to testify, and as related to this trial, no

1 one needs to testify or should be permitted to testify to
2 the jury with regard to how children typically behave. Our
3 second of that two part objection, Your Honor, and the
4 reason for the hearing today, is that under Rule 702
5 testimony by an expert, it needs to somehow assist the trier
6 of fact in understanding some component of the trial. I
7 know originally we were planning on having a hearing at the
8 pretrial yesterday morning, that didn't work out, but in
9 retrospect I kind of like we're doing it at this point in
10 the trial, Your Honor, because at this point the Court's had
11 an opportunity to hear from the two alleged victims, hear
12 from most all of the witnesses that I'm expecting, the Court
13 fully understands what's at issue here. And the reasons
14 that are given typically for wanting this type of testimony
15 and the types of behavior that the children can exhibit, a
16 lot of those just aren't present in this case. The facts
17 are fairly straightforward, some of those things
18 specifically are children recanting, revealing things
19 piecemeal, telling a family member and a family member not
20 believing it and it comes out at a later date. There's
21 nothing to suggest that the children's behavior has been
22 affected. A lot of things that you hear about are bed
23 wetting problems in school or conversely model behavior from
24 a child to cover up for these problems that are going on
25 behind closed doors. And so, Your Honor, with regard to the

1 second part of our objection, in Rule 702 there is nothing
2 that an expert could provide that would assist the trier of
3 fact in better understanding what's going on in this case.

4 THE COURT: You're making this argument now in lieu of
5 me hearing testimony?

6 MS. GRICE: No, sir. I just want to -- I guess in my
7 mind it made sense to -- since I filed the motion I felt I
8 needed to explain what my intentions were. Your Honor,
9 that's all I want to say on that, is just explained the two
10 parts of our objection. I would like to hear from Dr.
11 Foster. And then, Your Honor, if you would give us just a
12 few minutes afterwards, we have our own expert here,
13 Ms. Julie Buck, who has flown in and wasn't present during
14 the first day of trial yesterday, I'd like a few minutes
15 after Dr. Foster testifies to speak with her. She's
16 primarily here to assist with our cross and rebut any
17 portions of the proffer of the State's testimony that we
18 find objectionable.

19 THE COURT: Okay.

20 MS. GRICE: Thank you.

21 THE COURT: Ms. Bodman?

22 MS. BODMAN: I will call Dr. Foster to the stand.

23 THE COURT: All right.

24 The witness, ALLISON FOSTER, M.D., was first
25 duly sworn and testified as follows:

ALLISON FOSTER (MOTION)

1 DIRECT EXAMINATION

2 BY MS. BODMAN:

3 Q Dr. Foster, if you can tell us where you are currently
4 employed?

5 A Two places. I'm chief psychologist at the ARC here in
6 Columbia, half-time position, then I'm also self-employed in
7 private practice.

8 Q How long have you been at the ARC?

9 A Since 1994 as an intern. I was the program director
10 there for 17 years, from 1995 to 2012, and then went into a
11 part-time position at the end of 2012.

12 Q And how long have you had a private practice?

13 A Since the late 1990's.

14 Q And your private practice, primarily what types of
15 clients are you working with?

16 A My whole practice is really forensic, so -- the Court
17 is probably familiar with the ARC, sort of the restrictions
18 for what comes in the ARC are they are cases that are under
19 active investigation for suspicions of various forms of
20 child abuse. My private practice is sort of a natural
21 extension of that, I get court appointed cases in family
22 court when there are, for example, recurring allegations of
23 abuse in high conflict divorce cases. But it falls outside
24 of the sphere of what a children's advocacy center would
25 handle. I conduct child custody evaluations, I also do

ALLISON FOSTER (MOTION)

1 criminal case consultations.

2 Q So are your clients primarily then children?

3 A Yes.

4 Q And children that either I guess at the ARC are
5 suspected to be victims of abuse, or potentially in your
6 private practice maybe that's even been founded or proven to
7 be victims of abuse?

8 A True, yes.

9 Q In your work at the ARC as director and chief
10 psychologist and I guess the whole time you've been there,
11 what have been your duties and responsibilities?

12 A Sure. Ever since the beginning conducting frontline
13 video recorded forensic interviews of children suspected of
14 being sexually, physically or otherwise abused or witnesses
15 to violent crime. Since the late nineties and certainly
16 beginning in 2000 with our five day forensic interview
17 training course, another one of my job duties has been to
18 teach. So we provide a five day course called Childfirst
19 South Carolina three to four times a year and so I'm senior
20 faculty for that. I provide therapy and even now short term
21 interventions with children who may have been forensically
22 interviewed by one of my colleagues, I might provide short
23 term intervention to the child or family. Certainly when I
24 was the director I also was involved in hiring and
25 supervising and other administrative duties.

ALLISON FOSTER (MOTION)

1 Q And can you tell the Court about your educational
2 background and your qualifications?

3 A Yes. College, Emory University in Atlanta. Then
4 worked for a year in between college and graduate school at
5 a residential treatment school in Atlanta. Then relocated
6 here and entered the Ph.D program in 1989, graduated with a
7 Ph.D in Clinical Psychology in the spring of 1996.
8 Post-doctoral supervised work, became licensed in 1997 and
9 became -- received a faculty appointment with the University
10 of South Carolina School of Medicine Department of
11 Neuropsychology and Behavioral Science in 1998.

12 Q What percentage, I guess, of your post-graduate work
13 once you've gotten your Ph.D in clinical psychology has
14 dealt with child abuse?

15 A More than 90 percent, with the exception of a small
16 amount of child custody work that has nothing to do with
17 child abuse. I mean, really the vast majority of my
18 practice is about children and allegations.

19 Q Aside from -- you mentioned being involved in training
20 of forensic interviewers at the ARC, do you conduct lectures
21 and training outside of the Assessment Resource Center?

22 A Yes. I am frequently a faculty member at the National
23 Children's Advocacy Center in Huntsville, Alabama. I
24 trained for the National District Attorney's Association,
25 NDAA, as well as the National Child Protection Center, and

ALLISON FOSTER (MOTION)

1 then various conferences. I'm training in North Dakota in a
2 couple of weeks, I'll be training in New England in the
3 fall, so there are always sort of statewide conferences
4 around the country that I'm frequently invited to speak.

5 Q As part of your training in your areas of knowledge in
6 order to conduct forensics interviews, in order to provide
7 therapy and these other services that you're talking about
8 to children, is it important for you to understand the
9 dynamics of child sexual abuse?

10 A Yes.

11 Q And has that been a part of your education either under
12 undergraduate for your psychology, Ph.D and postgraduate
13 training?

14 A Certainly yes, mostly postgraduate training.

15 Q Does that include the process of disclosure that
16 child -- how children disclose abuse?

17 A Yes.

18 Q Does that include -- is it important for you to know
19 memory and how memories are encoded and retrieved?

20 A Yes.

21 Q And does that include -- are you familiar with the
22 child sexual abuse accommodation syndrome?

23 A Yes.

24 Q Okay. First I guess dealing with -- have you spoken on
25 these areas, have you trained on these areas?

ALLISON FOSTER (MOTION)

1 A All of the ones you mentioned, yes.

2 Q Okay. Starting with I guess memory and how memories
3 are encoded and then retrieved, is there research to back up
4 the information that you would be able to provide to the
5 jury?

6 A Yes.

7 Q Is that research peer review?

8 A Yes.

9 Q And would it help assist a trier of fact to understand
10 in the case maybe of chronic abuse why a child's memory may
11 be just of a couple of incidents and not every incident, the
12 dates, the times, et cetera?

13 A I think of it as a specialized area of knowledge and
14 not something that a typical person understands. So I would
15 consider that to be helpful, yes.

16 Q Okay. In terms of the process of disclosure, I guess,
17 tell us, what does that mean to you?

18 A Sure. The process of disclosure is kind of a common
19 professional terminology to describe the fact that we know
20 that there are a number of children who will not disclose
21 throughout their childhood about actual instances of child
22 abuse, so they would be classified as being in the stage of
23 denying, or not telling. And then there is research and
24 there certain is in my -- I don't know, how many years have
25 I been practicing now, 18 years of practice, the phenomenon

ALLISON FOSTER (MOTION)

1 of what we call piecemeal disclosure, so the fact there can
2 be stages to telling that move from denial to sometimes a
3 more tentative stage of disclosure, to a more active stage
4 of discloser. There can be a recantation phase to
5 disclosure, and there can be a reaffirmation or
6 rehabilitation phase of disclosure. It does not necessarily
7 go in that order, it's not like an A, B, C, D, E kind of
8 order, but this phenomenon is robustly identified in our
9 field.

10 Q I'm going to back up a little bit in terms of the
11 research regarding a memory and how memories are coded and
12 retrieved, and you said it was backed up by research.

13 A Yes.

14 Q Is that research commonly accepted in the child abuse
15 community or the psychology community?

16 A Yes, and way more broadly. It's a large area of
17 cognitive psychology so the whole field of memory is a very
18 large field that far exceeds just sort of the narrow range
19 of child abuse practitioner.

20 Q And you're using that broader range of knowledge to
21 then apply to, I guess, children.

22 A That's right.

23 Q Okay. And the difference between adult memories and
24 child memories.

25 A Exactly.

ALLISON FOSTER (MOTION)

1 Q And then, I guess, chronic abuse versus traumatic
2 memories.

3 A Right.

4 Q Things such as that.

5 A That's right.

6 Q And then the disclosure, process of disclosure, is that
7 area, is it backed up by research?

8 A Yes.

9 Q And is it commonly accepted or widely accepted in the
10 area of --

11 A Yes. And it's a very active area of research. I would
12 not say it's settled science in all of its aspects, in fact,
13 it's an area that there's a lot of research continuing to go
14 on. It's a very well established tenet, hence the reason
15 why there is so much research on it.

16 Q Okay. And aside from the research, have you
17 yourself -- how many, I guess, forensic interviews do you
18 think you've conducted?

19 A Over 1,000. I don't keep a tally.

20 Q Okay. How many children do you think that you have
21 been involved in therapy with or these other services that
22 you provide?

23 A Hundreds, but fewer than forensic interviews. I
24 conduct, you know, forensic interviews week in and week out.
25 Therapy is a longer term process, evaluations are different

ALLISON FOSTER (MOTION)

1 so I don't really have a good number other than to say, you
2 know, probably in the low hundreds.

3 Q And in your experiences as a forensic interviewer and
4 in private practice or as a clinical psychologist, a broader
5 area is your observations or the research that you see, does
6 that match the observations you see in your own experiences
7 as a forensic interviewer and as a clinical psychologist?

8 A Yes.

9 Q Okay. Then turning to the child sexual abuse
10 accommodation syndrome, can you tell us what that is?

11 A Yes. Child sexual abuse accommodation syndrome is a
12 term that was coined by a psychiatrist named Roland Summit
13 in the early 1980s, and there are two kinds of syndromes in
14 scientific publications, and this would fall in the category
15 of descriptive as opposed to diagnostic. Dr. Summit
16 published an article and coined this term to describe the
17 dynamics that he observed in victims he treated of incest
18 abuse, so interfamilial chronic child sexual abuse. He
19 identified the phenomenon with sort of five components;
20 secrecy, helplessness, entrapment in accommodation, delayed
21 tentative unconvincing disclosure followed by a recantation,
22 all as aspects of the dynamics for victims of chronic
23 familial child sexual abuse kind of -- the manner in which
24 they came forward to ultimately make allegations or provide
25 narrative accounting of their histories. So he saw this

ALLISON FOSTER (MOTION)

1 phenomenon, he authored papers in the early 1980's, and it
2 is a concept that has continued to be considered clinically
3 astute and helpful. Researchers have continued to kind of
4 look at the aspects of the syndrome to consider what has
5 been more impurely validated and what hasn't been. And so
6 to this day it's commonly taught in five day forensic
7 interview academies as you know, a sort of part of what
8 investigative teams ought to understand about the dynamics
9 of child sexual abuse.

10 Q And in talking about these five characteristics you
11 said it is not diagnostic, correct?

12 A Correct.

13 Q And so would you be at all testifying that if a child
14 in a particular hypothetical, if some of these
15 characteristics were present, that that child, in fact, was
16 abused?

17 A Absolutely not.

18 Q Okay. And would you at all be trying to tell the jury
19 in any way, shape, or form that if these things were present
20 that they were truthful?

21 A No.

22 Q And are all of these five characteristics always seen
23 in every child victim of interfamilial chronic sexual abuse?

24 A No.

25 Q So they are just characteristics that are commonly seen

ALLISON FOSTER (MOTION)

1 in different combinations perhaps?

2 A Yes.

3 Q You said it's secrecy, helplessness, entrapment,
4 delayed disclosure and --

5 A Recantation.

6 Q Have you testified previously in South Carolina courts
7 of law regarding memory?

8 A Yes.

9 Q Have you testified in courts in South Carolina
10 regarding the process of disclosure?

11 A Yes.

12 Q And have you testified in courts in South Carolina
13 regarding this child sexual abuse accommodation syndrome?

14 A Yes.

15 Q And have you previously been declared an expert in the
16 area of, I guess people may have called it different things,
17 either child abuse assessment, dynamics of child abuse?

18 A Yes.

19 Q And other areas that you can --

20 A Yeah. I've been qualified as broadly as child
21 psychology and as narrowly as probably an expert in some
22 specific component like delayed disclosure or, you know,
23 memory and suggestibility issues. Probably most commonly
24 I'm qualified in some way to capture expertise in the
25 dynamics of child sexual abuse and the evaluation of child

ALLISON FOSTER (MOTION)

1 sexual abuse.

2 Q And these five characteristics in the child sexual
3 abuse accommodation syndrome; the secrecy, helplessness,
4 entrapment, delayed disclosure, would those assist a jury to
5 understand that there is a possible theory other than it's a
6 lie and made up for the child's behavior?

7 A Yes.

8 MS. BODMAN: That's all I have right now, Your Honor.

9 THE COURT: Ms. Grice.

10 MS. GRICE: Your Honor, what I would like at this time,
11 if you will, just give me five minutes to speak with
12 Ms. Buck to prepare for my cross-examination.

13 THE COURT: Okay. We'll take a break five minutes.

14 MS. GRICE: Thank you, sir.

15 (A break was taken.)

16 MS. GRICE: Your Honor, I've had time to speak with
17 Dr. Buck --

18 THE COURT: You may.

19 MS. GRICE: -- may I proceed? I'm sorry. I've had
20 enough time to speak with Dr. Buck if the Court is ready to
21 hear from us again.

22 THE COURT: All right. Go ahead.

23 CROSS EXAMINATION

24 BY MS. GRICE:

25 Q Good morning, Dr. Foster.

ALLISON FOSTER (MOTION)

1 A Good morning.

2 Q My name is Jessamine Grice. Let me get organized here.

3 Now, the first thing I want to ask you is there is no one

4 way that a child reveals that abuse has taken place.

5 A Correct.

6 Q And there is, in fact, a number of ways that abuse is

7 revealed and there are differences in the age in which a

8 child reveals it.

9 A Right.

10 Q There are distinctions in whether a child reveals it to

11 a family member versus a stranger?

12 A Right. Maybe not a stranger, but --

13 Q There's distinctions in the age of -- a variety of ages

14 in which a child may disclose?

15 A Yes.

16 Q Some do it as children, some wait until they're adults,

17 correct?

18 A Right.

19 Q And then, of course, there's probably a percentage of

20 children who experienced abuse and never reveal it at all,

21 correct?

22 A Right.

23 Q And that makes it very difficult to study this topic,

24 the issue of child abuse assessment, right?

25 A Yes.

ALLISON FOSTER (MOTION)

1 Q And I guess it makes it difficult to know what
2 population you're dealing with when you only know to include
3 the people who've opened their mouth at some point in time
4 and made an allegation.

5 A Yes.

6 Q Now, child sexual abuse accommodation syndrome, Roland
7 Summit, I'm familiar with the article you mentioned. This
8 was in 1983, he wrote an argument, a published article.

9 A Right.

10 Q And in that where he mentions the five categories I
11 guess of the syndrome, he based this on, I believe he said
12 it was four years of his anecdotal and clinical experience
13 in his private practice, correct?

14 A I would take your word for it because I haven't gone
15 back and reviewed the '83 article in a long time, but that
16 would essentially capture what I know to be true.

17 Q As an officer of the court I would not lie about that,
18 of course. He said that he tested this for four years in
19 his practice and he writes that he specialized in
20 consultation to sexual abuse programs.

21 A Yes.

22 Q Now, you work for the ARC as a chief psychologist?

23 A Yes.

24 Q And Alicia Benedetto, are you her supervisor or are you
25 in a separate department?

ALLISON FOSTER (MOTION)

1 A Neither, she's my supervisor.

2 Q You said just now that you've conducted thousands of
3 interviews.

4 A Right, over 1,000.

5 Q And she likewise. Okay. So anyone who is referred to
6 the ARC, if the ARC is involved it's because a referral has
7 been made, correct?

8 A That right.

9 Q That's because there's allegations of abuse.

10 A Right.

11 Q And you're referred either from law enforcement or DSS
12 typically?

13 A Yes.

14 Q And so there's already an assumption even though there
15 hasn't been that investigation yet, there is an assumption
16 of abuse when a person is referred to the ARC?

17 A No, not for us there's not. There is the assumption
18 that there is a suspicion of abuse, but beyond that --

19 Q Well, there is a suspicion, that's a good word for it.
20 Now, when Roland Summit wrote this article with these five
21 stages I believe you just said yourself that not all
22 children go through all five stages.

23 A Right.

24 Q And those five stages; the secrecy, helplessness,
25 entrapment and accommodation, delayed disclosure and

ALLISON FOSTER (MOTION)

1 retraction, I believe you said that some children go through
2 some but not all and not necessarily in that order?

3 A Really when I was testifying about the order I was
4 responding more to Ms. Bodman's questions about the process
5 of disclosure, from denial to tentative to active
6 recantation to reaffirm.

7 Q Okay.

8 A In terms of the five factors for child sexual abuse
9 accommodation, we know that not all children go through a
10 stage of recantation, for example.

11 Q Yes.

12 A We know that the majority of children, in fact, do go
13 through a stage of secrecy.

14 Q Okay.

15 A Because we know that the majority of children don't
16 come right out and disclose abuse, and, in fact, perhaps the
17 majority even don't tell anybody until adulthood.

18 Q Are there numbers on, for instance, what percentage of
19 children reveal alleged abuse?

20 A Yes.

21 Q And what I mean by percentage, is what percentage of
22 children who have actually been abused reveal it versus
23 those who never reveal it?

24 A Well, therein becomes the quandary. Because there's
25 the universe of those who never tell, and how on earth do we

ALLISON FOSTER (MOTION)

1 ever know how many are in the universe of those who never
2 tell?

3 Q It's like doing the Census and not knowing who you're
4 leaving out.

5 A Right.

6 Q And so really there's just no good answer as to what
7 percentage of children who are abused actually reveal it,
8 make statements, it's a hard thing to measure.

9 A It's a hard thing to measure, and therefore people take
10 different approaches to measuring it, and that's correct.
11 Probably the best current publications synthesize a wide
12 range of studies to try to come to some level of conclusion
13 or consensus about something recognizing there are
14 methodological flaws no matter how you try to study
15 something in the behavioral sciences.

16 Q And synthesizing studies, is that because there are
17 different answers reached in a number of studies and you're
18 trying to get the best general percentages based on outlying
19 numbers and variety of percentages?

20 A Right. I mean, you typically see trends that are going
21 in one common direction, but you'll see different
22 percentages, different variables are measured in different
23 ways, so it is difficult to.

24 Q Okay. So is there a percentage of children who make an
25 allegation and later recant? Do you know that percentage?

ALLISON FOSTER (MOTION)

1 A It depends on the study you look at. The studies range
2 as low as four percent and as high as 27 percent. There is
3 a 2007 article by Malloy and Lilian (phonetically) and
4 there's a couple of other authors on that one that I think
5 places the number right around the 20 percent mark, and
6 there's other convergent data around that are percentage.
7 Others would argue that that is a percentage that is too
8 high.

9 Q I want to briefly go through the five steps. Secrecy.
10 Is that the idea that children will keep this inside and not
11 reveal it right away?

12 A Yes, they will hold secret.

13 Q And is that also a difficult thing to measure because
14 you don't know who is still holding that secret in versus
15 who has told immediately? Is there a way to know what
16 percentage of children who have been abused are keeping that
17 secret compared to the percentage who opened their mouths?
18 We don't know how many children are still keeping that
19 secret.

20 A Well, it certainly is an imperfect analysis. But there
21 are retrospective studies that actually have provided really
22 pretty amazing consistency in suggesting that perhaps --
23 well, in suggesting that the majority of children do delay
24 telling. The majority of children delay telling anyone
25 until adulthood. A subset of children tell in childhood but

ALLISON FOSTER (MOTION)

1 then if you look at that subset and you say -- you asked the
2 question when did they tell, did they delay? And the answer
3 is again, yes, the majority of them there is a period of
4 delay, as long as six months to 12 months is quite typical.

5 Q I think the first secrecy kind of relates to the second
6 component, helplessness.

7 A Right.

8 Q Can you explain helplessness?

9 A Yes. Feeling helpless -- the way I would explain it if
10 I were teaching about this would be to say, you know, the
11 child's perspective is that they are caught in a bargain
12 that they feel unable to change, that they are helpless to
13 find a way out of the dynamics in which they're caught,
14 snared in a child abuse relationship.

15 Q Summit's article, if you recall this, talks about
16 one -- well, he talks about that being -- do you recall that
17 Summit talked about this being an issue if the child did not
18 have a loving and trusting relationship with their parents?
19 Are you familiar with where he talks about if the child
20 feels like their parent is neglecting them or doesn't take
21 care of them routinely that they are not going to get
22 positive feedback from that, "so what's the point?"

23 A Right. Yes, that that contributes to their feeling of
24 helplessness.

25 Q So in terms of helplessness, I guess it would be hard

ALLISON FOSTER (MOTION)

1 to measure but maybe broadly you could say that family --
2 where there was a good family structure and a loving
3 supporting caregiver/child relationship, you could say that
4 it's more likely that the child will not feel helpless and
5 report --

6 A In fact, no -- I didn't mean to interrupt you. In
7 fact, no, empirically that's not been shown to be true. So
8 Summit's population, he's trying figure out from his clients
9 why is it that they felt that they were helpless. From 1983
10 forward there have been a number of studies looking at the
11 dynamics of delayed disclosure and the patterns of
12 disclosure. We do know that maternal support is beneficial
13 but we -- there are plenty of very supportive mothers and
14 fathers out there whose children still don't come to them
15 and still don't tell.

