

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GERALD BARRETT,

APPELLANT

APPELLATE CASE NO. 2013-002158

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT

State of South Carolina,)
Plaintiff,) Case Nos: 2012-GS-07-1631
vs.) 2012-GS-07-1632
GERALD THOMAS BARRETT, JR.,) 2012-GS-07-1633
Defendant.)

ORIGINAL

TRANSCRIPT OF JURY TRIAL
VOLUME I OF IV
HEARD BEFORE JUDGE KRISTI LEA HARRINGTON
ON MAY 20, 2013

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2	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>ADMITTED</u>
3	<u>State's Exhibit:</u>		
4	No. 13	70	
5	Nos. 7, 8, & 9		78
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8	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>ADMITTED</u>
9	<u>Defendant's Exhibit:</u>		
10	Nos. 1 through 8	62	
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1 The above-styled cause came on for hearing on
2 the 20th day of May, 2013, at 10:00 a.m., before Judge
3 Kristi Lea Harrington, presiding over the General
4 Sessions Court for the County of Beaufort, when the
5 following proceedings were had and entered of record, to
6 wit:

7 PROCEEDINGS

8 VOLUME I OF IV

9 (Defendant is present with his counsel.)

10 THE COURT: All right, Counsel. For my
11 benefit, give me your name.

12 MS. CONCANNON: Mary Concannon.

13 MR. SHELTON: Ben Shelton.

14 THE COURT: Good morning, Mr. Shelton.

15 MR. SHELTON: Good to see you.

16 MS. CAMPBELL: Good morning. Hi, I'm
17 Trasi Campbell. And that's T-r-a-s-i.

18 THE COURT: And, Ms. Campbell, you represent
19 Mr. Barrett?

20 MS. CAMPBELL: I do, your Honor. This is
21 Gerald Barrett, Jr.

22 THE COURT: And I understand that you are
23 asking for a continuance; is that correct?

24 MS. CAMPBELL: That is correct, your Honor.
25 I'll be happy to place that on the record at this time.

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1 if you would like.

2 THE COURT: I'd be happy to hear from you.

3 MS. CAMPBELL: Thank you, your Honor. I've

4 been representing Mr. Barrett since he was incarcerated

5 on these charges, your Honor, which is, eight, nine

6 months now. Last Thursday, four or five days before

7 trial, I was -- a packet of information was dropped off

8 at my office by the State of South Carolina. And in

9 that packet of information and through a phone call with

10 the Solicitor, Ms. Concannon, it divulged to me at that

11 point she intended to introduce or to try to introduce

12 evidence of Child Sexual Assault Accommodation Syndrome.

13 Upon receipt of that packet of information from the

14 State, I began conducting research Thursday, Friday,

15 over the weekend, and it has come to my attention that I

16 believe, based on what I found, that if I do not request

17 that the State provide an expert for Mr. Barrett on

18 those -- on that particular issue, that I will be

19 ineffective. So I am requesting a continuance to allow,

20 basically, the State to provide an expert for

21 Mr. Barrett on -- on that particular issue alone. It is

22 highly contested; it is highly debated. There are some

23 research articles that, you know, label it and put it in

24 the area of junk science, and there are others that find

25 some credibility to it. And with no counter argument,

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1 I'm sort of left, in my opinion, being ineffective for
2 Mr. Barrett. Thank you.

3 THE COURT: All right. Ms. Campbell, if I
4 exclude that testimony, are you prepared to go forward?

5 MS. CAMPBELL: I am.

6 THE COURT: All right. Let me hear from you.

7 MS. CONCANNON: Thank you, your Honor. The
8 State is prepared to go forward. We did hand over that
9 information to Ms. Campbell on Thursday. I would like
10 to add that, in the State's opinion, it is not grounds
11 for a continuance. It is well established in the area
12 of child sexual abuse cases. It's from the inception
13 of --

14 THE COURT: Tell me how the information was
15 presented.

16 MS. CAMPBELL: I received information from
17 Kendra Twitty, who is -- I'm going to attempt to qualify
18 as an expert in counseling child sexual abuse victims.
19 And she provided me with a brief synopsis of the child
20 sexual --

21 THE COURT: How did she get involved in the
22 case?

23 MS. CONCANNON: She is with Hope Haven of the
24 Lowcountry, which conducts forensic interviewing in the
25 counseling of the child sexual victims.

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1 THE COURT: Has she been involved in this case?
2 This is a 2012 case; is that correct?

3 MS. CONCANNON: She was the actual forensic
4 interviewer on Minor , the 14-year-old victim in
5 this case.

6 THE COURT: Had she -- had you provided
7 information regarding the videotape of the interview and
8 all of that prior to Thursday?

9 MS. CONCANNON: Yes, your Honor.

10 THE COURT: All right. So this would, in
11 essence, be a supplemental report; is that --

12 MS. CONCANNON: Yes, your Honor. The videotape
13 was provided earlier on in this case. And when I met
14 with Ms. Twitty, she was able to provide me with it. I
15 can hand you a copy of what we're mentioning if you
16 would like.

17 THE COURT: What is the essence of the
18 testimony?

19 MS. CONCANNON: She is going to testify, in
20 which I had told Ms. Campbell, as to the mental effects
21 that children who are victims of child sexual abuse
22 suffer such as delayed reporting, who they report to,
23 why they choose to report to these sort of individuals,
24 different affects regarding, not Minor in particular,
25 just general -- generalized what -- regarding these

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1 victims.

2 THE COURT: And has she testified in this court
3 before? Has she been qualified as an expert before in
4 Beaufort County?

5 MS. CONCANNON: Yes, your Honor.

6 THE COURT: I am not from Beaufort County, so I
7 am not familiar with your advocacy centers and who may
8 testify. So that's important for me to know.

9 Ms. Campbell, you were aware that she was the
10 forensic interviewer?

11 MS. CAMPBELL: I am aware that Ms. Twitty
12 served as the forensic interviewer in this case. As
13 your Honor knows, I did file my motion to disallow
14 Kendra Twitty's qualification as an expert and the use
15 of the term "forensic interviewer" and any testimony
16 from Twitty that does not fall squarely within the
17 ruling in Kromah. And that would be a motion, I assume,
18 that we would hear if we were continuing this matter.

19 So based on Kromah and based on the -- the
20 written report from Kendra Twitty that in no way
21 references Child Sexual Assault Accommodation Syndrome,
22 I would have no way of knowing that the State intended
23 to elicit that type of testimony from this particular
24 person. There was no -- no information at all that that
25 particular information was sought from that witness.

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1 THE COURT: What was the basis of her interview
2 with the victim?

3 MS. CAMPBELL: Well, Minor , at the time,
4 was 14. Kendra Twitty interviewed her at Hope Haven.
5 And I watched the video, and I've read the -- the report
6 from Kendra Twitty. And it is an outline of the
7 allegations in the case. It is a repetition of the same
8 story that was given repeatedly to -- at the initial
9 disclosure, at the interview with law enforcement. And
10 everything particularly remained the same, obviously,
11 except that the times -- or the time of the one incident
12 bounced around. But there's nothing in here --

13 THE COURT: All right. Are you familiar with
14 Ms. Twitty?

15 MS. CAMPBELL: I know of her. I have never
16 been involved in a case with her in terms of taking a
17 case to trial with her.

18 THE COURT: You were aware that she was the
19 forensic interviewer in this case?

20 MS. CAMPBELL: I am aware of that, yes.

21 THE COURT: And, Ms. Campbell, you are aware
22 of, basically, what a forensic interviewer does and
23 their qualifications?

24 MS. CAMPBELL: I am aware of forensic
25 interviewers. I'm aware of Ms. Twitty and her work in

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1 previous cases. And I have not tried a child sexual
2 assault case subsequent to Kromah. And so in light of
3 that, my thinking and my perspective and the way I am
4 dealing with the case has changed, and Ms. Twitty.

5 THE COURT: All right. Counsel, let me hear
6 from you.

7 MS. CONCANNON: I would just like to add in
8 response to Ms. Campbell's reference to Kromah, it was
9 never in the State's intention to attempt to get
10 Ms. Twitty qualified as -- in the field of forensic
11 interviewing. We know there's case law out there
12 against that.

13 In the supplement that I provided for
14 Ms. Campbell, it does state case law in which courts
15 have allowed forensic interviewers to be qualified as
16 experts in the field of child sexual abuse counseling
17 and treatment. And I do have a copy of that case for
18 your Honor if you would like to look at it.

19 THE COURT: You may -- you may approach. Tell
20 me what her qualifications are that you believe she can
21 be qualified as an expert.

22 (Document is handed to the Judge.)

23 MS. CONCANNON: Thank you.

24 Ms. Twitty has expertise -- well, as of
25 May 1st of this year, she's conducted 986 forensic

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1 interviewers -- interviews of children ranging from 3 to
2 17 years old. She has expertise in trauma, focus
3 cognitive behavioral therapist, as well as a child
4 forensic interviewer, crisis intervention specialist.
5 She has a master of arts in clinical psychology from
6 Georgia School of Professional Psychology where she had
7 a 3.6 GPA. She also has a bachelor of science *magna cum*
8 *laude*, Ithaca College in New York. She has been a
9 licensed -- she's a licensed professional counselor here
10 at the Hope Haven of the Lowcountry. Her professional
11 experience ranges from forensic interviewer/counselor,
12 in which she is specialized in interviews, does reports,
13 assessments to the officials who are investigating and
14 alleged child sexual abuse. She has provided expert
15 testimony in child abuse in civil, criminal, and federal
16 court hearings. She conducts trauma assessment to
17 provide evidence-phased, trauma-focused, cognitive
18 behavioral therapy to victims of trauma and sexual abuse
19 and substance abuse. She has been, since 2010, a
20 clinical supervisor and counselor in Bluffton at
21 MindStream Academy. She has also -- she is a social and
22 emotional learning coordinator. She's had that position
23 from 2009 to 2010 at Charter School here in Beaufort.
24 She's a part-time daily therapist in Hope Haven,
25 forensic interviewer and counselor, and that is where

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1 she does specialized interviews making allegations of
2 sexual and/or physical abuse. She does the written
3 reports and assessments to officials. She provides
4 continuing education, training on mandated reporting of
5 signs and symptoms of abuse, and breaking the silence to
6 professionals in the field of education and childcare.
7 She has assessed and provided treatment to the victims
8 of trauma sexual abuse and the like, and she does joint
9 victim as well as family counseling for these victims of
10 child sexual abuse.

11 THE COURT: All right. What training has she
12 specifically received as -- with respect to interviewing
13 children of child sexual assault?

14 MS. CONCANNON: Okay. Her training is as
15 follows: National Child Protection Training Center,
16 emergent issues in the forensic interviewing. That was
17 in Columbia -- these are her certificates that she has
18 completed -- as well as Finding Words Advanced Course
19 from the Children's Loss Center, forensic interviewing
20 and advanced level training, the National Children's
21 Alliance Academy of Investigative Interviewing,
22 Professional Response Child Abuse Conference, Darkness
23 to Light, Fifth Annual National Conference, South
24 Carolina Prevention of Child Abuse, Sexual Development
25 and Sexually Reactive Behaviors in Children. She

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1 presented in that four years, as well as sexually
2 problematic adolescence training. Her training goes
3 back to 2000 and is continued up until 2012, it looks
4 like.

5 THE COURT: Ms. Campbell, are you asking
6 for -- what are you asking for specifically?

7 MS. CAMPBELL: I'm specifically --

8 THE COURT: Is it a continuance for the entire
9 case, a continuance to review, opportunity to speak with
10 the witness; what is it that you're requesting?

11 MS. CAMPBELL: I am specifically asking for a
12 continuance to obtain the services of an expert in the
13 field of Child Sexual Assault Accommodation Syndrome,
14 which is the specific evidence that the State seeks to
15 introduce through Kendra Twitty that I was informed of
16 on Thursday -- last Thursday.

17 I would point out that we're ready to go
18 forward in every other respect, as I was on Wednesday
19 when I forwarded, you know, my motions and I was ready
20 to go. This added a different layer to it. I had to do
21 my research. As I did it, it says to me right here that
22 I am ineffective if I do not request an expert to
23 counter the evidence that the State seeks to introduce.
24 And so that is what I'm doing on behalf of my client.
25 It would give me an opportunity to obtain the services

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1 of an expert, to speak with that expert, and have them
2 testify at Mr. Barrett's trial.

3 And -- and the basis for this is, is that, as
4 far as I can tell, a number of courts, two Florida cases
5 in particular, have overturned convictions where Child
6 Sexual Assault Accommodation Syndrome was introduced as
7 evidence in that case. It's a very -- it's a very
8 dangerous type of testimony to put in without me being
9 allowed to counter it with a professional myself.

10 THE COURT: Solicitor, tell me what child
11 accommodation syndrome is.

12 MS. CONCANNON: Your Honor, it goes into the
13 mental trauma that child victims of sexual abuse could
14 suffer and do suffer -- do suffer. It just shows that
15 it's the most frequent observed behaviors that these
16 victims partake in and represent and what the sexual
17 abuse does for them in the mental aspect. For example,
18 it looks at behavioral characteristics such as the
19 secrecy; the helplessness these children suffer;
20 entrapment; accommodation; delayed, conflicted, and
21 unconvincing disclosure; as well as retraction, which
22 are things that are common in all child sexual abuse
23 cases. And it goes back to at least 1983 when this
24 study came out.

25 MS. CAMPBELL: May I speak, your Honor?

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1 THE COURT: You may.

2 MS. CAMPBELL: Thank you. One of the things
3 that I was able to -- to discover in my research over
4 the weekend about this is that Roland Smith [sic] did
5 put forth this position in 1983. And since that time,
6 basically the Courts are looking at it and saying the
7 accommodation syndrome does not obviously detect sexual
8 abuse. It makes the assumption that abuse has occurred
9 and it -- and then attempts to explain the child's
10 reactions to it. And so the accommodation syndrome, not
11 proving abuse, and it -- it doesn't constitute
12 substantive evidence. And that is very problematic when
13 the State is seeking to put in front of the jury a
14 person who is going to be testifying from the position
15 that abuse occurred. And even though the State says,
16 Well, we're not going to make it specific to ^{Minor}, you
17 can't deny that that's the interpretation the jury would
18 take from that testimony. Thank you, your Honor.

19 THE COURT: All right. When is the -- when do
20 you plan to have the expert testify?

21 MS. CONCANNON: Ms. Twitty was going to be here
22 this afternoon to handle this as a pretrial matter. Her
23 actual testimony, I would hope, tomorrow.

24 THE COURT: All right. I am not -- at this
25 point, I am not granting your motion for a continuance

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1 based upon the fact that she was named as the
2 interviewer. It may be that, based upon when she comes
3 in for the other pretrial matters related to the
4 videotape and some of the other testimony, that I will
5 make a determination otherwise; but at this point, we
6 are going forward on this matter. Note your exception
7 to my ruling for the record.

8 Anything further before we begin -- before I
9 begin qualification?

10 MS. CONCANNON: Not from the State.

11 MS. CAMPBELL: Just one further matter, your
12 Honor, in terms of the discovery. Additionally, the
13 State provided on Thursday jail phone calls to the
14 Defense in the neighborhood of hundreds of hours worth
15 of listening that I would need to do to that -- to those
16 calls. And the State indicates to me that they've
17 listened to all of them. Obviously, I was occupied, for
18 my client, investigating this issue that was given to me
19 on Thursday, and this discovery was dumped at the office
20 also on Thursday. And I will tell you for the record,
21 I've not listened to the jail phone calls. I've not had
22 time.

23 THE COURT: All right. Do you plan to use the
24 jail --

25 MS. CONCANNON: I plan to use the one phone

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1 (The Judge steps off the bench at 1:31 p.m.)

2 (Lunch recess.)

3 **PRETRIAL MATTERS**

4 THE COURT: Whenever you are ready,

5 Ms. Campbell.

6 MS. CAMPBELL: Thank you, your Honor. Your
7 Honor, at this time, on behalf of my client, I would
8 make a Motion to Quash the three indictments in this
9 case. I'll be referring to my handwritten motion during
10 my argument to the Court briefly here, and then I'll be
11 making my motion. And the three indictments from August
12 23rd, 2012, Defendant's exhibits, along with my copies
13 of the three indictments from March 28th, 2013,
14 Defendant's exhibits, and then the last exhibit the
15 Defendant would put into the record of this case is a
16 copy of the -- dated February 20th, 2013, Notice of
17 Defendant's Alibi to cover the times stated in the three
18 original indictments.

19 The Defendant alleges in this case, that the
20 State of South Carolina, upon notice of his alibi,
21 amended the indictments to reflect different dates. We
22 would contend that these indictments that we are here on
23 today are not sufficient as to -- and good as to date
24 and time because the State has essentially moved the
25 date and prevented Mr. Barrett from presenting fully a

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1 defense in this case. The original indictments, your
2 Honor, were handed down August 23rd, 2012. As the
3 record will reflect, we gave notice of alibi in February
4 2013. The first indictment, 2012-1631, stated that the
5 offense occurred on March 19th; not "on or about," but
6 March 19th. That day, and that day alone, he was on
7 notice to defend against. In the kidnapping indictment,
8 2012-1632, it stated, "on or about March 19th, 2012,"
9 which gave a little bit more leeway. And then the last
10 indictment, 2012-1633, simply had no date at all.

11 The Defendant was provided discovery by the
12 State of South Carolina. And in that discovery, is a
13 very clear, handwritten statement by Minor . And
14 in that statement, pursuant to questioning by Kendra
15 Twitty of Hope Haven and being interviewed in this case,
16 she wrote that the offense occurred two days after
17 Saint Patrick's Day. And we would contend that Saint
18 Patrick's Day is a little bit like Christmas Day or New
19 Year's Day; these are days that everybody knows when
20 they are. They don't float around. It's -- Saint
21 Patrick's Day is March 17th; Christmas, December 25th;
22 New Year's Day, January 1st.

23 So if you are told by Minor that she was
24 sexually assaulted -- as the investigator was -- two
25 days after Saint Patrick's Day, then you obtain warrants

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1 for March 19th, which he did. The warrants in this case
2 directed the Defendant to March 19th as the day upon the
3 allegation.

4 As we proceeded to trial and we prepared our
5 defense, we sent notice to the State. And as we were
6 coming up to the term of court where we were to have our
7 trial, I, as Mr. Barrett's defense counsel, received a
8 telephone call from the Assistant Solicitor Patrick Hall
9 that indicated he was fleshing out the victim's story
10 and that it would appear to him that the date was, in
11 fact, Saint Patrick's Day parade on Hilton Head. And
12 with that information, he was going to seek amending the
13 indictments. I cautioned him that I had grave concerns
14 about that action; that I felt that the change in her
15 statement, I suppose, should have been documented in
16 some manner. It has not been done to date, that I'm
17 aware of, to corroborate her changing the date
18 subsequent to the solicitor's fleshing out of her story.

19 The Solicitor's Office then took the
20 indictments to another grand jury and changed the dates
21 based on a statement from Shawn Ward who indicates in
22 sort of a re-interview, although he was highly
23 intoxicated on Hilton Head Island's Saint Patrick's Day,
24 that he had some memory of Mr. Barrett being at his home
25 that evening.

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1 There has been, to my knowledge, no
2 re-interview of Minor in terms of pinning her
3 down on a different date. And even if there were at
4 this point, Mr. Barrett argues to this Court that
5 this -- these actions taken subsequent to his notice of
6 alibi deny him of due process, fairness, and justice in
7 this courtroom. And he seeks the remedy of quashing
8 these indictments and full dismissal with prejudice for
9 the actions taken subsequent to his notice of alibi by
10 the State of South Carolina, and we feel that it would
11 be only fair and just and equitable remedy for the
12 Defendant at this point in these proceedings.

13 And if I may, your Honor, I would like to
14 approach and mark my exhibits for Mr. Barrett at this
15 time with the court reporter. I've got them pre-marked.

16 THE COURT: You may.

17 MS. CAMPBELL: And for the record, the Motion
18 to Quash the Indictments is Defendant's Exhibit 1.

19 The 16 -- excuse me, 2012-1631, True Bill date
20 August 23rd, 2012, Defendant's Exhibit 2.

21 2012-1632, True Bill date August 23rd, 2012,
22 Defendant's Exhibit 3.

23 2012-1633, Defendant's Exhibit 4, True Bill
24 date August 23rd, 2012.

25 Defendant's Exhibit 5, 2012-1631, True Bill

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1 date March 28th, 2013.

2 Defendant's Exhibit 6, 2012-1632, True Bill

3 date March 28th, 2013.

4 True bill -- excuse me, Defendant's Exhibit 7,

5 2012-1633, True Bill date March 28th, 2013.

6 And last is Defendant's Exhibit 8, which is
7 Defendant's Notice of Intention to Offer Alibi Defense
8 pursuant to Rule 5.

9 Thank you, your Honor.

10 (Defendant's Exhibit Nos. 1-8 marked for
11 identification.)

12 THE COURT: Ms. Concannon?

13 MS. CONCANNON: Thank you, your Honor. The
14 State would respectfully disagree with Ms. Campbell's
15 motion. The indictments were amended by a finding from
16 the grand jury which are secret proceedings. And the
17 only allegations that have been altered in the
18 indictment or amended is the date that the offense
19 occurred. It now gives an on or about date which also
20 encompasses the original date. Ms. Campbell stated that
21 initially my victim indicated that it happened on
22 St. Patrick's Day. Well, to a 14-year-old girl that has
23 been sexually assaulted, she equated St. Patrick's Day
24 with when it was celebrated. And the Hilton Head parade
25 happened to fall on a Sunday; and the year of this

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1 Hilton Head parade, it was on a Sunday, the 19th, after
2 Saint Patrick's Day. She did not even know that Saint
3 Patrick's Day was a specified day. She equated it with
4 when it was celebrated. And for a criminal sexual
5 assault case regarding the one that we have at bar
6 today, the date is not an element of the offense
7 charged.

8 The factual allegations did not change at all.
9 It was always the same place, the same victim, the same
10 sort of sexual battery. The only thing that did -- was
11 amended was the day and how it's a range instead of a
12 specific date. I do have a case law, State v. Wade,
13 that specifically touches on sex crimes and how date is
14 not an element of the offense charged. I do not have a
15 prepared formal written memo for you. I just received
16 Ms. Campbell's today, but I can prepare one for you.

17 THE COURT: Anything further?

18 MS. CONCANNON: Nothing further from the State,
19 your Honor.

20 MS. CAMPBELL: Your Honor, could I reply
21 briefly?

22 THE COURT: You may.

23 MS. CAMPBELL: Thank you. In terms of
24 the -- the -- of Minor ' date situation, the original
25 allegations placed this encounter occurring two weeks

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1 right before the end of school, which is two months
2 from Saint Patrick's Day. And -- and then, as I said,
3 subsequent to this interview and the effort to pin down
4 precisely a date, in her own handwriting, subsequent to
5 this detailed interview, they decide upon two days after
6 Saint Patrick's Day. Regardless, that's March 19th, and
7 that's the date we prepared nine months -- eight to nine
8 months to defend against. And to then move the date --
9 still again, no discovery to the Defendant as to the
10 victim's version of moving the date, just this
11 Shawn Ward person -- we feel is unfair and unjust.
12 Thank you, your Honor.

13 THE COURT: All right. As you know, an
14 indictment is a notice document. The purpose is to
15 state with sufficient certainty and particularity to
16 enable the Court to know what judgment to pronounce and
17 for the Defendant to know what he is called upon to
18 answer and whether he may plead or what happens if there
19 should be a conviction and whether it apprises the
20 Defendant of the elements of the offense that are
21 intended to be charged. The test is utilized to
22 determine the sufficiency of an indictment. And we'll
23 just use the analogy that it's an overly broad time
24 period since there was -- the original indictments
25 indicated a one-day time frame and now there's a March

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1 11th through March 19th.

2 Is the time a material element of the offense
3 and whether the time period covered by the indictment
4 occurred prior to the return of the indictment by the
5 grand jury? Based upon the information that has been
6 presented from the State as to why the time frame had
7 been changed from a particular date, while I understand
8 the analogy to Christmas that it is a particular date, I
9 am not convinced that Saint Patrick's Day, because it is
10 typically celebrated on different days when there is a
11 celebration of a parade or something of that nature, not
12 always celebrated on March 17th. As to a 14-year-old,
13 I'm not sure that that understanding should be imputed
14 to indicate that perhaps the State has done something to
15 obviate your alibi witness.

16 Based upon the testimony -- or the indication
17 that why it was amended, the fact that it was amended
18 approximately two months ago, I deny your Motion to
19 Quash the indictments.

20 MS. CAMPBELL: Thank you, your Honor. Shall I
21 proceed to the next motion?

22 THE COURT: Let's see what we have -- a Motion
23 to Quash indictments and then a Motion to Sequester
24 Witnesses. Any objection?

25 MS. CONCANNON: Not to sequester witnesses,

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1 your Honor.

2 THE COURT: Motion to Sequester Witnesses is
3 granted.

4 MS. CONCANNON: I did want to add one thing for
5 the record, your Honor. My apologies. The parade was
6 the 11th. So Saint Patrick's Day was the 17th. The
7 initial date was the 19th. I just wanted to correct
8 myself on the record. I had said the parade was the
9 19th, but the parade was the 11th.

10 THE COURT: Which is what you amended your
11 Indictment to be?

12 MS. CONCANNON: Right. When I spoke, I said
13 the 19th.

14 THE COURT: All right. Thank you.

15 All right. Ms. Campbell, the next one that I
16 have on your list pertains to a -- pertains to the list
17 that you had filed is the use of the video evidence.