16 Q Okay.

17 A And it's not because the parents are neglectful or not
18 supportive.

19 Q Okay. For me to summarize that then, it's again hard
20 to measure response, helplessness, because regardless of the
21 family environment that you're living in it's still not
22 clear one way or the other whether you would reveal abuse or
23 not reveal abuse. You draw correlations and say that family
24 is more likely or this family is, it's still just a very
25 difficult thing to measure.

ALLISON FOSTER (MOTION)

1 A Okay. I think you're asking me about two things at
2 once. That doesn't really have to do with whether or not
3 it's hard to define helplessness. I think you're asking me
4 is a feeling of helplessness correlated with a lack of
5 familial support and the answer is we don't know, because
6 there's many things that may impact a child's self appraisal
7 that they are helpless to change their circumstances.

8 Q Okay. The third thing, entrapment and accommodation.
9 What exactly does this mean?

10 A Entrapment and accommodation defines the state that the
11 child finds him or herself in when they feel helpless to
12 change the bargain. The child molestation has begun, it is
13 ongoing and essentially the child still has to get along
14 with the business of life. So they feel trapped, meaning
15 "Okay. This is a situation in which I live that I cannot
16 change but I must accommodate it. I have to go to school, I
17 have to do my homework, I've got to go to church, I've got
18 to brush my teeth, I've got to sleep, I've got to eat, I've
19 got to make friends, I've got perform as a member of this
20 family, as a member of this community," and that's
21 accommodation. So it's accepting and living with something
22 you cannot change.

23 Q Okay.

24 A Or you perceive that you cannot change.

25 Q And when it comes to accommodation there's more than

ALLISON FOSTER (MOTION)

1 one way, there's many ways the children accommodate.

2 A Right.

3 Q And some of those we can generally categorize as
4 positive; the child is on their best behavior, follows rules
5 at home, tries to do well in school, is very obedient you
6 might say.

7 A I agree, yes.

8 Q And then a second group that children who are
9 accommodating may fall into would be children who are acting
10 out, maybe getting in trouble at school, fights, showing
11 signs of violence or something like that.

12 A Correct. The concept being that while they're
13 accommodating they're not accommodating as well and so
14 they're symptomatic in some way, right.

15 Q And some children may revert back to things like bed
16 wetting or biting or other types of behavior that -- is it
17 coping? I don't know whether it would be a coping
18 mechanism, but there are other ways that a child may act out
19 that would be inappropriate for their age that could be
20 associated with accommodation.

21 A Right.

22 Q So I guess again, it's hard to know whether a child's
23 behavior is symptomatic of abuse.

24 A Correct.

25 Q I guess you would agree that we couldn't say that

ALLISON FOSTER (MOTION)

1 100 percent of children who are doing well in school have
2 been abused.

3 A Right.

4 Q And 100 percent of children who were doing poorly must
5 have been abused, there's no way to.

6 A Exactly.

7 Q And what percentage can we say, what percentage would
8 you say accommodate in a positive way?

9 A I wouldn't.

10 Q And I guess the same question is negative, what
11 percentage of children who we can with certainty confirm
12 that were abused react in a negative way?

13 A Right. There's no way for me or anyone to accurately
14 calculate that.

15 Q Because completely healthy children who have never
16 experienced any kind of abuse as we know act in any variety
17 of behaviors that we exhibit.

18 A Right.

19 Q So I guess there's really no way to guarantee that
20 because a child is exhibiting any particular behavior that
21 they have, in fact, been abused?

22 A Right.

23 Q They would just maybe make some kind of propensity or
24 go towards maybe compiling with other factors would indicate
25 that maybe the child had been but we have no way of knowing

ALLISON FOSTER (MOTION)

1 for certain.

2 A Yeah. I'm not even sure I'd agree with that.

3 Q Okay.

4 A I mean, I think it's a retrospective individual
5 analysis depending on any individual's life.

6 Q Okay. From Summit's article he mentions that the
7 reason -- does this sound familiar, the reason he proposed
8 it was for clinicians, for people like himself to improve
9 the way that they understand and accept a child's behaviors
10 and to try to help them move forward clinically to try to
11 recover.

12 A Yes.

13 Q So he was not intending to lay out a model to diagnose
14 sexual abuse.

15 A That's right.

16 Q He is really after the fact where abuse has been I
17 won't say 100 percent confirmed, but let's say the child is
18 in treatment, the abuse has been confirmed, his purpose is
19 for clinicians to be able to assist those children into
20 recovery.

21 A Yes.

22 Q This article is about 30 years old. I believe it's
23 1983.

24 A That's right.

25 Q Okay. And are you familiar with any subsequent

ALLISON FOSTER (MOTION)

1 articles he had written?

2 A Yes.

3 Q Okay. Are you familiar with the article he wrote maybe
4 a decade after that saying that he did not necessarily
5 intend that it be used to diagnose?

6 A Yes. I think the title of the article is the abuse of
7 the child sexual abuse accommodation syndrome.

8 Q Okay.

9 A Right.

10 Q And as you mentioned yourself earlier, this is
11 something that's being, in the field of psychiatry, studied
12 and studied, it's a very active field of study.

13 A Yes.

14 Q Are you aware of research that does not support the
15 theory of child sexual abuse accommodation syndrome? Are
16 you familiar with research to suggest that this is not a
17 good measure of -- not a good tool for assessing a child's
18 behavior?

19 A I'm familiar with for example -- oh, I don't know if
20 I'll remember all of their names -- London and Steve CeCe
21 are two of the four authors in the 2005 literature review
22 they did looking at essentially what of these components
23 have been empirically validated. But you're asking me if
24 I'm aware of research that actually rejects it and I would
25 say no, and I would say that the article is far from

ALLISON FOSTER (MOTION)

1 rejecting of the --

2 Q Well, the 2005 article that you mentioned with CeCe and
3 all the different names involved -- I'm not going to quiz
4 you on this too thoroughly.

5 A That's okay.

6 Q -- but they do compile some of the things we have
7 already spoken about. There are a number of different
8 answers you get depending -- a number of different
9 percentages you get depending on what field -- what
10 population you study. There's so many different factors
11 that can go into studying the topic.

12 A Right.

13 Q And when you compare all those studies side by side you
14 find that you get very different answers. It's hard to
15 confirm -- for instance with recanting. There is a wide
16 variety of answers that you get depending on how the study
17 is conducted.

18 A Correct, in terms of frequency. But there's no
19 refuting the fact that there are bona fide victims of
20 violent crime that go through a stage of recanting that it
21 ever happened. There's pretty good historical agreement
22 that these components exist, and then you get into the kind
23 of the inside baseball about the percentages.

24 Q Now, Ms. Benedetto, I'm sorry, I don't know she is
25 Dr. Benedetto --

ALLISON FOSTER (MOTION)

1 A Dr. Benedetto.

2 Q When she was here yesterday, and I know you were not
3 here for this, but I'm not asking you questions about this
4 particular case, but she had the opportunity to explain to
5 the jury the RATAC form of forensic interviewing.

6 A Okay.

7 Q And had an opportunity to go through her education,
8 expertise, experience doing thousands of forensic
9 interviews. You were asked by the solicitor earlier if you
10 felt that your opinions on this topic generally would assist
11 the trier of fact, the jury, in determining and
12 understanding this topic. Why is Dr. Benedetto's -- I know
13 you were not here for that, but why is her thorough
14 explanation of the RATAC formula not an effective
15 opportunity for the jury to hear about forensic interviews?

16 A Well, my understanding from Ms. Bodman's inquiry of me
17 before this cross began was we were talking about child
18 sexual abuse accommodation syndrome, we were talking about
19 memory, we were talking about delayed disclosure and the
20 stages of disclosure, none of which -- those are all
21 distinct from forensic interviewing technique, so I'm not
22 sure. And I am quite aware of State v. Kromah.

23 Q Yeah.

24 A So I think some distinctions are being made between
25 witnesses who are fact witnesses and someone like me who has

ALLISON FOSTER (MOTION)

1 no other professional role in this case other than being
2 here today.

3 Q And I think I asked the question in a way that I didn't
4 exactly mean to.

5 MS. GRICE: Beg the Court's indulgence one moment.

6 (Break in proceedings.)

7 Q Just a couple more questions, Dr. Foster. We're
8 talking about a child's behavior, and I know you're not
9 being asked to give an opinion and you probably don't know
10 anything about this particular case, correct?

11 A Correct.

12 Q But we're talking about a child's behavior following
13 allegations of abuse, and I know you mentioned Kromah, and
14 I'm assuming you're aware and the reason you mentioned that
15 is because you -- that a forensic interviewer during a trial
16 cannot give an opinion as to a child's behavior.

17 A Correct, won't be qualified as an expert and won't
18 offer any opinion testimony.

19 Q And, of course, Dr. Benedetto of course, was told not
20 to do that and she did not and that's why this does not come
21 up yesterday.

22 A Right.

23 Q You referred to child sexual abuse accommodation
24 syndrome as a phenomenon.

25 A Okay. I may have.

ALLISON FOSTER (MOTION)

1 Q What specifically did you mean by that?

2 A That child sexual abuse accommodation syndrome is a
3 phenomenon?

4 Q Yes.

5 A I'm not sure exactly what my sentence was, but --

6 Q Well, I don't know if this answers it exactly, but
7 would you agree that it's still kind of a work in progress,
8 that this is the best we have so far but this is an active
9 field of research that psychologists, behavioral
10 psychologists continue to try to perfect?

11 A Yes. I think at one point I said it's certainly not
12 settled science. The dynamics of chronic child sexual abuse
13 are complex, the forensic evaluation of those allegations is
14 complex. Understanding human behavior is complex and
15 there's a lot of things that people can theorize and then
16 there are others who will try to -- I just lost the word,
17 but for the purposes of research define and quantify those
18 dynamics, measure them and there will still be a substantial
19 amount of mystery and error.

20 Q Okay. All right.

21 MS. GRICE: Thank you. No further questions, Your
22 Honor?

23 THE COURT: Any redirect?

24 MS. BODMAN: Nothing, Your Honor.

25 THE COURT: All right. Thank you. You may step down.

ALLISON FOSTER (MOTION)

1 Have we got all the jurors? All right. We'll take a few
2 minutes and the jury will come in.

3 MS. BODMAN: Your Honor, I would like to just tender to
4 the Court a copy of Dr. Foster's CV.

5 THE COURT: All right.

6 MS. BODMAN: And then I did prepare just a legal memo
7 in support of her testimony.

8 MS. GRICE: Your Honor, just so the Court is clear,
9 Dr. Buck is present. I know we're taking a recess now but
10 before you rule, we would like to potentially have her
11 testify.

12 THE COURT: Well, if you want her to testify, she can
13 testify now.

14 MS. GRICE: Okay. Yes, sir.

15 THE COURT: Okay.

16 MS. GRICE: All right. Your Honor, then unless
17 somebody needed a recess?

18 THE COURT: Go ahead.

19 MS. GRICE: At this time, I'd like to call Dr. Julie
20 Buck to the stand.

21 The witness, JULIE BUCK, was first duly sworn
22 and testified as follows:

23 THE CLERK: Have a seat in the witness box. State your
24 name and spell it, please.

25 MS. BODMAN: Julie Buck, B-U-C-K.

JULIE BUCK (MOTION)

1 DIRECT EXAMINATION

2 BY MS. GRICE:

3 Q Where do you live, Dr. Buck?

4 A San Diego.

5 Q And how long have you lived there?

6 A Just a couple of months.

7 Q Where did you live prior to that?

8 A Salt Lake City, Utah.

9 Q And what kind of work did you do in Salt Like City?

10 A So I was an associate professor there of Criminal
11 Justice at Weber State University.

12 Q What do you for a living now?

13 A So I am now -- I now work full-time as a consultant.

14 Q And what are you consulting in generally?

15 A Eyewitness memory cases.

16 Q Dr. Buck, tell us about yourself, where did you go to
17 school?

18 A So I have a Ph.D in Psychology from Florida State
19 University, graduated in 2002; a Masters in Research
20 Psychology from the University of Tennessee-Chattanooga, and
21 before that a Bachelor's Degree.

22 Q Okay. What subjects did you previously teach in?

23 A A variety, but my emphasis area is psychology in law,
24 and in particular eyewitness, issues related to child
25 witnesses and adult eyewitnesses.

JULIE BUCK (MOTION)

1 Q Eyewitness memory, have you previously testified on
2 that?

3 A I have.

4 Q How many times previously have you testified?

5 A A dozen or so.

6 Q Have you been qualified as an expert?

7 A I have.

8 Q Tell us a little bit about eyewitness memory, and --
9 let me back up before that. Have you written on the
10 subject?

11 A I have.

12 Q Tell me a little bit about the work you've written and
13 what you have published.

14 A So I have nine publications relating to child witnesses
15 and eyewitness memory, six of these are peer reviewed,
16 twenty-five or so presentations at conferences which also
17 have a peer review process relating to this topic.

18 Q Are you a member of any kind of professional
19 organizations or associations?

20 A I am.

21 Q Which ones specifically?

22 A So American Psychological Association, American
23 Psychology and Law Association, those are the two that I
24 maintain memberships in.

25 Q Dr. Buck, you were in the courtroom just now and heard

JULIE BUCK. (MOTION)

1 Dr. Foster speak, correct?

2 A Correct.

3 Q You're familiar prior to this morning with the idea of
4 child sexual abuse accommodation syndrome.

5 A Yes.

6 Q And this fits in with your eyewitnesses memory studies,
7 correct?

8 A Correct. It's relating to eyewitness memory, a memory
9 of these events, how children talk about these memories,
10 those kinds of things.

11 Q Now, do you have clinical experience studying, working
12 with, for instance, children who are alleged to be victims
13 of sexual abuse?

14 A No. I am not a clinician at all, I have no clinical
15 experience. I don't work with children. I am very much a
16 researcher, a teacher at heart, so that's very much my
17 background.

18 Q Okay. And when you do research on the topic of
19 eyewitness testimony, what is it that you're compiling?
20 What are you studying?

21 A It depends on what the study is, but you're looking at
22 memory in general, how to obtain the best memories to the
23 children, reactions of those memories, a variety of things
24 depending on what the study is. I think Dr. Foster
25 mentioned this, too, this is a really big field if we talk

JULIE BUCK (MOTION)

1 about cognitive psychology.

2 Q Are you familiar with Roland Summit's 1983 article on
3 child sexual abuse accommodation syndrome?

4 A Yes.

5 Q And are you familiar with research that's followed
6 that?

7 A Yes.

8 Q Are you familiar with the article that came up
9 previously, the 2005 article with CeCe and Bruck, what does
10 the research tell us about the ways that children tell?

11 A Correct. And there's been several other review
12 articles of the topic. Okay. So what does the research
13 tell us about child sexual abuse accommodation syndrome? Is
14 it supported by research? What do we know about it?

15 Q Okay. In your research experience, is looking at child
16 disclosures during sexual abuse an area that you have
17 researched?

18 A Correct.

19 Q It is? Okay. And what do those studies generally show
20 about child abuse discoveries with regard to memory?

21 A So if you're -- are you asking -- I guess clarify that
22 a little bit.

23 Q What are the problems with child sexual abuse
24 accommodation syndrome from that Summit article from 1983
25 that you have studied as part of your research?

JULIE BUCK (MOTION)

1 A Well, frankly it's just really not supported by
2 research. While it is -- he even indicates that this is a
3 clinical opinion, it's not a scientific instrument and the
4 research supports that, that he came up with these ideas
5 then of how children might disclose, but the research really
6 didn't continue to support that that is typical of how
7 children disclose. So while it is true and Dr. Foster
8 supported this too, that most children don't disclose during
9 childhood, so around 60 percent wait and don't disclose
10 during childhood, they don't disclose right away, or they
11 just delay disclosure in some way. It isn't typical for
12 children to deny abuse in substantiated cases. So when a
13 child is interviewed in a high quality interview setting and
14 look at these kind of studies that have substantiated cases
15 of child sexual abuse, what we are finding is that the
16 majority do actually tell, around 85 percent if you're
17 looking at cross studies. Most of the children, the vast
18 majority of the children, are actually disclosing this
19 abuse, and so we're talking less than 15 percent are denying
20 allegations of abuse. So it is true that some children do
21 deny this but it is pretty rare. When we're talking about
22 recanting the rates are even lower, less than 10 percent of
23 children recant allegations of abuse in these substantiated
24 cases in this highest quality best research when we're
25 looking at cross studies. And studies vary, we've kind of

JULIE BUCK (MOTION)

1 talked about that this is a really complicated area, the
2 types of abuse vary, the age of the child varies, who the
3 perpetrator is varies, lots of different things affect how
4 children disclose. But if we're looking at Roland Summit's
5 theory it's just a theory and it's not scientifically
6 supported that this is typical of how children disclose
7 abuse.

8 Q You mentioned just in substantiated cases you said
9 roughly 85 percent. What was 85 percent?

10 A So 85 percent of children do disclose abuse in a formal
11 interview setting when asked.

12 Q And, of course, there's different methods of --

13 A So this is looking across many studies, this is kind of
14 our best estimates of what is going on if we look across
15 many studies. Some studies are going to find higher ratings
16 than that, still they're finding them is pretty rare in the
17 good studies.

18 Q And RATAAC is the method of interrogation --

19 A RATAAC is a solo questioning technique; it's an
20 interviewing protocol --

21 THE COURT: All right. Doctor, if you step down we're
22 going to continue this hearing, bring the jury in and resume
23 the trial.

24 MS. GRICE: Okay.

25 THE COURT: We'll be at ease for a couple of minutes

JULIE BUCK (MOTION)

1 and get ready to bring the jury in.

2 (A recess was taken.)

3 THE COURT: All right. You may bring the jury.

4 (The jury entered the courtroom.

5 THE BAILIFF: The jury panel is present.

6 MS. BODMAN: Thank you. All right. Welcome back,
7 ladies and gentlemen. Madam Forelady, how is the jury
8 doing?

9 THE JUROR: Doing well.

10 THE COURT: Good. We apologize for the delay, we've
11 been busy, busy with other things and are now ready to go.
12 You may call your next witness.

13 MS. BODMAN: Thank you, Your Honor. The State calls
14 Ray Olszewski.

15 The witness, RAY OLSZEWSKI, was first duly
16 sworn and testified as follows, on:

17 THE CLERK: Have a seat in the witness box. State your
18 name for the record and spell it for us.

19 MS. BODMAN: My name is Ray Olszewski. The last name
20 is spelled O-l-s-z-e-w-s-k-i.

21 DIRECT EXAMINATION

22 BY MS. BODMAN:

23 Q And with whom are you employed?

24 A With the Assessment Resource Center here in Columbia.

25 Q And can you tell the jury about your education and your

RAY OLSZEWSKI

1 background up until working at the Assessment Resource
2 Center?

3 A Yes. I have a Bachelor's Degree in Psychology from the
4 State University in New York. I have a Master's Degree in
5 Social Work from the University of South Carolina here in
6 Columbia.

7 Q And tell us about your employment history.

8 A After graduate school I was working for the Department
9 of Social Services as a child abuse investigator, CPS
10 investigator and also as a supervisor of child abuse
11 investigators. And following that employment I am now
12 working at the Assessment Resource Center and have been
13 since December 1999, so about 15 years.

14 Q And what are your duties and responsibilities at the
15 Assessment Resource Center?

16 A I am a forensics interviewer, that is my primary job
17 duty, so I conduct forensic interviews of suspected child
18 abuse victims.

19 Q Tell us about your specific training that you have
20 received in order to be a forensic interviewer.

21 A When I started working at the ARC I received a lot of
22 on-the-job training, but within a year or two I attended my
23 first week-long forensic interviewing course. I was trained
24 in the RATAC forensic interviewing model --

25 MR. BELL: Objection, Your Honor. May we approach?

RAY OLSZEWSKI

1 THE COURT: No, sir. Objection is overruled.

2 A That was a week long 40 hour course. I also went
3 through advanced trainings and numerous workshops and
4 seminars in the area of child forensics interviewing. I'm
5 on the faculty of a forensic interviewing course that we
6 teach locally at the Assessment Resource Center, we train
7 frontline child abuse professionals in the interviewing
8 protocol that we have been using.

9 Q And do you have an estimate of approximately how many
10 forensic interviews that you conducted over the years?

11 A It's over 1,000, I'm not sure of the exact number.

12 Q Okay. Did you interview **Minor 2** in this case?

13 A I did.

14 Q And did you prepare a report in connection with that
15 interview?

16 A Yes, I did.

17 Q Okay. What day was it that you interviewed her?

18 A According to my report it was May 22, 2012.

19 Q And was that interview with **Minor 2** recorded?

20 A Yes, it was.

21 Q In its entirety?

22 A Yes.

23 Q Okay. Have you had a chance to review it prior to
24 testifying today?

25 A Yes, I have.

RAY. OLSZEWSKI

1 Q I'm going to show you State's Exhibit 13. It's a copy
2 of a recording held by the Assessment Resource Center.

3 A Yes. It's a copy of the interview.

4 MS. BODMAN: Your Honor, at this time I offer into
5 evidence State's Exhibit 13.

6 THE COURT: Any objection?

7 MR. BELL: Yes, Your Honor. I object to it based on
8 prior objections, motions in limine on the entirety as well
9 to redactions.

10 THE COURT: It's admitted over objection.

11 MS. BODMAN: Thank you, Your Honor. At this time if we
12 may publish it to the jury.

13 THE COURT: You may do so.

14 (The video was received as State's 13 and
15 played for the jury.)

16 Q Is it -- or was it I guess intentional or accidental
17 that you or Dr. Benedetto didn't interview both children?

18 A No. That would be intentional, yeah.

19 Q Is that a practice that y'all do in all cases?

20 A Yes. If we have multiple alleged victims we try to
21 divide them up among as many interviews as we can.

22 Q And do you even have any memory of whether or not you
23 interviewed Minor 2 first or second or if you did them at
24 the same time?

25 A I don't have any memory of it, but often times

RAY OLSZEWSKI

1 interviews will be going on simultaneously. At that time we
2 had three functional interview rooms.

3 Q And would you all have -- if one of them happened first
4 and not simultaneously, would you all talk to each other
5 about your own interview before a second one happened?