18 MS. CAMPBELL: Thank you, your Honor. It's my
19 understanding after speaking to the prosecution that
20 they are not intending to introduce the video evidence
21 in this case, and, therefore, that motion would not be
22 necessary.

23 MS. CONCANNON: And Ms. Campbell's correct. We
24 don't intend to use the forensic interview.

25 THE COURT: The video?

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1 MS. CONCANNON: The video, correct.

2 THE COURT: Thank you. So are you withdrawing
3 that motion, Ms. Campbell?

4 MS. CAMPBELL: I would withdraw. It will not
5 be necessary.

6 THE COURT: Thank you.

7 MS. CAMPBELL: The next motion, if I may, would
8 be -- would relate to the State's intended use of 404(b)
9 Lyle evidence.

10 THE COURT: All right.

11 MS. CAMPBELL: And I believe that the State
12 would be in a position to put up what they intend --

13 THE COURT: I just want to see what is
14 remaining because I anticipate that's going to be a
15 lengthy one.

16 MS. CAMPBELL: The other motions that I have
17 relate to Kendra Twitty. And I did file the written
18 motion. I provided the State with a copy of that -- my
19 objections to that. And then the qualification of
20 Kristin Dalton as an expert, I would have a motion on
21 that. And then --

22 THE COURT: Do you plan to qualify Ms. Dalton
23 as an expert?

24 MS. CONCANNON: I do. Not --

25 THE COURT: In what area?

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1 MS. CAMPBELL: Your Honor, the next motion
2 on -- on my anticipated pretrial motion list is the
3 Motion to Disallow the Qualification of Kendra Twitty as
4 an Expert and to disallow the use of the terminology
5 "forensic interviewer." And I -- I did take that,
6 additionally, to disallow her testimony in its entirety.
7 I rely on my motion -- handwritten motion that I
8 prepared and submitted to your Honor.

9 I'm not really sure the best way to handle this
10 except that I do -- I do believe the State intends to
11 have her testify outside the parameters of Kromah and --
12 which would be more than date, time, and circumstance of
13 the interview; any personal observations of the child's
14 behavior or demeanor; and a statement as to events that
15 occurred within the interviewer's personal knowledge. I
16 think it's fair to say Kromah cautions all of us when it
17 comes to this terminology of someone being qualified as
18 a forensic interviewer and that it is a misnomer. And
19 if the State is going to try to put Kendra Twitty on the
20 stand and have her qualified as an expert, we object to
21 that. And we object to the use of the term "forensic
22 interviewer." Thank you.

23 MS. CONCANNON: Thank you, your Honor. The
24 State does not intend to qualify her as an expert as a
25 forensic -- in forensic interviewing. We are cognizant

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1 of the Kromah case. We know you can't do that.

2 I handed up earlier State v. Shumpert which
3 indicates that Kendra Twitty -- the Court in that case
4 allowed the expert, who happened to also be a forensic
5 interviewer, to be qualified as an expert in child
6 sexual abuse counseling and treatment or a child's
7 sexual abuse trauma recovery.

8 Ms. Twitty, she is here as well for any
9 testimony that the Court may need for pretrial matters.
10 She does not intend to testify specifically about
11 Minor . She intends to testify -- to testify about her
12 findings in her field as an expert regarding children
13 who are victims of trauma and sexual abuse cases.

14 THE COURT: How does that not fall into what
15 Kromah warned against?

16 MS. CONCANNON: In Shumpert, they weren't
17 qualified as forensic --

18 THE COURT: That's wasn't my question.

19 (Respite.)

20 THE COURT: So you're going to call her, and
21 she's not going to testify as to the results of her
22 findings?

23 MS. CONCANNON: She is not going to be specific
24 to Minor interview and her interactions with Minor --

25 THE COURT: What's the relevance to her

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1 testimony?

2 MS. CONCANNON: Well, Minor will be able to
3 testify as to what she did after the sexual abuse
4 occurred. And Kendra's testimony is just shows -- it
5 is the State's intention to have Kendra testify that
6 different patterns of behavior are commonplace in child
7 sexual abuse victims.

8 THE COURT: You're objecting to that testimony,
9 Ms. Campbell?

10 MS. CAMPBELL: I am objecting to it, your
11 Honor. Again, I -- I've read Kromah again, and -- and I
12 have a firm belief that if Ms. Twitty wants to testify
13 as a child sexual abuse counseling and trauma expert,
14 that's not relevant to this case. That what she did in
15 this case was she interviewed Minor. And the
16 parameters of that interview are limited by Kromah, and
17 she is now limited to saying that the time and date and
18 the circumstances of her interview, what she observed
19 about Minor ' behavior or demeanor, and she has no
20 personal knowledge of the allegations, so --

21 THE COURT: Well, you would agree that
22 Kromah -- that list -- Kromah specifically says that
23 they're not supposed to be -- intended to be exhaustive.

24 MS. CAMPBELL: Right.

25 THE COURT: All right.

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1 MS. CAMPBELL: We would submit that talking
2 about the fact that -- I believe it would sound
3 something like this: You know, in my experience, and,
4 you know, child sexual abuse victims will delay
5 reporting. And they delay reporting because of A, B, C,
6 and D. And then because they delay reporting, you know,
7 it doesn't mean you shouldn't believe them.

8 And that sounds like vouching. I mean, that
9 sounds like making -- supporting up or bolstering the
10 fact that it's okay. She waited five months. That's
11 okay because every other child abuse victim -- or many
12 don't report immediately. She --

13 THE COURT: But shouldn't she be allowed to
14 testify as to, perhaps, some of the reasons why sexual
15 abuse victims don't immediately disclose without talking
16 about whether or not it impacts their credibility? I'm
17 assuming that's what you want, Counsel?

18 MS. CAMPBELL: That is what I'm asking -- oh,
19 I'm sorry.

20 MS. CONCANNON: Yes, your Honor.

21 THE COURT: That is what -- what you want to
22 limit her testimony to.

23 MS. CONCANNON: She is capable of testifying to
24 reasons some children react the way they do regarding --
25 after they are a victim of the sexual assault. Those

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1 are included, but aren't limited to, the secrecy, the
2 delayed disclosure, who they confine their disclosure
3 to, as well as any conflicting testimony such as the
4 dates. In this issue, she's just going to talk about
5 the mental effect that the sexual abuse can have on
6 child sexual abuse victims, as well as any retraction
7 that could possibly take place in these cases.

8 THE COURT: Well, is she going to testify that
9 this particular victim suffered that trauma, and that's
10 why she's delayed reporting?

11 MS. CONCANNON: She's testifying as an -- if
12 she's deemed an expert, as a general opinion.

13 THE COURT: Has she interviewed the child?

14 MS. CONCANNON: She did interview Minor when
15 this initially happened.

16 THE COURT: And based upon her interview, was
17 she able to base her observation upon her personal
18 observation of the child?

19 MS. CONCANNON: I'm confused with your
20 question. Regarding the interview or --

21 THE COURT: Where is she -- she's just drawing
22 inferences out of --

23 MS. CONCANNON: Based on her --

24 THE COURT: -- Textbooks?

25 MS. CONCANNON: Based on her dealings with

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1 900-and-some-odd interviews she's done, the training
2 that she has been to, the lectures, and the continued
3 education that she has gone to.

4 THE COURT: Why can't she testify as to her
5 personal observation and based upon that personal
6 observation and her understanding, based upon the
7 demeanor of the child, that this is consistent with her
8 understanding as an expert of why the child may have not
9 disclosed in a timely fashion?

10 MS. CONCANNON: The State had initially just
11 intended on using her as a general -- as the general
12 category, staying away from Minor specific interview
13 because of Kromah. I know that Kromah gave out
14 some -- some things that the forensic interviewer could
15 testify to. But I believe that State v. Shumpert is
16 more on key, allowing her to testify to the child sexual
17 abuse counseling and treatment and how those children
18 react.

19 THE COURT: But isn't Kromah a more recent
20 case?

21 MS. CONCANNON: Yes, your Honor. This was --
22 Shumpert is '93.

23 THE COURT: So would you agree that Kromah
24 is more up-to-date and now gives a guideline and
25 articulates, perhaps limits, the general testimony of an

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1 expert without personal observation of the child?

2 MS. CONCANNON: Yes.

3 THE COURT: Then why are we having this
4 discussion?

5 Ma'am, I do not know who you are in the purple
6 on the front row, but I am not calling out any one of
7 you on the front row again. I find nothing funny about
8 what is going on at all. I do not need an explanation.
9 I have observed the four of you throughout the testimony
10 of the two previous witnesses, and I find it very
11 inappropriate, very inappropriate. This individual is
12 facing very serious charges, and I want everyone in this
13 courtroom to understand the serious nature. If you
14 can't conduct yourself accordingly, then you need to
15 leave the courtroom. Please take the sunglasses off
16 your head. Thank you.

17 MS. CONCANNON: Your Honor, could I have one
18 minute, please?

19 THE COURT: You can take all the time you need.

20 (Respite.)

21 MS. CONCANNON: The State's understanding of
22 Kromah is that Kendra Twitty would not be able to
23 testify to bolster the credibility of Minor . She could
24 not testify regarding that. We have no intention of
25 asking questions or eliciting any testimony regarding

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1 the truthfulness of Minor testimony. She can, though,
2 lend credibility to her allegations, and that is where
3 the child sexual Abuse Accommodation Syndrome comes in
4 and that's where the general findings of child sexual
5 abuse victims comes into play with her expertise in
6 those. We have no intention of her speaking
7 specifically to the credibility of Minor, and I think
8 that's where maybe I got confused over why it's a
9 generalized testimony as opposed to specifics.

10 THE COURT: All right. Anything further?
11 Anything further?

12 MS. CONCANNON: She's not going to give an
13 opinion as to whether she believes Minor was telling
14 the truth or not telling the truth.

15 MS. CAMPBELL: Your Honor, and just so the
16 record is clear, I believe this is sort of a companion
17 situation here as it occurs to me now, that this is the
18 Child Sexual Assault Accommodation Syndrome testimony
19 that they're trying to -- to elicit from Kendra Twitty,
20 the interviewer at Hope Haven, and I put on the record
21 earlier, that we -- we objected to that. And the basis
22 for that objection's already on the record. We were
23 only notified of it Thursday. We have not had time to
24 prepare. We feel that if that is the -- going to be the
25 situation, if she's going to be qualified as an expert,

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1 as the State says, child sexual abuse counseling and
2 trauma, which means she wants her to testify about
3 accommodation syndrome, then we do object. And not only
4 just on Kromah, but because we -- we haven't had the
5 opportunity to obtain our own expert. Thank you, your
6 Honor.

7 THE COURT: Your response to that?

8 MS. CAMPBELL: Thank you, your Honor. I
9 think my focus mainly on Shumpert was because that
10 was an expert in the field of child sexual abuse
11 counseling. Kromah focuses on forensic interviewing.
12 Kendra Twitty's purpose of testimony is not to testify
13 specifically to the truthfulness of Miñor . That was
14 never our intention. Our intention is her observations
15 followed by the generalities that she's observed in her
16 training, her day-to-day life as a counselor of sex
17 abuse victims.

18 THE COURT: All right. And that is the
19 testimony that Ms. Campbell is objecting to that was not
20 presented, so let me hear you on that.

21 MS. CONCANNON: Regarding the child sexual
22 Abuse accommodation Syndrome?

23 THE COURT: Yes.

24 MS. CONCANNON: Kendra Twitty would just
25 testify regarding this. It's been around since the

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1 1980s. The gist deals with the behavioral patterns that
2 are consistent in victims -- child victims of sexual
3 abuse. It talks about their retraction, their secrecy,
4 who they disclose to, when they disclose, delayed
5 disclosure, just any behavioral mental aspects that come
6 along that have been seen in numerous victims of child
7 sexual abuse.

8 THE COURT: What about not providing the
9 testimony or the information to the Defense until two
10 days before trial?

11 MS. CONCANNON: I actually gave it to
12 Ms. Campbell on Wednesday. It -- it's the State's
13 opinion that this is just a general-held argument that
14 these counselors would testify to. It's not some new
15 smoking gun that we just came up with. It's been around
16 since the early '80s. It's commonly testified to
17 regarding child victims of sexual abuse consistent with
18 delayed reporting, retraction, who they disclose to,
19 when they disclose, why they disclose, and any sort of
20 helplessness or secrecy that may follow their -- the
21 actual sexual abuse.

22 THE COURT: All right. She's outside?

23 MS. CONCANNON: She is.

24 THE COURT: All right. Let me hear -- and I
25 just want to -- a very -- as to what you just stated,

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1 that's all I want to hear about.

2 MS. CONCANNON: Okay.

3 THE COURT: Thank you.

4 THE DEPUTY CLERK OF COURT: Please raise your
5 right hand, and put your left hand on the Bible.

6 (The oath is administered by the Deputy Clerk
7 of Court, and the witness answers as follows:)

8 THE WITNESS: I do.

9 THE DEPUTY CLERK OF COURT: Please be seated.

10 THE BAILIFF: State your full name and spell
11 your last name for the court reporter. And speak right
12 into the microphone.

13 THE WITNESS: My name is Kendra Twitty. Did
14 you say spell it?

15 THE COURT: Spell your last name.

16 THE WITNESS: It's T-w-i-t-t-y.

17 MS. CONCANNON: Thank you, your Honor. Would
18 you like Ms. Twitty to briefly go through her background
19 prior to getting into --

20 THE COURT: Do you have any objection as to her
21 qualifications as an interviewer and --

22 MS. CAMPBELL: For the purposes of this
23 hearing, no. We can proceed with her being qualified.
24 She's -- interviews these children all the time at Hope
25 Haven. Primarily concerned with this accommodation

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1 syndrome --

2 THE COURT: All right. I heard her background
3 earlier today, so you agree that, in essence, that's the
4 background?

5 MS. CAMPBELL: I agree.

6 THE COURT: For the purposes of this hearing?

7 MS. CAMPBELL: Correct.

8 THE COURT: We're here -- you're on the
9 stand for just a very limited purpose, all right,
10 depending on what happens in my ruling. We're going
11 to go through your qualifications, but I understand, in
12 a very general sense, what your background is. We're
13 here just about the child accommodation syndrome. All
14 right?

15 MS. CONCANNON: Thank you, your Honor.

16 KENDRA TWITTY,
17 having been first duly sworn by the Deputy Clerk of
18 Court to tell the truth, the whole truth, and nothing
19 but the truth, was examined and testified upon her oath
20 as follows:

21 DIRECT EXAMINATION

22 BY MS. CONCANNON:

23 Q Ms. Twitty, can you briefly tell the Court your
24 knowledge about the Child Sexual Abuse Accommodation
25 Syndrome; how long you've known about it, and the

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1 general characteristics of what it involves?

2 A Sure. I -- in my trainings as a counselor
3 working with children with sexual abuse, was trained
4 first on the Child Sexual Abuse Accommodation Syndrome
5 starting in 2000. And so for the 13 years that I've
6 been working with children, the accommodation syndrome
7 is something that I have taken into consideration.
8 Pretty much, it's a way of adults understanding --
9 understanding what children go through when they're
10 sexually abused and how children handle themselves
11 in an abnormal situation.

12 Q What are some of the characteristics associated
13 with victims of child sexual abuse?

14 A There's five associations as far -- or phases
15 or components: secrecy is one; helplessness is one;
16 entrapment and accommodation is one; delayed disclosure
17 on -- delayed disclosure, nonconflicting or unconvincing
18 disclosure; and retraction or recantation would be one
19 as well. And I'm -- I may be missing -- no. I think
20 that's it.

21 Q In your experience, are all victims of child
22 sexual abuse, do all of them have these characteristics?

23 A Not necessarily.

24 Q Do some of them have a combination of them?

25 A Absolutely. I would say that in my experience

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1 with working with victims of sexual assault or child
2 abuse, is that the delayed disclosure, the recantation,
3 and the secrecy has been something that I had to -- work
4 with children.

5 Q Those three would be the most common
6 characteristics you see?

7 A Yes. Well, entrapment and accommodation as
8 well, because while children are being sexually abused
9 they -- and they don't tell right away, they accommodate
10 with other things in their life. They may over excel in
11 things or they may have behavior outbursts and get --
12 turn to substance abuse, cutting, other behaviors that
13 are -- whatever they're doing to accommodate the abuse
14 that's happening to them.

15 Q Did you have to go through special training
16 just specifically for Child Sexual Abuse Accommodation
17 Syndrome?

18 A No. Not just specifically for the
19 accommodation syndrome.

20 Q Was it touched on in other trainings you have
21 attended?

22 A Absolutely, yes.

23 Q Is it something that is discussed in your field
24 reg- -- common?

25 A Yes.

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1 Q Is it common?

2 A It is kind of the most common research
3 that -- that the Children's Law Center or -- the common
4 training that the Children's Law Center has been doing
5 for the past 13 years that I've, on and off, have been
6 to some of their trainings, so. . .

7 Q Are some of these characteristics something
8 that a layperson would be able to recognize or know
9 about?

10 A Yes.

11 Q Have you testified regarding this syndrome
12 previously?

13 A I may have. And I took a little hiatus from
14 this profession as far as forensic interviewing and
15 working with Hope Haven. So in 2000- -- between 2004
16 and 2006, I may have talked about the child abuse
17 accommodation syndrome in court. And I'm not sure if it
18 was family court or criminal court.

19 Q But you have testified about it before?

20 A Yes, ma'am.

21 Q Okay.

22 MS. CONCANNON: Beg the Court's indulgence?

23 THE COURT: Take your time.

24 Q (By Ms. Concannon) You mentioned earlier
25 that laypeople could possibly identify some of these

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1 elements. What are some of the things that only your
2 specialized knowledge has allowed you to pick up on and
3 observe in these children?

4 A I guess I would -- I don't know -- really know
5 how to answer that. Can you be more specific?

6 Q I'll try to rephrase it. You have specialized
7 knowledge regarding this specific syndrome; correct?

8 A It's not really a syndrome.

9 Q Characteristics?

10 A Right, yeah. Characteristics, I guess you
11 could say.

12 Q Okay. So you --

13 A But I believe that I could explain those
14 characteristics to a layperson because it's basically
15 walking them through what it's like to be a child that
16 is living with child sexual abuse.

17 Q And you've gained the ability to explain to a
18 layperson these symptoms, these characteristics, through
19 your training, your experience, education?

20 A Yes. I do it every day.

21 Q Okay. Is there any way a layperson could
22 possibly pick up on these as you do?

23 A Yes.

24 Q But it's your training and experience that make
25 it --

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1 A It's something that the layperson doesn't
2 really think about and -- because sexual abuse is
3 something we don't want to even -- well, sexual abuse, I
4 find, in my professional opinion, is something that's
5 taboo, and something that is not easily talked about.
6 It's uncomfortable. People find that when children are
7 sexually abused, well, they should tell right away
8 because something happened, and it was wrong. And so
9 we -- I explain to adults that children -- there's many
10 reasons why children don't tell right away. There's
11 many reasons why people -- why children keep it a
12 secret. There's many reasons why children tell and
13 then take it back quickly and recant. So I think that
14 that's where my education and experience can come in to
15 explain.

16 Q Okay. So for a layperson, they may recognize
17 these symptoms but may not necessarily recognize them as
18 sexual abuse?

19 A Absolutely.

20 Q Your expertise and training has made you
21 recognize them as part of sexual abuse with children?

22 A That's correct.

23 MS. CONCANNON: I have nothing further for this
24 witness.

25 MS. CAMPBELL: May it please the Court?

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1 CROSS-EXAMINATION

2 BY MS. CAMPBELL:

3 Q Ms. Twitty, isn't it true that in the Child
4 Sexual Assault Accommodation Syndrome, which is what
5 most of the literature calls it, isn't it true that this
6 assumes that abuse has occurred?

7 A No, not necessarily.

8 Q Okay. And that the accommodation syndrome
9 cannot prove that abuse has occurred?

10 A Correct.

11 Q It assumes that it has occurred because you're
12 assuming the child is accommodating; right?

13 A Well, accommodation is one step that the child
14 may or may not have.

15 Q Do you see this -- that protocol, if you will,
16 as a diagnostic tool?

17 A No.

18 Q Okay. So what use does it provide to you?

19 A What use it provides to me is educating, I
20 guess you would say, the laypeople, the families, the
21 world about what it's like for a child that is sexually
22 abused.

23 Q So you would come in here to educate the jury
24 about what it's like to be a sexually abused child;
25 right?

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- 1 A If that's what I'm called for.
- 2 Q That's what you said this testimony would be,
3 you would be educating them?
- 4 A Well, this -- this -- a child sexual Abuse
5 Accommodation Syndrome doesn't necessarily mean that
6 the child was sexually abused. If the child makes a
7 disclosure and is having some symptoms that a
8 professional may see fit into one of the five categories
9 then, yes, that's how I would help educate someone.
- 10 Q And would you also testify and admit that there
11 are studies that -- well, are you familiar with the
12 studies that show that many times a failure to disclose
13 is indicative of just lying about the assault having
14 even occurred?
- 15 A I'm sure there's many studies that say that,
16 but I know that there are more studies that I have
17 researched that say that children do commonly deny in
18 the beginning. I don't know if you look at lying as
19 denying.
- 20 Q And so you would take the position, the
21 question about that, that there's more studies on your
22 side of the fence than on the other; right?
- 23 A No, I'm not saying that.
- 24 Q And isn't it true that in -- that in the
25 sexual -- Child sexual Abuse Accommodation Syndrome,

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1 what you look at are these peculiarities that develop
2 like bed-wetting or acting out or some, you know, major
3 change in the sociodevelopment of this child, chronic
4 behavioral abnormalities; right?

5 A That -- those behaviors can be from divorce,
6 bullying, not -- or a lot of other issues, not
7 necessarily just child sexual abuse.

8 MS. CAMPBELL: Okay. I think that's all I
9 have, your Honor.

10 THE COURT: Is that all you have?

11 MS. CAMPBELL: That's all I have.

12 MS. CONCANNON: Thank you, your Honor.

13 REDIRECT EXAMINATION

14 BY MS. CONCANNON:

15 Q Ms. Campbell stated that those can be
16 indicative of other aspects at home; correct?

17 A Correct.

18 Q But they're also indicative of child sexual
19 abuse?

20 A That is correct.

21 MS. CONCANNON: I have nothing further for this
22 witness.

23 THE COURT: Ms. Campbell?

24 MS. CAMPBELL: I have no further questions for
25 her.

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1 THE COURT: You may step down. Thank you.
2 Do you have any other witnesses that I need to
3 consider?

4 MS. CONCANNON: Not regarding Ms. Twitty's
5 testimony.

6 THE COURT: All right. Any arguments?

7 MS. CAMPBELL: I'll be happy to argue, or would
8 you like --

9 THE COURT: Is there anything else that I need
10 to --

11 MS. CAMPBELL: I do have a brief argument, your
12 Honor.

13 THE COURT: All right. Briefly.

14 MS. CAMPBELL: That -- you know, most of the
15 time, your Honor, when courts are confronted with a
16 Child sexual Assault Accommodation Syndrome, they will
17 allow, in a very limited way, for the State to use it as
18 a rehabilitation tool, not as substantive evidence in
19 the case in chief. There's -- there's clearly a -- the
20 situation where Ms. Twitty is going to -- want to
21 testify about --

22 THE COURT: Define "rehabilitation tool."

23 MS. CAMPBELL: Perhaps, in the research that
24 I've done, if -- if -- there was some indication that
25 maybe -- maybe subsequent to cross-examination, that

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1 there needed to be some effort on the State's part to
2 rehabilitate their witness, that some states have
3 allowed it for that limited purpose, to explain why
4 there was the delay in reporting if that was the subject
5 of the cross-examination. But most states have held
6 that it is inadmissible evidence and that it is
7 pseudoscience and that it should not be allowed in -- in
8 the case in chief certainly. And we just continue to
9 object to that. Thank you, your Honor.

10 MS. CONCANNON: Thank you, your Honor. The
11 State would argue that pursuant to State v. Shumpert as
12 in combination with Kromah, which is more recent, that
13 she should be able to testify in the field of sexual
14 abuse regarding the -- and in the combination of Child
15 Sexual Abuse Accommodation Syndrome as it is a -- she's
16 an expert in that field, and it's her specialized
17 knowledge that gives rise to indicate that those
18 particular characteristics could be indicative of child
19 sexual abuse. Not always, but sometimes.

20 THE COURT: Anything further, Ms. Campbell?

21 MS. CAMPBELL: No, your Honor.

22 THE COURT: Just so I'm clear, because I still
23 have missed the link, she did the forensic interview?

24 MS. CONCANNON: Yes, your Honor.

25 THE COURT: And when did the -- when was the

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1 forensic interview done in relation to the incident?

2 MS. CONCANNON: Roughly five months later.

3 THE COURT: Okay. Why can she not -- why is it
4 that you're not going to ask her the question
5 specifically as to the delayed reporting of this -- of
6 the victim and you want her to talk in general terms
7 that a layperson can understand?

8 MS. CONCANNON: In my opinion, that would just
9 be bolstering the credibility of Minor already -- who
10 will have already testified. Minor can testify as to
11 what she did, what happened to her after the assault.
12 Kendra Twitty is just testifying generalized --

13 THE COURT: You plan to call the victims first?

14 MS. CONCANNON: Yes.

15 THE COURT: All right. I'm going to withhold
16 my ruling until I hear the testimony from the victim.
17 All right.

18 All right. That will also give you some
19 time -- we're going to -- as I understand it, we're
20 done with the motions. So she's here, and that will
21 give you an hour or so that if you wanted to speak with
22 Ms. Twitty concerning that, since you were just given
23 that information on Wednesday, Ms. Campbell.