6 A Right. Now, we tried not to do that until the
7 interviews are complete.

8 MS. BODMAN: No further questions at this time.

9 THE COURT: Cross examination?

10 MR. BELL: Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MR. BELL

13 Q I'll be real short. You pretty much just asked
14 questions, right?

15 A I'm sorry?

16 Q You just pretty much just asked questions, right?

17 A That's part of it, yeah, asking the right questions.

18 MR. BELL: No further questions.

19 THE COURT: Anything further?

20 MS. BODMAN: No, sir.

21 THE COURT: All right. Thank you, sir. You may step
22 down. That brings us to lunchtime, ladies and gentlemen.
23 For the jury we're going to break until 2:30, I need you
24 back in the jury room at 2:30. You're not required to stay
25 in the jury room so if you want to eat and then leave and

JULIE BUCK (MOTION)

1 come back at 2:30, whatever you would like but just -- you
2 should not muddle around the front of the courtroom. If
3 you'll talk to the bailiffs about what your plans are.
4 Enjoy your lunch.

5 (The jury left the courtroom.)

6 THE COURT: We'll break until 2:00 with regards to the
7 testimony.

8 (A lunch break was taken.)

9 MS. BODMAN: All right. We'll continue on with the
10 Doctor.

11 (Continuation of Dr. Julie Buck's testimony.)

12 BY MS. GRICE:

13 Q Dr. Buck, just briefly, there are really just a few
14 questions, I don't want to beat a dead horse here but there
15 are a few things I wanted to follow-up on. All right. To
16 summarize a couple of things said this morning, is it true
17 that research supports the fact that most children delay --
18 what does the research show regarding what percentage of
19 children delay disclosure?

20 A So it is typical for children to delay disclosure or
21 not even disclose at all during childhood, so that is not
22 uncommon. There is a decent percentage of kids that do
23 disclose pretty quickly but a much larger percentage does
24 not disclose right away.

25 Q And it sounds like that's very hard to test, it's not a

1 very testable thing to know what --

2 A All of this is based on the best data we have
3 attempting to test something that is quite completion.

4 Q What, if any, research is there on recanting or denying
5 one's own statements that abuse has occurred?

6 A So few children -- when we look at substantiated cases,
7 few children recant, less than 10 percent across studies,
8 we're talking about nine percent if we're averaging across
9 studies looking at substantiated cases, around nine percent
10 of children recant in substantiated cases. So a small
11 percentage does recant, but the vast majority, maybe one
12 percent are not recanting in these substantiated cases.

13 Q And in terms of substantiated cases, what kind of
14 things would go into making those substantiate?

15 A These studies are looking after the fact and so you
16 might be looking at conviction rates, you might be looking
17 for medical evidence, you might be looking at physical
18 evidence, are there videotapes, that kind of thing. And
19 then to answer the question as far as denial goes, also not
20 that common. So around 85 percent of children do report
21 abuse in the substantiated cases when asked in a high
22 quality interview.

23 Q Okay. Is child sexual abuse accommodation syndrome
24 generally accepted, is that a hard question to answer? Is
25 it generally accepted as a method?

1 A I mean, I think if we're going to -- if we're asking
2 that question it really would be an empirical question of
3 asking people as a whole, experts in this field what they
4 think. There is a lot of research in the last decade
5 refuting that does exist or indicating that it's not very
6 likely. Some researches have gone so far as to call it junk
7 science and talk about the limitation. So there's a lot of
8 studies kind of talking about the limitations with this
9 study and that it is not scientific. So as far as the
10 research support for it, the research community as a whole
11 is not likely to support it because the research isn't
12 there.

13 MS. GRICE: No further questions for Dr. Buck.

14 CROSS EXAMINATION

15 BY MS. BODMAN:

16 Q How are you doing, Doctor? So in looking through your
17 CV that was provided to me, it looks like really one of your
18 main areas is talking about experts who testify in trial
19 regarding the interview itself.

20 A Correct.

21 Q And then you also have done some other things that are
22 completely unrelated to this field. You have some death
23 penalty stuff, eyewitness testimony in like an adult armed
24 robbery.

25 A And it's not completely unrelated, it's certainly

1 memory work.

2 Q Well, death penalty --

3 A Death penalty, correct.

4 Q But I don't see anything in your resume' that had --
5 that mentions I guess disclosure, memory related to chronic
6 abuse or, you know, child sexual abuse accommodation
7 syndrome specifically in your resume' about any articles or
8 anything you've written.

9 A Correct. I have not published on child sexual abuse
10 accommodation syndrome.

11 Q And you've not done any forensic interviews?

12 A I do not do any forensic interviews.

13 Q And you don't do any kind of therapy or anything
14 yourself.

15 A Correct.

16 Q Now, with regard to the child sexual abuse
17 accommodation syndrome, you do acknowledge that the delayed
18 disclosure aspect is backed up by research.

19 A Correct.

20 Q And then the secrecy science aspect, also the research
21 confirms that?

22 A Well, that's the same as delayed disclosure.

23 Q Okay. Then you said regarding denial, that it is less
24 than 10 percent that deny in substantiated cases, right?

25 A 15 percent.

1 Q Okay. So we're talking about they have a STD?

2 A Potentially. There's a wide variety of what
3 researchers are doing to substantiate cases. But when we
4 look at a case, we look at studies that have more data to
5 support that the abuse really occurred versus some studies
6 are -- they're taking all interviews that come to an
7 assessment center.

8 Q Exactly. That's what I want to ask you about is we're
9 talking about substantiated cases, let me just give you a
10 list, I guess, of substantiated cases. Is, I guess, a
11 pregnancy?

12 A It could be.

13 Q You said on video.

14 A Correct.

15 Q A STD that could only be gotten through a sexually --

16 A Correct.

17 Q -- a sexual event. So things like --

18 A It could be a confession.

19 Q Okay.

20 A It could be a conviction.

21 Q Okay. And so the population of that study is those
22 that we know and so the victim is kind of confronted with
23 this, you have a baby, you know, you have an STD, and so in
24 that population they don't recant or they don't deny.

25 A I think that somewhat that's true, but I don't think

1 they are that different than -- I mean, we're trying to do
2 the best we can as far as getting substantiated cases that
3 represent the population as a whole. We're not trying to do
4 something that makes it non-representative of the cases as a
5 whole. So when we're looking at cases that are
6 representative that's what we're talking about.

7 Q But that's where that statistic comes from is
8 substantiated cases.

9 A Correct.

10 Q Then you said that 85 percent do disclose in a formal
11 interview setting, correct?

12 A Correct.

13 Q However, that statistic actually comes from children
14 that have disclosed prior to even coming to the child
15 advocacy center, correct?

16 A Most of these studies are looking at child advocacy
17 center interviews. So yeah, we're not generally talking
18 about cases that aren't coming to the public's attention at
19 all.

20 Q Well, my question is the 85 percent statistic is a
21 specific population, that that population had disclosed
22 previous to coming to the child advocacy center.

23 A A large percentage of those, but not all.

24 Q Okay. There is actually a separate study that says
25 that 50 percent disclose in just total population, not

1 distinguishing between children who have already disclosed
2 and not disclosed, but in a large population that it's only
3 50 percent that disclosed these that come into a child
4 advocacy center.

5 A So that wouldn't be supported across the research at
6 all. There might be a study that -- I'm sure there is a
7 study that supports that specific -- I'm sure you're pulling
8 it from a specific study. But when we look at -- for
9 example, we look at the NICHD protocol, this is a really
10 widely recognized, one of the best interview protocols we
11 have out there. When we question kids using that who come
12 in for any kind of interview about abuse, we're talking less
13 than 20 percent don't disclose, and these are across all
14 cases, these aren't just substantiated cases. So this is
15 very rare.

16 Q Okay. So I lost my list of the five characteristics, I
17 apologize. So the secrecy, the delayed disclosure, you
18 acknowledge that the research backs up.

19 A So that's just one thing.

20 Q Yeah.

21 A Delayed disclosure, it is backed up by research.

22 Q And the secrecy is backed up by research.

23 A But that's the same thing.

24 Q Okay.

25 MS. BODMAN: No further questions, Your Honor.

1 THE COURT: Anything further?

2 MS. GRICE: Just one follow-up question.

3 REDIRECT EXAMINATION

4 BY MS. GRICE:

5 Q Dr. Buck, you were just asked about secrecy or delayed
6 disclosure. And that is a category from the 1983 Roland
7 Summit article, and that's the first proposed child sex
8 abuse --

9 A So that is one of the five categories. It is one of
10 the five things and it does have scientific support for it.

11 Q Okay. That's just one of the five.

12 MS. GRICE: That's all. Thank you.

13 THE COURT: You may step down. I'll hear argument
14 anyone wants to make.

15 MS. GRICE: Yes, Your Honor. Your Honor, going back to
16 what I said at the outset, our argument against allowing the
17 State to have Dr. Foster specifically, but anybody to
18 testify to child sexual abuse accommodation syndrome is
19 two-fold. First, under Kromah we believe that this is
20 testimony about behavior that a child exhibits that is
21 improperly being offered to bolster the credibility of the
22 children.

23 THE COURT: I disagree as to the applicability of
24 Kromah to this issue.

25 MS. GRICE: Well, the second part of our argument, Your

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1 Honor, falls under the standard for when expert testimony is
2 permissible. And the standard requires that the Court must
3 find that the evidence will assist the trier of fact -- I'm
4 just reading from Rule 702 -- will assist the trier of fact
5 to understand the evidence or determine a fact in issue. A
6 witness is qualified as an expert by knowledge, skill,
7 experience, training or education to testify thereto in the
8 form of an opinion or otherwise. Now, I know that Dr.
9 Foster is not being asked to give an opinion about the
10 testimony of Minor 1 and Minor 2 I don't know that
11 she's ever watched the forensic interviews, but I expect her
12 testimony will just be general as to the type of --

13 THE COURT: That's why I said Kromah is not applicable
14 to this issue.

15 MS. GRICE: Yes, sir. But nevertheless, I think the
16 only inference that the jury can draw is that it is
17 applicable. Whether Dr. Foster --

18 THE COURT: That Kromah is applicable?

19 MS. GRICE: What I believe, Your Honor, when we were in
20 court Monday and I first brought this motion to the Court's
21 attention, Your Honor's own words -- and this was just in
22 asking us if this was what we intended, but you said you
23 believe this is a backdoor attempt to go around Kromah and
24 allow a person to testify --

25 THE COURT: Of course I said that without knowing

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1 anything about whatever you all wanted to present on the
2 issue.

3 MS. GRICE: Well, without knowing it you characterized
4 our position appropriately. That's exactly what we're
5 arguing, Your Honor, is that Kromah prohibits the State from
6 putting on a forensic expert to testify in a way that would
7 bolster the credibility of a child victim in a case. They
8 can't say --

9 THE COURT: I agree with you concerning that.

10 MS. GRICE: Yes, sir. And so following from that, I
11 feel like this is the State's next attempt to circumvent
12 Kromah by putting somebody other than that forensic expert
13 on the stand to fulfill that same thing. I believe that in
14 this case there is nothing that it can add to the jury's
15 understanding of the facts as the trier of fact in this
16 case, nothing is needed to assist them. I feel like based
17 on the testimony they've heard, there are not a lot -- a lot
18 of the things that the two experts have talked about in
19 terms of behavior exhibited by a child, delayed disclosure,
20 recanting, those things are not present in this case. My
21 position would still be that this is not an appropriate
22 person to have testify, but those things are specifically
23 not in this case. We are not -- there was no testimony that
24 the girls recanted and then later came back. There is no
25 testimony that this was a tentative disclosure but later the

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1 real disclosure came out. I know the State gave us a memo I
2 believe during -- there's a memo that was given to us, I
3 guess, this morning related to this and there's an error in
4 here that I wanted to bring to the Court's attention. It
5 says that testimony is admissible to answer a reasonable
6 juror's questions, et cetera, et cetera. Moving on, this is
7 clearly an issue in this case when disclosure took many
8 years.

9 THE COURT: Well, you all have handed up probably 20
10 different memos in this trial, and as far as I'm concerned
11 those memos are more for your own benefit than my benefit.

12 MS. GRICE: Okay. Well, sir, I'll simply say that --
13 since we're doing this motion mid-trial like this rather
14 than before the trial the Court knows nothing about the
15 specific facts alleged in this case. A lot of the reasons
16 that the experts give that children may report in certain
17 manners are simply not present in this case. There is a
18 case in my memo and the State's memo that I'll just mention,
19 State v. Hudnall, H-u-d-n-a-l-l. And in this case as the
20 State put in their motion held expert testimony regarding --

21 THE COURT: What year was that?

22 MS. GRICE: This was 1987.

23 THE COURT: Has that since been reversed?

24 MS. GRICE: No, sir. It was -- the State and I
25 actually are both relying on in the things that we've had --

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1 THE COURT: My footnote says it's reversed.

2 MS. GRICE: Not the portion --

3 THE COURT: They reversed it in State v. Shumpert.

4 MS. BODMAN: Yes, sir. I acknowledge the Supreme Court
5 overturned it in Hudnall. I cited Hudnall because that was
6 one of the first cases --

7 THE COURT: I understand your argument. She's the one
8 who was citing it at this point, that's her argument.

9 MS. GRICE: Your Honor, there's several holdings in
10 Hudnall.

11 THE COURT: That's why I'm asking, which one -- you
12 said 1986.

13 MS. GRICE: Yes, sir, 1987. It says in terms -- it
14 says, "The Court held this evidence admissible only to rebut
15 the defense claim that the victim's response was
16 inconsistent with such trauma." We have not alleged -- we
17 didn't really hear anything about the victim's behavior in
18 this case so there is nothing that we have tried to argue
19 against is inconsistent. There is no need to bring this in
20 for -- we have not tried to impeach their credibility. Our
21 theory all along, Your Honor, is that it is simply
22 fabricated, we are not here to argue the timing and the
23 quality of the disclosure.

24 THE COURT: It doesn't matter what you are arguing, the
25 State has to present its case regardless of what you argue.

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1 MS. GRICE: Yes, sir, absolutely.

2 THE COURT: Your position is by any means necessary to
3 try to get the defendant to find him not guilty -- the jury
4 to find him not guilty. The State still has its burden of
5 trying to convince the jury that he is and to answer any
6 questions the jury may have that might cause them to
7 question the credibility of their witnesses.

8 MS. GRICE: It's a little different with social science
9 maybe than with a hard science in terms of measuring a
10 person's behavior in terms of having experts testify to
11 that.

12 THE COURT: Right.

13 MS. GRICE: This is -- our brief, our opinion is that
14 testimony presented on this subject is solely intended to
15 bolster the credibility of the victims in this case, that
16 credibility has not been impacted. Further, this is a junk
17 science that they are relying on that it is not widely
18 recognized in scientific fields. It is certainly novel --
19 in my limited experience here, novel in our courts. I
20 believe previously other people would have testified to the
21 same types --

22 THE COURT: What is a junk science?

23 MS. GRICE: Child sexual abuse accommodation syndrome,
24 Your Honor. It is the person --

25 THE COURT: You mean that particular label?

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1 MS. GRICE: Yes, sir. But that particular label, that
2 particular acronym is -- the first mention of it and it
3 spread like wild fire, there's different names, different
4 type studies, I guess, that fall under that category whether
5 you call it child sexual abuse accommodation syndrome or
6 not, that's what Dr. Foster called it and I assume that's
7 what she would be calling it were she to testify.

8 THE COURT: Who cares what she calls it?

9 MS. GRICE: Your Honor, as you heard it is a study that
10 is -- you're testing a population of people that it is very
11 difficult to measure. There is no reliable consistent way
12 to control like you would in a laboratory to have a control
13 group and a study group. It's hard to appear including and
14 excluding so it's hard to know that the group or the
15 population that you're studying are those you intend to
16 study. I don't know if there's any followup with the people
17 that are studied, the people who -- children who are dealing
18 with child sexual abuse who end up in our center because
19 there's already a referral, a suspicion as Dr. Foster said
20 of sexual abuse. So if that's the only population you're
21 studying it's hard to know --

22 THE COURT: There is no -- it doesn't satisfy the
23 scientific reliability of 702 or 703?

24 MS. GRICE: Your Honor, I was looking at, I guess, the
25 factors in Jones. You're familiar with that case, I guess,

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1 Jones and White --

2 THE COURT: Very familiar with it.

3 MS. GRICE: Yes, sir. So in terms of the factors that
4 would make that underlying science reliable, there would be
5 publications --

6 MS. BODMAN: Would that be dog tracking?

7 MS. GRICE: I'm sorry?

8 THE COURT: Is Jones the dog tracking case?

9 MS. GRICE: No, sir, it's a bite mark expert. Jones
10 was a bite mark expert.

11 THE COURT: Bite mark expert.

12 MS. GRICE: Yes, sir. And the issue in that case was
13 there were bite marks present on a deceased person and they
14 were trying to go back in time to prove that the person
15 charged was the person that left the bite marks. It was only
16 recognized in four jurisdictions and so it was thought to be
17 suspicious because other jurisdictions had not recognized
18 it.

19 THE COURT: There was no scientific basis for it.

20 MS. GRICE: Yes, sir.

21 THE COURT: That was my questions to you.

22 MS. GRICE: Yes, sir.

23 THE COURT: So your question is it's based on no
24 scientific reliability.

25 MS. GRICE: Yes, sir. And in Jones there were more

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1 easily measurable things.

2 THE COURT: So if you're dealing with medical issues,
3 is the study of medicine a science?

4 MS. GRICE: I'm sorry, what, Your Honor?

5 THE COURT: Is the study of medicine a science?

6 MS. GRICE: Yes, sir.

7 THE COURT: All right.

8 MS. GRICE: But --

9 THE COURT: So when you have medical testimony you base
10 the reliability on it on scientific knowledge?

11 MS. GRICE: Yes, sir. And in the bite mark case even
12 though the idea of measuring a bite mark by dental marks was
13 kind of a novel and emerging thing, there was underlying
14 science on that. My cross would be they had all kind of
15 x-rays and stuff that had been used and tested and relied
16 upon reliably for a longer period of time, so the
17 underpinning science was reliable. With social science it's
18 a little harder to measure. You know, you're not dealing
19 with numbers and percentages and pressure and density and
20 those physical chemistry kind of factors. But I believe the
21 factors in Jones still do apply, and I would argue that
22 because it is harder to quantify, that means that the Court
23 as the gatekeeper should err on the side of excluding it.
24 THE COURT: But what if the Supreme Court has already
25 approved it?

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1 MS. GRICE: If they have --

2 THE COURT: Not referencing the label that you're
3 placing on this syndrome, but the behavioral characteristics
4 of sexual assault victims, child abuse victims, child sexual
5 assault, child sexual abuse victims.

6 MS. GRICE: Yes, sir. If our State Supreme Court has
7 addressed that I'm unaware of it. I know other types of
8 syndromes and trauma centers and such you know, it can go
9 either way depending if -- something like battered women's
10 syndrome would be an affirmative defense. Battered women's
11 syndrome would be something where it is hard to study, it is
12 hard to get inside someone's head and measure and know like
13 the control for what they were like before the battery
14 began, but that's permissible because it's an affirmative
15 defense. You know that a crime has been committed and this
16 is an affirmative defense that then allows testimony to try
17 to explain as a defense why that crime occurred. Here that
18 is not why it's happening. Here the State wants this
19 testimony in our opinion to support that a crime has
20 occurred, it's trying to answer a question of fact that
21 should be --

22 THE COURT: I didn't hear that question asked of any
23 witness or of this witness whether the children were abused
24 or not.

25 MS. GRICE: No, sir. And that's -- the State is not

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1 offering her for that specific purpose. If the jury is
2 allowed to hear even general testimony on whatever we call
3 it, child abuse assessment, child sexual abuse accommodation
4 syndrome, without being told to connect the dots and find
5 that this doctor is here to tell us that this is what these
6 girls are going through, I don't see any other conclusion
7 that the jury can draw from that. They're going to have a
8 very qualified experienced professional and doctor
9 testifying about something, I believe that that is going to
10 give her testimony a lot of weight and they're not going to
11 be sure where to put that weight, they're going to assume
12 that it's for the purpose of supporting what these two girls
13 are saying.

14 THE COURT: Okay. From the State?

15 MS. BODMAN: Your Honor, pursuant to Rule 702, we
16 believe that and -- excuse me, State vs. White which is
17 the --

18 THE COURT: The dog tracking case.

19 MS. BODMAN: Dog tracking case, yes, sir. That you as
20 the gatekeeper make just a threshold finding of foundational
21 requirements of qualifications and reliability, and I
22 believe that Dr. Foster has clearly demonstrated her
23 qualifications to speak on this subject and her area of
24 expertise and knowledge. In addition to her own
25 observations over the decades of interviewing these children

1 and treating them in therapy as to common behaviors and
2 these characteristics that are seen. In addition the case
3 law supports from State v. Schumpert in 1993, which started
4 discussing this behavior characteristics being allowed into
5 testimony regarding behavioral characteristic of sexual
6 assault victims and the range of responses encountered. And
7 then through Weaverling, State vs. Weaverling which was in
8 1999, talking about such testimony is relevant and helpful
9 in explaining to the jury the typical behavior patterns of
10 adolescent victims of sexual assaults. It assists the jury
11 in understanding some of the aspects of the behavior of
12 victims and provides insight into the sexually abused
13 child's often strange demeanor. When facts of the case
14 raise questions of credibility or accuracy that might not be
15 explained by experiences common to jurors, like reactions of
16 child victims of sexual abuse expert testimony on general
17 behavioral characteristics of such victims should be
18 admitted. And she has said that they are not attacking her
19 credibility, they're merely saying that this is fabricated.
20 Well, a fabrication is a lie, and that's attacking these
21 victims' credibility. They stood up in opening statements
22 and said that this did not happen, the mother basically has
23 kind of orchestrated this whole thing in an effort to get
24 him out of the house. And so having an expert to come to
25 the stand to talk about there are explanations founded in

1 experience and research that is an alternate theory to why
2 there was a delay, why they may not have, you know, felt
3 they could talk to their mother or tell their mother. Why
4 from the time that they lived in New Jersey through the date
5 that it was disclosed that they would continue to get up in
6 the morning, eat breakfast, go to school, function
7 throughout the day, return home at the end of the night and
8 go on with their day. Their own defense expert
9 acknowledged, in fact, that the research does back the
10 secrecy aspect of it and the delayed disclosure aspect of
11 it. The entrapment and accommodation will be the expert --
12 expertise of Dr. Foster to then explain how that secrecy and
13 how that delayed disclosure kind of plays into accommodation
14 and entrapment. And as far as even if the Court is
15 concerned about the aspect of recantation and denial
16 characteristics is in this case it really plays no part
17 because we don't have a recantation or a denial and so we
18 don't need to get bound down in whether or not the research
19 supports those two characteristics because it's not an issue
20 that we are fighting about in terms of why these kids did
21 that. So just based on 702 she has specialized knowledge
22 that I believe should be admissible, and the probative value
23 far outweighs any prejudicial affect of that.

24 THE COURT: All right. I find that the testimony is
25 admissible as far as this witness is allowed to testify as.

1 an expert witness in this case. I'm not prepared to go so
2 far as to say that South Carolina should adopt this child
3 sexual abuse accommodation syndrome, I don't think that's
4 particularly relevant to the issues in the case or the
5 issues upon which the expert is likely to offer testimony.
6 She is imminently qualified in the field of evaluating child
7 sexual abuse cases and the behavioral characteristics of
8 abused children. She has the necessary expertise, training,
9 experience and skills that involves the subject matter based
10 on the testimony of both experts here today that clearly
11 involved matters that would be helpful to the jury in
12 understanding issues in this case, it's involving matters in
13 which the trier of fact may be assisted by a person with
14 specialized knowledge and training. Though the whole field
15 of behavioral characteristics of children who may have been
16 sexual assault victims, child sexual abuse victims, it's
17 difficult to place a scientific knowledge test to evaluate
18 the reliability of the testimony based on the fact that it
19 involves a particularized area of expertise. But I believe
20 that from what I've heard I believe the testimony to be
21 offered is sufficiently reliable that it meets the test for
22 the Court in its gatekeeper function. There has been and
23 adequate amount of scientific research and skills employed
24 to assess the nature of the problems with child sexual abuse
25 victims, this witness can testify generally to those issues

1 involved without seeking to usurp the decision making
2 function of the jury. No testimony obviously would be
3 allowed that would broach upon vouching for a witness or
4 testimony indicating some protection of abuse. The Court
5 can provide the jury with any limited instructions, any
6 appropriate limiting instruction as requested by the defense
7 as to the manner in which they should view this testimony,
8 but I deny the motion to exclude the expert witness. This
9 in parenthesis regarding sexual assault accommodation.
10 syndrome, the Court is neither objecting nor rejecting that
11 as a recognized syndrome of the law. I know it's been
12 adopted in some states, rejected in some. South Carolina
13 has not weighed in on them, I'm not going to weigh in on
14 this case. Anything else?

15 MS. GRICE: Nothing further from the defense. Thank
16 you.

17 THE COURT: Let's bring the jury.

18 (The jury returned to the courtroom.)

19 THE BAILIFF: The jury panel is present, Your Honor.

20 THE COURT: All right. Your next witness, please?

21 MS. BODMAN: Your Honor, the State calls Dr. Allison
22 Foster.

23 MS. GRICE: And your Honor, at this time we renew our
24 pretrial motion -- or our objection of this witness.

25 THE COURT: All right.

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1 The witness, ALLISON FOSTER, was first duly
2 sworn and testified as follows:

3 THE CLERK: Have a seat in the witness box. State your
4 full name for the record and spell it, please.

5 MS. BODMAN: My name is Allison Mary Foster.
6 F-o-s-t-e-r.

7 DIRECT EXAMINATION

8 BY MS. BODMAN:

9 Q And with whom are you employed?

10 A I am employed in two places. I am the chief
11 psychologist at the ARC, the Children's Advocacy Center here
12 in Columbia, I work there now part time. I used to work
13 there full time there for 17 years, now I work there
14 part-time. I'm also self-employed in private practice as a
15 clinical psychologist.

16 Q Can you tell the jury about your education and your
17 background for us?

18 A Sure. Starting with college, I went to Emory
19 University in Atlanta, graduated in 1998. Worked for a year
20 in a residential treatment facility called Devero
21 (pho-netic-ally) with seriously emotionally disturbed
22 adolescents, and then I relocated here because I got
23 accepted into the Ph.D program in clinical psychology and I
24 graduated in the spring of 1996. Starting in 1995 I
25 actually became employed at the ARC as its program director,

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1 then finished my Ph.D in '96, became licensed as a
2 psychologist a year later because you have to do a year of
3 postdoctoral supervised work, take an exam, sit through
4 orals so that you get your license. So I became licensed in
5 1997. And I received an academic appointment at the USC
6 School of Medicine Department of Neuropsychiatry and
7 Behavioral Science in 1998. And then going forward from
8 there just every year there are continuing education
9 requirements to maintain my license.

10 Q Tell us about your duties and responsibilities at the
11 ARC.

12 A Okay. First and foremost would be forensic
13 interviewing of children. So in '95 -- from '95 to 2012,
14 for 17 years I was the program director. So my weekly work
15 included forensic interviews, therapy with children where we
16 had substantiated cases of child sexual abuse or physical
17 abuse, then I was providing therapy, hiring staff,
18 supervising staff, teaching. Starting in 2000, we became a
19 certified state -- well, the ARC became certified along with
20 the Children's Law Office to provide a five day training
21 forensic interview training course called Childfirst
22 program, it was called Finding Words, now it's called
23 Childfirst. So the teaching of multidisciplinary teams,
24 that includes police officers, child fitness service
25 workers, prosecutors, therapists and forensic interviewers.

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1 around the state about child abuse and interviewing and
2 dynamics of abuse. I think those would be my main duties;
3 so service, teaching and supervision.

4 Q Give us a little perspective of the ARC's kind of
5 position in the forensic interviewing process as being a
6 trainer and leading off with Childfirst.

7 A Sure. Well, I'm proud to say we were the first state
8 in the country to get to take this national -- it was a
9 national program and the creators wanted to see about
10 bringing it down to the state level so they could roll it
11 out in many states and expand the amount of professionals
12 out there who were well trained to conduct interviews of
13 children and do it in a responsible and professional way.
14 So we were the first state to be approved to roll out this
15 training at the state level, and we've continued to do that
16 for now 14 years. And then additionally, of course, I
17 trained elsewhere outside of South Carolina.

18 Q So tell us about that. What type of training do you
19 provide outside the state?

20 A Sure. There is a national organization called the
21 Children's Advocacy Center in Huntsville, Alabama and I'm a
22 frequent trainer there, pretty much every March I go there
23 and present on various topics, and I've also been one of
24 their faculty members for their five day course. I teach on
25 things like child developments, language, memory, dynamics

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1 of child sexual abuse, process of disclosure, in other
2 words, how children tell about abuse. So those are some of
3 the areas that I teach about often.

4 Q And your private practice, what type of clientele are
5 you dealing with in your private practice?

6 A Children and families, very similar work actually, but
7 cases that kind of fall outside of what a children's
8 advocacy center does. So for example, allegations that come
9 up during divorce and custody litigation where maybe DSS and
10 law enforcement are no longer involved but there's still
11 allegations and the family court needs somebody like me to
12 help them sort it out. So I do custody work, I'm still
13 evaluating children and circumstances that affect children.
14 And then I also do just case consultations both for family
15 court matters and criminal court.

16 Q Have you testified in courts in South Carolina as an
17 expert before?

18 A Yes. Yes, I have.

19 Q And have you been declared an expert, I guess, either
20 in the areas of child abuse assessment or dynamics of sexual
21 abuse?

22 A Yes, both of those.

23 Q Any other areas that you've been declared an expert in?

24 A Child sexual abuse dynamics, process of disclosure,
25 kind of more broadly child abuse -- well, real broadly, I've

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1 been qualified as an expert in child psychology or child
2 forensic psychology.

3 Q And is the process of disclosure and the way that I
4 guess our memories work or children's memories work, are
5 those important aspects for you to be I guess up to speed on
6 and know the research in those areas?

7 A Yes, definitely.

8 Q Okay. Are those areas that you have spoken on?

9 A Yes.

10 Q Okay. Approximately how many forensic interviews do
11 you think you have conducted?

12 A More than 1,000, more than 1500. I don't know if it's
13 more than that.

14 Q Do you know approximately how many times you've been
15 declared an expert witness in a trial?

16 A No. More than 100, whether it's more than 200 I don't
17 know.

18 Q I asked you about South Carolina, but have there been
19 other court environments that you've been declared an expert
20 in as well?

21 A Yes.

22 Q Okay.

23 A So in addition to testifying in the State of South
24 Carolina in criminal court and family court, I've also
25 testified in Utah. District Courts in Chicago and here in

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1 Columbia. I also have testified in Colorado, Iowa, Georgia,
2 and I am sometimes an expert witness in the U.S. court
3 marshal system, so Army court marshal or Navy or Air Force,
4 those three branches of military service.

5 MS. BODMAN: Your Honor, at this time I would tender
6 Dr. Foster as an expert in the area of the dynamics of child
7 sexual abuse.

8 MS. GRICE: Your Honor, we would object based on our
9 reasons given earlier.

10 THE COURT: Do you have any additional voir dire of the
11 witness?

12 MS. GRICE: Not at this time, no, sir.

13 THE COURT: All right. The Court will accept the
14 witness as an expert in the field and ask that -- over
15 objection. And ladies and gentlemen, an expert witness is a
16 witness who -- or a person who by virtue of their education,
17 training and experience is considered by the Court as an
18 expert in some art, science or calling. Based on that
19 education, experience or training, they are able to offer
20 opinions where as other lay witnesses cannot. The testimony
21 of this witness, Dr. Foster, is being offered to you and may
22 be considered by you only for the purpose of understanding
23 and explaining the behavior or the dynamics of the child
24 sexual abuse victims in general and not as proof that
25 molestation occurred as to any one or more of the victims in

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1 this case. So it's being offered for the sole purpose of
2 helping you understand and explain the behavioral dynamics
3 of children generally who may be sexually -- or may have
4 been sexually abused and to help you understand it if you
5 determine -- help you understand it if it's determined by
6 you to apply to the behavior of the alleged victims in this
7 case, but it's not -- will not be for the purpose of proving
8 that molestation occurred to any one or more of the victims
9 in this case. You may proceed.

10 MS. BODMAN: Thank you, Your Honor.

11 Q Okay. Let's talk about first how you can help us with
12 memory, a child's memory and how it relates to chronic
13 abuse.

14 A Okay. So generally speaking, a few things to know.
15 First of all, memory is often talked about in terms of three
16 stages that are required to remember something. You have to
17 code it, so in other words you have to be alert to take it
18 in at some level through your five senses. Then you have to
19 be able to retain it. We really don't retain everything
20 that happens to us every minute of every day, so you've got
21 to code it, you have to retain it, and then you have to be
22 able to retrieve it. So that's the third component of
23 memory in terms of -- in other words, if I ask any one of
24 you a question about something that's happened in the past
25 it has to be something you coded, something you retained,

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1 and the way I asked the question has to allow you to
2 retrieve it and deliver it, so that's one thing to
3 understand. In terms of how memory functions for children
4 with the occurrence of -- you said chronic sexual abuse. So
5 when chronic sexual abuse occurs that essentially -- I would
6 make the assumption that for chronic sexual abuse to be
7 occurring, that means that nobody knows it's happening, or
8 at least if they know it's happening they're not stopping
9 it. So it's typical in those kinds of cases that sexual
10 abuse is occurring and it is allowed to continue occurring
11 because the child is not speaking of it. If you're not
12 speaking of your memories, you know, and if you're actively
13 suppressing as many victims of chronic sexual abuse are,
14 they're putting effort not into remembering and not into
15 organizing and not into telling, they're actually putting
16 effort into the opposite, which is to suppress, to
17 compartmentalize, think about it, deal with it the least
18 amount necessary to get on with the business of life and
19 that affects memory. Because memories are in part better
20 stored when they're reflected on and organized and given
21 voice. So it all kind of becomes -- I was going to say a
22 jumbled mess but that's not really fair, but it becomes a
23 fragmented collection of things that have happened that may
24 not have been very well organized. And lay on top of that
25 the fact that you've got a child -- I don't know what age,

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1 but children's brains are under development so children
2 don't have the life experience to understand their sexual
3 abuse experiences like an adult would understand the sexual
4 experience. So they have less experience with which to kind
5 of connect the abuse experience and have a way of thinking
6 about it or storing it sensibly, and the brain is literally
7 developing. So again, all of the skills of the brain to
8 code and to store and be prepared with language to retrieve,
9 all of that is under development so it's not going to be --
10 it doesn't play to the strength of the child.

11 Q And would the ages of around seven, eight, nine apply
12 to what you just said?

13 A Oh, absolutely.

14 Q Okay.

15 A The brain is really not fully developed until we're in
16 our early twenties. So in terms of combination of life
17 experience, you're talking about preadolescent like
18 elementary school aged children who should not have sexual
19 knowledge to anchor these experiences, and you have very
20 much a developing brain so the -- and developing language.
21 I mean, really we remember what we remember with words which
22 is why none of us really have memories as babies, we have to
23 have language to have what we call verbal memory. So all of
24 that is under development for you said seven to nine years
25 of age? Yeah. And then the last thing I would say is --

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1 you asked about memory, children and chronic sexual abuse.
2 So the other issue impacting memory would be whatever roll
3 trauma is playing. So when something is happening to us
4 that we feel upset by, overwhelmed by, we're coping with
5 something that is a threat to our integrity, our physical
6 integrity, our psychological integrity, that alters the way
7 the brain is functioning in the moment. So you may have
8 heard the expression fight, flee or freeze, like fight or
9 flight when you approach something that causes anxiety. So
10 when your anxiety is jacked up that changes the way the
11 brain is processing what's happening, so it changes what's
12 coded, it changes how it's retained and it will make it
13 different in terms of how that information is retrieved.
14 Some things will stick, and in fact, some things will stick
15 even better because of the distress, but other things don't
16 stick at all and are lost.

17 Q And you said -- so it has to be coded, or it has to
18 stick, I guess. Is that the same thing you were talking
19 about --

20 A Retained is the stick.

21 Q Okay. And so would it be -- I guess if there are
22 multiple incidents that happen, would it be something about
23 one incident, you remember one incident because something
24 different happened that time?

25 A That is often the case. It could be a different

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1 location, something different happens in the transaction,
2 that makes it stand out. Maybe the child tried something
3 different to resist or escape or to stop what was happening.
4 So something like that could make it stick out.

5 Q So hypothetically if the child says, "I'm going to
6 fight them off," or, "I'm going to run, I'm not going to let
7 it happen this time."

8 A Right.

9 Q Okay. And so that incident sticks out in that child's
10 mind, it is coded and retained as opposed to the time that,
11 you know, they just kind of let it happen.

12 A Right. And also -- you're making me think about
13 something else that I think would help the jury understand
14 the difference. We think about memory in terms of what we
15 call script memory versus episodic memory.

16 Q Okay.

17 A So script memory, if something happens to you a lot of
18 times or you are involved in something a lot of times you
19 end up remembering it with sort of a script. In other
20 words, if I said, you know, "Tell me about going to work in
21 the morning." Well, that's something maybe you do on a
22 regular basis and so you would say "Well, I usually do X, Y
23 and Z," you would have sort of a script in your head to make
24 quick work of telling me how you go to work in the morning,
25 that's script memory. That's very efficient but it also

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1 masks detail, it's an efficient way for your brain to
2 organize memory. But if I said, "Tell me all about how you
3 went to work yesterday," then that would be an episode, that
4 would be a specific episode that I'd be asking you to
5 retrieve. And so what happens with chronic events is that
6 you kind of end up assembling sort of a general script of
7 how it usually goes, but then there may be an episode like
8 something that's different that you remember well because it
9 sticks out as a specific episode that you can talk about
10 more clearly than everything else that just runs together.

11 Q Okay. So in terms of I guess -- you said retrieving it
12 sometimes how the question is asked.

13 A That's right.

14 Q Would it be or is it a common practice if there's
15 chronic abuse just to ask the child, "Just tell me about one
16 memory that you have of it?"

17 A Yes.

18 Q So that they can retrieve that one that for whatever
19 reason it stands out in their mind.

20 A That's exactly right.

21 Q And I guess related to memory in children is, can
22 children give dates and times of things that happen to them?

23 A Rarely. That doesn't play to their strengths at all.

24 It's doesn't actually play into human strengths. It's very
25 difficult for all of humans to remember when in time for

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1 something remote, but we as adults, we'll get out our
2 calendars or we'll make associations between events, and
3 those are very -- those are adult skills. So young
4 children -- they know that something happens when it happens
5 because people told them it was time to go somewhere or --
6 so they're not thinking in terms of chronology the way we
7 adults do.

8 Q So if we said, "Tell us the last time it happened,"
9 they're not going to say, "Last Wednesday."

10 A Correct.

11 Q Or a week to them may be, you know -- it may be
12 inaccurate?

13 A That's correct.

14 Q That it was actually a week ago or something.

15 A Right.

16 Q Talk to us about what is kind of known as child sexual
17 abuse accommodation syndrome --

18 A Okay.

19 Q -- if you can inform us about that.

20 A Sure. Child sexual abuse accommodation syndrome is a
21 term that was coined by a psychiatrist named Roland Summit
22 in the 1980's. And it has continued to be a term used in
23 our field to capture dynamics of sexual abuse that happen
24 for some children. Specifically -- well, a lot of it has to
25 do with how do children get on with the business of life for

ALLISON FOSTER

1 long periods of time while not telling about abuse. So
2 there are sort of five factors that Dr. Summit talked about,
3 the first being secrecy. That the child is through whatever
4 mechanisms feels that they're caught in the bargain, caught
5 in a deal where they have to keep it secret, whether it's
6 because they're afraid of getting the perpetrator in
7 trouble, whether they're afraid of something bad happening
8 to them, for whatever reason they are keeping it secret.
9 And then Dr. Summit talked about how that causes the child
10 to have a sense of helplessness to change the situation. So
11 because they're helpless to get out of that bargain or
12 helpless to find a way out they feel trapped, that's the
13 entrapment, the third stage -- there aren't really stages so
14 much as factors. There's secrecy, a feeling of helplessness
15 for the child to change it. There's a factor called
16 entrapment or accommodation. And that's basically
17 describing the fact that these children do go on with the
18 business of living. They go to school, they do their
19 homework, they join teams, go to church, do chores, they
20 sleep, they eat because they must, and they are doing all
21 that because -- they are accommodating something they feel
22 they can't change. They're accommodating abuse and getting
23 on with the business of life, and that's the accommodations
24 phase. We know that that can go on for months, years, it
25 can be something that goes on just until they age out or it

ALLISON FOSTER

1 goes on until they make a disclosure, which is the next
2 factor. So children who are trapped in that kind of
3 accommodation phase and abuse goes on for a long period of
4 time, some of them will eventually tell and so they may test
5 the waters. And so Dr. Summit talked about it being a
6 delayed tentative kind of way that they might step into
7 finally telling to sort of see what happens if they tell.
8 And then, of course, he talked about for some of those
9 children there will be even a period where they will take it
10 back, where they recant possibly because they see the
11 consequences of telling and they decide it's too much and
12 they want to put everything back together again, or they're
13 just feeling too overwhelmed internally. So he recognized
14 that in some true cases of abuse there may even be a stage
15 where they take it back.

16 Q And you said that not every child goes through each of
17 these behaviors that have been observed.

18 A Right.

19 Q The secrecy and the delayed disclosures, are those
20 backed by your own observations in this field as well as
21 research?

22 A Yes.

23 Q And then it sounds like the helplessness and the
24 entrapment are kind of a result of the secrecy?

25 A Exactly. To put a less fancy word on it, it would

ALLISON FOSTER

1 basically be saying coping, you know, coping with something,
2 enduring, you know, getting along with life because it's
3 just something that you just have to put up with while you
4 endure and cope.

5 Q In talking about the disclosure or tentative
6 disclosure, have you also heard of either a purposeful or an
7 accidental disclosure?

8 A Yes. We talk in our field about the ways in which
9 abuse might be discovered and it can be accidental or
10 purposeful. So an accidental disclosure would be, for
11 example, if a young child -- well, a child of any age tells
12 a peer, tells a friend about something that's happening
13 that's abusive and then an adult overhears that conversation
14 or catches wind of that conversation, that would be what we
15 call an accidental discovery, because the child didn't
16 really think he or she was telling for the purposes of
17 reporting, they were just telling a friend something.
18 Whereas that's very different than the child who makes a
19 decision who says, "I'm going to tell. I think I can tell
20 my grandmother," or, "I think I can tell my teacher or my
21 mother. I'm going to tell." That would be a purposeful
22 disclosure.

23 Q And so is it common or uncommon for there to be a delay
24 in an accidental disclosure?

25 A That would be a perfectly common scenario. If there's

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1 a delay there's no intent to disclose and it accidentally
2 comes to light through some circumstance.

3 Q And then in talking about helplessness, is that -- tell
4 us a little bit more about helplessness.

5 A Okay. Helplessness I would say -- maybe the clearest
6 way to say it, frankly it's a state of mind. So in other
7 words, it could be that that child has a way to get out of
8 the situation. The question is not whether or not
9 objectively we could look out from the outside looking in
10 and say, "Oh, the child could get out of that situation if
11 only she did this or that." It's about the child's own
12 self-appraisal of helplessness. So if the child feels that
13 she can't tell her mother or feels that she -- just for
14 whatever reason she feels helpless or he feels helpless to
15 change the circumstance, that's the helplessness that's
16 keeping the dynamic. So even though we might as logical
17 dates say, "Oh, well we can see an escape route," that
18 doesn't really matter.

19 Q And so it's that own child's assessment of their
20 situation --

21 A Right.

22 Q -- that makes them feel helpless about it.

23 A Exactly.

24 Q And in this particular case, have you reviewed either
25 of the interviews?

ALLISON FOSTER

1 A No.

2 Q Have you spoken with either Ray Olszewski or Dr.

3 Benedetto about the facts of this case?

4 A No.

5 Q And did I talk to you at all about the specific facts
6 that we've heard in this courtroom this week?

7 A No.

8 Q Did you hear any of the testimony from fact witnesses
9 in this case?

10 A No.

11 MS. BODMAN: No further questions at this time.

12 THE COURT: Ms. Grice?

13 MS. GRICE: Yes, sir.

14 CROSS EXAMINATION

15 BY MS. GRICE:

16 Q Good afternoon.

17 A Good afternoon.

18 Q Dr. Foster, a child's memory as you said, it's still
19 developing, the brain is developing in their early years,
20 and some of the issues they mention -- well, the child's
21 brain is not different if they've been abused than if they
22 haven't been abused. The same issues when it comes to
23 coding, retrieving memory, that's the same whether it's a
24 good thing or a bad thing, correct, or is it hard to kind of
25 generalize that?