24 MS. CAMPBELL: Yes, ma'am.

25 THE COURT: Did we address all of the motions?

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1 MS. CAMPBELL: I'm checking them off, your
2 Honor.

3 THE COURT: Mr. Shelton, make sure Ms. Twitty
4 doesn't leave until --

5 MR. SHELTON: Yes, I'll go check on her.

6 THE COURT: -- Ms. Campbell has an opportunity
7 to speak with her.

8 MR. SHELTON: Thank you, your Honor.

9 MS. CAMPBELL: If I could, your Honor, I did
10 have a motion on there about Kristin Dalton, who is the
11 certified nurse practitioner. I would like to know from
12 the State that the -- the type of expert they seek to
13 have her qualified as. I do have her *curriculum vitae*
14 from the State and some reports that she intends to rely
15 on in her testimony. And I'd like to clarify that.
16 That's all.

17 MS. CONCANNON: Just for the physical trauma of
18 child sexual abuse, I've provided regarding the -- the
19 hymen, the trauma that the body experiences with child
20 sexual abuse, and she'll testify that she's one of 16
21 nurses that does this in the state of South Carolina
22 regarding specifically child sexual abuse --

23 THE COURT: Wait. What are you going to
24 qualify her as expert in?

25 MS. CONCANNON: In the physical aspects of

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1 child sexual abuse. The physical trauma on the body of
2 a child for child sexual abuse.

3 THE COURT: All right. Does that answer your
4 question, Ms. Campbell?

5 MS. CAMPBELL: It answered my question, your
6 Honor.

7 THE COURT: All right. Do we need anything
8 further regarding that matter?

9 MS. CAMPBELL: Not at this moment.

10 THE COURT: All right. I think all of
11 the -- all the other motions have been addressed. You
12 understand my rulings as to Ms. Twitty, Ms. Campbell?

13 MS. CAMPBELL: I do understand the ruling, your
14 Honor. And at this time, if I may approach the court
15 reporter, I would like to mark my written motion on
16 Ms. Twitty.

17 THE COURT: Thank you.

18 MS. CAMPBELL: And I have presented that to the
19 court reporter, Defendant's Exhibit 9, which is my
20 motion referenced: Kendra Twitty and the Child Sexual
21 Assault Accommodation Syndrome Testimony.

22 (Defendant's Exhibit Number 9 is marked for
23 identification.)

24 THE COURT: All right. Anything further?

25 MS. CONCANNON: Not from the State, your Honor.

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1 MS. CAMPBELL: Not from the Defense.

2 THE COURT: All right. What are we doing as to
3 bond?

4 MS. CAMPBELL: Well, he's in jail.

5 THE COURT: He's to remain in custody? No need
6 to address bond?

7 MS. CAMPBELL: I don't think there's any reason
8 to address that.

9 THE COURT: All right. Just making sure.

10 All right. See you at 9:00 a.m.

11 COURT IN ADJOURNMENT, at 4:05 p.m.

12 (End of Volume I of IV. Day two of the trial
13 to commence tomorrow, May 21, 2013, at 9:00 a.m.)

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R E P O R T E R ' S C E R T I F I C A T E

STATE OF SOUTH CAROLINA)
) ss.
COUNTY OF BERKELEY)

I, **ROLAYNE M. VOLPE**, Certified Court Reporter, CCR, and Registered Professional Reporter, RPR, do hereby certify that the transcript of the foregoing proceedings, **VOLUME I OF IV**, accurately reflects the events that occurred before me to the best of my ability at the time and place set out on the caption hereto, the witnesses having been duly cautioned and sworn, or affirmed, to tell the truth, the whole truth, and nothing but the truth.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken or to any attorney or counsel employed by the parties hereto, nor financially interested, directly or indirectly, in the outcome of this action.

CERTIFIED AND SIGNED on this 17th day of February,
2014.

ORIGINAL

ROLAYNE M. VOLPE, LCC, PR
Certified Court Reporter and
Registered Professional Reporter
Commission Expires: 10/30/2021

Reported By:
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Official Court Reporter for the State of South Carolina

STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT

State of South Carolina,)
Plaintiff,) Case Nos: 2012-GS-07-1631
vs.) 2012-GS-07-1632
GERALD THOMAS BARRETT, JR.,) 2012-GS-07-1633
Defendant.)

ORIGINAL

TRANSCRIPT OF JURY TRIAL
VOLUME II OF IV
HEARD BEFORE JUDGE KRISTI LEA HARRINGTON
ON MAY 21, 2013

ROLAYNE M. VOLPE, CCR, RPR
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12	No. 1	326	
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1 seek to have him remain under my subpoena that, you
2 know, was issued and he complied with yesterday and I'd
3 like to extend it through the end of the trial.

4 THE COURT: All right. You are still under
5 subpoena, and the Rule of Sequestration has been
6 invoked. Thank you.

7 MR. PATRICK HALL: Thank you, your Honor.

8 THE COURT: You may return -- is your office in
9 this courthouse?

10 MR. PATRICK HALL: I'm here all week.

11 THE COURT: That wasn't my question. Is your
12 office in this courthouse? Do you have offices in this
13 courthouse?

14 MR. PATRICK HALL: Yes, we do.

15 THE COURT: All right. Is that where you will
16 be?

17 MR. PATRICK HALL: I will actually be in the
18 other courtroom, in Courtroom 3 -- in the back of
19 Courtroom 3.

20 THE COURT: All right. Thank you.

21 MR. PATRICK HALL: Thank you.

22 MS. CAMPBELL: That's all I have.

23 THE COURT: Thank you.

24 Anything before we bring in the jury?

25 MS. CONCANNON: The State did have one

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1 follow-up question. Minor is here, and she will
2 testify. In her forensic interview, many times she's
3 been asked to speak about -- she's good until she gets
4 to the actual incident. She kind of breaks down a
5 little bit, and she's had to write it out in the past.
6 Will the Court allow her, if in the -- in the event that
7 happens, she's not able to get the words out, would she
8 have permission to write out what happened?

9 MS. CAMPBELL: I would object to that.

10 THE COURT: All right. Let's see -- let's hope
11 that doesn't happen and deal with it when it happens.
12 All right?

13 MS. CONCANNON: Thank you, your Honor.

14 THE COURT: Is she going to be present during
15 openings?

16 MS. CONCANNON: No, ma'am. She will just be in
17 for her testimony.

18 THE COURT: All right. Let's bring in the
19 jury.

20 THE BAILIFF: Yes, ma'am.

21 (Respite.)

22 THE BAILIFF: The jurors are ready to enter,
23 your Honor.

24 THE COURT: All right. Please bring them
25 in.

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1 Ladies and gentlemen, I do have my own laptop
2 on the bench. One of the questions a juror always asks
3 is, What are you doing on your laptop? Trust me, I am
4 not surfing Facebook or playing Words With Friends or
5 anything of that nature. I am researching law and
6 communicating regarding this case and other cases that
7 may be on the docket.

8 Ladies and gentlemen, thank you again for
9 accepting this responsibility, jury service. Please
10 give your strict attention.

11 Madam Solicitor.

12 MS. CONCANNON: Thank you, your Honor. May it
13 please the Court?

14 OPENING STATEMENTS

15 BY MS. CONCANNON:

16 South Carolina uses a term criminal sexual
17 conduct to refer to various sexual assaults. But to
18 a 14-year-old girl, she may not know what those words
19 mean. The first word that comes to her mind is rape.
20 That's the word that Minor used to describe what
21 that man there did to her. Minor was 14 years old the
22 day that her life was shattered. She was a child in
23 every sense of the word. She should be worried about
24 school and the gossip and maybe homework she may have or
25 tests or just school -- common worries a 14 year old

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1 should have. She should not be haunted by the pain and
2 the fear that she carries with her on a daily basis
3 because of that man, Gerald Barrett.

4 The Defendant was a family friend. He knew
5 Minor It was somebody that she should have been able
6 to trust. But his true colors came out around Saint
7 Patrick's Day of last year. There was more than meets
8 the eye to Gerald Barrett. And on Saint Patrick's Day,
9 in Minor bed, in Minor bedroom, he held her down. He
10 forced her 14-year-old arms to the bed. She could not
11 move. She had nowhere to go. She was restrained there.
12 She was confined there. He hovered his adult man body
13 over her. He removed her underwear and forced her, 14
14 years old, to have sex with him.

15 This happened in a place where Minor called
16 home, a place she should have felt safe, a place where
17 she shouldn't have to worry about things like this. It
18 happened on the night around Saint Patrick's Day. The
19 grown-ups were outside having a good time, and Minor was
20 inside watching TV, like any other 14 year old would.

21 Defendant's first assertion of control occurred
22 downstairs. Minor was on the couch watching TV, and
23 Gerald Barrett came in. He sat on the couch next to
24 her. She felt just a little creeped out. She didn't
25 like it. Too close for comfort. She moved to a chair

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1 in the den. He followed. He got next to her on the
2 chair, and skin-to-skin contact, he took his grown hands
3 and groped, first, her 14-year-old breasts; and,
4 secondly, he took his adult male hands, stuck them down
5 her 14-year-old body and fondled and groped her vaginal
6 area.

7 He wasn't done. Minor went upstairs to her
8 bedroom, a place that she should have been safe, she
9 should have felt safe. Couple of hours later, she hears
10 somebody walking up the stairs. She looks over, and
11 it's Gerald Barrett, Jr., standing in her bedroom.

12 He's there to assert his final control. He
13 gets on top of her; he places all of his weight down on
14 top of her. He's a grown man on top of a 14-year-old
15 little girl. He holds her arms down; he pins her to her
16 own bed. She cannot go anywhere. She is stuck there.
17 She is confined there. She cannot escape. She can't
18 even get a noise to scream. So she closes her eyes, and
19 she tries to survive.

20 Her worst nightmare is coming true. And she
21 suffered what quite possibly will be the worst moment
22 she will ever suffer in her entire life. He ripped her
23 innocence from her and stole something from her that she
24 will never be able to get back, and Minor may never be
25 the same.

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1 Now, through the duration of this trial you're
2 going to hear different testimony and different
3 witnesses will testify and different evidence will be
4 presented. And I ask you to pay attention to what they
5 have to say. And you're also going to hear from Minor
6 herself. And she's going to take you back to that
7 night. She's going to take you to the den downstairs
8 where his initial attack occurred, and then she's going
9 to take you to her bedroom, where he pinned her down and
10 forced her, 14 years old, to have sex with him.

11 Now, I'm confident, after you hear all this
12 testimony and all this evidence is presented, that you
13 will not hesitate to find that Defendant, Gerald
14 Barrett, Jr., first, guilty of lewd act for his initial
15 attack on Minor downstairs, where he groped and fondled
16 her body, but also of criminal sexual conduct with a
17 minor in the second degree -- Minor was 14 years -- as
18 well as kidnapping, for his final assertion of control,
19 where he pinned her down and forced her, 14 years old,
20 to have sex with him against her will. You will not
21 hesitate to find him guilty, just as he did not hesitate
22 to rip her innocence right from under her. Thank you.

23 THE COURT: Ms. Campbell.

24 MS. CAMPBELL: May it please the Court, your
25 Honor?

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1 OPENING STATEMENTS

2 **BY MS. CAMPBELL:**

3 Good morning. As I said yesterday, when we
4 first met, my name is Trasi Campbell. I represent
5 Gerald Barrett, Jr. Gerald is here in the courtroom,
6 seated at our table. His mom and his sister are here.
7 His dad was here yesterday. He will be here in a little
8 while; he's got to come from Bluffton, work.

9 You know, people will tell you -- or people
10 will say, you know, there's always two sides to a story,
11 or, you know, there's two sides to a coin, or this is a
12 he-said/she-said thing. That's not how it is. And
13 that's definitely not how it is in this courtroom, in
14 any American courtroom. Because here in this courtroom,
15 there is -- there is a guiding light, a principle that
16 every single one of us, the judge, me, the prosecutor,
17 you, have to abide by. It's the foundation of how we
18 live and work and survive. And that is, when a man is
19 accused of a crime, what can any man do? Particularly a
20 crime like this. A man can say, I'm innocent. Can a
21 man prove himself innocent? No. Does a man have to
22 prove himself innocent? No. The burden of proof of
23 guilt sits right here on this table.

24 Because this is the Government. This is the
25 state of South Carolina. They are the ones who, through

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1 this officer right here, talked to Minor investigated
2 this case, preparing this case for today, for you. And
3 you will ask yourselves, as we proceed, what did the
4 Government do to prepare this case for you? Because
5 Mr. Barrett -- Gerald Barrett, just like you, and you,
6 and me, we can't do that. We don't have to do that. We
7 shouldn't have to do that, and we certainly can't do
8 that. All the man can say is: I'm innocent. I did not
9 do this.

10 So we say to ourselves, Well, where's the
11 proof? What are the facts? What's the evidence in this
12 case? And I'll tell you. While, perhaps riveting, what
13 Ms. Concannon had to say is in no way evidence of
14 anything. It's not evidence that anything happened at
15 all. The evidence in this case, as her Honor has told
16 you, will be right there in that chair from the
17 witnesses that come into this courtroom and take that
18 Bible and put their hands on it and swear to tell you
19 and everybody else the truth today. Regardless of
20 anything else, anybody says, the only evidence that you
21 can take is from that witness stand.

22 And I'm going to ask you to do something that's
23 probably a little hard. Because, you know, when you
24 work on a case, you talk to people about it, and you go
25 through your thoughts on it, and probably a lot of you,

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1 when you sat out there and you heard the Judge read the
2 Indictments in this case, you felt uneasy. You had a
3 little feeling in your stomach, like, oo, hmm, that's a
4 bad case. And what you have to do is to take that
5 feeling, justifiable, though, and leave that at that
6 door. Because you can't bring that feeling in here.
7 That passion, that uneasiness, that flinching has got to
8 stay there. It's your oath to leave it there.

9 And what I'll ask you to do, in place of that
10 cringe or that uneasiness, is to bring into this
11 courtroom three things with you: I'm going to ask you
12 to bring your respect, which I believe you all have,
13 your respect for this Judge and her rules that she gives
14 you; I'm going to ask you to use your will power, each
15 and every individual one of you --

16 Because you're not a group. Each one of you
17 sits in your own chair, with your own mind, and your own
18 heart.

19 -- and I'm going to ask you to use your
20 judgment and your discerning abilities to listen to what
21 people say to you, and make a decision as to what you
22 believe, individually, about that testimony, and ask you
23 to discern and to see what you've been given and what
24 you have not been given.

25 And the third thing I will ask you is to take a

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1 solemn oath that at this moment you honestly presume
2 that Gerald Barrett is an innocent man. And if you can
3 picture, as you should at this moment, that there -- you
4 know the Olympic torch, there's a torch of innocence, of
5 light, that is over him right now, and what I'm going to
6 do, and what I'm asking you to do is, if I took that
7 torch, that innocence that every single man deserves
8 when he sits in that chair, and I'm going to break it up
9 into 12 pieces. And I'm going to give each and every
10 one of you a piece of that torch of innocence, and I'm
11 going to ask you to hold onto it. And you're going to
12 hold it high, and you're going to carry it throughout
13 this trial. And you know what? Even when this trial
14 is over, the Judge is going to tell you that you're
15 going to take that torch, that innocence that we all
16 abide by, and you're going to put it in the jury room
17 with all of you. And nobody is going to put that torch
18 out.

19 The only way that that torch can be
20 extinguished is if you, individually, say to yourself,
21 that's the torch I'm given, and I'm putting it out. And
22 the reason I'm putting it out is because the state of
23 South Carolina has proven to me, beyond reasonable
24 doubt, that Gerald Barrett is guilty. And you say to
25 yourself at that point, and you know why I'm putting

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1 that torch of innocence out? Because I have no
2 hesitations whatsoever. And the Judge will tell you
3 reasonable doubt is the kind of doubt that would make a
4 reasonable person hesitate to act.

5 I'm going to have a chance to speak to you one
6 more time, just the two of us, you know, here. And I'm
7 going to say to you, when we finish this trial, that
8 there is no proof. I believe that when we finish, that
9 the doubts that will be in your mind will far surpass
10 reason, and that you will carry back into here, into
11 this courtroom, each one of you, that torch of
12 innocence, that torch of light, and you will say, to
13 this courtroom: No, you have not met your burden, state
14 of South Carolina.

15 I thank you, on behalf of my client, for your
16 duty here today, and I appreciate your time this
17 morning. Thank you.

18 THE COURT: Call your first witness.

19 MS. CONCANNON: Thank you, your Honor. State
20 calls Mary Grossnicklaus.

21 THE DEPUTY CLERK OF COURT: Would you place
22 your left hand on the Bible and raise your right hand.

23 (The oath is administered by the Deputy Clerk
24 of Court, and the witness answers as follows:)

25 THE WITNESS: I do.

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1 THE DEPUTY CLERK OF COURT: Please be seated.

2 State your name and spell it for the Court, please.

3 THE WITNESS: My name is Mary Grossnicklaus.

4 THE COURT: Spell your last name.

5 THE WITNESS: G-r-o-s-s-n-i-c-k-l-a-u-s.

6 THE COURT: Your witness.

7 MS. CONCANNON: Thank you, your Honor.

8 MARY GROSSNICKLAUS,

9 having been first duly sworn by the Deputy Clerk of
10 Court to tell the truth, the whole truth, and nothing
11 but the truth, was examined and testified upon her oath
12 as follows:

13 DIRECT EXAMINATION

14 MS. CONCANNON:

15 Q Good morning. May I call you Mary?

16 A Yes.

17 Q Thank you. Do you know Minor ?

18 A Yes.

19 Q How do you know her?

20 A She is my stepgranddaughter.

21 Q When you say stepgranddaughter, how is she your
22 stepgranddaughter?

23 A My son -- my son married Brandace. She had
24 Minor Minor was, I think, three when they married.

25 Q Okay. So you've -- Minor has been in your life

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1 since she was three years old?

2 A Yes.

3 Q Did she ever live with you?

4 A Yes.

5 Q Does she live with you now?

6 A No.

7 Q Do you know who she lives with now?

8 A Tyreed Lucas (phonetic), her father.

9 Q Her father?

10 A Yes.

11 Q Do you remember last early spring?

12 A Yes.

13 Q Okay. Would Minor ever go to Aiken with

14 you?

15 A Yes. Each time I would pick up my other

16 granddaughters, Minor would usually come spend the

17 weekend with me.

18 Q Were there any of those trips that stick out in

19 your mind today?

20 A Yes. The trip that we -- when I picked them up

21 for spring break last year, when Minor disclosed to me

22 what had happened to her.

23 Q Did she say where anything had happened?

24 A Yes. She said it happened when they -- her --

25 she was living with her brother at Shawn's.

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1 Q Okay. Do you know where Shawn lived?

2 A No, I'm not familiar with Bluffton. She gave
3 me the name of the street, Pine-something -- Pine
4 Forest, maybe, but I'm not familiar with this area.

5 Q Bluffton?

6 A Yes.

7 Q Did she say when it would have happened?

8 A She said around Saint Patrick's Day.

9 Q Okay. And how long after Saint Patrick's Day
10 was this conversation?

11 A Saint Patrick's Day would have been in March.
12 This would have been April.

13 Q Okay. With that information, what did you do?

14 A After she disclosed to me, we talked about it.
15 And I contacted her father, first and foremost, to let
16 him know what she had told me. And then -- that would
17 have been on a Monday evening, because I picked up the
18 girls on a Friday. So it was Monday evening Minor and I
19 had that chat, and we called her father. And then
20 Tuesday, I contacted law enforcement here in Beaufort
21 County.

22 Q Okay. So just one more time again. When did
23 Minor say it happened?

24 A Around Saint Patrick's Day.

25 Q And where did she say?

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1 A At Shawn's house on Pine Forest, and I believe
2 that's a Bluffton address.

3 MS. CONCANNON: Okay. I have no further
4 questions for this witness at this time.

5 THE COURT: Ms. Campbell.

6 MS. CAMPBELL: May it please the Court?

7 CROSS-EXAMINATION

8 **BY MS. CAMPBELL:**

9 Q Mary, do you remember talking to a Deputy
10 Sheriff Glass in early July, 2012, and telling him that
11 that is when you received some information about an
12 accusation against Gerald Barrett? Do you remember
13 telling Deputy Sheriff Glass that it was July, not
14 spring break?

15 A I was contacted in July.

16 Q Okay. So you do remember talking to Deputy
17 Sheriff Glass?

18 A Yes.

19 Q Okay. And do you remember telling him, also,
20 that Minor said that she was making this accusation as
21 happening one to two weeks -- right before the end of
22 school 2012? Do you remember telling Deputy Sheriff
23 Glass that?

24 A No.

25 Q Okay. Do you remember also telling Deputy

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1 Sheriff Glass that you were going to call Minor mother,
2 with no mention of calling her dad; right?

3 A No. I would not have called her mother.

4 Q Okay. So when Deputy Sheriff Glass says, Mary
5 stated she contacted Minor ' mother and advised her of
6 the situation, well, Deputy Sheriff Glass is just lying?

7 A No. What happened was, I contacted Tyreed, and
8 Tyreed contacted Brandace. Brandace then called me,
9 yes. But I contacted Tyreed first. Brandace contacted
10 me.

11 Q And Deputy Sheriff's Glass' report, that
12 indicates you set the date and the time one to two weeks
13 prior to the conclusion of school, he must be lying
14 about that too?

15 A Ma'am, I can't recall. That was a year ago.

16 Q Okay. So if he wrote it down in his report,
17 when it was happening, and his recollection was taking
18 place at that time, in preparation of the trial, what he
19 wrote down might, in fact, be more accurate than what
20 you can remember; right?

21 A It may, yes, ma'am.

22 MS. CAMPBELL: Thank you. I have nothing
23 further for her.

24 MS. CONCANNON: Just a brief follow-up. Thank
25 you, your Honor.

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1 REDIRECT EXAMINATION

2 **BY MS. CONCANNON:**

3 Q Mary, why wouldn't you have called Brandace,
4 Minor mom?

5 A Because this happened while she was living with
6 her mother, and I knew that her mother was friends with
7 the accused. So I contacted her father first. I didn't
8 feel her mother could adequately protect her.

9 MS. CONCANNON: I have no further questions for
10 this witness.

11 RECROSS-EXAMINATION

12 **BY MS. CAMPBELL:**

13 Q Mary, isn't it true that Minor was living with
14 you up around Aiken before she came down here to stay
15 with her mother?

16 A Yes.

17 Q And isn't it true, when she was living up
18 there, that she was starting to get in some trouble, and
19 you sent her down here to her mother's?

20 A She did not get into trouble while she was
21 there, but, yes, I sent her home.

22 Q Didn't you send her for some mental health
23 counseling for cutting herself?

24 A No, ma'am, I don't know anything about her ever
25 cutting herself.

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1 MS. CAMPBELL: Okay. Thank you.

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

3 Call your next witness.

4 MS. CONCANNON: The State calls Shawn Ward.

5 THE DEPUTY CLERK OF COURT: Would you place
6 your left hand on the Bible and raise your right hand
7 for me, please.

8 (The oath is administered by the Deputy Clerk
9 of Court, and the witness answers as follows:)

10 THE WITNESS: I do.

11 THE DEPUTY CLERK OF COURT: Please be seated.
12 State your name and spell it for the Court, please.

13 THE WITNESS: Shawn Ward, S-h-a-w-n W-a-r-d.

14 SHAWN WARD,

15 having been first duly sworn by the Deputy Clerk of
16 Court to tell the truth, the whole truth, and nothing
17 but the truth, was examined and testified upon his oath
18 as follows:

19 DIRECT EXAMINATION

20 BY MS. CONCANNON:

21 Q Shawn, where do you live currently?

22 A Pine Forest Drive, Bluffton.

23 Q Is that -- I'm sorry?

24 A In Bluffton.

25 Q Is that where you lived in March of last year?

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1 A Yes.

2 Q Okay. In March of last year, who lived there

3 with you?

4 A Brandace Smith, Minor , T. and

5 S. were there on visitations occasionally.

6 Q Who are T. and S. ?

7 A Those are Brandace's other daughters.

8 Q Brandace is Minor mom?

9 A Yes.

10 Q And did Minor and Brandace live with you full

11 time during that time?

12 A Yes.

13 Q Did Minor have her own bedroom there?

14 A Yes.

15 Q Okay. Where was this bedroom?

16 A It was upstairs. Kind of like a loft area and

17 then a bedroom off of the loft.

18 MS. CONCANNON: Okay. Permission to approach,

19 your Honor?

20 THE COURT: You may.

21 MS. CAMPBELL: Your Honor, may I see what the

22 Solicitor has? I haven't seen these. May I have a

23 moment?

24 THE COURT: You may.

25 (Document are handed to Ms. Campbell.)

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1 MS. CONCANNON: Permission to approach?

2 THE COURT: You may approach.

3 Q (By Ms. Concannon) Shawn, I'm going to show
4 you a couple of marked State's Exhibits, 1 through 6.
5 Do you recognize these pictures?

6 (Document is handed to the witness.)

7 A Yeah. These are all pictures of my house.

8 Q Those are pictures of your house?

9 A Uh-huh.

10 Q I'm going to ask you specifically about State's
11 Exhibit 6. What is that a picture of?

12 A That's the entrance to the bedroom upstairs,
13 standing in the loft area at the top of the stairs.

14 Q And whose bedroom was this in March of last
15 year?

16 A That was Minor s'.

17 MS. CONCANNON: Permission to publish these to
18 the jury and admit into evidence?

19 THE COURT: Any objection?

20 MS. CAMPBELL: I have no objection.

21 THE COURT: All right. State's 1 through 6
22 into evidence without objection. You may publish.

23 MS. CONCANNON: Thank you, your Honor.

24 (State's Exhibit Nos. 1 through 6 are admitted
25 into evidence.)