ALLISON FOSTER

1 A You may be surprised at my answer, but research is
2 coming out to suggest actually that traumatic events do
3 actually affect a developing brain, so --

4 Q Okay.

5 A -- it's actually kind of an area of the harder science,
6 examining brain structures and the impact of long term
7 development on the brain.

8 Q Fair enough. Child sexual abuse accommodation
9 syndrome, this was a clinical theory, correct?

10 A Yes.

11 Q Developed about 30 years ago.

12 A Correct.

13 Q By a person, Dr. Summit, whose job it was to assess
14 children who we know have been abused, correct?

15 A Right.

16 Q And that was the population that he was dealing with
17 where children -- it was in a treatment setting, helping
18 them to recover from their abuse where abuse had been
19 confirmed.

20 A Yes, that would be correct.

21 Q And so he based these five categories on his limited
22 anecdotal but professional anecdotal work with children
23 whether there had been confirmed or substantiated cases of
24 abuse.

25 A Right.

ALLISON FOSTER

1 Q Okay. So he was not doing wider research into what
2 percentages of children have been abused and how can we
3 confirm their abuse.

4 A Right. This was never supposed to be -- the idea of
5 his child sexual abuse accommodation syndrome was not to
6 be like to look for these features and then say, "Oh, this
7 allows me to diagnose and prove that abuse occurred," it's
8 just to describe dynamics.

9 Q Exactly. Because there's no one way that abused
10 children behave.

11 A Correct.

12 Q And there's no one way that children disclose abuse.

13 A Correct.

14 Q And, in fact, many people who have been abused never
15 disclose it.

16 A That is true.

17 Q And it's hard to find out when there is what seems like
18 a spontaneous disclosure from a child, what is driving that
19 I guess. Whether it's accidental or purposeful, I guess,
20 you never really know the child and the child might not know
21 their own motivation as well it sounds like.

22 A I would agree with that.

23 Q Okay. And the five steps that Dr. Summit goes through,
24 the first one being secrecy. Children are generally
25 secretive, would you agree with that?

ALLISON FOSTER

1 A No, I wouldn't.

2 Q Well, do you agree that children are -- can be
3 secretive about any number of things?

4 A I would agree that children are capable of keeping a
5 secret or trying to keep a secret if they think it's in
6 their best interest.

7 Q I guess to better ask the question, a child -- we
8 cannot necessarily say that if a child is secretive it's
9 because they have been abused.

10 A Right. True enough.

11 Q And children are helpless generally in the way that you
12 said, they might not from an outsider's perspective feel
13 that they are helpless if they have good people in their
14 lives and access to food and those kinds of things. But all
15 children may feel helpless just in the nature of the fact
16 that they are children, correct?

17 A Yes. There can be situations that children can feel
18 quite helpless in.

19 Q Because children, there's always some kind of
20 caregiver, or should be, correct?

21 A Yes, more or less.

22 Q And there are people that I would say I can't think of
23 any child that wouldn't say that there are authority
24 figures, people who have control over them.

25 A Right.

ALLISON FOSTER

1 Q Whether it's teachers, the police, their parents.

2 A Yes.

3 Q Okay. So all children to some degree would be labeled
4 helpless, or feel helpless because they are not in full
5 control of how they spend their time, where they go, what
6 they get to do or say.

7 A Right.

8 Q And helplessness, it makes children vulnerable I guess.

9 A Yes, I would agree.

10 Q And helpless children -- whether a child is, in fact,
11 helpless from an outsider's perspective, if the child feels
12 helpless they're more vulnerable to being taken advantage of
13 by those who care for them.

14 A By those who are supposed to care for them, right.

15 Q So by virtue of being a helpless child, a child can be
16 taken advantage of and manipulated by somebody who should be
17 caring for them.

18 A Yes.

19 Q Not all children go through all five of these stages as
20 you said.

21 A Correct.

22 Q And I know the solicitor just asked but I think it
23 bears repeating, you don't know anything about this case.

24 A That's correct.

25 Q You have not seen the interviews.

ALLISON FOSTER

1 A Correct.

2 Q You intentionally have not seen the interviews or been
3 given any information about it.

4 A Correct.

5 Q And that's because you -- and so because of that you
6 can't render an opinion.

7 A About this case?

8 Q Yes.

9 A No, I can't.

10 Q And you're not being asked to.

11 A Right.

12 Q And so there's no way of knowing if you did review the
13 evidence in this case if you would be able to say that it
14 followed these five steps or not, these five categories of
15 behavior proposed by Summit.

16 A You're saying if I reviewed the case?

17 Q I guess -- let me ask it a little better. Child abuse
18 assessment is what you're specialty -- that's what you've
19 been qualified to talk about today, but you can't say today
20 that -- you have that experience and you have training
21 generally in talking about this subject matter, right?

22 A Yes.

23 Q Okay. But specifically you can't say anything about
24 this case.

25 A Correct.

ALLISON FOSTER

1 Q Studying children who have been abused is a difficult
2 thing to do, correct? I mean, difficult in the sense that
3 it's hard to know what group of people you're studying?

4 A Yes.

5 Q And children who never reveal abuse obviously can't be
6 included in that.

7 A Right.

8 Q And children who have come to the ARC Center have been
9 referred by law enforcement or DSS.

10 A Correct.

11 Q I don't think it would be fair to say there's an
12 assumption of child abuse but there's that suspicion of
13 child abuse.

14 A Right.

15 Q And so in your hundreds of forensic interviews at ARC
16 you start off with the suspicion that there is child abuse.

17 A We start off with a continuum of hypothesis based on
18 the fact that there's a feared complaint or somebody
19 suspects that abuse may have occurred and it's our job --
20 we're not blind, so in other words we are aware of that
21 concern. And then it's our job to entertain in addition to
22 that initial concern alternative explanations to the
23 suspicion.

24 Q And a forensic interviewer's job as we've seen in a
25 couple of videos is really just to ask questions to try to

ALLISON FOSTER

1 elicit information, correct?

2 A Yes.

3 Q But those forensic interviewers are not doing an
4 investigation per se, they're not following up on anything
5 afterwards. Their job takes place during the time they're
6 in there with the child and that's it, correct?

7 A Not exactly, close enough but not exactly. So the
8 forensic interviewer has the benefit of some information at
9 the front-end about why am I interviewing this child, what
10 is the concern. There is the forensic interview that
11 occurs, and then there is multidisciplinary staffing of the
12 interview with the investigators for the purpose of sharing
13 that information, and really for that interviewer who may be
14 a social worker, a psychologist, a counselor by training
15 just to provide their observations and their thoughts to the
16 investigators.

17 Q Does --

18 A -- which may facilitate to some degree what the
19 investigators then followup on.

20 Q Does ARC keep statistics on percentages of children who
21 recant? Not generally in the world or in the world of
22 children who have been -- where a report has been made, but
23 does ARC keep any statistics on children who recant, who
24 change their story or --

25 A We have some statistics but not specifically for a rate

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1 of recantation, I don't think we do.

2 Q Okay. So there's no -- okay. And do you keep any kind
3 of statistics on what percentage of children who are
4 interviewed where that leads to a conviction, a criminal
5 conviction for sexual abuse?

6 A Some efforts are made at that. We had a web-based case
7 tracking system and we provided every six months data to our
8 accrediting body, the National Children's Alliance, however
9 it's a far from perfect mechanism. Because in six months
10 increments we may interview X number of children, they may
11 not -- their cases may resolve in pleas or convictions or
12 acquittals that may not happen for 18 months to two years
13 down the road. And so from a data collections standpoint
14 there's a lot of data lost.

15 Q I guess when -- let me go back for this. You mentioned
16 a child's behavior. One interview is done and you have the
17 information given at that time. You mentioned earlier about
18 on direct when Ms. Bodman was asking you questions about
19 children's behavior and accommodation and that children try
20 to compartmentalize and go on with their life -- let me ask
21 this: There's many different ways that children react
22 following substantiated child abuse, correct? There are
23 some ways you can characterize as positive, doing well in
24 school, trying to be obedient at home, those kinds of
25 things. Would you agree with that?

ALLISON FOSTER

1 A Yes.

2 Q And there are other ways that children act that you
3 could generally characterize as negative.

4 A Right.

5 Q They act out, they do poorly in school, they become
6 violent with siblings, something like that.

7 A That's right.

8 Q So there are a number of different ways that a child
9 behaves -- is said to behave while accommodating under Dr.
10 Summit's theory.

11 A Yes.

12 Q Would you agree, though, that those are all ways that
13 any child who has never been abused could behave.

14 A Yes.

15 Q There's nothing to say that because a child, for
16 instance, does poorly in school they must be abused.

17 A Correct.

18 Q And because a child is being as obedient as possible at
19 home, doing every chore asked of them they must have been
20 abused.

21 A Right, correct.

22 Q Is there really any behavior that a child can exhibit
23 where you can definitively say they are doing this,
24 therefore must have been abused or they must not have been
25 abused?

ALLISON FOSTER

1 A No.

2 Q Okay. So pretty much regardless of what a child is
3 doing it can fall under the category of accommodation for
4 sexual abuse.

5 A Or not, right. You're not going -- child sexual abuse
6 is not proved or disproved on the basis of how well or
7 poorly the child is behaving.

8 Q So there's no lines that can be drawn the dots that can
9 be connected between behavior and abuse.

10 A I think there are lines that can be drawn and behaviors
11 that can be connected, but not in a manner that is
12 appropriate for this arena, not in the manner that's
13 appropriate for the courtroom.

14 Q Not one specific thing.

15 A Right.

16 MS. GRICE: Beg the Court's indulgence one moment.

17 (Break in proceedings.)

18 MS. GRICE: No further questions. Thank you.

19 THE COURT: Redirect?

20 REDIRECT EXAMINATION

21 BY MS. BODMAN:

22 Q When we are talking about -- you said that a lot of
23 these things such as the secrecy or delayed disclosure is
24 backed up by research.

25 A Yes.

ALLISON FOSTER

1 Q And the population of the victims that they are looking
2 at in that research, are those substantiated cases or just
3 the child has said they are abused?

4 A That's a good question. It varies from study to study.
5 We know that children who have disclosed prior to coming to
6 a children's advocacy center have a high likelihood of
7 re-disclosing once they're at the CAC. But some studies you
8 know, sample adults and ask them questions about their
9 childhood, other studies look at, you know, maybe all the
10 cases that come into the CAC for a period of time regardless
11 of whether they were substantiated or not and they look at
12 different patterns. So it really just depends on the study
13 and what they're trying to measure.

14 Q Right. What the study is trying to measure.

15 A Right.

16 Q So are there studies out there that you rely on to talk
17 to the jury about; secrecy, delayed disclosure,
18 accommodation, that deal with substantiated cases, for
19 example, the child is pregnant?

20 A Yes.

21 Q So we know --

22 A Right.

23 Q -- they are 12 years old and they are pregnant so we
24 know abuse occurred.

25 A Right.

ALLISON FOSTER

1 Q Or a sexually transmitted disease.

2 A Right.

3 Q Or a confession.

4 A Right.

5 Q Or it's on video.

6 A Right.

7 Q So it's not just a child making an allegation, but the
8 research study is based on we know --

9 A Right.

10 Q -- that this child is a victim of abuse.

11 A Correct.

12 Q Okay. And I guess in your own experience and knowledge
13 do you see these behaviors also in those types of cases
14 where it is substantiated? It's not just a child saying,
15 you know, I was abused, but you have a history in your own
16 head of cases that were substantiated.

17 A Yes. If I could elaborate on that just a little bit?

18 Q Well.--

19 A That's all right. Yes.

20 Q But that is -- you see these cases of behaviors in
21 substantiated cases in your own career.

22 A Absolutely.

23 Q She talked to you a little bit about the recantation.

24 What does put a child at risk for a recantation?

25 A There are going to be both external and internal sort

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1 of factors that can put a child at risk for recantation. We
2 know that lack of maternal support in particular, lack of
3 mother's support in particular is a risk factor for
4 recantation. But also depending on what kinds of worries
5 the child had about consequences of telling, for example,
6 maybe they were worried they were going to be put in foster
7 care or that it was going to break up the family or
8 something like that and then they start to see it happening
9 then they may feel that they caused it to happen by telling.
10 Now obviously they're not responsible, all they did was tell
11 but that's how it feels to the child, then they want to put
12 it all back together because the consequences of them
13 telling can feel worse than what they were already living
14 with. So there is the internal appraisal of what's
15 happening and can I tolerate it and cannot withstand the
16 pressures. And then there's the external which is they may
17 have external force put upon them by guilt inducing adults
18 who say, "You know, if he goes to jail and we lose money, we
19 lose the house or we lose whatever. Your baby brother loses
20 his father," or whatever it is. And so adults may put
21 pressure on a child to take it back and to recant because
22 they see some better benefit to not having the report go
23 forward.

24 Q And these risk factors, are they also the same factors
25 that are why maybe a child keeps it secret is the fear of

ALLISON FOSTER

1 these things?

2 A Absolutely.

3 Q And then when they do finally tell their fears become
4 reality and then they go, "Nevermind, you know, it didn't
5 happen, let's all just go back to normal."

6 A Correct.

7 MS. BODMAN: No further questions.

8 THE WITNESS: Thank you.

9 MS. BODMAN: Anything further?

10 MS. GRICE: No further questions of this witness.

11 Thank you.

12 THE COURT: All right. Thank you. Your next witness?

13 MS. BODMAN: Your Honor, at this time, the State rests
14 its case.

15 THE COURT: All right. Ladies and gentlemen, that's
16 the State's case. We'll take up some matters and let you
17 get a break, and then we'll come back. Please go to the
18 jury room and please, do not discuss the case.

19 (The jury left the courtroom.)

20 THE COURT: Any matters of law at this time?

21 MR. BELL: Your, at this time we renew all prior
22 objections to this case that were previously made.
23 Additionally we move for a director verdict, Your Honor.
24 The evidence presented in this case even from the State I
25 believe is inadequate, even in the light most favorable to

1 THE COURT: Ladies and gentlemen, you have heard the
2 State's case, it's now the defense's turn. Mr. Bell?

3 MR. BELL: The defense rests.

4 THE COURT: All right. Ladies and gentlemen, the
5 defense has rested. That means you have heard all of the
6 testimony in this case. You have received all of the
7 evidence in this case, the next thing will be closing
8 arguments. There is an admonition by the Chief Justice that
9 we should not charge juries after 4:00 because most
10 courthouses close typically around 5:00 or 6:00 or so and if
11 you were to hear closing arguments today, the jury charge
12 today, you probably would not get the case until
13 5:30 pushing 6:00, so rather than do that we'll start fresh
14 in the morning at 9:30 and we'll cut you loose for this day.
15 Please do not discuss the case and we'll see you back
16 tomorrow morning at 9:30.

17 (The jury left the courtroom.)

18 THE COURT: All right. All the evidence is in. Any
19 matters of law?

20 MR. BELL: Again, Your Honor, I renew all objections.

21 THE COURT: Yes, sir, pardon me.

22 MR. BELL: I renew all previous objections.

23 THE COURT: All right. The Court's ruling is the same,
24 denying all motions. I note that in addition to renewing
25 the motion the defense also seeks a directed verdict of not

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1 we'll hopefully be ready for the jury at 9:30.

2 (Court recessed for the evening and resumed at 9:30 a.m.
3 on July 10, 2014.)

4 THE COURT: All right. Let's bring the jury.

5 (The jury returned to the courtroom.)

6 THE BAILIFF: Your Honor, the jury is present.

7 THE COURT: All right. Thank you, sir. Good morning.
8 Welcome back to day number four. Ladies and gentlemen, you
9 have heard all of the testimony, received all of the
10 evidence, it's now time to hear closing arguments from the
11 lawyers. The State will open. The defense will close.
12 Ms. Bodman?

13 MS. BODMAN: Today Minor 1 and Minor 2 sit here
14 with a perspective and a knowledge that they did not have to
15 keep a secret, that they were not helpless and that their
16 mother believed that they were her number one
17 responsibility. What a hard way to learn the love of your
18 mother. I want to start out before I go through the facts
19 of the case and talk to you a little bit about the law. The
20 Judge is going to read what we call the Court's charge to
21 you and will lay out the law. You're going to go back, and
22 you're going to take the facts that you have heard in this
23 case, the evidence and the testimony from this witness
24 stand, testimony that came out of the mouths of the
25 witnesses into this microphone and are being documented by

CLOSING ARGUMENTS

1 this court reporter are evidence. Testimony by witnesses is
2 evidence. The defendant is charged with two counts of
3 criminal sexual conduct with a minor in the first degree,
4 one for Minor 1 and one for Minor 2 Basically you find that
5 there was a sexual battery, and that is either sexual
6 intercourse, oral sex, anal penetration or any intrusion
7 however slight of any part of a person's body or of an
8 object into the genital or anal openings of another person's
9 body except when accomplished by -- for medically recognized
10 treatment for diagnostic purposes, so any intrusion, however
11 slight. So in a child who is less than 11 years of age, one
12 for Minor 1 one for Minor 2 You also have to consider
13 before you a charge of lewd act upon a minor, and this is
14 involving Minor 2 I'm going to apply the facts, as I said,
15 to this as we go through. So it's unlawful for a person
16 over the age of 14 to willfully and lewdly commit or attempt
17 a lewd or lascivious act upon or with the body or its parts
18 of a child under the age of 16 with the intent of arousing,
19 appealing to or gratifying the lusts or passions or sexual
20 desires of a person or of a child. So, for example, where
21 penetration doesn't happen but there is rubbing of the
22 genitals; upon the genitals or any part of the body of a
23 child. Okay. There is not a penetrating act, but there is
24 some type of a rubbing act. Your job is the sole judge of
25 the credibility of the witnesses, the believability of the

1 witnesses. You can believe everything that someone said,
2 nothing of what someone said, or you can believe parts of
3 their testimony and discard other parts of their testimony,
4 and you're going to use your common sense when you do that.
5 The same tools that you use everyday to judge whether or not
6 your child stole the cookies out of the cookie jar or your
7 business partner is stealing from you, those same tools
8 you're going to use. You didn't leave your common sense
9 when you came in that door and you're not going to leave
10 your common sense when you go out that door to deliberate.
11 We have to prove this case beyond a reasonable doubt, and I
12 think this is incredibly important when you are looking at
13 our evidence and you are looking at the defense which is
14 that it is revenge by Kia, the whole thing set up by Kia.
15 So proof beyond a reasonable doubt is proof that leaves you
16 firmly convinced of the defendant's guilt. There are few
17 things in this world that we know with absolute certainty
18 and in criminal cases the law does not require proof that
19 overcomes every possible doubt. If based on your
20 consideration of the evidence you are firmly convinced that
21 the defendant is guilty of the crime charged you must find
22 him guilty. If, on the other hand, you think there's a real
23 possibility that he is not guilty you must give him the
24 benefit of the doubt and find him not guilty. So few things
25 in this world that we know with absolute certainty. The

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1 only way in any trial, civil or criminal, that we would be
2 able to prove to a jury with absolute certainty that
3 something happened would be if you saw it yourself, then you
4 would not be a juror, you would be a witness and you would
5 come up to this stand and the jurors would be deciding did
6 you see what you say you saw. Okay. And so that's why it's
7 not absolute certainty, it's reasonable doubt. So let's
8 talk about these witnesses and the testimony that you have
9 to weigh and decide the weight that you want to give it and
10 the credibility that you want to give it. How do they know
11 what they know? What is they're experience, they're
12 training, their expertise? Did they see it themselves? The
13 forensic interviews. Dr. Benedetto, Ph.D, and Ray
14 Olszewski. Mr. Bell asked each of them one question, which
15 was so your job is to ask questions, and that's a little
16 belittling, it's a little unprofessional. If you watched me
17 this week and were to synthesize my job you would probably
18 say my job was to ask questions, that's what I did the
19 entirety of the week with these witnesses. They have been
20 highly trained to ask these questions.

21 MR. BELL: I have an objection, Your Honor.

22 THE COURT: The objection is overruled.

23 MS. BODMAN: Part of their training you heard is in
24 memory and how memories are recalled, stored and recalled so
25 that they know how to ask these questions. You heard Dr.

1 Foster talk about in chronic abuse how those memories may be
2 unorganized and that it has to be the right question, and
3 that maybe a particular memory stands out because it was
4 different or there was something unique about it, they tried
5 something different and that that's why they say, "Tell me
6 one of the memories that you have. Tell me -- can you reach
7 back into your memory and talk to me about one time that you
8 remember this happening?" They don't talk to each other
9 about their interviews before they do it so they are not at
10 all influenced by each other in terms of why is this child
11 maybe saying something that this child is not, so it is
12 completely uninfluenced by the other child's interview. It
13 is the best evidence really of what happened to them. They
14 are in a friendly, non-adversarial situation. They're in a
15 comfortable room talking to a friendly person. Anyone would
16 not want to come up to this witness stand and talk about
17 their last sexual experience in front of strangers. It is
18 uncomfortable, it is embarrassing, it is in the public, let
19 alone two small children that have to talk about private
20 parts and what happened to them, but they did it. But that
21 is why those interviews are done in that manner. They are
22 recorded, they are preserved for your examination, for your
23 evaluation and so that you can be an eyewitness to that
24 interview. The medical examination. Dr. Luberoff, a board
25 certified child abuse pediatrician, decades she has been

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1 doing this. She's one of about she said 300 in the nation
2 that have the experience and training that she does. And
3 who knew that we were going to come here this week and learn
4 what we did about hymens and the anus, but unfortunately
5 that's what the case is about. The female genitalia. First
6 of all, prior to reaching the hymen, that is a penetrating
7 act. Okay. There are other parts to the female genital
8 anatomy that it is penetration however slight even before
9 you get to the hymen. And we're talking about Minor 1 here,
10 because Minor 1 describes one incident of vaginal penetration
11 so that's what we're talking about here. You would ask why
12 is there no injury? Why is the hymen not busted? Why was
13 there not blood all over the place? First of all, that
14 could be a reason. Care is taken by the abuser, right? The
15 molester wants to be able to do it again. If they cause it
16 to be a painful experience; hurt, blood, injury, right, the
17 child is going to fight more, is going to run from them. It
18 might mean enough to them to now start telling because it
19 hurts. And so the abuser, as strange as it sounds in
20 sexually molesting a child, care is taken. Research shows
21 that even with a penetrating act, pregnant girls, pregnant
22 teens have normal hymens. And so there is no way to do a
23 genital exam on a woman and to say there has been a
24 penetrating act in the vagina, there isn't any way, there
25 could be absolutely no injury to that. She did say that it

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1 hurt and that could be part of the care that's taken, right?
2 He starts to penetrate and at the point that she shows
3 discomfort, that's when he stops. So penetration, however
4 slight. And even if there was injury the doctor said it
5 heals. That is the type of skin or material that heals back
6 and you're not going to see any residue of that injury.
7 There is decades of experience and research that backs all
8 of this up. The defense is revenge by Kia. She finds out
9 that he'd been cheating on her and that it's all fabricated
10 by the girls orchestrated by Kia, but that is completely,
11 absolutely not reasonable under the facts that we know them.
12 First of all the allegation doesn't start with her. She
13 doesn't pick up the phone and call the police. Minor 1 tells
14 her friend, D.H. She's gone off one random day to
15 reading club, they're sitting in a waiting room waiting for
16 Danielle Jackson and they start talking about about whatever
17 it is that prompts Minor 1 to say what's happening. D.H.