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1 THE COURT: You can pass them one at a time if
2 there's no reason for them to stay in the packet.

3 (State's Exhibit Nos. 1 through 6 are published
4 to the jury at this time.)

5 Q (By Ms. Concannon) Shawn, do you know
6 Gerald Barrett, Jr.?

7 A Yes.

8 Q Do you maybe know him by another name?

9 A Yes.

10 Q What would you know him as?

11 A Bubba.

12 Q Okay. Do you see him in the courtroom today?

13 A Yes.

14 Q Could you point him out, please?.

15 A Sitting in the middle of the table to the left
16 there.

17 MS. CONCANNON: Thank you. Let the record
18 reflect that the witness pointed out the -- identified
19 the Defendant.

20 THE COURT: It will.

21 Q (By Ms. Concannon) We're going to go back
22 to the spring of last year. Do you remember the time
23 surrounding Saint Patrick's Day?

24 A Yes.

25 Q You were still living at this house you

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1 currently live at?

2 A Yes.

3 Q Does anything significant stand out in your
4 head regarding that time, a day?

5 A The Saint Patrick's Day Parade.

6 Q And what did you do on -- where was this
7 parade?

8 A It was Coligny, South End, Hilton Head.

9 Q Hilton Head. Okay. Who was at this parade
10 with you?

11 A It was me, Brandace, Minor , T. , S. ,
12 and then, of course -- that was who was with our
13 immediate party, but there was several people there,
14 friends and other people that we know.

15 Q Did y'all stay at the parade the whole time
16 that the -- the duration of the parade?

17 A Yeah.

18 Q What happened after the parade?

19 A We listened to some music, some bands, one at
20 New York City Pizza, and then over to Wild Wings to the
21 outdoor stage.

22 Q And after y'all did that, where did you go?

23 A After that, we went home.

24 Q And who was with you when you went home?

25 A It was me, Brandace, and T. .

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1 Q Okay. When you got back to your house, did
2 anybody else come over, or was anybody else already
3 there?

4 A Yeah. We had a few friends over. That was
5 what we told people, to come on over after. We were
6 going to have a fire and have some drinks. Yeah, we had
7 people over.

8 Q Were you drinking this day?

9 A Yes.

10 Q Were you drinking beer, or liquor?

11 A Beer.

12 Q Beer. Do you remember, maybe, how many beers
13 you had that day and into the night?

14 A Throughout the whole day? Maybe eight beers.

15 Q Were you drunk?

16 A No.

17 Q Do you remember every part of the night?

18 A Not every part of it, but. . . Just because it
19 was a year ago, you know.

20 Q Because it was longer?

21 A Yeah.

22 Q Not because of your intoxication?

23 A Right.

24 Q Okay. Was the Defendant at this get-together?

25 A Yes.

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1 Q You saw him there?

2 A Yes.

3 Q Did Minor stay at the house that night?

4 A Yes.

5 Q Did the Defendant spend the night that

6 night?

7 A Yes.

8 Q How do you know that?

9 A Well, because he asked me if he could spend

10 the night, and he had to work in the morning. It was

11 getting late. And I said, yeah, you can stay on the

12 couch.

13 Q Okay. Had you met the Defendant prior to this

14 day?

15 A Yes.

16 Q Do you know how many times you, maybe, had met

17 him before?

18 A I couldn't give you an exact number, but just a

19 handful of times.

20 Q A handful of times.

21 How were you introduced to him?

22 A Through Brandace and her daughters, as a friend

23 of their families'.

24 Q Okay. Was there anytime in the night that you

25 ever remember the Defendant being alone with Minor or

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1 being with Minor

2 A There was people there. I'm -- there could
3 have been -- I don't want to say for sure, because there
4 was a lot of in and out, and I don't know at any point
5 that they were alone. But we were all there and in
6 and out from inside to outside. So I really can't say
7 that -- I can't particularly remember a point, standing
8 out, where he was alone with her.

9 Q Were -- the adults that were there, were they
10 mainly inside of the house, or outside of the house?

11 A It was a little bit of both.

12 Q All right.

13 A We had a fire going. So we were in and out.

14 Q Fire?

15 A Fire outside.

16 Q Okay.

17 A So it was out by the fire, back in the house,
18 you know.

19 Q Okay.

20 A Front porch.

21 Q Okay. But you remember Minor being there. Did
22 Minor spend the night that night?

23 A Yes.

24 Q Did you ever take Minor to school while you --
25 while her mother and her lived with you?

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1 A Yeah.

2 Q Frequently? Occasionally?

3 A Occasionally.

4 Q Occasionally. Okay.

5 A Because she -- she caught the bus at Old South

6 usually.

7 Q Okay.

8 A But that was early. So if we were running late

9 or -- I worked on the island. So I had to drive right

10 by the high school. So those were the days that I would

11 take her to school.

12 Q When she couldn't catch the because?

13 A Yeah, for whatever reason. If it was running

14 late that morning.

15 Q But you had taken her to school before?

16 A Yeah.

17 Q Okay. And do you remember Bubba specifically

18 being there that night?

19 A Yes.

20 MS. CONCANNON: Okay. Beg the Court's

21 indulgence?

22 THE COURT: Take your time.

23 (Ms. Campbell speaks with Mr. Shelton off the

24 record.)

25 MS. CONCANNON: I have no further questions for

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1 this witness at this time.

2 THE COURT: Ms. Campbell.

3 MS. CAMPBELL: Thank you, your Honor.

4 CROSS-EXAMINATION

5 BY MS. CAMPBELL:

6 Q Mr. Ward, back in, gosh, maybe July of 2012,
7 when Minor first accused Gerald of this act, isn't it
8 true nobody interviewed you? You didn't talk to any
9 police about this, did you?

10 A Not at that time.

11 Q Okay. This -- this horrific criminal sexual
12 conduct -- this rape that was supposed to have taken
13 place in your home; right?

14 A Yes.

15 Q Right?

16 A Yeah.

17 Q Not a single police officer discussed those
18 allegations with you; right?

19 A Not at that time --

20 Q Not at that time.

21 A -- that you're speaking about.

22 Q The pictures that you identified as being of
23 your home.

24 A Uh-huh.

25 Q The bed in Minor room, that's where Minor

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1 slept; right?

2 A Right.

3 Q That would be the bed where this sexual assault
4 is supposed to have taken place; right?

5 A Right.

6 Q Okay. And sometime in March of 2013, this
7 officer here, this Investigator Adams, he came out to
8 your house; right?

9 A Yes.

10 Q Okay. And then, and only then, he interviewed
11 you about these allegations; right?

12 A Yes.

13 Q Okay. And you let him into your house; right?

14 A Yes.

15 Q You let him walk around your house?

16 A That's right.

17 Q You let him take pictures of your house?

18 A Uh-huh.

19 Q And you let him take pictures of the bed where
20 the sexual assault was supposed to take place; right?

21 A Right.

22 Q Prior to March, 2013, not a single officer had
23 come to your house to look at that bed; right?

24 A Right.

25 Q Okay. Now, you remember in March, 2013, when

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1 Investigator Adams came to talk to you, he asked you to
2 make him a written statement; right?

3 A Yes.

4 Q And, Mr. Ward, you were honest when you made
5 that written statement, weren't you?

6 A Yes.

7 Q And you were telling the truth?

8 A Yes.

9 Q And so do you remember that in your written
10 statement, that you said that y'all had been partying
11 all day. It's Saint Patrick's Day and parade, and best
12 you can remember, somebody else took Brandace's three
13 girls back to your house in Bluffton. Someone took the
14 girls back to the house; right?

15 A Yeah.

16 Q You don't know who that was; right?

17 A (Moves head from side to side.)

18 Q Okay. And you also said that about an hour or
19 two later, you and Brandace wound back up at the house;
20 right?

21 A Right.

22 Q Okay. And the girls were already there; right?

23 A Two of the girls.

24 Q Minor was there; right?

25 A Yes.

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1 Q Okay. And after y'all got back, basically you
2 just moved the party to your house in Bluffton; right?
3 There was a party?

4 A If you want to call it that, yeah.

5 Q Now, let's just clear up this school situation
6 right now. Because you live in Bluffton, but -- but
7 Minor was going to school on Hilton Head?

8 A Yes.

9 Q Normally if you live in Bluffton, you don't go
10 to school on Hilton Head, do you?

11 A Not usually.

12 Q Okay. You -- you went to bed that night, you
13 say, Mr. Ward, about midnight; right?

14 A Right.

15 Q And you say you slept all through the night.
16 You never heard a single thing; right?

17 A That's right.

18 Q Not a disturbance, nothing; right?

19 A That's right.

20 Q And you say you got up about 6:30 in the
21 morning, you got yourself dressed, and you went to work;
22 right?

23 A Yep.

24 Q Okay. You made it very clear that you did not
25 take Minor to school that morning; right? You went to

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1 work?

2 A Yeah.

3 Q Okay. You made it clear to this officer,
4 when he interviewed you in March of 2013, that Minor
5 according to you, was missing her boyfriend, Ce. ,
6 back in Aiken; didn't you?

7 A Excuse me? Repeat that.

8 Q You told Investigator Adams that Minor was
9 missing her boyfriend, Ce. , back in Aiken; right?

10 A During that time?

11 Q Yes. While she was living with you in
12 Bluffton.

13 A Yes. She was, in the beginning, missing him,
14 yeah.

15 Q Would it be fair to say that you were
16 Brandace's support -- financial support during that
17 spring 2012?

18 A Not completely, no.

19 Q Did you pay the bills at that house?

20 A Not all of them.

21 Q Did you pay the rent?

22 A We put our money together and paid the bills as
23 needed.

24 Q When you came back to your house after the
25 festivities of Saint Patrick's Day 2012, I guess, Hilton

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1 Head parade, after you finished work that day, did you
2 see any signs in the bedroom or the bathroom, or
3 anywhere like that, that there was -- were bloodstains,
4 or sheets that had been discarded, or any signs that
5 someone had been sexually assaulted and bled profusely?
6 Did you see anything like that, Mr. Ward?

7 A No, not downstairs. But I didn't go upstairs.
8 I didn't usually go up there.

9 MS. CAMPBELL: May I approach?

10 THE COURT: You may.

11 Q (By Ms. Campbell) Mr. Ward, I'm going to show
12 you what's been marked State's Exhibit No. 6, if I may.

13 A All right.

14 Q And you've already said that is a photograph of
15 the bed that Minor was sleeping in when she made the
16 allegation that Mr. Barrett sexually assaulted her;
17 correct?

18 A Actually, no. That is a bed that I've moved up
19 there since. There was a bed in that same spot.

20 Q Oh, really? Where is that bed now?

21 A I'm not sure.

22 Q You don't know where that bed is?

23 A No.

24 Q Okay. And then why would you let Officer Adams
25 take a photograph of a bed and lead him to believe that

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1 was the bed she was assaulted in?
2 A No.
3 Q Why would you do that, Mr. Ward?
4 A He asked to take pictures of the room and
5 everything there. I don't believe the comment -- the
6 conversation came up, was that the exact bed.
7 Q Okay.
8 A It was more to take pictures of the area.
9 Q It was what?
10 A To take pictures of the area that --
11 Q The area.
12 A -- she stayed in.
13 Q He wanted to see where the assault occurred;
14 right? And you led him to this room, and he took a
15 photograph of this room; right?
16 A Yeah. But that's the room the assault
17 allegedly occurred in.
18 Q Right. So if Officer Adams thought this was
19 where it took place, he just assumed that; right?
20 A I don't understand what you're saying.
21 Q What I'm saying, Mr. Ward --
22 A He asked if he could take some pictures.
23 Q Right.
24 A Okay. And I said: Of course, whatever you
25 want to do.

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1 Q Right.

2 A You want to take pictures, take pictures. So
3 he asked: Is this where she stayed?

4 Yeah, she stayed up the stairs.

5 Okay. This is the room?

6 Yes.

7 Is that where the bed was located?

8 Yes.

9 So those are the kind of questions. I just let
10 him do his job.

11 Q That would lead Officer Adams to believe -- and
12 thank you for helping us along with that -- that that
13 was the bed. Thank you.

14 A All right.

15 MS. CAMPBELL: Just one second, your Honor,
16 please?

17 That's all I have for this witness. Thank
18 you.

19 THE COURT: Ms. Concannon?

20 MS. CONCANNON: Thank you, your Honor.

21 **REDIRECT EXAMINATION**

22 **MS. CONCANNON:**

23 Q Just a couple of follow-up questions, Shawn.
24 That day, roughly a little over a year ago, around Saint
25 Patrick's Day of last year, you don't remember if you

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1 took Minor to school that day, do you?

2 A Yeah. I don't remember, because I've took her
3 occasionally, and I can't -- being such a long time ago,
4 I can't remember about that morning, if I took her to
5 school or not.

6 Q Do you know exactly what days you took her to
7 school?

8 A Exactly what days?

9 Q Uh-huh.

10 A No.

11 Q This night that we were speaking of, you
12 remember Gerald Barrett asking you for permission to
13 spend the night?

14 A Yes.

15 MS. CONCANNON: I have no further questions.

16 MS. CAMPBELL: May I approach, your Honor?

17 THE COURT: You may.

18 RECROSS-EXAMINATION

19 BY MS. CAMPBELL:

20 Q Mr. Ward, I'm going to hand you a copy of your
21 statement that you gave to Investigator Adams on March
22 16th, 2013. And I'm going to ask you to read the
23 sentence that begins right here: I got up.

24 A Okay. I got up at 6:30 to 7:00 a.m. to go to
25 work and cannot recall if I saw him in the morning or

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1 not.

2 Q Okay. And you made the statement that you got
3 up 6:30, 7 o'clock, to go to work, and you gave that
4 statement to Officer Adams in March 2013; correct?

5 A Yes.

6 MS. CAMPBELL: That's all I have.

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

8 Call your next witness.

9 MS. CONCANNON: Thank you, your Honor. State
10 calls Minor

11 THE DEPUTY CLERK OF COURT: Would you place
12 your left hand on the Bible and raise your right hand.

13 (The oath is administered by the Deputy Clerk
14 of Court, and the witness answers as follows:)

15 THE WITNESS: Yes.

16 THE DEPUTY CLERK OF COURT: Please be seated.
17 State your name and spell it for the Court, please.

18 THE WITNESS: What do I say?

19 THE COURT: I need you to state your full name
20 and spell your last name.

21 THE WITNESS: Minor (phonetic) ,

22

23 MS. CONCANNON: Thank you, your Honor.

24 Minor ,

25 having been first duly sworn by the Deputy Clerk of

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1 Court to tell the truth, the whole truth, and nothing
2 but the truth, was examined and testified upon her oath
3 as follows:

4 DIRECT EXAMINATION

5 BY MS. CONCANNON:

6 Q Minor , how old are you?

7 A Fifteen.

8 THE COURT: I need you to speak up, Minor

9 THE WITNESS: Fifteen.

10 Q (By Ms. Concannon) You're 15? When is your
11 birthday?

12 A .

13 Q What year were you born?

14 A .

15 Q ? So March of last year, how old were you?

16 A Fourteen.

17 Q Fourteen? Where were you living last March?

18 A Pine Forest.

19 Q Where is that?

20 A In Bluffton.

21 Q Okay. Who -- who were you living with?

22 A My mom and her boyfriend, Shawn.

23 Q Okay. Where do you go to school right now,

24 Minor

25 A Hilton Head High School.

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1 Q What grade are you in?
2 A Ninth.
3 Q Ninth grade?
4 A Uh-huh.
5 Q Do you like to go to school?
6 A Yeah.
7 Q Yeah? What's your favorite subject?
8 A Math.
9 Q Math? Do you get good grades in school?
10 A Sometimes.
11 Q Sometimes? You do best in math?
12 A No.
13 Q But it's still your favorite?
14 A (Moves head up and down.)
15 THE COURT: You're going to have to answer out
16 loud.
17 THE WITNESS: Okay.
18 Q (By Ms. Concannon) When you were living in
19 Bluffton, did you live somewhere before that not in
20 Beaufort County?
21 A In Aiken.
22 Q In Aiken? Who did you live with in Aiken?
23 A My grandma.
24 Q Your grandma? Do you know her name? What's
25 her name?

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1 A Mary.
2 Q Mary? Okay. Is she your real grandma, or is
3 she your stepgrandma?
4 A She's my mom's ex-husband's mom.
5 Q Okay. Minor do you know someone named Bubba?
6 A Yeah.
7 Q Yeah. How do you know Bubba?
8 A He was my mom's friend.
9 Q How long do you think you've known Bubba?
10 A A while.
11 Q A while? How old do you think you were when
12 you first met Bubba?
13 A Little.
14 Q Little? Do you know an age, maybe?
15 A (Moves head from side to side.)
16 Q Were you in school?
17 A No.
18 Q Before that?
19 A Yeah.
20 Q Okay. Do you see Bubba today?
21 A Yep.
22 Q Where is Bubba today?
23 A Over there.
24 Q Can you point to Bubba, please.
25 A No.

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1 Q He's over there?

2 A (Moves head up and down.)

3 MS. CONCANNON: Okay. Let the record reflect

4 the witness did point to the Defendant.

5 THE COURT: It will reflect she pointed towards

6 the Defendant.

7 Q (By Ms. Concannon) Minor do you remember

8 around Saint Patrick's Day of last year?

9 A Yep.

10 Q Do you remember going to a parade?

11 A Uh-huh.

12 Q Where was this parade?

13 A In Hilton Head.

14 Q On Hilton Head? Were you there all day?

15 A Huh-uh, no.

16 Q How long do you think you were at the parade?

17 A A few hours.

18 Q A few hours? What were y'all doing at the

19 parade?

20 A Usual stuff that people do at the parade.

21 Q Just walking around?

22 A (Moves head up and down.)

23 Q Who were you at the parade with?

24 A My mom and Shawn and their friends.

25 Q After the parade ended, what did you do?

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1 A I went home.

2 Q You went home? And is this the home where you

3 lived at with Mom and Shawn?

4 A Yeah.

5 Q Was there anybody else at this home when you

6 got there?

7 A When I got there, I was baby-sitting.

8 Q You were baby-sitting there? Who were you

9 baby-sitting?

10 A .

11 Q And who is ?

12 A My dad's girlfriend's best friend's daughter.

13 Q Okay. Did anybody else show up throughout the

14 night at that house?

15 A My mom and Shawn and their friends.

16 Q Their friends? Was there a bunch of people

17 over or. . .

18 A There were a few.

19 Q A few people over? Where were the grown-ups

20 throughout the night?

21 A On the porch.

22 Q On the porch? Did y'all have a big backyard --

23 or backyard at this house?

24 A I don't really know. I didn't go in the

25 backyard, but it was -- I guess it was average.

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1 MS. CAMPBELL: Your Honor, I'm having a very
2 hard time understanding her. And I do apologize, but I
3 would like to hear her answers.

4 THE COURT: Minor , you're going to need to
5 speak up. Ma'am, you're the farthest juror. Can you
6 hear?

7 THE JUROR: Uh-huh.

8 THE COURT: Thank you. If you need to move,
9 let me know.

10 MS. CAMPBELL: Thank you.

11 THE COURT: Thank you.

12 MS. CAMPBELL: Thank you.

13 Q (By Ms. Concannon) Just try to talk a little
14 louder in the microphone.

15 So we're at Mom and Shawn's house; where you
16 lived; where was your home. You said the grown-ups are
17 out of -- they're on the porch?

18 A On the front porch.

19 Q Where are you?

20 A Inside.

21 Q What are you doing inside?

22 A Sitting on the couch watching TV.

23 Q Does anybody come in -- come in there while
24 you're watching TV?

25 A Yep.

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1 Q Who comes in there while you're watching TV?
2 A Him.
3 Q When you say "him," who do you mean?
4 A Bubba.
5 Q Bubba? Where does he go when he comes in the
6 den?
7 A He sits down on the couch.
8 Q Is that where you're seated?
9 A Yep.
10 Q What does he do on the couch?
11 A He sat down really close to me. So I moved to
12 the chair.
13 THE COURT: You're going to have to speak
14 louder. Thank you.
15 Q (By Ms. Concannon) You moved to the chair?
16 A (Moves head up and down.)
17 Q What happened when you moved to the chair?
18 A He came over there.
19 Q Did he sit on the chair with you?
20 A Yes, ma'am.
21 Q Was he beside you on the chair?
22 A Yep.
23 Q How big is this chair? What kind of chair is
24 it?
25 A A chair. Like a usual furniture chair.

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1 Q Okay. When he -- is he touching you when he's
2 sitting on the chair with you? Is his body touching
3 you?

4 A Yeah.

5 Q Okay. What happens when you're sitting on the
6 chair and he's sitting next to you on the chair?

7 (Respite.)

8 A Do you think I could take a break?

9 Q You need to take a break?

10 A Uh-huh.

11 THE COURT: Let me know when she's ready.

12 THE WITNESS: Do I need to just sit here?

13 (Respite.)

14 Q (By Ms. Concannon) You ready?

15 A Yeah.

16 Q Okay. What is Bubba doing when he's sitting on
17 the chair next to you?

18 A He touched me.

19 Q Where did he touch you?

20 A My lower private area.

21 Q You have to say that a little louder, Minor

22 A My lower private area.

23 Q Was this above your clothes, or underneath your
24 clothes?

25 A Underneath.

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1 Q Underneath? He was touching your skin on your
2 private area?
3 A Yep.
4 Q Did any part of him ever go inside of your
5 body, or did it stay on the outside of your private
6 area?
7 A His fingers.
8 Q His fingers did what? They stayed --
9 A The inside.
10 Q They went on the inside?
11 A (Moves head up and down.)
12 Q When he's doing this, what are you doing?
13 A Texting.
14 Q Do you ever leave the chair?
15 A Yep. I went upstairs.
16 Q Okay. Where did you go when you were upstairs?
17 A To my sister.
18 Q And what sister is this?
19 A T. .
20 Q And what is T. doing right now?
21 A She was sleeping. So I woke her up.
22 Q You woke her up?
23 A Yep.
24 Q What did y'all do?
25 A We were just talking.

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1 Q Do you remember what y'all were talking about?
2 A Not really. That was a while ago.
3 Q Did you tell T. what had happened
4 downstairs?
5 A No.
6 Q Why didn't you tell T. ?
7 A I didn't feel the need to. Because I was
8 scared.
9 Q After you're in T. 's bedroom, do you go
10 anywhere that night?
11 A Yeah.
12 Q Where do you go?
13 A I fell asleep in T. 's room, and then I woke
14 up, and then I went to my room.
15 Q Do you know what time you woke up?
16 A Not really.
17 Q It's dark outside?
18 A Yeah. Really dark.
19 Q Really dark? Is your room close to T. 's
20 room?
21 A It was right beside it.
22 Q What does your room look like?
23 A It had glass doors and -- and it's just a
24 regular room.
25 Q Just a regular room with a bed in it?

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- 1 A (Moves head up and down.)
- 2 Q When you go in your room, are you wearing your
- 3 pajamas right now or not yet?
- 4 A I can't remember. I think I was.
- 5 Q What do you sleep in?
- 6 A A T-shirt.
- 7 Q A T-shirt? Did you have anything on the
- 8 bottom, underwear or pants or anything?
- 9 A Underwear.
- 10 Q You go into your bed -- do you go to sleep?
- 11 A Yeah. I dozed off.
- 12 Q You dozed off? Did something wake you up?
- 13 A Footsteps.
- 14 Q After you heard footsteps, what did you do?
- 15 A Pretended to sleep.
- 16 Q Why did you pretend to sleep?
- 17 A I don't know. It's just a reaction. And I was
- 18 scared.
- 19 Q Why were you scared?
- 20 A I'm afraid of the dark.
- 21 Q Do you know whose footsteps those were?
- 22 A After they come in my room, yeah.
- 23 Q So those footsteps came into your bedroom?
- 24 A Yep.
- 25 Q Who came into your bedroom?

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1 A Him.

2 Q When you say "him," who is him?

3 A Bubba.

4 Q Bubba?

5 A Yeah.

6 Q What was Bubba doing in your bedroom?

7 A I don't know.

8 Q Did he ever come in your bedroom before?

9 A No.

10 Q No? What did Bubba do when he got in your
11 bedroom?

12 A Laid down in my bed.

13 Q Could you say that again, Minor ?

14 A Laid down in my bed.

15 Q Does he think you're sleeping right now, or do
16 you let him know you're awake?

17 A I was awake.

18 Q You were awake? When he lays down in your bed,
19 is he beside you in your bed?

20 A Yep.

21 Q Okay. What happens when Bubba is in bed with
22 you?

23 A He started touching me again.

24 Q When you say "touching" you, where did he touch
25 you?

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- 1 A My lower private area.
- 2 Q What was he touching -- what part of his body
- 3 was touching your lower private areas?
- 4 A His fingers.
- 5 Q Were you still wearing your T-shirt and
- 6 underwear?
- 7 A Yep.
- 8 Q What did Bubba do after his fingers were
- 9 touching your private area?
- 10 A He got up.
- 11 Q Did he go anywhere else?
- 12 A Nope.
- 13 Q Did Bubba's fingers go inside of your private
- 14 area, or were they on the outside of your private area?
- 15 A Inside.
- 16 Q Where were your arms when this was happening?
- 17 A My hands were on my face.
- 18 Q Why didn't you get up?
- 19 A Because I was afraid.
- 20 Q Was Bubba holding you down?
- 21 A At that point, no.
- 22 Q At that point, no. At a different point, was
- 23 he holding you down?
- 24 A Yeah. Yep.
- 25 Q How was he holding you down? Where were your

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1 arms?
2 A Beside me. Above me, beside me.
3 Q What part of his body was holding your arms
4 down?
5 A His hands.
6 Q Did you try to get away?
7 A I was afraid.
8 Q When Bubba's holding your hands down, what else
9 is he doing?
10 (Respite.)
11 Q Did any other part of Bubba touch your private
12 parts?
13 A Yep.
14 Q What part of Bubba touched your private parts?
15 A His private part.
16 Q Did it go inside your private parts, or did it
17 stay on the outside of your private parts?
18 A Inside.
19 Q He's on top of you during this?
20 A Yep. Yeah.
21 Q Why didn't you scream or call for help?
22 A Because I was afraid.
23 Q Why were you afraid?
24 A I didn't know how anyone was going to react.
25 Q After Bubba is on top of you and his private is

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1 inside of your private parts, what happens next?
2 A He heard a noise.
3 Q What did he do when he heard a noise?
4 A Jumped up and left.
5 Q And he left? What did you do when he left?
6 A I went to the bathroom.
7 Q What did you do in the bathroom?
8 A I urinated.
9 Q Did you notice anything funny when you went to
10 the restroom?
11 A Blood.
12 Q There was blood. Was there anything else?
13 A (Moves head up and down.)
14 Something weird.
15 Q Something weird? What did it look like?
16 A It was white.
17 Q It was white?
18 A Yeah.
19 Q After you went to the bathroom, did you do
20 anything else?
21 A Took a shower.
22 Q After you took a shower, what did you do?
23 A Locked my door and went to sleep.
24 Q Why did you lock your door?
25 A I was scared.

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1 Q Did you have school the next morning, Minor
2 A Yep.
3 Q Did you go to school?
4 A Yes, ma'am.
5 Q Where were you at school during this time?
6 A Huh?
7 Q Where were you going to school?
8 A Hilton Head Middle School.
9 Q Do you remember seeing Bubba that next morning?
10 A Yeah.
11 Q Where did you see him?
12 A Shawn took him to the hotel.
13 Q What hotel did Shawn take him to?
14 A Quality Inn.
15 Q Did Shawn take you somewhere that morning?
16 A He took me to school.
17 Q Minor who was the first person that you told
18 this -- that you told this happened to?
19 A T.
20 Q Who's T. ?
21 A My little sister, the one that told.
22 Q How old is T. ?
23 A Twelve.
24 Q Twelve. Did you tell anybody else?
25 A Ta.

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1 Q Who is Ta. ?
2 A My best friend. And C. and Ce. .
3 Q Who are C. and Ce.
4 A C. is one of my best friends.
5 Q And who is Ce. ?
6 A He was my boyfriend.
7 Q Do they live here in Beaufort?
8 A No.
9 Q Where do they live?
10 A In Aiken. And C. lives in Anderson.
11 Q Okay. Why did you tell them first instead of
12 telling a grown-up?
13 A Because.
14 Q Because why?
15 A I was afraid.
16 Q Why were you afraid?
17 A I didn't know what they were going to do.
18 Q You didn't know what who was going to do?
19 A Anyone.
20 Q Did you tell anybody else about this?
21 A Well, I had to tell my grandma.
22 Q Why did -- why do you say you had to tell your
23 grandma?
24 A Because T. told, and my grandma made me
25 tell her everything.

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1 Q This is Grandma Mary?
2 A Yes, ma'am.
3 Q Do you remember when Grandma Mary found out?
4 A When we were on the way back to Aiken, when we
5 were taking my friend, M. , home.
6 Q Where does M. live?
7 A In Windsor.
8 Q Why didn't you tell your mom, Minor ?
9 A I didn't know how she was going to react or
10 what she was going to do.
11 Q Why didn't you tell your dad?
12 A Because he has a very bad -- he's not good with
13 communicating sometimes, and he gets angry really,
14 really easy.
15 Q Why didn't you tell Grandma Mary?
16 A I didn't want to talk about it, and I was
17 scared too, because I knew that once she found out, she
18 was going to tell.
19 Q Who were you scared she was going to tell?
20 A The police. Because I don't like talking about
21 anything.
22 MS. CONCANNON: Beg the Court's indulgence?
23 THE COURT: Take your time.
24 (Ms. Concannon speaks with Mr. Shelton off the
25 record.)

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1 MS. CONCANNON: Minor I don't have any more
2 questions for you, but Ms. Campbell will have some
3 questions for you.

4 MS. CAMPBELL: Your Honor, may we approach
5 briefly?

6 THE COURT: You may.

7 (Side-bar; Ms. Campbell and Ms. Concannon
8 approach the bench.)

9 MS. CAMPBELL: Thank you, your Honor.

10 CROSS-EXAMINATION

11 BY MS. CAMPBELL:

12 Q Minor --

13 A Yes, ma'am.

14 Q -- you were living with your grandmother -- or
15 stepgrandmother, Mary, up around Aiken in 2011 and early
16 2012; is that right?

17 A Yes, ma'am.

18 Q Okay. When you were living with your
19 stepgrandmother, isn't it true that you and your
20 stepgrandmother were having a lot of disagreements and
21 arguments at that time?

22 A I wouldn't say they were disagreements. It was
23 more just about how my grades were.

24 Q Your grades weren't very good?

25 A I had a lot of Ds.

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1 Q Would your stepgrandmother have told your mom
2 that you had started smoking?

3 A I didn't start smoking.

4 Q So she didn't tell her that?

5 A Not that I know of.

6 Q When you went to live with your mom here in
7 Beaufort County in 2012, y'all moved in with a fellow by
8 the name of Shawn Ward; right?

9 A Yep.

10 Q And Shawn would take care of the house and take
11 care of your mom and take care of you and your sisters;
12 right?

13 A Yes, ma'am.

14 Q And you remember that when you made the
15 allegation that Gerald had assaulted you, that at some
16 point you sat down and wrote down what you said
17 happened; right?

18 A Yep.

19 Q And do you remember that when you first made
20 the allegation, you said that this took place about a
21 week or two before the end of school. Do you remember
22 telling Grandma Mary that?

23 A Not really. It was a while ago.

24 Q Do you remember telling some other people that
25 you remember it being two days after Saint Patrick's Day

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1 when this happened? Do you remember telling them that?

2 A Yes, ma'am. And I get Saint Patrick's Day and
3 the Saint Patrick's Day Parade confused, because I never
4 knew which one was which.

5 Q Okay. So when you told someone that this
6 happened, and you said that it happened two days after
7 Saint Patrick's Day, who -- who picked that day? Who
8 picked March 19th, 2012? Was it you or the person you
9 were talking to that picked that day?

10 MS. CONCANNON: Objection. She's leading the
11 witness.

12 THE COURT: Overruled.

13 You may answer.

14 THE WITNESS: I don't know.

15 Q (By Ms. Campbell) You said, "I don't know"?

16 A I don't remember.

17 Q Okay. At some point, you talked to another
18 person about this allegation, and that person's name
19 was -- was Mr. Patrick Hall, a prosecutor for the state
20 of South Carolina. Didn't you talk to Mr. Hall about
21 this?

22 A Yes, ma'am.

23 Q And in that conversation with Mr. Hall, isn't
24 it true that you again moved the date, and you moved it
25 to March 11th, eight days away from March 19th?

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1 A I moved it to the -- anywhere around that day,
2 but, yes, I did, because I didn't know which one was
3 Saint Patrick's Day. I remember it was the parade.

4 Q Okay. And you wrote two days after Saint
5 Patrick's Day -- and so when you're writing two days
6 after Saint Patrick's Day, is that what you mean by the
7 day of the parade?

8 A I guess. Most likely, yes.

9 Q So was it the day of the parade, or was it two
10 days after the parade or two days after Saint Patrick's
11 Day or a week before the end of school when this
12 happened, Minor

13 A It was the day of the parade. I thought that
14 Saint Patrick's Day was around the time of the parade.
15 I thought that that's why the parade was on Sunday.

16 Q So when you made another written statement and
17 you wrote, sometime around March or April, 2012, that
18 was just a guess; right?

19 A Yep.

20 Q And you're positive today that it was the day
21 of the Saint Patrick's Day Parade on Hilton Head; right?

22 A Yes, ma'am.

23 Q And you're positive that when you --

24 A I'm positive.

25 Q -- came home after the parade -- who was there?

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1 Who was at the house? When you got home the
2 day of the parade on Hilton Head, who was at the house
3 in Bluffton when you got there?

4 A Me and Ta. .

5 Q Okay. So when you make a statement earlier and
6 you say, I got home, and my mom was there, and her
7 boyfriend Shawn was there, and Bubba was there, that was
8 just a lie?

9 A No, ma'am.

10 Q I'm sorry. What?

11 A No, ma'am.

12 Q Okay. But you did make that statement about
13 this case, that everybody was there when you got home?

14 A I mean, it is kind of hard to remember, seeing
15 as how that was a whole year ago.

16 Q Well, actually, your written statement was made
17 at exactly the time that you started making these
18 allegations, a whole lot closer to March 2012; right?

19 A Seems that way.

20 Q I have had a hard time understanding you and
21 hearing you, but I believe that you said, Minor when
22 you make the allegation that Gerald was assaulting you
23 downstairs on the night of the parade, that while he was
24 assaulting you, that you were texting. I believe that's
25 what you said.

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1 A Yep.

2 Q That is what you said. Okay. So while you're
3 being sexually assaulted, you were on your phone texting
4 someone; is that right?

5 A Yep.

6 Q And then after you are sexually assaulted
7 downstairs with -- in the midst of the party, you go
8 upstairs to your bedroom; right?

9 A No.

10 Q You go upstairs to T. 's bedroom. I'm
11 sorry. Right?

12 A Yep.

13 THE COURT: Is that a yes? Is that a yes,

14 Minor ?

15 THE WITNESS: Yes, ma'am.

16 THE COURT: Thank you.

17 Q (By Ms. Campbell) And then you move from
18 T. 's bedroom into the bedroom with the glass doors.
19 That was your bedroom; right?

20 A Yes, ma'am.

21 Q Okay. And that bedroom has a door that locks;
22 right?

23 A Yes, ma'am. But I was in the comfort of my own
24 home, so, therefore, I did not feel the need to lock my
25 door.

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1 Q And, again, so I'm clear, you had just been
2 sexually assaulted downstairs, in your home, in the
3 midst of the party going on, and when you get to your
4 room, with a door you can lock, you don't lock the door;
5 right?

6 A Nope.

7 Q And those doors are glass doors too, aren't
8 they?

9 A Yep.

10 Q People can see in that room, can't they?

11 A Yeah.

12 Q Okay. Now, Minor you said that after this
13 second sexual assault takes place upstairs in your
14 bedroom, that you get up, and you go to the bathroom,
15 and you are bleeding; right?

16 A Yep.

17 Q Okay. And you are bleeding. And not only are
18 you bleeding, you have something that you characterize
19 as weird white stuff on you; right?

20 A Uh-huh.

21 Q Okay. Minor was the blood also on the sheets
22 of your bed or just on you?

23 A I don't really remember. I think it was just
24 on me, though.

25 Q Was it on your clothing?

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- 1 A Yep.
- 2 Q I'm sorry. What?
- 3 A Yes, ma'am.
- 4 Q Okay. So there's blood on your clothing. And
- 5 where did you put that clothing?
- 6 A In the dirty laundry.
- 7 Q In the dirty laundry. Did you ever see that
- 8 clothing again?
- 9 A After I washed it.
- 10 Q Okay. Do you remember telling some people that
- 11 after you were sexually assaulted, that you had gotten
- 12 yourself back into the bed, and that you started getting
- 13 text messages from Bubba telling you to come on
- 14 downstairs?
- 15 A Yep.
- 16 Q Do you remember saying that?
- 17 A Yes, ma'am.
- 18 Q Do you have those text messages for us?
- 19 A No, ma'am, I don't.
- 20 Q Did you give them to law enforcement?
- 21 A Nope.
- 22 Q Okay. Minor do you always call it urinating --
- 23 A Yep.
- 24 Q -- when you talk about going to the bathroom?
- 25 A Not always, but most of the time.

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1 Q Isn't urinating a word that someone supplied to
2 you?

3 A No, ma'am. We learned it in school in about
4 fifth grade, because I'm in honors classes.

5 Q And you're absolutely positive that Saint
6 Patrick's Day, the parade, you've been viciously
7 sexually assaulted to the point that you're bleeding all
8 over your clothing, that you -- about five o'clock in
9 the morning, that you clean yourself up, you get your
10 clothes on, and you get up, and you go to school the
11 next day; right?

12 A Yep.

13 Q And that Shawn takes you to school?

14 A Yes, ma'am.

15 Q Was your momma in the car?

16 A No. She was sleeping. She wakes me up in the
17 morning, and then she goes back to sleep.

18 Q Okay. So you never told Assistant Solicitor
19 Patrick Hall that your mother and Shawn took you to
20 school that morning; is that right?

21 A I don't remember.

22 Q Well, you just told this jury she didn't. Was
23 your mom in the car or not?

24 A No. I don't remember if I told him that, but
25 I'm pretty sure I didn't.

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1 MS. CAMPBELL: Just one second, your Honor.

2 THE COURT: Take your time.

3 (Respite.)

4 Q (By Ms. Campbell) Minor do you remember
5 telling one of the investigators at Hope Haven that
6 you had to see a mental health counselor for cutting
7 yourself?

8 A What does that have to do with anything?

9 Q Well --

10 A That's kind of personal, and, yes, I do.

11 MS. CAMPBELL: Your Honor, I'm going to ask
12 that she answer the question.

13 THE COURT: She just did.

14 MS. CAMPBELL: Okay.

15 Q (By Ms. Campbell) Minor were you, before you
16 came to Bluffton, cutting yourself?

17 MS. CONCANNON: Objection; relevance.

18 THE COURT: Overruled.

19 Q (By Ms. Campbell) Were you cutting yourself,
20 Minor You swore to tell the truth. Were you cutting
21 yourself?

22 A Yes. But I don't see the point in you asking
23 this.

24 Q And were you seeing a mental health counselor
25 before you came to Bluffton in 2012?

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1 A It was the guidance counselor, but, yes.

2 MS. CAMPBELL: That's all I have. Thank you.

3 THE COURT: Redirect?

4 MS. CONCANNON: Thank you, your Honor.

5 REDIRECT EXAMINATION

6 BY MS. CONCANNON:

7 Q Minor how much blood was on your clothes?

8 A I kind of thought it was my period.

9 Q It was about the same amount as a period blood?

10 A Yep.

11 Q So it wasn't everywhere, was it?

12 A No.

13 Q Did you wash those clothes?

14 A Yes, ma'am.

15 Q Did anybody else ever see those underwear?

16 A I hid them.

17 Q You hid them? You stated a little bit ago that
18 Bubba texted you.

19 A Uh-huh.

20 Q You don't have those texts anymore. Why did
21 you delete those?

22 A Because.

23 Q Because why?

24 A I knew that if my little sister or someone
25 were to go through my phone and see that, they'd

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1 automatically start questioning me.

2 Q Why didn't you want them to question you?

3 A Because I was scared, and I didn't want to talk
4 about it.

5 Q Do you remember this was around Saint Patrick's
6 Day of last year?

7 A Yes, ma'am.

8 Q It happened at your home in Bluffton?

9 A Uh-huh.

10 MS. CONCANNON: I have no further questions.

11 MS. CAMPBELL: Just one or two, your Honor.

12 RECROSS-EXAMINATION

13 BY MS. CAMPBELL:

14 Q Minor you said that the underwear you were
15 wearing that night, that you hid them?

16 A In the laundry basket.

17 Q Where did you hide them in the house?

18 A In the laundry basket, underneath my clothes.

19 Q You hid them in the laundry basket. Okay.

20 Thank you.

21 THE COURT: Ladies and gentlemen, this is an
22 appropriate time for us to take our break. Do not begin
23 your deliberations. Do not discuss this case amongst
24 yourselves. You may leave your notepads in your chairs.
25 We'll take about 10 or 15 minutes. If you'll just let

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1 the bailiffs know, after you have your comfort break,
2 when you are ready to return.

3 Please rise for the jury.

4 Minor , stay seated. Thank you.

5 (The jury is escorted from the courtroom
6 at 10:56 a.m.)

7 THE COURT: Thank you. Be seated.

8 Minor , you may step down. You're free to
9 remain in the courtroom with us, but you're also free to
10 go. Thank you.

11 Anything before we take our mid-morning break?

12 MS. CONCANNON: Not from the State, your Honor.

13 MS. CAMPBELL: No, your Honor.

14 THE COURT: All right. Thank you. We're at
15 ease.

16 THE COURT: Ten minutes.

17 (A break is taken from 10:56 a.m. until
18 11:08 a.m.; at which time, the proceedings continue as
19 follows:)

20 THE COURT: Be seated. All right. Your next
21 witness is Ms. Twitty; is that correct?

22 MS. CONCANNON: Yes, your Honor. I wasn't sure
23 if outside of the presence of the jury, we wanted to
24 address her.

25 THE COURT: Tell me, based upon the victim's

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1 testimony, what it is that you plan to elicit from
2 Ms. Twitty at this time.

3 MS. CONCANNON: Initially, from Ms. Twitty,
4 pursuant to Kromah, just the original time/date
5 circumstance of the interview, just what Kromah will
6 allow, from the demeanor of Minor , as well as her
7 personal knowledge regarding that.

8 THE COURT: All right.

9 MS. CONCANNON: Then I was planning, so the
10 jury doesn't get confused, regarding her qualifications
11 as an expert, do that, then qualify her as an expert
12 regarding the behavior of and trauma of child sexual
13 abuse victims. Minor mentioned cutting, and she
14 mentioned who she disclosed to. And both of those are
15 two of the characteristics. We don't even have to call
16 it Child Sexual Abuse Accommodation Syndrome, if that's
17 throwing people off or too confusing.

18 THE COURT: I don't think anybody's confused by
19 that term.

20 MS. CONCANNON: Okay. Just common
21 characteristics that she has seen in her experience
22 dealing with child sexual abuse victims.

23 THE COURT: Okay. Any last word, Ms. Campbell?

24 MS. CAMPBELL: Your Honor, the cutting is
25 prior to this sexual assault. So that's not relevant

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1 whatsoever. That's not a behavior that would be the
2 subject of any testimony from Ms. Twitty on the child
3 sexual assault syndrome in relation to this matter.

4 If I understand the State correctly, they
5 wanted to use Ms. Twitty to -- to flesh out the delay in
6 reporting. I questioned her not about that. I did not
7 go into anything to do with how long it took her to
8 report the sexual assault, not a single question. In
9 that scenario, cognizant of the fact that this syndrome
10 has never been approved as a field of expertise in the
11 state of South Carolina --

12 THE COURT: She's not going to use that
13 terminology.

14 MS. CAMPBELL: -- that this type of testimony
15 has never been allowed, no one's been qualified as an
16 expert in South Carolina to that effect. And that even
17 in the jurisdictions where they have allowed it, it has
18 been to rehabilitate a victim --

19 THE COURT: Ms. Twitty, we're talking about
20 you. So you might as well come on in and -- so that you
21 understand clearly what you will be able to testify to
22 and not to.

23 THE WITNESS: Where would you like me?

24 THE COURT: On the witness stand.

25 THE WITNESS: Okay.

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1 MS. CAMPBELL: Shall I continue?

2 THE COURT: You may continue. I did not mean
3 to interrupt you. I just thought this would speed up
4 the process.

5 THE WITNESS: And, actually, I would prefer not
6 to testify to the Child Sexual Abuse Accommodation
7 Syndrome.

8 THE COURT: You don't get to choose.

9 THE WITNESS: I don't get to choose? But
10 that's something that I'm not. . .

11 MS. CAMPBELL: Okay. So if the Court deemed it
12 appropriate to qualify her as the expert in that area,
13 then I would have my continuing objection to the fact
14 that I was only informed of that particular testimony --

15 THE COURT: Unless I'm confused, you weren't
16 asking to qualify her as an expert in child -- in that
17 syndrome; correct?

18 MS. CONCANNON: No, your Honor. Just in what
19 she has experienced in her profession, in her counseling
20 with victims of child sexual abuse, characteristics that
21 they share.

22 THE COURT: So what are you going to -- what
23 are you asking to qualify her as an expert in?

24 MS. CONCANNON: As a mental health
25 professional, working with victims, and more

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1 specifically child -- children of child -- children of
2 sexual abuse and trauma. And there are states --
3 Shumpert has qualified a counselor to testify about
4 trauma that has been suffered by rape victims.

5 THE COURT: Are you objecting to her
6 qualifications as a practitioner of mental health
7 specifically dealing with children of child sexual
8 assault?

9 MS. CAMPBELL: I'm objecting to it, yes. And
10 I'm looking for the specific section here -- and I
11 apologize, as we've shifted gears a bit -- for cases
12 recognizing the -- mental health in this area, social
13 workers in particular.

14 Okay. So -- I guess my question is: What
15 exactly are you, Ms. Twitty? What are your
16 qualifications? What degrees do you hold?

17 THE COURT: All right. Direct it to me. She's
18 not -- she's just merely --

19 MS. CAMPBELL: Oh, okay.

20 THE COURT: She's just merely there because
21 that's where I have chosen for her to sit.

22 MS. CAMPBELL: Okay. I'm sorry. So there are
23 several categories. One would be physicians, a nurse,
24 the psychologist, and social workers -- and I do have
25 all the code sections -- professional counselors. And

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1 so I guess I need more direction from the State as to
2 her qualifications, and then I can go from there.

3 MS. CONCANNON: Counselor. She's a
4 professional counselor of victims of child sexual abuse.

5 THE COURT: Is that what you're objecting to?

6 MS. CAMPBELL: Yes.

7 THE COURT: Do you wish to *voir dire* her on her
8 qualifications?

9 MS. CAMPBELL: I will. Yes, I will, if I -- I
10 need to grab her *Curriculum Vitae*.

11 I only have, in my packet, the *Curriculum Vitae*
12 for Chris Dalton. I apologize, if I don't have the one
13 for Ms. Twitty.

14 THE COURT: Do you happen to have your C.V.
15 with you?

16 THE WITNESS: I do.

17 THE COURT: All right.

18 THE WITNESS: It has notes on it.

19 (Document is handed from Ms. Concannon to
20 Ms. Campbell.)

21 THE COURT: All right. I will allow you,
22 Ms. Campbell, to lay the foundation for her education,
23 experience, before you qualify her, in the presence of
24 the jury. I will allow you to *voir dire* -- object,
25 *voir dire*, and then if I need any additional, I'll have

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1 you come to the bench. I'm going to allow limited
2 testimony based -- and, again, it's going to depend upon
3 how she's qualified and what she says.

4 I know you're sitting right here. I know,
5 Ms. Twitty, I'm talking to you like you're not here --
6 to discuss generally behavioral evidence as to delayed
7 disclosure.

8 Note your exception to my ruling as to that.
9 All right? Thank you.

10 Anything before we bring in the jury?

11 MS. CONCANNON: Not from the State, your Honor.

12 THE COURT: How many more witnesses do you
13 anticipate calling, as for scheduling purposes?

14 MS. CONCANNON: One. One following Ms. Twitty.

15 THE COURT: All right. How long do you
16 anticipate Ms. Twitty and that one witness will be?
17 Trying to determine our lunch schedule.

18 MS. CONCANNON: I think we'll be done before
19 noon --

20 THE COURT: All right. And do you have -- just
21 for scheduling, do you have witnesses available if the
22 afternoon --

23 MS. CAMPBELL: Well, if the State does not
24 intend to call Investigator Adams to testify about his
25 work in this case, then, obviously, I will have to call

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1 him..

2 THE COURT: All right. So at a minimum, you
3 will have Investigator Adams --

4 That was not your next witness; is that
5 correct?

6 MS. CONCANNON: No, your Honor.

7 THE COURT: All right. And do you have any
8 other witnesses?

9 MS. CAMPBELL: Not today. I'll have to close
10 my case, I suppose, and discuss with my client where we
11 stand in terms of the *alibi* situation, and I may have to
12 call Patrick Hall. So I may have two.

13 THE COURT: All right. You need to have
14 Mr. Hall and whatever arrangements you need to make.
15 Right now he needs to be on call after lunch and outside
16 the courtroom door. And you need -- we've evidently
17 moved faster than you anticipated. So your witnesses
18 need to be here this afternoon.

19 MS. CAMPBELL: Yes, ma'am.

20 THE COURT: Your investigator is right here.
21 So I have two for you right outside the door or in the
22 courtroom.

23 MS. CAMPBELL: I'm ready to go.

24 THE COURT: All right. Thank you. Let's bring
25 in --

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1 MS. CONCANNON: Your Honor, briefly, before
2 the jury gets in, so we don't have any confusion.
3 Ms. Twitty's testimony will initially regard the Kromah
4 factors for Minor ' interview. Then I will qualify her
5 to avoid any confusion. Then we will go into the
6 testimony regarding her qualifications as an expert.

7 THE COURT: If that's how you choose to do it.
8 I don't know why you need to do it that way. But if
9 that's how you are choosing to do it, I'm not telling
10 you how to control your case.

11 MS. CAMPBELL: And the second portion is only
12 related to delayed disclosure?

13 THE COURT: That's the only thing that I have
14 understood --

15 MS. CAMPBELL: Okay.

16 THE COURT: -- that there is an issue about.

17 MS. CAMPBELL: All right.

18 THE COURT: All right. But to protect
19 your record, you need to object if there's anything
20 objectionable. Thank you.