, who is a little bit older knows, "I need to report
19 this." There are heros in this world and they are called
20 D.H. and Danielle Jackson, they have names and
21 faces. There are heros in this world, and that phone call
22 is made to Kia. Kia goes over and that is how it all comes
23 out. So this is a bizarre way for a revenge situation to
24 happen. Why get both girls to lie? Why not just one of
25 them? Why not B.M. She's older, she would be easier

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1 to control. You have younger ones, who knows what they're
2 going to possibly say when they're by themselves in
3 elementary school. But you could get B.M. and go,
4 "Okay, this is what we're doing so stick to the plan." Why
5 have one say anal penetration and the other say anal and
6 then one incident of vaginal penetration? It's a complex
7 revenge story. Why go to South Carolina and New Jersey?
8 Why is she going to put herself at risk and have the kids
9 say that it's been happening right ever since we lived in
10 New Jersey and then potentially people are going to come to
11 her and go, "Where are you? Where are you when these kids
12 are being abused? Did you know about it?" She's putting
13 herself potentially at risk for being, you know, turning the
14 other cheek and not knowing it's going on. She could just
15 say that, "Hey, tell them last night he did this to you."
16 One clean, quick, "B.M. you and I, we're on the same
17 page, let's get this going." She leaves the house and goes
18 to a hotel. Okay. So you're a revenge filled woman. I
19 would be standing in front of my yard and go, "I'm not going
20 anywhere, I'm staying right here in front of my house, make
21 him go to a hotel. I want you to arrest him today. Why is
22 this taking so long? I want my revenge today." She could
23 just get a divorce. I mean, she could just say, "This is
24 not working out, I can see that you're talking to this woman
25 online, you need to leave." Also the fact that no threats.

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1 I mean, you're going to make it good, right? You're going
2 to say, "Tell him that he threatened to kill you, tell them
3 that he threatened to kill all of us." And then you have
4 Minor 1 spontaneous in her interview, "How did this all
5 come out?" She says, "Well, I told my friend, D.H. , " and
6 then she says in this voice that reflects that the weight of
7 the world is off her shoulders, she said Minor 2 said, "Why
8 did you tell?" Because the weight of the world is coming
9 down on Minor 2 right? Minor 2 is like, "Oh my God, the
10 secret is out, we were not supposed to tell. What is going
11 to happen? Mom is going to hate us. They're not going to
12 believe us." And Minor 2 is like, "Why did you tell?" And
13 Minor 1 says, "It's all right, at least we told. It doesn't
14 matter, at least we told." That type of spontaneity and
15 truth in her voice you can't make up. This phone call to
16 this paramour that Kia makes on June 23 is after this
17 arrest. That is consist with exactly how all of this plays
18 out, that she finds out about it, she reports it to the
19 police, the police are doing their investigation, and then
20 once he is in jail she realizes you know what, I need to
21 check on the dad. There are two types of people in the
22 world, right? There's those of us that would go, "I hate
23 him and I hate his family, I'm going to hate everybody that
24 is associated with him because he is a horrible person who
25 did this to my children and I'm going to blame the whole

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1 family." And there are those people that can separate it
2 out and say, "That poor father didn't have anything to do
3 with what he did to my children and he is sick and he's
4 probably wondering where his son is and I'm going to see if
5 he's called and I'm going to call him back and let him know
6 what happened." And she continues to talk to him, right,
7 for six or seven weeks, from April 30th when it's reported
8 to the police all the way to June 23rd, she continues to
9 talk to him. That's not a revenge-filled person, that's a,
10 you know, "I've got to wait this out. I'm processing --
11 there's got to be investigation, I'm processing what all of
12 this is, what did the girls say in their interviews, what's
13 happening. I want to know where he is in case law
14 enforcement needs him to get back here. I am processing who
15 is this person that I was with all of this time, and I'm
16 finding out." None of the facts fit revenge by Kia, none of
17 them. Another thing, too, about this paramour and the hour
18 and 20 minute conversation they had. Let's put all of that
19 into perspective, too. Okay. This was someone who was in
20 some type of online relationship, she's in Chicago. And so
21 while you do not want your significant other having an
22 emotional affair with somebody, there are degrees of
23 cheating. You know, there is the every day I said I was
24 going to work but I was actually going to the hotel and we
25 were having sex for the past year, or there is a, you know,

1 I found out that he was having communications with the
2 woman. She has already spent six to seven weeks processing
3 that this man molested her children, molested her children.
4 That puts in the hierarchy of what I'm upset about at the
5 top, the fact that he was having an online communication
6 with someone in Chicago is further down the list. I've
7 already decided, right, that this is not somebody that I
8 really knew, that things were happening at my home that I
9 had no idea, I have already come to terms with that. Then
10 when he's arrested I see this -- I hear this phone message,
11 I call the woman and that is entirely reasonable that that
12 hour and 20 minute conversation was a sharing of
13 information, "Let me tell you what I know. Who are you?
14 What do you know? I need to tell you this." It wasn't a
15 day-to-day sexual relationship, it was somebody across the
16 country who he was typing with. That all makes reasonable
17 sense. Some of us may react differently but that is
18 entirely reasonable that that is exactly how it happened.
19 Okay. So the timeline and the facts as we know it. Around
20 January of 2011 the defendant moves in. They don't know
21 him. She says she didn't introduce them to him. He's a
22 boyfriend and they called him Mr. Wayland, just here, moving
23 into the home. Around March they get married, September
24 they move to South Carolina, the adults make the decision.
25 They've got no schools, no home, no family, and then Kia

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1 gets a job within a couple of weeks, some time in October,
2 Mr. Wayland gets a job. They're going to school, working,
3 scouts, birthday parties, community meetings, greeting
4 clubs, volunteering. Life is happening, right? The
5 defendant is not working so he is at home, there's
6 opportunities for him to be at home. You've got four kids.
7 You've got a preteen going one direction, right, "I want to
8 go to the movies with my friends. I need a ride. Take me
9 here." So it's, "Okay. I'll drive her there, you stay here
10 with those kids." You've got a boy then who is going to be
11 involved in his boy activities, he's a younger age and he's
12 going to be going off in his direction, "I need to take the
13 kids that way, we've got to take that one that way." And
14 then you have Minor 1 and Minor 2 who are very close in age
15 who are probably kind of doing the same things. They're
16 probably -- when the other ones are going off in their
17 direction and their at home together doing the same
18 activities, doing the same things. Life is happening with
19 plenty of opportunities for him to be home with these kids.
20 April 30th then, Minor 1 discloses to her peer, mom
21 immediately responds, calls the police, and they go to a
22 motel. Then May through June 21st Kia is communicating with
23 him. Forensic interviews, medical exams, the 21st he's
24 arrested and the 23rd is the phone call to this woman.
25 Dr. Foster. See how this fits?

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1 MR. BELL: I have an objection, Your Honor.

2 THE COURT: To what?

3 MR. BELL: To the board.

4 THE COURT: I need to see it.

5 (Complies.)

6 THE COURT: The objection is overruled.

7 MS. BODMAN: Characteristics, behavior characteristics
8 seen in sexually abused children. Secrecy, helplessness,
9 the self-appraisal, the child's own internal, not the truth
10 of -- the reality of the situation but their own assessment
11 of the factors of their life going on around them in their
12 own environment that they are helpless. Entrapment,
13 accommodation, the business of getting on with life. "I've
14 got the secret, I am helpless to stop it, but, you know
15 what? I've got to get up. I've got to put my shoes on,
16 I've got to go to school, I've got to go to scouts."
17 Delayed disclosure is a common thing that's seen, it's that
18 keeping of the secret. It can be purposeful or accidental.
19 And then recantation. Then she talked to us a little bit
20 about her memories and how memories work. It has to be
21 coded, you have to retain it and then you have to be able to
22 retrieve the memory. And how that works with chronic abuse
23 is that you're not talking about it, and talking about it,
24 right, helps you process it and that's what helps you code
25 it and store, it's the processing of it. It's kind of like

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1 if you had a dream last night and you wake up in the morning
2 and you remember it for a second, but if you have a journal,
3 you know, or you tell somebody your dream right away it's
4 going to help you remember it. But if you don't talk about
5 it and you don't write it down right away it's gone. Speech
6 helps code it. So if you're not talking about it then
7 you're basically compressing it, that memory, and you're
8 getting on with life. So it becomes kind of this fragmented
9 collection of memories. Scripted then versus episodic is
10 the usually, you know, if you usually find out this way
11 versus those specific events that are coded or retained
12 because maybe there is something different about how it
13 happened that time, that that particular memory sticks in
14 your brain because it was a little bit different, maybe it
15 happened at a different place, something happened during it.
16 So let's talk a little bit about that. First of all the
17 secrecy of it, right? I mean, up until that day. The
18 helplessness, okay, the factors, right? They're own
19 self-appraisal. He moves in, they don't know him, he's
20 Mr. Wayland. "We never met this guy. She didn't have him
21 come get to know us. She didn't see how he interacts with
22 us." You know, this is clearly not a family decision, and
23 I'm not saying, you know, marrying somebody else or having a
24 stepfather should be a family decision. But that is their
25 own self-appraisal of "we haven't even met this man." All

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1 of the sudden this dude named Mr. Wayland is there. And
2 this also goes with Minor 2 saying in her video that he was
3 her grandfather. She says, "Mr. Wayland," and then she
4 goes, "He's my grandfather." She doesn't even know what a
5 stepfather is. I mean, now that this all has come out, you
6 know, she says, you know, "He's my stepfather, I don't know
7 why on that video I said he was my grandfather." But right
8 after she says he's my grandfather Ray Olszewski says, "Oh,
9 on your mom's side or your dad's side?" And she goes, "My
10 mom's side because I have a dad." So she knew where he fit
11 in the relationship, you know, he's not my dad because I
12 have a dad but she doesn't know the name of the stepfather,
13 he's just Mr. Wayland. They don't even know if it's his
14 first name or last name. All this time he has been living
15 in her home. They go do an interview down here, I don't
16 know what his -- I don't know if that's what his first name
17 or last name, it's just Mr. Wayland. Now he's married and
18 now they are in a car zooming to a new state, don't know
19 anybody, no friends, no family. All of that. They are
20 helpless. Then what they got to do, right, is they got to
21 go on with the business of life. That's why they're getting
22 up and going to scouts and going to birthday parties, they
23 are accommodating. They're stuck in this situation with
24 this man living in their house and they are going to
25 accommodate for it. And then delayed disclosure, right,

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1 purposeful versus accidental. Minor 1 is a little bit older,
2 a little older, probably on that cusp of starting to really
3 realize that this is wrong. You don't put privates on
4 somebody else's privates and she starts talking to an older
5 girl and that is how it comes out, not thinking that she was
6 letting the secret out of the bag and so it's that
7 accidental disclosure. Now recantation. They say it
8 doesn't happen in every case. It's the higher risk
9 situations, or the cases that are at higher risk for
10 recantation is when the parent isn't supportive, they don't
11 believe them, they end up being ripped out of the home. So
12 exactly their fears of what would happen if they let the
13 secret out of the bag happens, or the parent actually puts
14 pressure on them, "You know what's going to happen to
15 grandpa, you know what's going to happen to Uncle Joe. The
16 whole family is going to be mad if Uncle Joe is in trouble."
17 And then they say, "Okay, let's take that back." That
18 didn't happen because their mom immediately, not the next
19 day, not the next week she didn't think about it, she went
20 home, "Has Mr. Wayland been putting his hands on you? We
21 are calling the police. We are getting out of the house,
22 we're going to a motel," and she says, "You are my number
23 one responsibility. You're my number one responsibility."
24 They're out of this. Memories then. The videos are in
25 evidence. If you want to watch those they're each about 30

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1 minutes long, if you want to watch and go through those, you
2 can most certainly. Chronic. So the -- if it's going to be
3 coded and retained maybe that there's something different
4 about it or something that sticks out in your mind. Minor 2
5 talks about Noah's birthday party. She's got that memory
6 of, "I remember my mom took my brother to Noah's birthday
7 party and we were home." But then she says kind of in that
8 maybe more the scripted, "Usually is he pulls our pants
9 down, that's why we would be screaming and trying to pull
10 them back up." But then she talks about, "One time I came
11 looking for her, I was looking for Minor 1 and I seen them
12 and he is on top of her and he had her rolled over," so that
13 one sticks out in her mind. She -- remember, Minor 2 is a
14 little bit younger and Dr. Foster talks about how memory,
15 you know, develops as you get a little bit older. And so
16 her memories as a little bit younger child may be a little
17 bit more scripted in the usually versus the episodic. But
18 then you have Minor 1 and Minor 1 talks about one is vaginal
19 penetration. And so that is different than the turning us
20 around and putting it in our bottom, that she remembers that
21 one. He would say bend down and turn around, bend down and
22 turn around. I mean, that's the kind of spontaneous thing
23 that they're being put up to this, they're not just going to
24 just put it here and put it there, but not, "Yeah, he would
25 say bend down and turn around." The one time she says, "I

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1 was going to fight him, I was going to fight him." Dr.
2 Foster said sometimes maybe the memory they have is that one
3 time they make a decision to do something about it. And she
4 said, "I felt like I could beat him up and that I could
5 fight him and that's when he pulled me down behind the
6 couch." Now, that has to be really traumatic that you are
7 making this decision to fight, then he just pulls you right
8 on down, and then she said that B.S was watching TV. "So
9 how is this happening that I'm going to fight him and then
10 he pulls me down behind the couch and that my brother is
11 right here?" That is coded. "I was going to do something
12 about it and it did not work out." Another time she says
13 bedroom cleaning up. "We were in the bedroom, we were
14 cleaning up, he came in, said it was time to read books."
15 She says, "We got on his lap," and then that's when she's
16 using the doll when she says, "He was pushing like this."
17 So that one, the fact that it was involved on his lap as
18 opposed to bend down and then on the ground reading books is
19 coded in their memory, something a little bit different
20 happened. She talks about -- Minor 1 talks about, "One time
21 my sister and I were in our room and we were hitting each
22 other. I was pulling her pants down, she was pulling my
23 pants down, then we were dancing and playing and then he
24 came in and did it to us." Another coded memory, just
25 something just else, a different event that sticks out in

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1 her mind as one that she can tell us about. She talks about
2 stairs, being on the stairs and he was chasing her sister.
3 All of this completely makes sense in terms of when it's
4 happening many times. They can't tell us exactly how many,
5 but they can tell us, you know, "He would put his private in
6 our butt." And then can you tell me about one memory you
7 have? And those pulling -- retrieving those memories about
8 something that was different. "Yeah, I do kind of remember
9 being at Noah's birthday party. I remember being home
10 alone. I remember this one incident where it was in the
11 front this time. I remember deciding I was going to fight
12 him back, and I got held down. Hitting each other, playing
13 around, dancing in our room and he came in." All of this
14 fits together. And when you watch their videos and you
15 watch how natural they are about telling what happened to
16 them, this is the truth. This is the truth. Ladies and
17 gentlemen, thank you very much for your time and your
18 attention. I noticed that each of you have really been
19 paying attention to every single witness and we all
20 appreciate that. At this time, I ask you to please, to
21 bring justice, bring justice and find him guilty. In terms
22 of CSC with a minor on Minor 1 -- well, let me back up. In
23 terms of a penetrating act on the anus, I understand that
24 maybe some of you have concerns that there is no injury. I
25 understand that maybe you're concerned that the girls don't

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1 say that it hurt. Dr. Luberoff, I believe, addressed all of
2 those concerns. They said it went in. They said -- Minor 2
3 said it felt like he was poking us. I believe she addressed
4 those concerns with you enough for you to find there was, in
5 fact, penetration of the anus. There could also be -- he is
6 behind these girls so it could also be possible that while
7 they believe it was his private part it could have been a
8 finger, that they know something went in the anus, they felt
9 it, they said it went in, but it could have been something
10 smaller than a penis, it could have been a finger. So
11 that -- if you believe the testimony of the girls, if you
12 believe Dr. Luberoff and the explanations of why there would
13 be no injury, why they would say it didn't hurt, why
14 children at that age don't have the vocabulary and the
15 understanding to really say how it felt, that that is
16 sufficient for you all to find him guilty of the CSC with a
17 minor in the first degree, the back penetrating act.
18 However, if you do have concerns with Minor 1 she clearly
19 described -- excuse me, with Minor 2 she clearly also -- or
20 Minor 1 sorry, clearly also described the vaginal
21 penetrating. And so that act in saying he penetrated her
22 vagina and it hurt, they are now right face to face and that
23 penetrating act is sufficient for you to find a CSC with a
24 minor in the first degree. So Minor 1 CSC minor first
25 degree for either of those. With Minor 2 she only

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1 describes a penetrating act of the bottom, and so same
2 thing. I believe that Dr. Luberoff addressed these concerns
3 about any injury, they said that it went in, felt like it
4 was poking. But if you do have concerns about whether or
5 not his private part actually went in and penetrated, you
6 have the lewd act that he had his private out and he was
7 rubbing it at a minimum on her bottom. Okay. So there are
8 options with the testimony of experts for you to understand
9 penetration and evidence and with the testimony in case
10 you're concerned about the penetration. And it is with
11 that, with the law, with the evidence that we do ask you to
12 do justice in this case, and we ask you to do justice and to
13 send these girls home with truly, honestly, really getting
14 on with the business of life. Thank you.

15 THE COURT: Let's stand for a moment, please.

16 (Break in proceedings.)

17 THE COURT: All right. Mr. Bell?

18 MR. BELL: Thank you, Your Honor. Thank you, ladies
19 and gentlemen. Now, if anything that I said or anything
20 that Ms. Grice said offended you, didn't like, don't like my
21 demeanor, I may be a country person, don't hold it against
22 Mr. Purnell. Hold it against me, hold it against Ms. Grice.
23 Now, something I want to note before I continue, remember
24 the last word that Ms. Bodman said? That's reasonable doubt
25 right there. She doesn't even trust her own case, she made

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1 that clear. Now, the burden of proof in every criminal case
2 is on the State, it's on the government. Behind this table,
3 all the resources of the government, they carry the burden,
4 and they have to prove beyond a reasonable doubt each and
5 every element of the crime. Now, what is a reasonable
6 doubt? Reasonable doubt is that that would cause a
7 reasonable person to hesitate to act. Probably guilty, may
8 be guilty, likely guilty, that means not guilty, that is not
9 beyond a reasonable doubt. Now, each and every single one
10 of you are important, just as important as the next person
11 sitting next you. Stay true to your beliefs, stay true to
12 your opinions, stand for what you believe in. Common sense.
13 Many things that we heard out of this witness stand defies
14 common sense. The solicitor's office used the word chronic.
15 What does chronic mean? Repeated over and over again,
16 that's what they said. It defies common sense that there
17 was no injury in this case that a man's erect penis is going
18 into the anus of an eight year old, it defies common sense.
19 Dr. Luberoff got up there, she's a pediatrician. Who
20 specializes in the vagina? A gynecologist. Who specializes
21 in the anus? A proctologist. She is not one of them, and
22 they didn't put her up there or anyone of that
23 specialization because the answers would have been
24 different. She tried to tell me that either way, either way
25 it didn't matter. But I guarantee you, the State would be

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1 up here telling you if there was injury it was caused by
2 this alleged abuse, I guarantee you they would have gotten
3 up here and told you that. I'm sorry that I sound
4 frustrated because Dr. Luberoff just defied common sense.
5 It aggravated me, I apologize for that, that I got
6 frustrated. Something else that defies common sense. She
7 got up here and said there was a fight behind a couch but
8 somebody was sitting on that couch. They didn't call him up
9 here. He didn't see it, he didn't see anything but he was
10 in the same room. He was in that same room, yet where is
11 he? You didn't hear from him. You get to consider what
12 they present for you as well. The burden is on them, that's
13 the government over there. Ms. Bodman showed you the layout
14 of the house, it's a small house. There are witnesses up
15 here, according to them, they were being loud in the house.
16 What, were they in a different room? They can still hear
17 them. Where are the people that heard this, heard any of
18 this? Let's talk about Dr. Foster real quick. Dr. Foster
19 acknowledged that children whether they've been abused or
20 haven't been abused exhibit all the same factors, all the
21 same types of characterizations as Ms. Bodman would like to
22 say. She admitted that at the end, she fails to mention
23 that, but don't forget about that. Yes, these girls are
24 victims, they're victims of Kia Muse, that's who they're
25 victims of. Ms. Bodman got up there and said the number one

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1 responsibility, the number one responsibility of bringing a
2 man that she says she didn't know into the house with these
3 kids, that's her number one responsibility? Kia Muse got up
4 here on the stand, she sat up here, right here. Take into
5 account her demeanor when I was asking her questions. Take
6 into account the eye contact that she made, whether she made
7 it and whether she didn't. Take into account whether she
8 was forthcoming. You recall our discussion about Tashura
9 Thompson. It was 120 minutes, so that's two hours, two
10 hours. Her number one concern. If her number one
11 responsibility were those children, she would have not been
12 on the phone with the girlfriend of Mr. Purnell, her number
13 one concern would have been those children. Think about the
14 questions she didn't answer when I asked them. Think about
15 her trying to get around answering certain questions and
16 what the State didn't present to you. Kia knew about
17 Teshura Thompson, she knew about her because Mr. Purnell
18 tried to send her Girl Scout cookies out there. She knew
19 Mr. Purnell's pass code. You don't think that's the first
20 time that she logged onto this phone with whatever pass
21 code, let's be honest about it. She knew it, she'd used it
22 before. How else would she know it? Her own words, enemy.
23 She called Mr. Purnell her enemy, then she tried to
24 backtrack or retract that, think that she didn't say that.
25 She said it. She called him her enemy. Ladies and

CLOSING ARGUMENTS

1 gentlemen, the question is when is there going to be another
2 trial? When is the next person that she's in a relationship
3 with and she's going to decide she wants to get rid of them,
4 that's the question. That's what I'm fearful of. Again,
5 the burden is on the State of South Carolina to prove beyond
6 a reasonable doubt that Mr. Purnell committed these crimes,
7 each and every element. Yes, Mr. Purnell was unfaithful, he
8 was unfaithful with an adult female, now that doesn't make
9 him guilty of these charges and I ask that you return a
10 verdict of not guilty. Thank you.