21 Let's bring in the jury.

22 (The jury is escorted into the courtroom
23 at 11:19 a.m.)

24 THE COURT: Thank you. Be seated.

25 All right. Ms. Twitty is on the stand. Please

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1 swear her in.

2 THE DEPUTY CLERK OF COURT: Yes, ma'am. Would
3 you please raise your right hand for me.

4 (The oath is administered by the Deputy Clerk
5 of Court, and the witness answers as follows:)

6 THE WITNESS: I do.

7 THE DEPUTY CLERK OF COURT: Thank you. Would
8 you state your name and spell it for the Court?

9 THE WITNESS: Certainly. Kendra Twitty,
10 T-w-i-t-t-y.

11 THE COURT: Ms. Concannon.

12 MS. CONCANNON: Thank you, your Honor.

13 KENDRA TWITTY,
14 having been first duly sworn by the Deputy Clerk of
15 Court to tell the truth, the whole truth, and nothing
16 but the truth, was examined and testified upon her oath
17 as follows:

18 DIRECT EXAMINATION

19 BY MS. CONCANNON:

20 Q Kendra, where are you currently employed?

21 A I'm currently employed at Hope Haven.

22 Q What is Hope Haven?

23 A Hope Haven is a children's advocacy center and
24 rape crisis center, and we serve the 14th Circuit.

25 Q What are some of your duties as an employee at

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1 Hope Haven?

2 A I am a forensic interviewer at Hope Haven, and
3 I'm also a counselor/therapist at Hope Haven. So I work
4 with children that have been sexually abused.

5 MS. CAMPBELL: Objection, your Honor. I
6 objected to her being -- terminology of forensic
7 interviewer. And I believe that we had --

8 THE COURT: All right. No speaking objections.
9 What are you objecting -- what is the basis of your
10 objection?

11 MS. CAMPBELL: Under Kromah, I believe she's
12 not qualified as a forensic interviewer. She's not a
13 forensic interviewer.

14 THE COURT: All right.

15 THE WITNESS: That's what I do for my job.

16 THE COURT: Okay. When there's an objection,
17 you need to stop talking until I rule on it.

18 THE WITNESS: All right.

19 THE COURT: Thank you.

20 MS. CONCANNON: We're not qualifying her as an
21 expert forensic -- as a forensic interviewer. That's
22 just part of her job duties.

23 THE COURT: All right. Overruled. Thank you.
24 You may continue.

25 MS. CONCANNON: Thank you, your Honor.

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1 Q (By Ms. Concannon) Are you familiar with an
2 interview involving Minor ?

3 A I am.

4 Q Do you know the time and date and the
5 circumstances surrounding that interview?

6 A We received a referral from the Beaufort County
7 Sheriff's Office to interview Minor on July 20th,
8 2012, and the time of the interview was at two o'clock.

9 Q Who conducted this interview?

10 A I was the interviewer.

11 Q Was there anybody in the room with you during
12 this interview?

13 A When I interview children, it's myself and the
14 child, and law enforcement watches the interview from a
15 closed-circuit television. So a victim advocate from
16 Hope Haven and a law enforcement officer is in another
17 room watching the interview.

18 Q What were your personal observations of Minor
19 behavior and demeanor during this interview?

20 A Okay. Minor came in, very quiet and shy and
21 closed and guarded. I could barely kind of hear her.
22 She was soft-spoken. And once I was building some
23 rapport with her, which is part of the process of -- of
24 the interview technique that we use, she became a little
25 bit more comfortable and started talking more, and I

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1 could hear her better. And then when we got to the
2 abuse-related questions or scenario, when it was time
3 for -- when I asking her open-ended questions, she kind
4 of shut down, got really quiet. And, actually, at that
5 point, I asked her if she would like to write down
6 whatever it is that she wanted to say. And she said,
7 yes, that she would like to write down the answers to
8 some of my questions.

9 Q Was she ever able to verbalize to you what she
10 wrote down?

11 A She was -- when I ask children if they would
12 like to write it down, I tell them, after you write
13 this, I'm going to read it, and then we're going to talk
14 about it, and I'm going to ask that you talk about it
15 with me. So she then talked about what she wrote down.

16 Q What was her body language like during this
17 interview?

18 A Her posture was slouched, her affect was flat.
19 She was -- she appeared to be shy and sad, confused.
20 You know, she presented as someone that was not
21 comfortable talking about an uncomfortable topic.

22 Q Did she ever cry during this interview?

23 A To be honest, I'm not sure if she cried during
24 the interview or not. She may have become teary-eyed.
25 But I interview so many kids, that I don't recall if she

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1 cried or not.

2 Q But she wasn't able to speak throughout the
3 entire interview, was she?

4 A Correct. She shut down when I asked about the
5 abuse.

6 Q She was eventually able to -- to write or
7 verbalize what happened?

8 A That's correct.

9 Q Okay. I'm going to shift gears a little bit.

10 A Okay.

11 Q Can you tell us a little bit about your
12 education?

13 A Sure. I went to Ithaca College in Ithaca, New
14 York. Graduated in '98, and then I came down south and
15 went to the Georgia School of Professional Psychology,
16 which is now called Argosy, and graduated with a
17 clinical psychology -- a master's in clinical psychology
18 there in 2004. And that's my education experience, as
19 far as degrees.

20 Q Do you have any professional licenses?

21 A I do. I'm a licensed professional counselor
22 in South Carolina. And in order to become a licensed
23 professional counselor, you do two years of direct
24 clinical supervision under a psychologist or a licensed
25 supervisor. And then you do 1500 hours of -- I'm sorry

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1 -- 1300 hours of direct client supervision with your
2 counseling clients.

3 Q Do you only work with children, or do you work
4 with adults as well?

5 A I focus mainly on children. I work with
6 adults, in the sense that I work with the parents and
7 the family, so -- but my specialty and training is in
8 children, adolescents.

9 Q You said your specialty in training. Have you
10 had some specialized training?

11 A I have. Starting in 2000, I have been
12 attending trainings concerning child sexual abuse and
13 the emerging issues and research and findings and skills
14 and behaviors and symptoms for working with children
15 that have been abused.

16 In 2006, I took a little break from that
17 profession, went into private practice, and came back
18 into the profession this past -- this last summer, and
19 went back to a week-long training in Minnesota and then
20 in Columbia to refresh my -- to keep up-to-date with the
21 current trends in child sexual abuse. I found that
22 pretty much still the same since 2000. And so,
23 basically, those are the -- the trainings that I
24 completed certificate for attending. I guess,
25 continuing education kind of things.

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1 Q What is your professional experience in dealing
2 with children?

3 A Okay. Starting in 2000 is when I started at
4 the Hope -- Hope Haven, which is the Children's Advocacy
5 Center. And I have been working with children that have
6 been sexually abused since 2000. It may -- it may not
7 have been at Hope Haven. When I was in private
8 practice, I did a lot of work with adults that were
9 disclosing child sexual abuse, and then a lot of
10 children in the school system that were disclosing any
11 type of trauma related to sexual abuse or physical
12 abuse. So I would say since 2000.

13 Q Have you ever testified in court before?

14 A I have, but it was a long time ago.

15 Q Do you know roughly how many times you've
16 testified?

17 A I've testified mostly in family court, and
18 probably four, maybe -- I'm guessing four or five times
19 in criminal court.

20 Q Okay. Have you ever been qualified as an
21 expert in any of these proceedings?

22 A I have.

23 MS. CONCANNON: Okay. At this point, I would
24 move to admit Ms. Twitty as an expert as a mental health
25 professional working with victims of child sexual abuse

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1 and trauma.

2 THE COURT: Any objection?

3 MS. CAMPBELL: I do object, your Honor.

4 THE COURT: All right. You may *voir dire*.

5 MS. CAMPBELL: Thank you.

6 VOIR DIRE

7 BY MS. CAMPBELL:

8 Q Ms. Twitty, you said you had been qualified as
9 an expert previously. Do you have any idea whether that
10 was in family court or in criminal court?

11 A I believe it was in family court.

12 Q So you've never been qualified as an expert in
13 this area in criminal court, with these types of
14 proceedings, have you?

15 A I -- honestly, I can't answer that. I'm not
16 sure if I've been qualified as an expert or not. I know
17 that I've testified, but I'm not sure if that was a
18 fact-finding person or an expert.

19 Q Okay. And, specifically, the focus of your
20 training and your practice and your experience is in
21 interviewing children and -- and working in child abuse
22 situations; is that correct?

23 A That's correct. Not just interviewing, but
24 also working with kids that have disclosed already about
25 sexual abuse.

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1 Q And in terms of the techniques that you use and
2 things of that nature, you've never been in a position
3 to testify on behalf of a defendant as an expert;
4 correct? It's always just the State that you're working
5 with?

6 A I've been called about that, and I have never
7 testified on the defense side, no.

8 MS. CAMPBELL: Okay. I have no further
9 questions.

10 THE COURT: All right. Are you still
11 objecting?

12 MS. CAMPBELL: I am.

13 THE COURT: Ms. Concannon, specifically, you
14 want her to testify as an expert in what area?

15 MS. CONCANNON: As a mental health
16 professional, working with children victims of sexual
17 abuse, characteristics, and trauma.

18 THE COURT: As a mental health professional --

19 MS. CONCANNON: Working with victims of child
20 sexual abuse and trauma.

21 More so in the characteristics and the behavior
22 that she has seen in her counseling experiences through
23 the years of being a child sexual abuse counselor.

24 THE COURT: Anything else?

25 MS. CONCANNON: No, your Honor.

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1 Just specifically about child sexual abuse
2 victim characteristics and their behaviors.

3 THE COURT: Ladies and gentlemen, normally a
4 person cannot give opinion testimony. Typically, when a
5 person testifies, they must testify as to either what
6 they heard or saw or sensed by smell or something of
7 that nature. There is an exception in our laws if
8 someone is qualified because of their education and
9 experience. They are permitted to give their opinion
10 in certain areas if the Court qualifies them in that
11 way. This witness will be qualified in the area
12 of -- as a mental health professional, specifically in
13 the area of child sexual abuse characteristics and
14 behavior, to give opinion testimony in that area. That
15 does not mean that you must accept the opinion. It is
16 simply evidence for you to use in any way that you see
17 fit.

18 Note your exception to the qualification,
19 Ms. Campbell. Thank you.

20 MS. CAMPBELL: Thank you.

21 MS. CONCANNON: Thank you, your Honor.

22 **FURTHER DIRECT EXAMINATION**

23 **BY MS. CONCANNON:**

24 Q Briefly, back to Minor ' specific interview,
25 did she indicate to you the time and place this all

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1 occurred?

2 A She indicated the place, and she was at her
3 mother's house.

4 Q Okay. When was your interview with Minor ?

5 A It was on July 20th, 2012.

6 Q Among child abuse professionals, what
7 is -- what is meant by the term delayed disclosure?

8 A Okay. In the 13 years that I've been doing
9 this, first off, I find that kids usually never tell.
10 And there's a lot of reasons why kids never tell:
11 Because it's such an uncomfortable thing to tell,
12 fear-driven. Kids -- even research shows that kids
13 usually tell when they're adults. But as far as delayed
14 disclosure, kids may not tell because of threat of the
15 perpetrator; they may not tell because of shame, feeling
16 like it's their fault, they blame themselves, they're
17 embarrassed; they may fear that they're not going to be
18 believed by telling; they may not feel like there's ever
19 an opportunity that's a good time; they may fear that
20 they tell, and it rips their family apart, or that this
21 person that may have done -- or this person that has
22 done something to them may be really close to their
23 family. It may be someone that they're related to; it
24 may be a caregiver; it may be a friend of the family.
25 And so telling is a pretty big deal, as far as

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1 children disclosing. So a delayed disclosure is a very
2 common thing in the child sexual abuse field. And a lot
3 of times kids disclose accidentally or purposefully.
4 Accidentally usually is the little ones. They, by
5 accident, tell, because they don't know not to tell.
6 And, purposefully, usually teenagers tell purposefully
7 when they either feel safe or they have a time when
8 they're hanging out with their peers, which is -- when
9 you are a teenager, your peers are your world, and you
10 start talking and you disclose on purpose. So that's --

11 Q You mentioned their peers. Why would they
12 disclose to these peers?

13 A Well, when you are an adolescent, your peers
14 are your world, and that's who you feel safe with. And
15 so it's typical that I find, being at Hope Haven, that
16 kids usually tell their peers. And then the grown-ups,
17 the adults, the caregivers are usually the last people
18 to find out, and it's really hard for caregivers to
19 understand that.

20 Q What are -- can you maybe explain some family
21 dynamics that could affect a child disclosing later?

22 A Sure. As far as family dynamics, kids were
23 taught -- kids are taught to listen to adults. They are
24 taught to respect their mom and their dad and their
25 authority figures. And so telling something that might

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1 hurt someone in the family or a friend of the family is
2 a lot of pressure on that -- that child.

3 So, again, that delayed disclosure of telling
4 what happens, I find, in my work, is that the kids tell,
5 and the family explodes, and then the kids recant, which
6 means: Oh, wait, I didn't mean that. That's -- that
7 really didn't happen. So recantation is very common
8 when children disclose child sexual abuse.

9 Q What are some -- based on your professional
10 experience, some of the different time frames that may
11 be included in delayed disclosure?

12 A Disclosure is a process, number one. Kids
13 usually don't just blurt out everything. So, first,
14 it's a tentative phase, where they tell a little bit to
15 test out the waters, to see how the grown-ups are going
16 to respond, see if they're kept safe. And if there's
17 someone that's going to listen them and believe them,
18 then most typically they move into an active phase of
19 disclosure, where they usually start telling all the
20 information.

21 Sometimes kids will stay in that tentative
22 phase for years, for months, for weeks. It depends if
23 they get therapy or not. So those -- you know, the
24 disclosure process is different for each adolescent or
25 child or person.

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1 Q Regarding the disclosure, is it -- do
2 children necessarily recall in a particular order the
3 chronological series of the events when they are
4 disclosing?

5 A Disclosing, as I said, is a process. A lot of
6 the times children are traumatized. It depends on if
7 they're having chronic abuse, which means they've been
8 abused from the age of 6 to 16, or they have acute
9 abuse, which they've had either one incident of a sexual
10 assault or two incidents or three incidents. You know,
11 those are considered acute cases. So depending on what
12 type of trauma or what type of abuse, if it was chronic
13 or acute -- I'm sorry, I forgot what I WAS asked --
14 the --

15 Q The chronological series --

16 A The chronological series is, it depends, again,
17 if it's chronical, there's so much to tell. So it's
18 hard for their memory, I find, in my profession, because
19 of the trauma to recall the certain dates, times, events
20 in chronological order because of the trauma and the
21 paralyzing effect that trauma can have during -- during
22 a scary time for a child.

23 Q In your experience, why -- why are children
24 scared to disclose?

25 A Children are scared to disclose, I think, for

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1 the reasons I said before, as far as being fearful of
2 all the consequences of what happens in disclosing.

3 MS. CONCANNON: I have no further questions for
4 this witness at this time.

5 MS. CAMPBELL: May it please the Court?

6 THE COURT: Yes, ma'am.

7 CROSS-EXAMINATION

8 BY MS. CAMPBELL:

9 Q Ms. Twitty, isn't it true that when you talked
10 with Minor that you received information that her
11 allegations against Gerald Barrett were two to three
12 days after Saint Patrick's Day? Isn't that what she
13 told you?

14 A I believe she said it was sometime around
15 Saint Patrick's Day, two to three days after. And
16 usually when a child or adolescent or person is having
17 an event -- a traumatic event, sometimes they'll hang
18 onto a significant detail, like a holiday or birthday
19 party or something like that.

20 Q Didn't you have her write it down for you?

21 A I wrote on -- I believe that you're holding the
22 piece of paper that she wrote down the disclosure.

23 Q Right.

24 A Right. And then I wrote notes on that while we
25 were talking.

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1 Q And on the paper --
2 A Okay.
3 Q -- it says after Saint Patty's Day. Two days
4 after Saint Patty's day; right?
5 A If that's what -- I don't have it. So I'm
6 sorry.
7 MS. CAMPBELL: May I approach, your Honor?
8 THE COURT: You may.
9 MS. CAMPBELL: Thank you.
10 (Document is handed to the witness.)
11 Q (By Ms. Campbell) This is the -- a statement
12 that you -- you had her generate for you, to pin down a
13 date and a time for her allegations; right?
14 A That's correct. This is what she told me at
15 that time.
16 Q And what did she say? What does it say there?
17 A It says, two days after Saint Patty's Day,
18 March or April, 2012.
19 Q Okay. Thank you.
20 MS. CONCANNON: Objection. Is Ms. Campbell
21 moving the statement into evidence?
22 THE COURT: No.
23 Q (By Ms. Campbell) Now, Ms. Twitty, you've
24 testified that in your experience, you -- you note
25 things like shyness and sadness and confusion and not

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1 being comfortable in young people that you talk to about
2 situations of abuse; right?

3 A Yes, ma'am.

4 Q Okay. And isn't it true that it would seem,
5 well, a little bit odd or different that someone who is
6 shy, and reticent to disclose, not being comfortable
7 with the disclosure would also be someone, at 14, that
8 was wearing a tattoo? Wouldn't that be a little bit
9 off?

10 A I don't see the relevance.

11 Q Okay. Well, she had a tatoo. You made note of
12 the tattoo. You made note that she was under the age of
13 18, shouldn't have a tattoo, but yet she had one; right?

14 A I believe -- that's what we -- yeah, I believe
15 talking about that in the interview. I was trying to
16 build A rapport with her so she felt comfortable.

17 Q Now, having been qualified in as an expert in
18 this area, are you familiar with the report from the
19 National Children's Advocacy Center on recantation and
20 false allegations of child abuse and child sexual
21 assault? Are you familiar with this?

22 A I have done so much reading that I would have
23 to look at it to say if I'm familiar with it or not.

24 MS. CAMPBELL: I'd be happy to approach and
25 provide it to her.

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1 THE COURT: You may.

2 MS. CAMPBELL: Thank you.

3 (Document is handed to the witness.)

4 THE WITNESS: Page 9?

5 Q (By Ms. Campbell) Not necessarily page 9. The
6 entire report, which deals with what you're an expert
7 in; right?

8 A I have not read this entire report, but I have
9 been to trainings that have talked about this report.

10 MS. CAMPBELL: Thank you. May I approach and
11 retrieve it?

12 THE COURT: You may.

13 MS. CAMPBELL: Thank you.

14 (Document is handed back to Ms. Campbell.)

15 Q (By Ms. Campbell) Ms. Twitty, young people
16 lie, don't that?

17 A Absolutely. Young and old people lie.

18 Q Well, you don't deal with old people; you deal
19 with young people? Right?

20 A I deal with their parents. So. . .

21 Q Okay. Interesting. You're not a human lie
22 detector, are you?

23 A I am certainly not a human lie detector.

24 Q All right. So you don't know when somebody is
25 telling you the truth, do you?

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1 A I do not know.

2 Q Okay. All right. And so all you do is just
3 take notes about what you are told; right?

4 A I would disagree with that.

5 Q Okay. And what you were told was that two to
6 three days -- or two days after Saint Patty's Day this
7 alleged sexual assault took place against Minor right?
8 And she told you that; right?

9 A She told me that.

10 Q Okay. And other than that, you don't know
11 anything about -- else about this case today to help us;
12 right?

13 A Can you restate what you just asked me?

14 Q You don't know anything else about this
15 case? You can talk on and on about shyness and being
16 uncomfortable and all those things; but this case,
17 you know when she says it happened, and that's it;
18 right?

19 A Well, I know what she told me, and I know that
20 based on --

21 MS. CAMPBELL: Your Honor, I'm going to object
22 to that. That's not --

23 THE COURT: All right. Counsel, that's not the
24 way we do it. So you need to rephrase your question.

25 MS. CAMPBELL: Okay.

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1 MS. CONCANNON: Can Ms. Twitty answer the
2 question?

3 THE COURT: I'm sorry?

4 MS. CONCANNON: Can Ms. Twitty answer the
5 question?

6 THE COURT: I'm going to let her rephrase the
7 question.

8 Ms. Twitty, if you need to respond further --
9 I'm going to let her rephrase her question. If you need
10 to respond further, you may. Thank you.

11 MS. CAMPBELL: Thank you, your Honor.

12 Q (By Ms. Campbell) We've established,
13 Ms. Twitty, that you are -- you're not a -- you're not a
14 diagnosis [sic] for this; right?

15 A Correct.

16 Q You give no diagnosis?

17 A Correct.

18 Q You get a date; you get a time? Right?

19 A I get details of the event.

20 Q Right. And the date and the time that you
21 were given in this case, specifically, was two days
22 after Saint Patrick's Day, 2012; right?

23 A I believe it said two to three days, either
24 April or March, 2012, is what I had written.

25 Q And so as you're getting the information about

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1 the date and time, because it's very important, you've
2 got this broad range of time between March and April;
3 right? And by the end of your interview, you have
4 narrowed it down to two days after Saint Patrick's
5 Day? It's what that piece of paper said; didn't
6 it?

7 A I wouldn't necessarily say narrowed it down,
8 but I asked the child to tell me when she thinks it
9 happened. But at the time of the interview, that wasn't
10 our main focus. My interview focus is to assess the
11 overall safety of a child. Like, I want to rule out all
12 hypotheses. I am not going in there looking for fact
13 details to prove or not prove child sexual abuse. My
14 hope is that kids aren't sexually abused, because that's
15 what I would hope. So I was. . .

16 Q The paper says between March and April 2012;
17 right?

18 A I asked her when she thought it would happen.

19 Q Right.

20 A -- or when she thought it happened.

21 Q Right. We've got a broad two-month time frame,
22 but by the end of your talking to her is down to March
23 19th, 2012; right?

24 A I don't know about March 19th. She said two to
25 three days after Saint Patty's Day.

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1 MS. CAMPBELL: Thank you. I have nothing else.

2 THE WITNESS: Okay.

3 MS. CONCANNON: Thank you, your Honor.

4 REDIRECT EXAMINATION

5 BY MS. CONCANNON:

6 Q Ms. Campbell just asked you a little bit about
7 the interview that you conducted with Minor . She
8 stated that -- she showed you a piece of paper. Okay.
9 When -- when was that piece of paper drafted? When did
10 you get ahold of that piece of paper?

11 A That piece of paper was -- I gave Minor a
12 piece of paper when she shut down on me. And so as
13 an interviewer, I try to offer other avenues for
14 children to -- to disclose. And I say: Would you feel
15 more comfortable writing this? And so I gave her the
16 piece of paper, and that was the piece of paper that was
17 just shown to me. She wrote down some of what happened
18 to her.

19 MS. CONCANNON: Permission to approach the
20 witness, your Honor?

21 THE COURT: You may.

22 Q (By Ms. Concannon) Ms. Twitty, I'm going to
23 show you what's been previously marked as State's
24 Exhibit 11.

25 (Document is shown to the Ms. Campbell.)

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1 (Document is handed to the witness.)

2 Q (By Ms. Concannon) Do you recognize that piece
3 of paper?

4 A I do.

5 Q What is that?

6 A This is the paper that Minor wrote down for
7 me, when I asked her what happened and she shut down and
8 didn't talk and we sat there a little bit in silence,
9 this is what she started writing.

10 Q Is all of that her handwriting?

11 A No. My notes are in purple.

12 Q When did you add your notes?

13 A I added my notes towards the end of the
14 interview, when I was asking about when she thinks it
15 happened.

16 MS. CONCANNON: Okay. Thank you.

17 Permission to publish to the jury and admit
18 State's Exhibit 11 into evidence?

19 MS. CAMPBELL: I would object to that as being
20 entered into evidence, your Honor. It's Minor
21 statement, and she's trying to get it entered through
22 Ms. Twitty --

23 THE COURT: All right. Counsel approach.

24 (Ms. Campbell, Ms. Concannon, and Mr. Shelton
25 approach the bench for a side-bar.)

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1 THE COURT: State's 11 into evidence over your
2 objection. Thank you.

3 MS. CAMPBELL: Thank you.

4 MS. CONCANNON: Thank you, your Honor.

5 (State's Exhibit No. 11 is admitted into
6 evidence.)

7 MS. CONCANNON: Permission to publish
8 State's 11 to the jury?

9 THE COURT: You may.

10 MS. CONCANNON: Thank you, your Honor.

11 (State's Exhibit 11 is published to the
12 jury.)

13 Q (By Ms. Concannon) Ms. Twitty, Ms. Campbell
14 asked you a question about you -- you knowing nothing
15 but the date and time of the alleged incident. Did
16 Minor tell you anything else?

17 A She disclosed to me what happened.

18 Q When you say she disclosed to you what
19 happened, what did she say?

20 MS. CAMPBELL: Your Honor, I'm objecting.

21 THE COURT: What's your basis?

22 MS. CAMPBELL: That goes past the parameters of
23 the Supreme Court ruling in Kromah.

24 THE COURT: All right. Maybe you didn't
25 understand. Speaking objection, one word. Please

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1 approach.

2 (Mr. Shelton, Ms. Campbell, and Ms. Concannon
3 all approach the bench for side-bar.)

4 THE COURT: Please rephrase your question.

5 MS. CONCANNON: Thank you, your Honor.

6 Q (By Ms. Concannon) What else did Minor tell
7 you?

8 A We talked a little bit about her family. We
9 talked a little bit about what she likes to do for fun.
10 We talked about who she hangs out; what she likes to do
11 at school. She loves school. Kind of neutral, finding
12 out about her life, details.

13 Q What did she tell you about Saint Patrick's Day
14 last year?

15 A What I have in my report is, when asked about
16 the date of when this happened with Bubba, Minor
17 reported that she thinks it was two or three days after
18 Saint Patrick's Day. And that's all that I had asked
19 her about, as far as Saint Patrick's Day.

20 Q What did she say what acts happened around
21 Saint Patrick's Day?

22 A The acts that she stated that happened is that
23 she was at her mom's house, hanging out with her mom,
24 hanging out with her friends. She reported that Bubba
25 came over to her mom's house, and they were all hanging

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1 out outside. She stated that she was inside watching
2 TV, when Bubba came inside the house and sat next to her
3 on the couch. She stated that she moved from the couch
4 to the chair to get away from him, but he followed her
5 to the chair and sat down with her.

6 MS. CAMPBELL: Your Honor, I object again.
7 Same basis as before.

8 THE COURT: Overruled.

9 THE WITNESS: Can I continue?

10 THE COURT: Yes.

11 THE WITNESS: Okay. Minor appeared to become
12 uncomfortable talking about what happened next. This is
13 when she shut down. The interviewer asked Minor to
14 write down what happened. This is when she wrote down
15 that green stuff, the green marker. Minor wrote down
16 what happened, and the interviewer read it out loud to
17 Minor. Please see letter in file.

18 Minor reported that Bubba touched her -- her
19 private area -- that's what she called her breasts --
20 underneath her clothes, and that he touched her private
21 area, is what she called her vagina. She stated that
22 Bubba crept -- quote, crept her out and told him to
23 get away, but he would not get away. Minor went
24 upstairs with her little sister T. and then fell
25 asleep. She stated that she got up and went into her

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1 room around 4:30 a.m., and that she could hear someone
2 coming up the stairs. Minor stated that Bubba came
3 into her room, laid down in her bed with her. Minor
4 stated that she asked Bubba what he was doing, and that
5 he told her not to worry about it.

6 She reported that Bubba told her not to tell
7 anyone about what he was doing. Minor reported that
8 Bubba put his private part inside her private part, and
9 that it felt painful. She reported that she thought she
10 was dying, and that she was crying. She stated that she
11 felt helpless. Minor reported that Bubba held her arms
12 out to her side when he was on top of her and when his
13 private part, his penis, went inside her private part,
14 vagina.

15 Minor stated that Bubba's shirt was on and
16 that his pants were pulled halfway down. She stated
17 that she was wearing a pajama shirt. Minor stated that
18 Bubba got off of her when he heard a noise. She stated
19 that he went downstairs and sent her a text to come
20 downstairs. Minor reported that she went into the
21 bathroom, locked the door, and took a shower. She
22 stated that she was bleeding, and that when she went
23 pee, white stuff was coming out of her on the tissue
24 paper.

25 When asked about the date of when this happened

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1 with Bubba, Minor reported that she thinks it was two
2 to three days after Saint Patrick's Day.

3 Q (By Ms. Concannon) What is the date of that
4 report, when your interview was conducted?

5 A This was on July 20th, 2012.

6 Q 2012? What Saint Patrick's Day was she
7 referring to? What year?

8 A I'm assuming she was referring to this Saint
9 Patrick's Day. Because she said March or April 2012.

10 MS. CONCANNON: Okay. I have no further
11 questions for this witness.

12 THE COURT: Ms. Campbell.

13 MS. CAMPBELL: Thank you, your Honor.

14 RECROSS-EXAMINATION

15 BY MS. CAMPBELL:

16 Q Ms. Twitty, you're familiar with something
17 called the Child Sexual Abuse Accommodation Syndrome;
18 right?

19 A I'm familiar with it, yes.

20 Q But you're no expert in that; right?

21 A I'm not an expert in it.

22 Q And you just testified to factors under the
23 Child Sexual Abuse Accommodation Syndrome, haven't you,
24 about delayed reporting; right?

25 A Correct.

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1 Q Okay. And you're no expert, but you're
2 testifying about that; right?

3 A Well, the Child Sexual Abuse Accommodation
4 Syndrome is categories, five categories of typical
5 behaviors that professionals see in children that are
6 sexually abused. So it's a theory.

7 Q Right. And you're not an expert, but you've
8 talked about it; correct?

9 A Well, I feel that I'm an expert in the
10 categories of the -- that they talk about in the Child
11 Sexual Abuse Accommodation Syndrome, as far as what I do
12 in my profession.

13 Q But you've not been qualified in that --

14 A Correct.

15 Q -- in that by this Court; correct?

16 A I'm sorry. Correct.

17 Q Okay. Now, you're familiar, also, then, with
18 the fact that this particular type of testimony has
19 been found to be very problematic and even referred to
20 sometimes as pseudoscience; right?

21 A What type of testimony? The child sexual --

22 Q The type of testimony that you're giving.

23 A My professional opinion and my experience? I'm
24 sorry. I don't understand the question.

25 Q All right. Well, are you familiar with the

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1 Children's Law Center?

2 A Yes. That's where I've been trained quite a
3 bit, yeah.

4 Q And at the Children's Law Center, they put out
5 a report about this delayed disclosure thing that you're
6 talking about; right?

7 A Yes.

8 Q And in there, don't they characterize it as
9 typically occurring in children and adolescents who have
10 suffered years of repeated abuse? Would you like me to
11 pass this up to you?

12 A Sure. Well, I think that's when we talked
13 about the different types of abuse, as far as chronic
14 abuse --

15 MS. CAMPBELL: May I approach?

16 THE COURT: You may.

17 THE WITNESS: -- and acute abuse, meaning the
18 sexual assault happened.

19 Q (By Ms. Campbell) This is the paragraph here.

20 A Okay. Right.

21 Q Okay.

22 A That's for the accommodation syndrome that
23 they're talking about.

24 Q Delayed disclosure, which you've testified
25 about; right?

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1 A Well, delayed disclosure in general just isn't
2 part of that syndrome. There's something just called
3 delayed disclosure.

4 Q Okay. Well, in 1983, Dr. Summit -- Ronald
5 Summit -- you're familiar with him; right?

6 A Correct.

7 Q Okay. And those factors that he puts out
8 there, delayed disclose is one of the factors; right?

9 A It is one of the factors.

10 Q And the Children's Law Center, that has trained
11 you, has said that delayed disclosure is commonplace,
12 typically reported in conjunction with years of repeated
13 abuse; correct?

14 A Correct.

15 MS. CAMPBELL: All right. Thank you. That's
16 all I have.

17 THE COURT: All right. You may step down.
18 Thank you.

19 Call your next witness.

20 THE WITNESS: I'm ready?

21 THE COURT: You're done. Thank you.

22 MS. CONCANNON: Thank you, your Honor.

23 THE WITNESS: Thank you.

24 MS. CONCANNON: State calls Kristin Dalton.

25 THE COURTROOM DEPUTY CLERK: Would you place

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1 your left hand on the Bible and raise your right hand
2 for me, please, ma'am.

3 (The oath is administered by the Deputy Clerk
4 of Court, and the witness answers as follows:)

5 THE WITNESS: I do.

6 THE DEPUTY CLERK OF COURT: Please be
7 seated. State your name and spell it for the Court,
8 please.

9 THE WITNESS: My name is Kristin Dalton,
10 K-r-i-s-t-i-n, Dalton, D-a-l-t-o-n.

11 MS. CONCANNON: Thank you, your Honor.

12 KRISTIN DALTON,

13 having been first duly sworn by the Deputy Clerk of
14 Court to tell the truth, the whole truth, and nothing
15 but the truth, was examined and testified upon her oath
16 as follows:

17 DIRECT EXAMINATION

18 BY MS. CONCANNON:

19 Q What is your profession right now, Kristin?

20 A I'm a pediatric nurse practitioner.

21 Q What is your education to become a pediatric
22 nurse practitioner?

23 A I went to four years of undergraduate school to
24 become a nurse, and then practiced for ten years, and
25 went back to graduate school. In three years, got my

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1 master's degree and took a national certifying board
2 exam, and became a nurse practitioner.

3 Q Where are you employed currently?

4 A Beaufort Pediatrics.

5 Q Do you hold any professional licenses?

6 A I do. I have a DEA license, an R.N. license,
7 and an advanced practice nurse license.

8 Q Have you ever attended any specialized
9 training?

10 A I have. Starting in 2004, I became a member of
11 a group in the state of South Carolina. There are 16 of
12 us medical providers who are specialized in child
13 maltreatment. I started receiving training in that area
14 in 2004, when I went out to Utah for a week-long medical
15 training there. And then another week in Minnesota, a
16 year later; four days in Atlanta a year after that; and
17 then I've done annual child maltreatment medical
18 conferences ever since.

19 Q You predominantly work with children?

20 A Only with children.

21 Q You never work with adults?

22 A No. Anyone under 21. Twenty-one would be the
23 oldest.

24 Q What would bring a patient to you, a child
25 patient to you?

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1 A Well, in my role as a nurse practitioner at
2 Beaufort Pediatrics, I function in the same manner as a
3 pediatrician. I see children for their well checks and
4 for their sick visits. If they're sick enough and need
5 to be admitted to the hospital, admit them and follow
6 them in the hospital.

7 Q Are you ever called to examine any children
8 regarding reports of sexual assault abuse?

9 A Yes, I am.

10 Q And how many people in the state of South
11 Carolina have your same position as reporting when
12 there's an allegation of child sexual abuse?

13 A Well, currently, there's 16 people in our
14 state who are qualified and designated as medical
15 experts to examine children who are victims of abuse
16 and sexual -- maltreatment. So neglect, physical abuse,
17 and sexual abuse. This is a group that started -- in
18 2004, it was created. We have a director, Dr. Olga
19 Rosa, who is a pediatrician, who is also a child
20 maltreatment Board-certified expert. And the 16 of us
21 created the policies and procedures for doing these
22 exams, for maintaining continuing education. We meet
23 quarterly in Columbia for peer review and continuing
24 education. This has been going on since -- for the last
25 ten years.

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1 Q What are some of the procedures or policies
2 regarding these examinations of a child sexual abuse
3 victim?

4 A Well, there are two different kinds of exams.
5 There are what's referred to as an acute exam. When a
6 child has been sexually assaulted and you're looking for
7 DNA evidence, you can usually get DNA if it's been less
8 than 24 hours since the assault. So those acute exams
9 are done infrequently, because it's not very common that
10 we figure this out that quickly, that someone has been
11 assaulted, a child.

12 Then there are what's called chronic exams.
13 And the chronic exams are done any time a child has
14 disclosed sexual abuse. One of the 16 of us in the
15 state will do the exam, where we are examining them for
16 multiple purposes. To see if there's any trauma, any
17 evidence of physical trauma, to see if there are any
18 sexually transmitted infections they may have acquired,
19 and, in general, to reassure the child that their body
20 is okay.

21 Q It would only be one of the 16 of y'all that
22 would conduct these examinations?

23 A To my knowledge, there's nobody else that's
24 certified to do that in our state.

25 Q Have you ever testified in court before?

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1 A Yes, I have.

2 Q Do you know how many times you've testified?

3 A Probably about 18 or 20.

4 Q Have you testified in criminal court?

5 A Yes.

6 Q Have you ever been qualified as an expert
7 before?

8 A I have.

9 MS. CONCANNON: At this point, I move to
10 qualify Ms. Dalton as an expert in the trauma and
11 physical symptoms following child sexual abuse.

12 THE COURT: Ms. Campbell.

13 MS. CAMPBELL: I have no objection.

14 THE COURT: She will be so qualified. Thank
15 you.

16 MS. CONCANNON: Thank you, your Honor.

17 Q (By Ms. Concannon) You mentioned when you do
18 these examinations, there are two different types that
19 you do when you look for trauma. What is some trauma
20 that can be found in a victim that's suffered sexual
21 abuse?

22 A For sexual abuse, the chance of physical
23 findings are incredibly, incredibly small. Right now
24 the national statistics state that about 3 percent or
25 less of children who are sexually abused will have

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1 physical findings. The reasons are myriad, but mainly
2 because that area of the body is very rapid to heal.
3 And also, it's difficult to injure that area of the
4 body.

5 One of the ways to think about it is, the
6 genitalia, the vaginal area of a female, is similar
7 tissue to the inside of your mouth. So if you bite
8 your cheek and it hurts a lot and it bleeds, and you
9 might have difficulty eating for a day or two, when you
10 go and look in the mirror and look at your cheek, you're
11 not going to see where you bit yourself, and you're not
12 going to see a scar. And there's nobody walking around
13 today who can say, this is where I bit myself when I was
14 five, and this is where I bit myself a month ago.

15 So the female genitalia heals very, very
16 rapidly. It is also a tremendous misconception that
17 goes around in the general public about the shape of the
18 female body and the hymen and what that piece of tissue
19 can do when somebody has had sex, whether it's
20 consensual or nonconsensual. So everyone thinks that
21 you can do a virginity test, that you can look at a
22 woman or a teenager and see if they've had sex before.
23 That is absolutely false, and there are multiple studies
24 out there that show that that's false.

25 I have found, in my professional experience,

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1 that my statistics of findings are about what the
2 national statistics are, which is certainly less than 5
3 percent of the girls I examine will have physical
4 findings. And I'm not talking just about the sexually
5 abused children. I'm talking about -- I do gynecology,
6 pediatric gynecology and pelvic exams and STD testing
7 for teenagers, and I've been doing it for 20 years. And
8 a huge number of them, far more than 50 percent, don't
9 have any findings in their hymen to show that they've
10 been consensually sexually active.

11 So the -- another reason for that is not only
12 that trauma heals quickly, but the hymen, which is sort
13 of a doughnut-shaped, very thin piece of tissue that's
14 right at the entrance of the vagina -- so if you think
15 of a tube having this thin membrane around it. This
16 membrane is similar to a rubber band. It's very, very
17 elastic. So if you were handed a bag of rubber bands,
18 and you pulled one out and you stretched it, and then
19 you put it back in the bag, and you asked someone to
20 tell you which rubber band did you stretch, they're not
21 going to be able to do that.

22 This is the same way the hymen is. It can
23 stretch. And children -- young children can be victims
24 of penile vaginal penetration and have no evidence, that
25 can stretch and not have been injured at all, or injury

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1 can heal very rapidly.

2 Q Would there be signs of an injury to the hymen
3 five months or so after the alleged assault?

4 A No.

5 Q Immediately after a sexual assault, is it
6 common there be a lot of blood?

7 A It depends on the -- the degree of violence,
8 the physicality of the assault. There are, you know, a
9 lot of perpetrators who are well known to the victim and
10 aren't as physically assaulting during the act of
11 penetration, and then there are other instances when
12 it's much more aggressive. So, you know, that's another
13 myth. People think that every time a woman who is a
14 virgin has sex, that there is going to be blood
15 afterwards. It just depends on whether that hymen did
16 tear. And, certainly, the hymen can tear. And for
17 women who are highly -- are sexually experienced, many
18 of them will have a visible, what we call transection,
19 or a tear in the hymen, that will then heal. So when
20 they go to the gynecologist, or they come to me, I can
21 see that there is that -- that tear in the hymen that is
22 healed. But, again, that is not something that is -- is
23 seen in sexually active women as a definite, and that's
24 why you can't tell.

25 MS. CONCANNON: Beg the Court's indulgence?

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1 THE COURT: Yes, ma'am.

2 (Ms. Concannon speaks with Mr. Shelton off the
3 record.)

4 Q (By Ms. Concannon) Did you conduct a physical
5 examination on Minor ?

6 A I did.

7 Q When was this physical examination conducted?

8 A In August of 2012, I believe it was.

9 Q What were your findings of that exam?

10 A There were no findings on her exam.

11 Q When you say there are no findings, what does
12 that indicate?

13 A Well, first of all, the hymen had no
14 disruptions in it. So there were no tears or notches or
15 clefts in the hymen. I saw no visible signs of an STD.
16 Unfortunately, her caretaker did not follow through on
17 taking her to the lab to have the STD testing done. So
18 I don't know for sure whether there was or was not any
19 infection there. So that's the reason for no findings
20 there.

21 Q And, again, you said this was in August of last
22 year, the exam?

23 A Yes.

24 MS. CONCANNON: I have no further questions for
25 this witness.

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1 MS. CAMPBELL: Thank you.

2 CROSS-EXAMINATION

3 BY MS. CAMPBELL:

4 Q Kristin --

5 A Yes.

6 Q -- did you provide the state of South Carolina
7 with an article from the Official Journal of the
8 American Academy of Pediatrics that you rely on?

9 A Yes. It's one of the many that I rely on.

10 Q Okay. Well, this is what the State gave me
11 that you were relying on in relation to your testimony
12 today. Okay? And this Official Journal of the American
13 Academy of Pediatrics, which is many, many pages long,
14 you've read this; right?

15 A Yes, I have.

16 Q Okay. And you're very familiar with what this
17 article says, aren't you?

18 A I'm -- yes, I am familiar with what that
19 article says.

20 Q Okay. And you used the criteria in this
21 article in your physical examination of Minor ;
22 right?

23 A What do you mean by using the criteria?

24 Q I mean, you took your knowledge, your
25 information, your expertise that founds itself, that

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1 rests itself on reports just like this, and you used
2 that in your physical examination of Minor ; right?

3 A That was one of many, yes.

4 Q Okay. Well, the only one the State gave me
5 is this one. And you admit to relying on this one;
6 correct?

7 A It's part of the myriad of studies I use. Yes,
8 that is correct.

9 MS. CAMPBELL: May I approach, your Honor?

10 THE COURT: You may.

11 (Document is handed to the witness.)

12 Q (By Ms. Campbell) If you would, please, would
13 you read for the jury the title of this article.

14 A Genital Anatomy in Pregnant Adolescents.
15 Normal Does Not Mean Nothing Happened.

16 Q Thank you. May I have it back, please?

17 A Sure.

18 Q Minor is not pregnant in August 2012, is
19 she?

20 A No, she wasn't.

21 Q Okay. Now, in this physical examination you
22 did of her, you say you looked at her hymen; right?

23 A Yes.

24 Q And when you did that, you're following
25 a 13-page treatment protocol; right?

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1 A Following the protocol?

2 Q Yes. You have a 13-page child treatment
3 protocol?

4 A That's the form that I fill out, yes, for after
5 the exam.

6 Q Okay.

7 A That's the information that I need to provide
8 to the State.

9 Q Right. Okay. And in that 13-page treatment
10 protocol, you note that Minor is -- been the victim
11 of or exposed to multiple occasions of domestic
12 violence; correct?

13 A I did note that, yes.

14 Q Okay. Which are not at all related to
15 Gerald Barrett, Jr.; right?

16 A I don't know if he was there for those -- I
17 didn't specifically ask who was involved in those
18 instances.

19 Q So there's some information you don't know?

20 A I'm sure there's a tremendous amount of
21 information I don't know about Minor ' life, if that's
22 what you're asking.

23 Q But, again, in the protocol, you're supposed to
24 answer those questions. And that's what you answered
25 right here on page 3. It says that she was exposed to a

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1 history of domestic violence between herself -- excuse
2 me -- the mother and the father and the ex-husband,
3 something to that effect. Would you like to see it?

4 A Yes, I would like to, please.

5 Q Okay.

6 (Document is handed to the witness.)

7 A Okay. So I put -- I interviewed both Minor
8 mother, Ms. Brandace Smith, and then I interviewed
9 Minor , to -- which is part of medical history. You
10 always take a social history, a behavioral history, a
11 past medical history, and a surgical history. So this
12 is part of the social history. And I obtained it from
13 both the victim and her mother. And the mother reports
14 -- and I quote myself, she, referring to Ms. Smith, the
15 mother, reports a history of domestic violence between
16 herself and her ex-husband, which was often witnessed by
17 Minor . She denies the family has ever been involved
18 with any law enforcement or DSS, Department of Social
19 Services, prior to this incident. There have been no
20 problems with substance abuse, alcohol, or illicit drug
21 use by any of Minor ' caretakers. This, of course, is
22 important for the medical exam.

23 And then underneath that, I wrote, Minor has
24 lived with her mother most of her life. Mother married
25 when Minor was about one year. That marriage ended

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1 about three years ago, but stepfather is still involved.
2 Then at the bottom I put, when Minor was interviewed
3 alone, she reported law enforcement had been involved
4 with the family on multiple occasions due to domestic
5 violence.

6 Q (By Ms. Campbell) Thank you. And so you've
7 got two different versions: One from the mother, one
8 from Minor; right?

9 A Yes.

10 Q About any involvement with law enforcement, but
11 both confirmed domestic violence; correct?

12 A Correct.

13 Q Now, on page 4, your report reflects that Minor
14 reported that she was bleeding after she suffered this
15 sexual assault; correct?

16 A Yes.

17 Q Okay. And on -- then again, on page 6, you say
18 that, Minor had been treated long before this
19 allegation for mental health issues and for cutting
20 herself; correct?

21 A Yes.

22 Q All right. And then you go on in the -- in
23 this protocol, and you say that -- on page 8, that
24 the -- the hymen -- which, thank you for your
25 explanation of that to all of us -- was estrogenized,

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1 which if I may, would mean that she's postpuberty;
2 right?

3 A It could mean that she's just begun puberty or
4 is towards the end. There's five stages of puberty. So
5 it just means that she's involved in that process.

6 Q The estrogenized?

7 A Estrogenized means that a child's body has
8 begun changing from that of a child to that of a woman
9 or a man.

10 Q Right. And that you note on this page that the
11 hymen is smooth, continuous; correct?

12 A Yes.

13 Q Okay. And very clearly, on your protocol that
14 you have to follow, you make the notations, no tears?
15 There are no tears; correct?

16 A Correct.

17 Q There are no lacerations?

18 A Correct.

19 Q There's no vaginal discharge?

20 A Correct.

21 Q There's no posterior hymenal transections;
22 correct?

23 A Correct.

24 Q There are no deep notches?

25 A There are no findings at all, no. Correct.

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1 Q There are no perforations?

2 A Perforations, I don't believe that's one of
3 the -- I don't believe that's even -- should be on the
4 protocol. Perforation would imply a hole. The hymen
5 already has a hole in it.

6 Q Okay. How about a deep cleft?

7 A I didn't see a deep cleft either.

8 Q Are you familiar in your studies with the term
9 perforation?

10 A I'm not sure what you mean by that.

11 Q Okay. So the only person that has viewed Minor
12 Minor's hymen is you; right?

13 A I don't know. I'm -- I know that I viewed her.
14 I don't know what her past gynecological history is.

15 Q Kristin, you took -- you took no photographs,
16 correct, of the hymen? You preserved no evidence;
17 correct?

18 A There was no evidence. So I didn't see the
19 need to take a photograph.

20 Q Well, you study, in reports just like this,
21 photographs of the hymen; right?

22 A What do you mean, I study photographs of the
23 hymen? You mean when I go to medical conferences or
24 read journal articles?

25 Q Kristin, you said you're familiar with this

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1 report; correct? You provided it to the State?

2 A Right.

3 Q Okay. And in this report that you rely on,
4 there are photographs of the hymen -- of different
5 hymens that you learn from and you look at and you say,
6 okay, this is a certain type of hymen, and this is
7 another type of hymen; correct?

8 A Uh-huh.

9 Q Yes?

10 A Yes.

11 Q Okay. And so in this case, for us today, there
12 is no preservation of any evidence. There's no
13 photograph of the hymen that's at issue in this case;
14 correct?

15 A I did not photograph her hymen. What I'm
16 -- I'm sorry if I'm misunderstanding you. But what my
17 point is, there wasn't what I considered to be evidence.
18 There were no -- there was no unusual findings. So I
19 did not photograph that.

20 Q Right. And you -- you made that decision;
21 correct?

22 A Correct.

23 Q Okay. And so because you didn't find anything,
24 you didn't preserve any evidence for us; correct?

25 A I didn't preserve evidence of a normal exam for

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1 you, that is correct.

2 Q You didn't order any kind of imaging studies at
3 all on this -- this case; right?

4 A There are no imaging studies that you can order
5 on a hymen.

6 Q You work for Hope Haven; correct?

7 A Yes. That's our child advocacy center.

8 Q Correct. And you testify for the State; right?

9 A Correct.

10 Q Okay. You don't testify in defense of any man
11 that's charged with these crimes; correct?

12 A No. I have testified in defense.

13 Q And you didn't preserve any evidence; correct?

14 A There was no evidence to preserve, and I did
15 not photograph the exam. I'm not understanding what
16 you're asking me. I'm sorry.

17 Q I'll move on.

18 A I did not photograph a normal exam. I did not
19 feel there was evidence -- may I say that? -- and so I
20 did not feel the need to photograph.

21 Q You testified at the very beginning of your
22 testimony about this thing that, you know, in a day or
23 two, you don't have any DNA evidence you can get; right?

24 A Correct.

25 Q Okay. You're not a DNA expert?

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1 A No, I'm not.

2 Q But what you do know, is when you do a physical
3 exam on someone that's made an allegation of sexual
4 assault, that you can find DNA; correct?

5 A If -- if it's been 12 to 24 hours after the
6 assault, that is the time that the scientists and the
7 DNA experts tell us --

8 Q Right.

9 A -- no longer try after that period of time.

10 Q On her body; right?

11 A Pardon me?

12 Q On the body; correct?

13 A Correct.

14 Q Okay.

15 A And then you have a little bit longer on
16 fomites, like sheets and towels and panties and that
17 kind of thing.

18 Q Correct. And if you had the opportunity, you
19 would take these items into evidence, wouldn't you?

20 A In the acute cases, I do, yes.

21 MS. CAMPBELL: Okay. Thank you. I may be
22 finished, your Honor. Just one more second.

23 (Respite.)