11 THE COURT: Ladies and gentlemen, we'll take a break
12 for a few minutes, if you'll go to the jury room, please do
13 not discuss the case.

14 (The jury left the courtroom.)

15 THE COURT: We'll take a few minutes.

16 (A break was taken.)

17 THE COURT: All right. Bring in the jury.

18 MS. BODMAN: Your Honor, one quick matter. I'm sorry.
19 Just logistics for the videotape in case you wanted to
20 address it with them is that we have a laptop, an office
21 laptop that has nothing on it that we have used to send back
22 with the jury if they want to watch the DVD's. If they
23 wanted to watch it on the smart board on a bigger screen, I
24 think we have some complications involving like taking that
25 smart board back to the jury. So if the Court wanted to

JURY CHARGE

1 offer then the option of the smart board, I think they will
2 need to be brought back into the courtroom to watch it that
3 way.

4 THE COURT: Yeah. I don't intend to offer them any
5 option.

6 MS. BODMAN: Okay.

7 THE COURT: If they make a request it's their request.

8 MS. BODMAN: Okay.

9 THE COURT: Bring the jury in.

10 (The jury returned to the courtroom.)

11 THE BAILIFF: Your Honor, the jury is present.

12 THE COURT: Well, Madam Forelady and members of the
13 jury, you've heard the testimony, evidence and arguments of
14 the State and the defendant. I will now explain to you the
15 law that applies to this case. Under the constitution and
16 laws of South Carolina, you are the finders of the facts in
17 this case. I do not have the right to pass upon the facts
18 or to even express any opinion that I might have as to the
19 evidence because this is a matter solely for you, the jury,
20 to determine. As jurors then, it is your duty to determine
21 the effect, the value, the weight and the truth of the
22 evidence presented during this trial. You are also the
23 judges, the sole judges of the credibility, that is the
24 believability of the witnesses who have testified and the
25 evidence in the case. In passing upon the credibility you

JURY CHARGE

1 may take into consideration many things, such as the manner
2 or demeanor of testifying, whether the witness had reason to
3 be biased or prejudiced, whether a witness' testimony was
4 contradicted on the one hand or supported and corroborated
5 on the other hand, remembering however, that there is no
6 requirement that testimony be corroborated. All these
7 things you will consider bearing in mind that you should
8 give the defendant the benefit of every reasonable doubt.
9 It becomes your duty as jurors to analyze and to evaluate
10 the evidence and determine that evidence which convinces you
11 of its truth. During this trial you've heard testimony from
12 children. Where a witness is a child you must determine as
13 with any witness whether that testimony is believable. In
14 deciding believability you may consider not only matters
15 that I have already discussed with you but you may also
16 consider the age of the child, the child's ability to
17 observe and remember facts, and the child's ability to
18 understand and answer questions. Because young children may
19 not fully understand what is happening here, it is up to you
20 to decide whether the child understood the seriousness of
21 appearing as a witness at this criminal trial, whether the
22 child understood the questions, whether the child has a good
23 memory and whether the child understands the difference
24 between lying and telling the truth. In addition, young
25 children may be influenced by the way that questions are

JURY CHARGE

1 asked. It is up to you to decide whether the child
2 understood the questions asked. The Rules of Evidence
3 ordinarily do not permit witnesses to testify to opinions or
4 conclusions. An exception to this rule exists for witnesses
5 we call expert witnesses. A witness who by education and
6 experience has become expert in some art, science,
7 profession or calling may state an opinion as to relevant
8 and material matter in which the witness claims to be an
9 expert, and may also state the reasons for the opinion. You
10 should consider any expert opinion received into evidence in
11 this case and like any other evidence give it the weight you
12 think it deserves. If you decide that the opinion of an
13 expert is not based on sufficient education and experience,
14 or if you conclude that the reasons given in support of the
15 opinion are not sound, or that the opinion is outweighed by
16 other evidence, you may disregard the opinion entirely. An
17 expert witness' testimony is to be given no greater weight
18 than that of other witnesses simply because the witness is
19 an expert. Further, you are not required to accept an
20 expert's opinion even though it is not contradicted. I
21 instruct you and emphasize that the fact that the defendant
22 did not testify is not a factor to be considered by you in
23 any way in your deliberations and in your consideration on
24 the question of the guilt or the innocence of the defendant.
25 It must not be considered by you in any manner whatsoever.

JURY CHARGE

1 A defendant has the constitutional right to remain silent,
2 and the assertion of this right must not be considered by
3 you in your deliberations. I repeat, under your oath you
4 are to draw no conclusions whatsoever from the fact that the
5 defendant in this case did not testify. The fact that this
6 defendant did not testify should not even be discussed in
7 the jury room. The burden of proof, as I stated to you, is
8 on the State. The defendant is not required to prove his
9 innocence. The burden of proof remains on the State to
10 prove guilt beyond a reasonable doubt. Now, as the trial
11 judge it is my responsibility to preside over the trial of
12 this case and to rule upon and pass upon the admissibility
13 of the evidence offered during this trial. You are to
14 consider only the testimony which has been presented from
15 this witness stand together with any exhibits which have
16 been made a part of the record. I have the additional duty
17 to charge you the law applicable to this case. As the
18 presiding judge I am the sole judge of the law of this case.
19 It is your duty as jurors to accept and apply the law as I
20 now state to it you and then reach your verdict. And
21 finally, I charge you in this regard, that you should not be
22 concerned with what you think the law ought to be, but what
23 I charge you the law is. The fact that the defendant was
24 arrested, charged and indicted is not evidence in this case
25 and cannot be considered by you as evidence of guilt in this

JURY CHARGE

1 case, nor does it create any presumption or inference of
2 guilt. These indictments are simply the formal written
3 instruments which contain the charges made against the
4 defendant. An indictment is a formal document by which this
5 case is brought into court. The defendant has pled not
6 guilty to the charges in these indictments, and that plea
7 puts the burden on the State to prove the defendant guilty.
8 A person charged with committing a criminal offense in South
9 Carolina is never required to prove himself innocent. I
10 charge you that it is an important rule of the law that the
11 defendant in a criminal trial no matter what the seriousness
12 of the charge may be, will always be presumed to be not
13 guilty of the crime for which the indictment was issued
14 unless guilt has been proven by evidence satisfying you of
15 that guilt beyond a reasonable doubt. This presumption of
16 innocence does not end when you begin your deliberations,
17 but it accompanies the defendant throughout the trial until
18 you reach a verdict of guilt based on evidence satisfying
19 you of that guilt beyond a reasonable doubt. The
20 presumption of innocence is like a robe of righteousness
21 placed about the shoulders of the defendant which remains
22 with the defendant until it has been stripped from the
23 defendant by evidence satisfying you of the defendant's
24 guilt beyond a reasonable doubt. The presumption of
25 innocence is not a mere legal theory, it's not just a legal

JURY CHARGE

1 phrase, it is a substantial right to which every defendant
2 is entitled unless you, the jury, are satisfied from the
3 evidence of the defendant's guilt beyond a reasonable doubt.
4 The State must prove the defendant guilty beyond a
5 reasonable doubt. So what is a reasonable doubt in the law?
6 A reasonable doubt is a doubt which makes an honest, sincere
7 juror in search of the truth to hesitate to act. Proof
8 beyond a reasonable doubt must therefore be proof of such a
9 convincing character that a reasonable person would not
10 hesitate to rely and act upon it in the most important of
11 his or her own affairs. Proof beyond a reasonable doubt can
12 also be described as proof that leaves you firmly convinced
13 of the defendant's guilt. Now, there are very few things in
14 this world that we know with absolute certainty, and in
15 criminal cases the law does not require proof that overcomes
16 every possible doubt. If based on your consideration of the
17 evidence you are firmly convinced that the defendant is
18 guilty then you must find him guilty. If on the other hand
19 you think there is a real possibility that he is not guilty,
20 you must then give him the benefit of the doubt and find him
21 not guilty. The indictments in this case allege several
22 different offenses against the defendant. The charges are
23 criminal sexual conduct with a minor first degree two
24 counts, and a lewd act on minor. Each indictment charges a
25 separate and distinct offense. You must decide each.

JURY CHARGE

1 indictment separately on the evidence and the law applicable
2 to it uninfluenced by your decision as to any other
3 indictment. The defendant may be convicted or acquitted on
4 any or all of the offenses charged. You will be asked to
5 write a separate verdict of guilty or not guilty on each
6 indictment. The defendant is charged with criminal sexual
7 conduct with a minor first degree, two counts. The State
8 must prove beyond a reasonable doubt that the defendant
9 engaged in a sexual battery with the victim or the victims,
10 Minor 2 and Minor 1 A sexual battery is
11 sexual intercourse, cunnilingus, fellatio, anal intercourse
12 or any intrusion, however slight, into the genital or anal
13 openings of another person's body except when the intrusion
14 is accomplished for medically recognized treatment or
15 diagnostic purposes. The State must also prove beyond a
16 reasonable doubt that the victim was less than 11 years old
17 at the time of the sexual battery. Consent, willingness,
18 indifference or ignorance on the part of the minor, if any,
19 as to what was taking place does not in any way affect the
20 charge of criminal sexual conduct with a minor, because an
21 unmarried person under the age of 14 cannot legally consent
22 to sexual intercourse. The defendant is charged with
23 committing a lewd act on a minor, Minor 2 A minor
24 is a person under the age of 18. The State must first prove
25 beyond a reasonable doubt that the defendant was over the

JURY CHARGE

1 age of 14. Next the State must prove that the defendant
2 willfully and lewdly committed or attempted a lewd or
3 lascivious act on the body or its parts of a child under the
4 age of 16 years with the intent to arouse, appeal to or
5 gratify the lusts, passions or sexual desires of the
6 defendant or the child. Willfully means voluntarily and
7 intentionally with the specific intent to do something the
8 law forbids. Lewd means obscene, lustful, indecent or
9 lecherous. Lascivious means tending to incite lust, lewd,
10 indecent, obscene or tending to deprave the morals in
11 respect to sexual relations. Now, while the arguments of
12 counsel is a beneficial part of every trial, you should
13 remember that the statements made by counsel are not
14 evidence. In presenting their arguments, counsel often
15 refers to the evidence, however, you should base your
16 verdict on the evidence as you remember it. Therefore, if
17 there are any conflicts between the recollection of counsel
18 about the evidence and your own recollection, you should
19 rely upon your own understanding of the evidence. Now, you
20 have been chosen and sworn to give the parties in this case
21 a fair and impartial trial, and when you have done so you
22 will have complied with your oath and no one will have the
23 right to criticize your verdict. You must not be influenced
24 by opinions or expressions of opinion you may have heard
25 outside of the courtroom, but rather should base your

JURY CHARGE

1 verdict only on the testimony of the sworn witnesses who
2 took the stand, the exhibits received into evidence and
3 facts which have been stipulated or agreed to by the
4 parties. You should not be swayed by child caprice,
5 passion, prejudice or improper sympathy for or against any
6 of the parties in this case. Remember, you have no friends
7 to reward or enemies to punish. All parties are entitled to
8 a fair and impartial trial at your hands. It is your duty
9 as jurors to consult with one another and to deliberate with
10 a view to reaching an agreement. Each of you must decide
11 the case for yourself, but only after an impartial
12 consideration of all the evidence in the case with your
13 fellow jurors. In the course of your deliberations do not
14 hesitate to re-examine your views and change your opinion if
15 you become convinced it is erroneous, but do not surrender
16 your honest conviction as to the weight or effect of the
17 evidence solely because of the opinion of your fellow jurors
18 or for the mere purpose of returning a verdict. As stated
19 earlier you are the judges, judges of the facts. Your sole
20 interest is to seek the truth from the evidence in the case.
21 Your verdict must represent the considered judgment of each
22 juror. In other words, your verdict must be unanimous.
23 Now, you may have noticed that I have read these
24 instructions. I do so to give you the law as accurately as
25 possible. I will give you a copy of these instructions to

JURY CHARGE

1 have in the jury room. You may refer to these instructions
2 to assist you in your deliberations. Please return the
3 instructions to the bailiff when you have finished
4 deliberating. Now, Madam Forelady, it will be your duty to
5 preside over the deliberations of the jury. If during your
6 deliberations you should desire to communicate with the
7 Court, please reduce your message or writings -- or question
8 to writing signed by your foreperson and pass the note to
9 the bailiff who will bring it to my attention, I will then
10 respond as promptly as possible either in writing or by
11 having you return to the courtroom so that I can address you
12 orally. I caution you, however, with regard to any message
13 or question you might send that you should never state or
14 specify your numerical division at the time. Again, any
15 verdict you reach must be a unanimous one, that is it must
16 be agreed to by all of you. When you have reached a
17 verdict -- when you have reached a unanimous verdict and
18 indicated your verdict as to each charge on the back of the
19 respective indictment, you may knock on the door and we will
20 take the verdict. As I indicated, in addition to the
21 exhibits, this jury charge, you will also have the three
22 indictments, and on the back of the indictment, each
23 indictment, ladies and gentlemen, Madam Forelady, you have a
24 space that says verdict. You will write the verdict of
25 guilty or not guilty, sign and date the verdict form, each

JURY CHARGE

1 verdict form. There is no significance in the order in
2 which I state the possible verdicts, certainly one must be
3 stated first. So I ask you at this time to retire to the
4 jury room, all of you except the last juror selected, the
5 alternate juror, if you'll go to the jury room but do not
6 begin to discuss the case until you have received a copy of
7 this charge, the indictments and the exhibits, once you
8 receive these things that will be your signal to begin
9 deliberating. Once you begin deliberations you will
10 deliberate until you have reached a verdict as to each
11 indictment, at which time you will knock on the door, advise
12 the bailiff and we will bring you out to receive your
13 verdict. Now, we've ordered lunch which is due to come in
14 at noon today so you have time to deliberate before it gets
15 here. When it gets here you can handle that in any way you
16 prefer. If you're still deliberating then you can stop and
17 eat, deliberate, then eat, eat while deliberating, it's all
18 up to you the manner that you handle all of that. I ask
19 that you go to the jury room at this time.

20 (The jury left the courtroom.)

21 MS. BODMAN: Where did the 13th juror go?

22 THE CLERK: He went in there.

23 THE COURT: The 13th juror, I said all of you except
24 the last juror selected.

25 (The alternate juror returned to the

JURY CHARGE

1 courtroom.)

2 THE COURT: Are there any additions or exceptions to
3 the charge?

4 MS. BODMAN: None from the State, Your Honor.

5 MR. BELL: None from the defense, Your Honor.

6 THE COURT: All right. If you will review the exhibits
7 before they go to the jury room.

8 (The alternate juror was released.)

9 THE COURT: Okay. So Mr. Bailiff, you have the jury
10 charge and the indictments?

11 THE BAILIFF: No, sir. I don't have the paperwork, I
12 just have the evidence.

13 THE COURT: Well, that's part of what they get. All
14 right. Well, the jury is out at 11:30. We will be at ease.

15 (The jury began deliberations.)

16 THE COURT: I have a note from the jury that they want
17 to watch the videos. What says the State?

18 MS. BODMAN: They're in evidence so no objection. We
19 have, if the Court wishes, a laptop that is empty of any
20 documents whatsoever. The Internet access is shut off and
21 both DVD's do operate on that laptop.

22 THE COURT: All right. What says the defense?

23 MR. BELL: Your Honor, I have no objections to them
24 watching the videos. My only concern is they also consider
25 the actual testimony from the witness stand under cross

JURY CHARGE

1 examination.

2 THE COURT: All right. Well, they asked to watch the
3 video and I answered the question they requested. There is
4 no objection to them watching the video?

5 MR. BELL: None.

6 THE COURT: All right. So you can take the videos back
7 there for them -- videos, or the player back there.
8 Christine, just take it.

9 (The laptop and DVD's were sent back to the
10 jury.)

11 THE COURT: All right. We'll be back at ease. I need
12 everyone to stay around the courthouse.

13 MR. BELL: Your Honor, was there two questions or was
14 that just the one?

15 THE COURT: They had another question about
16 clarification of bottom and -- anus and bottom. I sent it
17 back to them for a more complete thought.

18 MR. BELL: Okay.

19 THE COURT: And they haven't returned the question. So
20 we'll be back at ease. I need everyone to stay closer to
21 the courthouse.

22 (A short break was taken.)

23 THE COURT: The question is, "Dear Judge Newman, is it
24 considered first degree criminal sexual conduct if the penis
25 touches the bottom of the person?" And then they wrote,

JURY CHARGE

1 "Clarification of the bottom or the anus." I asked them to
2 give a more complete thought with regard to their question
3 and they then wrote, "Does this refer to intrusion? What
4 does slight intrusion mean? Does it mean touching the
5 buttocks or between the butt cheeks or penetrating the
6 anus?" So that's their question.

7 MR. BELL: I think that's a question they have to
8 answer for themselves.

9 MS. BODMAN: Yes. Unfortunately, I think it's just,
10 you know, that the statute kind of speaks for itself and
11 whether or not they can apply the facts to whether there was
12 intrusion however slight.

13 THE COURT: All right. The question again is, "Judge
14 Newman, is it considered first degree sexual conduct if the
15 penis touches the bottom of a person? Clarification of the
16 bottom or the anus?" I asked them to write a more complete
17 thought, then they said, "Does this refer to intrusion?
18 What does slight intrusion mean? Does it mean touching the
19 buttocks or between the butt cheeks or penetrating the
20 anus?" What says the State?

21 MS. BODMAN: I just think that however the Court wants
22 to fashion its response in terms of you have the law and the
23 evidence before you to make that application. The statute
24 itself says I think intrusion however slight into the
25 genital or anal openings, so if they just read that and try

JURY CHARGE

1 to apply the facts as best they can to the law.

2 THE COURT: All right. Mr. Bell?

3 MR. BELL: Yes, Your Honor. They have the law back
4 there as the Court described and I don't think any
5 clarification or comments by the Court on their application
6 of this, they've been told to apply the facts as they find
7 them to the law which is applicable. The law has defined
8 what it has and that's a question for them to answer back
9 there and I think it would be inappropriate for the Court to
10 comment on that manner of question.

11 THE COURT: Do you want me to tell them that words
12 should be given their plain and ordinary meaning?

13 MR. BELL: I don't believe any instruction should be
14 necessary, I believe it just should be --

15 THE COURT: You want me tell them I can't answer the
16 question or -- I mean --

17 MR. BELL: That is --

18 THE COURT: -- do you want me to respond?

19 MR. BELL: I don't think there should be a response.
20 The question is for y'all to decide. I mean, they're the
21 jurors, they're the ones that have to apply the facts to the
22 law, they have the law, they're the ones that decide what
23 the facts are. And the question is -- I think the Court
24 answering that would be going into the purview of what the
25 facts are.

JURY CHARGE

1 THE COURT: I understand what you don't want me to tell
2 them, but what do you want me to tell them, if anything?

3 MR. BELL: "You're limited to the law as the Judge
4 charged the law which y'all have copies of," which the jury
5 has copies of.

6 THE COURT: So you want me to tell them that I've
7 instructed you as to the law that you are apply in this
8 case?

9 MR. BELL: Yes.

10 MS. BODMAN: Yes, Your Honor.

11 THE COURT: All right. All right. If you'll bring
12 them out.

13 (The jury returned the courtroom.)

14 THE BAILIFF: Your Honor, the jury is present.

15 THE COURT: All right. Madam Forelady and members of
16 the jury, you sent a note saying, "Dear Judge Newman, is it
17 considered first degree criminal -- is it considered first
18 degree sexual conduct if the penis touches the bottom of the
19 person? Clarification of the bottom or the anus. Does this
20 refer to intrusion? Does this refer to intrusion? What
21 does slight intrusion mean? Does it mean touches the
22 buttocks or between the butt cheeks or penetrating the
23 anus?" I have instructed you as to the law you are to apply
24 in this matter, I've given you a copy of the law and there
25 are no further instructions that I can give in this regard.

JURY VERDICT

1 I ask that you please return to the jury room and resume
2 deliberating.

3 (The jury left the courtroom and resumed
4 deliberations.)

5 THE COURT: Any additions or exceptions to the charge?

6 MS. BODMAN: No, sir.

7 MR. BELL: No, Your Honor.

8 MS. BODMAN: All right. We'll be back at ease then.

9 (The jury returned with a verdict.)

10 MS. BODMAN: I understand that the jury has reached a
11 verdict. You may bring the jury.

12 (The jury returned to the courtroom.)

13 THE BAILIFF: Your Honor, the jury is present.

14 MS. BODMAN: Thank you, sir. Madam forelady, if you'll
15 stand for me. Have you reached a verdict?

16 FOREPERSON: Yes, sir.

17 MS. BODMAN: Is it unanimous?

18 FOREPERSON: Yes, sir.

19 THE COURT: Thank you. Pass it up. You may be seated.
20 You may publish the verdict.

21 THE CLERK: The State of South Carolina, County of
22 Richland versus Wayland Purnell, case number
23 2014-GS-40-01247, indictment for a lewd act upon a child the
24 jury found guilty. Signed by the foreperson, number 248 on
25 July 10th, 2014.

JURY VERDICT

1 THE COURT: Call the victim's names on the indictments.

2 THE CLERK: This indictment is in regard to Minor 2

3 Seabrook, indictment number 2012-GS-40-5315, the State of

4 South Carolina, County of Richland versus Wayland Purnell,

5 criminal sexual conduct with a minor in the first degree in

6 regards to Minor 2 the jury found not guilty,

7 signed by the foreperson, number 248 on July 10th 2014.

8 Indictment number 2012-GS-40-5044, the State of South

9 Carolina, County of Richland versus Wayland Purnell,

10 indictment for criminal sexual conduct with a minor first

11 degree in regard to Minor 1 the jury found him

12 guilty. Signed by the foreperson number 248 on July 10th,

13 2014. Madam Forelady, is this your verdict and the verdict

14 of the entire jury?

15 FOREPERSON: Yes.

16 THE COURT: If that is the verdict of each and every

17 juror please let it be known by raising your right hands.

18 (All jurors raised their right hands.)

19 THE COURT: Thank you. Any individual polling

20 requested?

21 MR. BELL: Yes, Your Honor, I'd ask that they

22 individually be polled.

23 THE COURT: All right. If you will the poll the jury

24 individually please.

25 THE CLERK: Ladies and gentlemen, I'm going to ask two

SENTENCING HEARING

1 a burden on the parents and on the children but a burden on
2 society because these problems develop and morph into mental
3 health issues, drug and alcohol abuse issues, crime and
4 perpetuation of a cycle of sexual abuse. So with respect to
5 this criminal -- well, first of all with respect to lewd act
6 on a minor, I certainly understand the struggle that the
7 jury might have had based on the level of specificity by the
8 younger child as to exactly what you did to her and you got
9 the benefit of the doubt on that one, but the sentence on
10 that one is 15 years. On the CSC with a minor, the sentence
11 is 25 years. You'll be given credit for time served and I
12 wish you the best of luck. You are a convicted sex offender
13 and monitored and tracked for life. Good luck to you.

14 MS. BODMAN: Your Honor, are those running concurrent
15 or consecutive?

16 THE COURT: It will be a concurrent sentence of 15
17 years and 25 years.

18 MS. BODMAN: Thank you, sir.

19 MR. BELL: Thank you, Your Honor.

20 (End of trial proceedings.)

21

22

23

24

25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	Indictments: 2012-GS-40-05044; 2012-GS-40-05315
COUNTY OF RICHLAND	)	2014-GS-40-01247
	)	
The State of South Carolina,	)	MOTION TO EXCLUDE THE
	)	QUALIFICATION OF ANY EXPERT
	)	WITNESS REGARDING "CHILD SEXUAL
v.	)	ABUSE ACCOMMODATION SYNDROME"
	)	AND REQUEST FOR HEARING
	)	
Wayland Purnell	)	
<u>Defendant</u>	)	

The Defendant objects and opposes the State's attempt to qualify any professional as an alleged expert with regard to Child Sexual Abuse Accommodation Syndrome (CSAAS). Specifically, the Defendant objects to Ms. Allison Foster being qualified as an expert for the purposes of testifying with regard to this pseudoscience. The defense, therefore, requests a hearing under SCRE 702.

The Defendant objects generally to the qualification of anyone as an "expert" with regard to Child Sexual Abuse Accommodation Syndrome. "The label of expert should be jealously guarded by the court and never loosely bandied about." *State v. Kromah*, -- S.C. --, Opinion No. 27212 (2013). This syndrome was created in 1983 by a medical doctor to describe the way he felt children typically responded to sexual abuse. Summit, R.C (1983) *The Child Sexual Abuse Accommodation Syndrome*. Child Abuse and Neglect, 7, 177-193. It was designed with the limited purpose as a treatment tool in a clinical setting where sexual abuse had been confirmed. The Defense avers that this testimony should not be allowed based on its lack of scientific reliability.

In support of its motion the Defense looks to *State v. Jones*, 259 S.E.2d (S.C. 1979). *Jones* held that admissibility of scientific evidence depends on "... the degree to which the trier

of fact must accept, on faith, scientific hypotheses not capable of proof or disproof in court and not even generally accepted outside the courtroom.” *People v. Marx*, 54 Cal.App.3d 100 (1975). *Jones* set our four reliability factors that guide the court in determining whether to admit expert testimony: 1) the publication and peer review of the technique; 2) prior application of the method to the type of evidence involved in the case; 3) the quality control of procedures used to ensure reliability; and 4) the consistency of the method with recognized scientific laws and procedures.” *State v. Council*, 515 S.E.2d 508, 517 (S.C. 1999).

The State of South Carolina has no statutory or case law dealing with CSAAS. However many surrounding states have determined that CSAAS is little more than inadmissible junk science. *See Bussey v. Commonwealth*, 697 S.W.2d 139 (1985, Ky) (held that testimony regarding CSAAS was improperly admitted based on its lack of reliability in the relevant medical community). Furthermore, Defense objects to the State entering any testimony which improperly seeks to bolster the credibility of the alleged victims in this case. Defense anticipates that the State will try to explain possible delayed disclosures by the alleged victims to bolster their credibility, but this is an impermissible objective as has been held in numerous courts. *See Irving v. State*, 705 So.2d 1021 (Fla. Dist. Ct. App 1st Dist. 1997) (holding the trial court erred in permitting the prosecution to present expert testimony that alleged child victim’s testimony was consistent with that of a child suffering from CSAAS).

While South Carolina has not dealt with CSAAS directly, there is case law on point to suggest that any expert testimony that serves no purpose other than to bolster a witness’s testimony is impermissible. In *State v. Hudnall*, a pediatrician was permitted to testify over objection by the defense as to common characteristics exhibited by child victims of sexual abuse.

State v. Hudnell, 293 S.C 97, 99-101 (1987). On appeal the Supreme Court of South Carolina found that this testimony had no probative value and “was admitted to bolster the child’s testimony that the crime had in fact occurred.” *Hudnell* at 100. The defense alleges that any use by the State in the present case is intended to bolster the victims’ testimony in a harmful and prejudicial manner.

Therefore, the Defendant objects and opposes the State’s attempt to qualify any person as an expert regarding Child Sexual Abuse Accommodation Syndrome.

Respectfully submitted,

J. Taylor Bell
Attorney for Defendant
Richland County Public Defender's Office
Post Office Box 192
Columbia, South Carolina 29202
(803) 765-2592

Columbia, South Carolina

This ____ day of _____, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND

The State of South Carolina,

Vs.

Wayland Purnell

Defendant.

IN THE COURT OF GENERAL SESSIONS

**Indictments: 2012-GS-40-05044; 2012-GS-40-05315
2014-GS-40-01247**

**MOTION IN LIMINE IN OPPOSITION TO
STATE'S MOTION FOR ADMISSION OF
OUT-OF-COURT-STATEMENTS OF
CHILDREN PURSUANT TO S.C. CODE
17-23-175**

The Defendant objects and opposes the State's motion for admission of out-of-court statements of children pursuant to S.C. Code § 17-23-175.

I. S.C. Code § 17-23-175 is unconstitutional in that it violates the Confrontation Clause of the Sixth Amendment to the United States Constitution as interpreted by *Crawford v. Washington*.

S.C. Code § 17-23-175 is unconstitutional in that it violates the Confrontation Clause of the Sixth Amendment to the United States Constitution as interpreted by *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354 (2004). S.C. Code § 17-23-175 was enacted in 2006 and its constitutionality has never been tested in the South Carolina courts. The requirements of S.C. Code § 17-23-175 for admission of the videotaped forensic interviews in this case are in direct conflict with the provisions of *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354 (2004), and therefore violates the Confrontation Clause of the Sixth Amendment of the United States Constitution (The Confrontation Clause of the Sixth Amendment, made applicable to the states through the Fourteenth Amendment, provides “In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.”) In *Crawford*, the court discussed the admissibility of out-of-court hearsay statements of a witness and concluded

that the right of confrontation is violated by admission of such statements except in very limited circumstances. Those limited circumstances for admission of such statements are considered testimonial, and the defendant has a prior opportunity for cross-examination of the witness. *Id.* at 68, 124 S.Ct. 1374. In contrast, S.C. Code § 17-23-175 allows admission of out-of-court hearsay statements if they were made in response to questioning conducted during an investigative forensic interview of the child (making the statements testimonial) and when the child is available for testimony and cross-examination at trial. S.C. Code § 17-23-175 (A)(1), (A)(3). The requirement that the children be available for testimony directly contradicts the *Crawford* requirement that the witness be unavailable before out-of-court hearsay statements can be admitted.

Crawford v. Washington interprets the Confrontation Clause to be violated when out-of-court testimonial hearsay statements of an available witness are admitted. In this case, the State admits in its motion that it expects the children to testify at trial and be subjected to cross-examination. If the children are available to testify, *Crawford* simply does not allow admission of the out-of-court testimonial statements made on the videotaped forensic interviews, the contrary provisions of S.C. Code § 17-23-175 notwithstanding. Because S.C. Code § 17-23-175 violates the mandate of *Crawford*, the Defendant requests that this Court find S.C. Code § 17-23-175 unconstitutional and apply *Crawford* to exclude the videotaped forensic interview of the child.

II. S.C. Code § 17-23-175 violates *Maryland v. Craig*, 497 U.S. 836, 110 S.Ct. 3157 (1990).

S.C. Code § 17-23-175 violates *Maryland v. Craig*, 497 U.S. 836, 110 S.Ct. 3157 (1990)

in two important ways. First, to be constitutional, testimony of a child witness occurring outside the presence of the defendant must be under oath with an opportunity for contemporaneous cross-examination. Second, even if constitutional, the application of S.C. Code § 17-23-175 to admit out-of-court videotaped statements should be limited to situations where the court makes specific findings regarding the necessity of admitting the evidence.

A. S.C. Code § 17-23-175 is not constitutional because it does not provide an under oath, contemporaneous cross examination as required by *Maryland v. Craig*.

The videotaped interviews in this case are the equivalent of videotaped testimony except that the interviews are not under oath and there was no opportunity for contemporaneous cross-examination. In *Maryland v. Craig*, the United States Supreme Court, while noting that face-to-face confrontation is best, held that the testimony of a child witness via closed circuit TV did not violate the right of confrontation. The Court reasoned:

We find it significant, however, that Maryland's procedure preserves all of the other elements of the confrontation right: *The child witness must be competent to testify and must testify under oath; the defendant retains full opportunity for contemporaneous cross-examination*; and the judge, jury and defendant are able to view (albeit by video monitor) the demeanor (and body) of the witness as he or she testifies. Although we are mindful of the many subtle effects of face-to-face confrontation may have on an adversary criminal proceeding, the presence of these other elements of confrontation—oath, cross-examination, and observation of the witness' demeanor—adequately ensures that the testimony is both reliable and subject to rigorous adversarial testing in a manner functionally equivalent to that accorded live, in-person testimony. These safeguards of reliability and adversariness render the use of such a procedure a far cry from the undisputed prohibition of the Confrontation Clause: trial by *ex parte* affidavit or inquisition.

Id. at 851, 110 S.Ct. at 3166 (emphasis added).

The *Maryland v. Craig* Court noted that the majority of the states had adopted procedures for child witnesses to testify via closed circuit TV or videotaped testimony. The Court

concluded, "The Confrontation Clause does not prohibit use of a procedure that, despite the absence of face-to-face confrontation, ensures the reliability of the evidence by subjecting it to rigorous adversarial testing and thereby preserves the essence of effective confrontation."

Without an oath and without contemporaneous cross-examination, there cannot be effective confrontation. Specifically, nearly 20 months or almost two years have passed since the videotaped interviews were conducted of the alleged child victims in this case. It is not reasonable to say that 20 months is in any way a contemporaneous cross-examination.

Additionally, these children have been given multiple opportunities over the past 20 months to review and prepare for cross-examination before it takes place. S.C. Code § 17-23-175, therefore, violates the right of confrontation afforded by the Sixth Amendment.

- B. Even if this Court finds S.C. Code § 17-23-175 constitutional, the application of S.C. Code § 17-23-175 to admit out-of-court videotaped statements should be limited to situations where the court makes specific findings regarding the necessity of admitting the evidence.**

Even if this Court determines that S.C. Code § 17-23-175 does not violate the Confrontation Clause and chooses to apply S.C. Code § 17-23-175 in determining admissibility of the videotaped forensic interview, the Court should consider the necessity of admitting the evidence in addition to the criteria enumerated in S.C. Code § 17-23-175, as is required when a court determines whether to allow testimony of children via closed circuit television in child abuse cases. In *Maryland v. Craig*, the court held that the Confrontation Clause does not prohibit a child witness from testifying by closed circuit television, but that a case-specific finding of necessity for the use of that procedure was required. *Id.* at 855-56, 110 S.Ct. 3169. If a finding of necessity is required in those circumstances, where a child is actually testifying during a trial

and is subject to cross-examination, surely the same finding should be made for admission of an out-of-court testimonial statement in which the child witness was *not* subject to cross-examination.

In *Maryland v. Craig*, the Court noted that the public policy of protecting child witnesses from the trauma of giving testimony in child abuse cases could be sufficiently important in some cases to outweigh the defendant's rights to confrontation (In a footnote, the Court cites the South Carolina statute allowing videotaped testimony of an allegedly sexually abused child, S.C. Code § 16-3-1550(E) (formerly 16-3-1530 (G)), which was enacted in support of this public policy. *Maryland v. Craig* at 854, 100 S.Ct. at 3168, fn.2). *Id.* at 853, 110 S.Ct. at 3167. However, the Court also held that the importance of protecting child witnesses outweighs the defendant's right of confrontation only "if the State makes an adequate showing of necessity." *Id.* at 855, 100 S.Ct. at 3169. To make that showing of necessity:

(1) the State must present case specific evidence from which the trial can determine whether admission of videotape evidence is necessary to protect the welfare of the particular child witness; (2) the trial court must find that the child witness would be traumatized by the presence of the defendant; and (3) the trial court must find that the trauma suffered by the child witness in the presence of the defendant is more than "mere nervousness or excitement or some reluctance to testify."

Id. at 856, 110 S.Ct. at 3169. No such showing of necessity can be made here to justify admission of the out-of-court videotaped statements of the child. There had been no showing that the child in this case is not fully capable of testifying in the courtroom. Under these circumstances, there is absolutely no necessity for admission of the videotaped forensic interviews of the children. The State's desire to admit these videotaped forensic interviews of the children solely to bolster their testimony with prior consistent statements, both of which are

not permitted by the South Carolina Rules of Evidence.

The South Carolina courts agree that a particularized showing of necessity is needed before videotaped or closed circuit testimony can be used to avoid face-to-face confrontation with a defendant. Although S.C. Code § 16-3-1550(E) does not preclude the use of videotaped testimony for certain witnesses (S.C. Code § 16-3-1550(E) states: "The circuit or family court must treat sensitively witnesses who are very young, elderly, handicapped, or who have special needs by using closed or taped sessions when appropriate. The prosecuting agency or defense attorney must notify the court when a victim or witness deserves special consideration."), the judge must make appropriate findings before such procedures can be used.

In *State v. Murrell*, 302 S.C. 77, 393 S.E.2d 919 (1990), the South Carolina Supreme Court affirmed the trial judge's order allowing videotaped testimony of a child witness where the judge heard expert testimony that the child would be significantly harmed by an in-court confrontation. In that case, the child witness was placed in a courtroom setting and the defendant was in an adjacent room viewing the child on video. Defendant's attorney was present in the courtroom for direct and cross-examination, the attorney's law partner was in the room with the defendant with three-way communication available at all times between the attorneys and the defendant. *Id.* at 71, 393 S.E.2d 920-21.

In *State v. Bray*, 342 S.C. 23, 535 S.E.2d 636 (2000), the South Carolina Supreme Court determined that although the record contained sufficient evidence to support a finding that testimony of a child witness should be given by closed circuit television, reversal was mandated because the trial court failed to make specific findings for its ruling allowing testimony outside the presence of the defendant, specifically failing to cite to testimony that the child would be

traumatized if required to testify in the presence of the defendant. *Id.* at 31-31, 535 S.E.2d 641. These requirements for case specific finding of necessity for admission of videotaped or closed circuit television testimony should limit S.C. Code § 17-23-175 in a similar manner. Because S.C. Code § 17-23-175 does not require a finding of necessity for admission of videotaped forensic interviews, it contradicts the provisions of *Maryland v. Craig* and its progeny and therefore violates the defendant's right to confrontation. Furthermore, as noted previously, no showing of necessity has been made in this case.

III. The “particularized guarantees of trustworthiness” enumerated in S.C. Code § 17-23-175(B) are not adequate to protect the Defendant’s right of confrontation.

Prior to *Crawford v. Washington*, *supra*, the United States Supreme Court, in *Ohio v. Roberts*, 448 U.S. 56, 100 S.Ct. 2531, conditioned the admissibility of all hearsay evidence on whether it falls under a “firmly rooted hearsay exception” or bears “particularized guarantees of trustworthiness.” *Id.* at 66, 100 S.Ct. 2539. Under the *Ohio v. Roberts* test, the “particularized guarantees of trustworthiness” enumerated in S.C. Code § 17-23-175(B) perhaps could have been held to pass constitutional muster. However, the United States Supreme Court abrogated *Ohio v. Roberts* in the *Crawford v. Washington* decision, finding that the *Ohio v. Roberts* test was too broad in that “[i]t applies the same mode of analysis whether or not the hearsay consists of *ex parte* testimony upon a mere finding of reliability.” *Crawford v. Washington*, *supra* at 60, 124 S.Ct. 1369. The Court stated: “This malleable standard often fails to protect against paradigmatic confrontation violations.” *Id.*

The particularized guarantees of trustworthiness that render firmly rooted hearsay exceptions reliable *do not* exist with regard to the videotaped forensic interviews in this case.

Almost all the firmly rooted hearsay exceptions recognized in our jurisprudence apply to non-testimonial statements, with the exception of certain dying declarations that might be made in a testimonial context. *Id.* at 56, 124 S.Ct. 1367, fn. 6. The *Crawford v. Washington* opinion had the following to say about the fallacy of using the “reliability” determination when dealing with testimonial statements such as videotaped interviews at issue here:

Where testimonial statements are involved, we do not think the Framers meant to leave the Sixth Amendment’s protection to the vagaries of the rules of evidence, much less to amorphous notions of “reliability.” Certainly none of the authorities discussed above acknowledges any general reliability exception to the common law rule. Admitting statements deemed reliable by a judge is fundamentally at odds with the right of confrontation. To be sure, the Clause’s ultimate goal is to ensure reliability of evidence, but it is a procedural rather than a substantive guarantee. *It commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination.* The clause thus rejects a judgment, not only about the desirability of reliable evidence (a point on which there could be little dissent), but about how reliability can best be determined. Cf.3 Blackstone, Commentaries, at 373 (“This open examination of witnesses . . . is much more conducive to the clearing up of truth”); M. Hale, History and Analysis of the Common Law of England 258 (1713) (adversarial testing “beats and bolts out the truth much better”).

Id. at 61, 124 S.Ct. at 1370 (emphasis added).

Under the reasoning of *Crawford v. Washington*, the “particularized guarantees of trustworthiness” factors enumerated in S.C. Code § 17-23-175(B) cannot suffice to allow admission of the out-of-court testimonial hearsay statements contained in the videotaped forensic interview. Without a prior opportunity for cross examination during those statements, admission of the videotapes clearly violates the Defendant’s right of confrontation.

IV. If the videotapes are admitted over Defendant’s objection, the videotapes must be redacted to comply with the South Carolina Rules of Evidence

If the videotapes are admitted over Defendant’s objection, the videotapes must be

redacted to comply with the South Carolina Rules of Evidence, specifically inadmissible hearsay, non-relevant statements, and inadmissible prior bad acts. There are several portions of the recorded interview of the alleged victims in this case that are either (1) inadmissible hearsay, (2) non-relevant statements, or (3) inadmissible prior bad acts. The prejudicial nature of these portions of the recorded interviews outweigh the probative value under SCRE Rule 403 analysis as well.

For the foregoing reasons address above, the Defendant requests that the videotaped forensic interviews be excluded from evidence. Alternatively, if admitted, the Defendant requests that the court require that portions of the videotaped interviews that violate the South Carolina Rules of Evidence be redacted.

Respectfully submitted,

J. Taylor Bell
Attorney for Defendant

Richland County Public Defender's Office
Post Office Box 192
Columbia, South Carolina 29202
(803) 765-2592

Columbia, South Carolina

This ____ day of _____, 2014.

WITNESSES

(S) B COLEMAN – Columbia Police
Department

ARREST WARRANT NUMBER

K651968

ACTION OF GRAND JURY

TRUE BILL

Jill R. Koenig
Foreperson of Grand Jury
Date: **OCT 11 2012**

VERDICT

Guilty

DOCKET NO. 2012-GS-40-05044

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

OCTOBER TERM 2012

92

**THE STATE
vs.**

WAYLAND PURNELL

**Indictment for
CRIMINAL SEXUAL CONDUCT WITH
MINOR, 1ST DEG**

SC Code: **16-03-0655(A)(1)**
CDR Code: **0385**

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

Artema Harris, July 10, 2014
Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on OCTOBER 10, 2012,
the Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

CDR: 0385 16-03-0655(A)(1)

That WAYLAND PRUNELL did in Richland County, State of South Carolina, on
or between SEPTEMBER 1, 2011 and APRIL 29, 2012, willfully and unlawfully
engage in sexual battery with a minor who is less than eleven (11) years of age, to
wit: Minor 1 in violation of Section 16-03-655(A)(1), [formerly
Section 16-3-655(1)], S. C. Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.


DAN JOHNSON, SOLICITOR

WITNESSES

(S) INV. BARBARA COLEMAN, CPD

ARREST WARRANT NUMBER

DP - 14034

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

FEB 20 2014

VERDICT

Guilty

Foreperson of Petit Jury
Date:

DOCKET NO. 2014-GS-40-01247

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2014

92

THE STATE
vs.

WAYLAND PURNELL

Indictment for
LEWD ACT UPON CHILD

SC Code: 16-15-140

CDR Code: 2468

Class FEL/D

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on FEBRUARY 19 2014 the Grand Jurors of Richland County present upon their oath:

LEWD ACT UPON A CHILD

That WAYLAND PURNELL in Richland County on or between SEPTEMBER 1, 2011 AND APRIL 29, 2012, being over the age of fourteen years, did willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of one Minor 2 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; all in violation of S.C. Code of Laws § 16-15-140.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

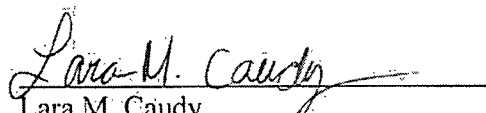


DAN JOHNSON, SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 15th, 2016


Lara M. Caudy
Appellate Defender

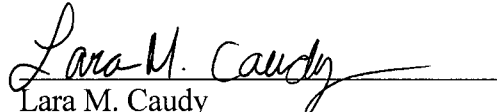
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 15th, 2016


Lara M. Caudy
Appellate Defender

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ATTORNEY FOR APPELLANT

RECEIVED
JAN 15 2016
SC Court of Appeals