24 Q (By Ms. Campbell) Kristin, you're not an
25 Ob-Gyn doctor; Right?

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1 A No, ma'am.

2 Q And you're not a surgeon; right?

3 A No.

4 Q Okay. And just so we're clear, again, there
5 were no findings -- under this nothing does not mean
6 happened in adolescence genital anatomy report that you
7 relied on relating to pregnant adolescents; right?

8 A Well, two of the 36 victims in that report had
9 findings. The reason they used pregnant girls was they
10 wanted to have a way to prove that girls had been
11 sexually active, and that's about the only way you can
12 prove. So in that study, 36 pregnant adolescents, who
13 we can all accept had been sexually active, were
14 examined by experts, and two of those 36 females had
15 findings of vaginal penetration.

16 Q Okay. Again, this is the report that you
17 relied on, the pregnant one?

18 A That is one of the reports that I rely on.
19 Yes, it is.

20 MS. CAMPBELL: Thank you. I have nothing else.

21 MS. CONCANNON: Thank you, your Honor. Just
22 very briefly.

23 REDIRECT EXAMINATION

24 BY MS. CONCANNON:

25 Q If there's -- if one of the -- if the child

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1 that you are examining indicates that blood was present,
2 does that necessarily indicate that the hymen was torn?

3 A Not at all. It's very different in cases of
4 sexual assault. The big difference between sexual
5 assault and consensual sex is the arousal factor. In
6 consensual sex, when a female is aroused, her body
7 produces a lubricant that makes the whole process a lot
8 easier. If there's no arousal, there's no lubricant.
9 And there are spots that -- areas of the hymen -- or
10 it's actually in front of the hymen, where in most cases
11 of sexual assault where there is trauma, it's not really
12 seen on the hymen. It's seen in the posterior
13 fourchette, which is -- I describe it as thinking of a
14 doormat in front of a door. That's what the posterior
15 fourchette is.

16 So in cases of assault, if there is no
17 lubricant, the friction tends to cause injury in that
18 area. If you're looking at a clock, it's like at
19 six o'clock. And that's often -- if I do an acute case
20 where there's been, you know, an assault, and I've seen
21 the child right afterwards, that is often an area where
22 I will see bleeding.

23 Q All right. You wrote a report after your
24 examination of Minor ; didn't you?

25 A Yes.

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1 Q Did this report include your findings of the
2 exam?

3 A It did.

4 Q If you're examining a child and there's no
5 evidence of trauma or you state there's no evidence at
6 all, would you typically take pictures of that?

7 A No.

8 MS. CONCANNON: I have no further questions.

9 MS. CAMPBELL: Just briefly, your Honor.

10 RE CROSS-EXAMINATION

11 BY MS. CAMPBELL:

12 Q Kristin, on page 5 of your report, you made a
13 notation in your pertinent medical history that, in
14 fact, Minor had an Ob-Gyn doctor on Hilton Head; correct?

15 A Yes.

16 Q And that that Ob-Gyn doctor probably around, I
17 guess, March or April had started prescribing Minor birth
18 control pills; correct?

19 A Correct.

20 MS. CAMPBELL: Okay. That's all I have.

21 THE COURT: Ladies and gentlemen, we've reached
22 an appropriate time for us to take our lunch break. Do
23 not begin your deliberations. Do not discuss this case
24 amongst yourselves. Please take your notepads with you.
25 We will lock them up during your lunch break. Please be

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1 back in your jury room at 1:45. We will begin promptly
2 once all 14 of you are there.
3 Please stay seated.
4 Please rise for the jury.
5 (The jury is escorted from the courtroom
6 at 12:35 p.m.)
7 THE COURT: Thank you. Please be seated.
8 You may step down. Thank you.
9 THE WITNESS: Thank you.
10 THE COURT: You are free to go.
11 Do you have any additional witnesses?
12 MS. CONCANNON: I will have Investigator Adams
13 briefly, and that is my last witness.
14 THE COURT: All right. I'm going to advise
15 your client of his right to testify. And we'll get to
16 that today.
17 MS. CAMPBELL: Would you like us to stand?
18 THE COURT: Yes, please.
19 MS. CAMPBELL: Thank you.
20 THE COURT: Mr. Barrett, I'm going to place you
21 under oath. Please swear Mr. Barrett.
22 (The oath is administered by the Deputy Clerk
23 of Court, and the Defendant answered as follows:)
24 THE DEFENDANT: I do.
25 THE DEPUTY CLERK OF COURT: Thank you.

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1 THE COURT: All right. Mr. Barrett, at this
2 time, I'm going to explain to you certain of your
3 rights. If you do not understand anything that I say,
4 please let me know. And if you need me to explain
5 anything in further detail, please let me know. Do you
6 understand?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: We are very close to the stage of
9 the trial where you may present your defense. You have
10 the right to claim the protections given to you by the
11 Fifth Amendment to the Constitution of the United
12 States. This amendment states in part that no person
13 shall be compelled in any criminal case to be a witness
14 against himself. This means that you cannot be required
15 to testify in this case. You have the right to testify
16 on your own behalf; however, no one can make you
17 testify. This is a personal right, and no one can waive
18 this right except for you.

19 If you decide to testify, you will be subject
20 to the same rules that govern other witnesses, and you
21 may be examined and cross-examined on any relevant issue
22 in this case. In addition, if you have any convictions
23 involving dishonesty, or false statements, or for crimes
24 punishable by imprisonment for more than one year, and I
25 determine that the probative value of admitting the

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1 evidence outweighs its prejudicial affect to you, the
2 Solicitor will be able to introduce your record to
3 attack your credibility.

4 Any convictions?

5 MS. CONCANNON: Yes, your Honor. He has
6 contributing to the delinquency of a minor, which was
7 noted earlier. He also has a financial transaction card
8 fraud, burglary second degree.

9 THE COURT: If you decide to testify, this
10 decision on your part must be freely, voluntarily, and
11 intelligently made, with the knowledge of the
12 protections given to you by the Fifth Amendment and the
13 consequences of your decision to testify. If you decide
14 not to testify, I will instruct the jurors that they
15 cannot give the fact that you did not testify any
16 consideration whatsoever, and there is to be absolutely
17 no prejudice to you because you did not testify.

18 It is left entirely up to you whether or not
19 you testify. You may talk to your friends, your family,
20 your attorney or anyone else, but the final decision
21 will be left entirely up to you. Do you know understand
22 what I've explained to you?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Do you have any questions about
25 what I've explained to you?

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1 THE DEFENDANT: No, ma'am.

2 THE COURT: Have you discussed with your
3 attorney previously whether or not you will testify?

4 THE DEFENDANT: No, ma'am. Not at this time.

5 THE COURT: You have not previously discussed
6 your attorney your -- whether or not you will testify?

7 THE DEFENDANT: Not if I would speak on my own
8 behalf, no, ma'am, but to the case, yes.

9 THE COURT: All right. When the appropriate
10 time comes, my question will be to you, do you wish to
11 testify? But you will have over the lunch hour to make
12 that decision.

13 All right. Anything before we take our lunch
14 break?

15 MS. CONCANNON: Not from the State, your Honor.

16 MS. CAMPBELL: No, ma'am.

17 THE COURT: If you will let me know, if you
18 will tell whomever I need to speak with about the rest
19 of the week, so that we can plan accordingly. Thank
20 you.

21 (A lunch recess is taken from 12:39 p.m.
22 until 1:43 p.m.)

23 MS. CONCANNON: Mr. Shelton is in another
24 courtroom handling other cases. I think he won't be
25 present for the rest of the afternoon. My apologies.

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1 THE COURT: Let's bring in the jury.

2 THE BAILIFF: The jury is ready.

3 THE COURT: Thank you.

4 (The jury is escorted into the courtroom
5 at 1:48 p.m.)

6 THE COURT: Thank you. Be seated. Call your
7 next witness.

8 MS. CONCANNON: Thank you, your Honor. State
9 calls Investigator John Adams.

10 THE DEPUTY CLERK OF COURT: Place your left
11 hand on the Bible, raise your right hand for me, please.

12 (The oath is administered by the Deputy Clerk
13 of Court, and the witness answers as follows:)

14 THE WITNESS: I do.

15 THE DEPUTY CLERK OF COURT: Please be
16 seated. State your name and spell it for the Court,
17 please.

18 THE WITNESS: My name is John Adams. I'm an
19 investigator with the Beaufort County Sheriff's Office.
20 My last name is A-d-a-m-s.

21 JOHN ADAMS,
22 having been first duly sworn by the Deputy Clerk of
23 Court to tell the truth, the whole truth, and nothing
24 but the truth, was examined and testified upon his oath
25 as follows:

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DIRECT EXAMINATION

1

2 BY MS. CONCANNON:

3 Q You mentioned you're with the Beaufort County
4 Sheriff's Office. In what capacity are you with the
5 Sheriff's Office?

6 A I'm an investigator with the Sheriff's Office.

7 Q And as an investigator, what are some of your
8 duties?

9 A I investigate cases, collecting evidence,
10 interviewing witnesses, things of that nature.

11 Q Okay. Were you involved in the investigation
12 of this current case we have been discussing the past
13 two days?

14 A Yes, ma'am, I was.

15 Q Okay. Were you the lead investigator on this
16 case?

17 A I was.

18 Q Do you know who Minor is?

19 A I do.

20 Q Who is Minor ?

21 A Minor is the victim in this case. It
22 was reported on July the 3rd of 2012, by Minor
23 grandmother, Mary, that she had been sexually assaulted
24 at the residence of her mother's house, and where her
25 mom lived with her boyfriend, at Forest Drive

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1 in Bluffton, Beaufort County, South Carolina.

2 Q How old was Minor ?

3 A At the time of the incident, she was 14.

4 Q Do you know how old she is now?

5 A I believe she's 15.

6 Q Who was Minor living with at that residence?

7 A At that residence, she was living with her
8 mother's boyfriend, Shawn Ward, and her mother, Brandace
9 Smith.

10 Q Do you know who she lives with today?

11 A I believe she lives with her father,
12 Tyreed Lucas, on Hilton Head Island.

13 Q Was there anybody else living with Minor
14 at that house with her mother and her mother's
15 ex-boyfriend?

16 A I know that sometimes her half-sisters or
17 stepsisters would live with them there off and on.

18 Q You said off and on. Where would they live
19 when they weren't there?

20 A When they weren't there, they would live with
21 their father, Michael Gray, at another residence in
22 Bluffton.

23 Q Okay. So Minor ' stepsister -- or
24 half-sisters, they share the same mother?

25 A Correct.

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1 Q Okay.

2 A These -- the sisters that you describe share
3 the same mother.

4 Q Okay. Thank you.

5 In your investigation of this incident, what
6 were some of your duties specifically?

7 A Well, on July the 5th, I made contact with
8 Minor ' mother, Brandace Smith, and arranged for her
9 to have a forensic interview at Hope Haven of the
10 Lowcountry, the child's advocacy center in Bluffton.
11 And on the 20th of July in 2012, I went to that forensic
12 interview at Hope Haven of the Lowcountry, and I
13 observed that Minor was brought to that interview
14 with her -- by both her mother and her father, the
15 mother, Brandace Smith, and the father, Tyreed Lucas.

16 I observed the forensic interview that took
17 place between interviewer Kendra Twitty and Minor
18 via closed-circuit television, which was live and in
19 real time. And one of the things I observed about
20 Minor during the interview is that she was intelligent,
21 she was articulate, very soft-spoken. And as Kendra led
22 her towards the actual assault part of the story, she
23 became very withdrawn and silent and was unable to speak
24 about the -- the assault itself and actually had to
25 write down in a note what had occurred to her.

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1 Q Did Minor state the time and place the
2 incident occurred?

3 A She said that it happened a few days after
4 Saint Patrick's Day, a couple of days after Saint
5 Patrick's Day.

6 Q And where the incident happened?

7 A At Forest Drive, Bluffton, Beaufort
8 County, South Carolina, the residence of Minor ' mother
9 and her live-in boyfriend, Shawn Ward.

10 Q What else did you do in your investigation of
11 the case?

12 A I also met with Mr. Ward on March the 16th of
13 2013 at that residence, Forest Drive, at which
14 time I photographed the residence. And I realized that
15 the house was consistent with the house that Minor had
16 described in her forensic interview. It was two
17 stories. And Mr. Ward indicated that she did, in fact,
18 stay in an upstairs bedroom.

19 Q Why did you wait almost a year after the
20 incident occurred -- or I guess it was -- came to your
21 attention in July and waited with until March to go
22 speak with Mr. Ward?

23 A Well, twofold. The -- well, I guess more than
24 twofold. I realized that neither Ms. Smith -- Brandace
25 Smith or Minor were living at the residence. And

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1 the delayed disclosure of this particular case would
2 have precluded me from collecting evidence from the
3 scene that I could directly link to the actual assault
4 itself. And I also went, I believe, at the request of
5 the assistant solicitor that was assigned to the case at
6 that time, Patrick Hall.

7 Q Did you speak with Mr. Ward?

8 A In reference to court preparation.

9 Q Had the disclosure been immediate at the time,
10 would you have gone to collect evidence from the
11 incident location?

12 A Yes, ma'am, we would have. Normally we do that
13 via search warrant, and we collect lots of forensic
14 evidence, if it's available at the scene.

15 Q Would forensic evidence have been available
16 five months after the incident happened?

17 A Not to my knowledge, ma'am.

18 MS. CONCANNON: I have no further questions for
19 this witness at this time.

20 MS. CAMPBELL: Thank you, your Honor.

21 **CROSS-EXAMINATION**

22 **BY MS. CAMPBELL:**

23 Q As the lead investigator in this case, Officer
24 Adams, you received the report from Deputy Sheriff
25 Glass; correct?

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1 A Yes, ma'am, I did.

2 Q Deputy Sheriff Glass is the officer who spoke
3 with the stepgrandmother, Mary; correct?

4 A Yes, ma'am.

5 Q And -- and you know Deputy Sheriff Glass is
6 trained, just as you are, to be accurate in his reports;
7 correct?

8 A I would assume so, ma'am. I'm not -- I don't
9 know exactly what the training is that Deputy Glass had,
10 but I would assume that that is correct.

11 Q Now, Officer Adams, you relied on this report;
12 right?

13 A I relied on it for the location, the people
14 involved, and the contact information, to make contact
15 with those people.

16 Q Okay. So, yes, you relied on Deputy Sheriff
17 Glass' report?

18 A Yes, ma'am.

19 Q And in that report, it's very clear that the
20 information you took from that report was that the
21 allegation related to one to two weeks before the end of
22 school; correct?

23 A I would have to go back and reread that. If
24 you would like me to, I'd be happy to.

25 MS. CAMPBELL: May I approach?

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1 THE COURT: You may.

2 MS. CAMPBELL: Thank you.

3 (Document is handed to the witness.)

4 Q (By Ms. Campbell) Do you have a copy of the
5 full report?

6 A Yes, ma'am, I do.

7 Q All right. Well, then, perhaps I could just
8 direct you.

9 A I'd be happy to be directed.

10 Q On page 3 of 3 of Deputy Glass' report, dated
11 July 3rd, 2012, in the second paragraph, three sentences
12 down, Mary stated, Minor advised the incident occurred
13 one to two weeks prior to the conclusion of school.

14 A It does say that in his report.

15 Q Okay. It also says in the report, that you
16 relied on in conducting your investigation, that this
17 allegation was leveled against Mr. Barrett, against
18 Gerald, while Mary was traveling from Bluffton to Aiken
19 with Minor , and that's when it took place; right?

20 A I'm not sure of the question, ma'am.

21 Q Okay. On page 3 of 3, Deputy Sheriff Glass
22 reports that Mary advised that while she was traveling
23 with Minor the allegation was made --

24 A Yes, ma'am.

25 Q -- correct?

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1 Okay. Not when they got back to Aiken, not in
2 Bluffton, but while they were traveling, the allegation
3 was made?

4 A That is what it says in the report.

5 Q And the allegation was made on July -- well,
6 around the beginning of July; correct?

7 A Yes, ma'am.

8 Q Okay. Not spring break, but the beginning of
9 July?

10 A It was reported to Deputy Glass on July the 3rd
11 of 2012.

12 Q All right. It was also reported to Deputy
13 Sheriff Glass, in information that you relied on, that
14 the original time of the assault was 1:00 a.m., not
15 5:00 a.m.; isn't that correct? Doesn't the report
16 reflect that?

17 Under the interview with Brandace Smith, Minor
18 told her the suspect came into her room at 1:00 a.m. and
19 laid in the bed with her; right?

20 A It does say that in the report, ma'am.

21 Q Okay. And that the incident occurred
22 March 1st; correct? Three lines down?

23 A It does say that in the report.

24 Q Okay. Officer Adams, you were trained here in
25 South Carolina at the Criminal Justice Academy?

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1 A Yes, ma'am.

2 Q Okay. And you were trained to interview
3 witnesses?

4 A Yes, I have had training in interviewing
5 witnesses.

6 Q And you were trained to interview victims of
7 crimes?

8 A Yes, ma'am, I was.

9 Q And you were trained to interview suspects in
10 crimes; correct?

11 A That's correct, ma'am.

12 Q You were trained to properly secure evidence;
13 correct?

14 A Yes, ma'am.

15 Q That would include fingerprint evidence, that
16 would include DNA evidence; correct?

17 A Yes, ma'am.

18 Q That would include evidence of semen at a crime
19 scene; correct?

20 A Yes, ma'am.

21 Q Okay. And there's special procedures that you
22 had to follow to collect that evidence; correct?

23 A Yes, ma'am.

24 Q Okay. And you know how to do that?

25 A I do.

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1 Q Okay. In fact, you regularly do that activity.

2 You process crime scenes?

3 A Yes, ma'am, I do.

4 Q Okay. So would it be fair to say that you

5 might even be an expert in the processing of crime

6 scenes; correct?

7 A I would not consider myself to be an expert,

8 but I have done it before many times.

9 Q And you're accurate; right?

10 A I try to be, yes, ma'am.

11 Q And thorough?

12 A I try to be thorough.

13 Q Okay. And through your accurate and thorough

14 investigation, you learned that Minor had made

15 an allegation against Gerald Barrett that a sexual

16 assault occurred, not one to two weeks before the end

17 of school, but two days after Saint Patrick's Day, is

18 what you -- you got; right?

19 A Yes, ma'am. I learned that at the forensic

20 interview at Hope Haven.

21 Q And you took that information, and you went and

22 got arrest warrants for Mr. Barrett; right?

23 A Yes, ma'am, I did.

24 Q And in your arrest warrant, you stated March

25 19th was the day this happened; right?

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1 A I did.

2 Q Okay. And to the best of your knowledge, the
3 solicitor's office took that information and got those
4 indictments; right?

5 A I believe that's correct, yes, ma'am.

6 Q But those aren't the first indictments they got
7 in this case, are they? They're the second set of
8 indictments; right?

9 A I believe the first set of indictments were for
10 the date of March the 19th, but the second set were for
11 the other date.

12 Q Right. The second set of indictments they
13 got extended the date all the way back to March 11th;
14 correct?

15 A I believe that's correct, yes, ma'am.

16 Q And Assistant Solicitor Patrick Hall talked to
17 you about the reason they needed to move the date back
18 to March 11th; correct?

19 A He did tell me that they were unsure of the
20 dates, and that I needed to follow up on --

21 Q And the solicitor also had informed you that
22 Mr. Barrett had served notice of an *alibi* defense,
23 correct, for March 19th; right?

24 A That's correct.

25 Q And so he sent you out, after he was made aware

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1 that Mr. Barrett had an *alibi* for the date of March
2 19th, to talk to Shawn Ward; correct?

3 A That's correct.

4 Q Okay. And to get Shawn Ward to make a
5 statement -- or to receive a statement, I suppose, from
6 Shawn Ward, that would move the date of the alleged
7 assault all the way back to the Saint Patrick's Day
8 Parade on Hilton Head; right?

9 A He did not instruct me as to what date to get
10 it for. The date problem, I guess, for lack of a better
11 term, is primarily my fault. Because when I watched the
12 Hope Haven interview of Minor she said that the
13 assault had occurred a couple of days after Saint
14 Patrick's Day, which I assumed to be March the 17th,
15 when Saint Patrick's Day actually was in 2012. And
16 after speaking with Mr. Ward, I realized that she was
17 probably referring to the actual Hilton Head Island
18 Saint Patrick's Day Parade, which during 2012 was not
19 celebrated on the same day as traditional Saint
20 Patrick's Day. That Saint Patrick's Day Parade was
21 March the 11th.

22 Q And this light bulb didn't go off, you know,
23 over your head until you had been informed that
24 Mr. Barrett had an *alibi* for March 19th; correct? None
25 of that took place until you knew about the *alibi* from

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1 the assistant solicitor; right?

2 A Ma'am, I did not realize that I had made a
3 mistake in assuming that the child was referring to
4 traditional Saint Patrick's Day until that time.

5 Q Now, you also received information through your
6 investigation -- and this is not in March 2013. This is
7 back in the summer of 2012. Just two -- maybe even a
8 month after the alleged sexual assault, if you take the
9 date being the end of school, that -- that a -- a
10 violent sexual assault, where there was blood and semen,
11 had taken place at Shawn Ward's house, in the bed there,
12 and you never went to the scene. You never looked at
13 the bed at all; correct?

14 A That's correct.

15 Q Okay. Now, isn't it true, Officer Adams, that
16 the Beaufort County Sheriff's Department has what could
17 be considered a state-of-the-art DNA processing lab
18 right here in Beaufort County?

19 A Yes, ma'am, they do have a DNA lab here.

20 Q Tim French runs that program, and it is -- it
21 is stellar. It's certified. It is good to go; right?

22 A Yes, ma'am.

23 Q All right. And that DNA lab could take samples
24 from a crime scene, like a mattress, where there's
25 semen, stains, and analyze it to determine where that

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1 came from, couldn't they?

2 A They could, yes, ma'am.

3 Q But the reason they can't do that in this case
4 is because we don't have any such samples in this case;
5 correct?

6 A That is correct. We do not have those samples.

7 Q And that's because you didn't go to the scene,
8 and you didn't take those samples; correct?

9 A I did not take those samples because of the
10 length of time of the disclosure.

11 Q I understand what you're saying, but you didn't
12 go, and you didn't take them; correct?

13 A I did not take any samples.

14 Q And even in March 2013, when you did go to the
15 scene, armed with your camera, to take the photographs,
16 you didn't take any samples; correct?

17 A That is correct.

18 Q Okay. So the bed that you photographed,
19 upstairs at Shawn Ward's house, did you think that was
20 the bed that the assault had happened in?

21 A The reason why the bed is in the photograph
22 is because I took general overview photos of the entire
23 house. I did not believe that that was the actual
24 bed.

25 Q Why not?

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1 A Because Brandace Smith and her children had not
2 lived there in quite some time.

3 Q But you don't know that for sure; right?

4 A That's correct.

5 Q And you're an investigator; right?

6 A I am.

7 Q And you might should have asked that question,
8 shouldn't you?

9 A I should have.

10 Q Okay. The answer to that question, and the
11 stains on that bed, might actually contain the
12 information that would say there is no stain on that
13 bed; there is no semen on that bed; right?

14 A I believe Mr. Ward testified earlier that it
15 was not the same bed.

16 Q That he had disposed of the bed where the
17 alleged sexual assault took place; right? He had gotten
18 rid of it?

19 A It wasn't the same bed. That's what I recall.

20 Q And did he tell you that on the day you were
21 there taking the photographs?

22 A I don't recall him telling me that.

23 Q One of the critical pieces of information that
24 you were able to get from Mr. Ward, when you went to
25 talk to him in March of 2013, it seems pretty clear from

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1 your report, and his statement, is that on the night of
2 the Saint Patrick's Day Parade from Hilton Head, he and
3 Brandace got home after Minor got home; right?

4 A May I refresh my memory?

5 Q Sure.

6 (Respite.)

7 (The witness reviews documents.)

8 A What I recall from memory, ma'am, is that they
9 rode separately.

10 Q Would it be -- would you like to see a copy of
11 his statement?

12 A Yes, ma'am, I would.

13 Q Okay. Let me -- let me provide that to you.

14 MS. CAMPBELL: May I approach?

15 THE COURT: You may.

16 Q (By Ms. Campbell) Officer Adams, I have
17 highlighted the sentence that I'm referring to. If you
18 could read that for the jury, please.

19 A It's: Someone took the girls back to the
20 house. We followed about an hour or two later.

21 Q Okay. Thank you.

22 (Document is handed back to Ms. Campbell.)

23 MS. CAMPBELL: That's all I have.

24 MS. CONCANNON: Just briefly, your

25 Honor.

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REDIRECT EXAMINATION

1

2 BY MS. CONCANNON:

3 Q Investigator Adams, would it be common or
4 typical for five months after a sexual assault has
5 occurred --

6 MS. CAMPBELL: Your Honor, I'm going to object.
7 He's not an expert. He's already testified he's not an
8 expert.

9 THE COURT: I don't know what her question is.

10 MS. CAMPBELL: Okay.

11 Q (By Ms. Concannon) -- for you personally to go
12 and collect DNA samples?

13 A That's correct.

14 MS. CONCANNON: I have no further questions,
15 your Honor.

16 MS. CAMPBELL: Nothing.

17 THE COURT: You may step down. Thank you.
18 Call your next witness.

19 MS. CONCANNON: Your Honor, at this point the
20 State rests.

21 THE COURT: All right.

22 THE COURT: Ladies and gentlemen, you have now
23 heard all the testimony that you will hear on behalf of
24 the State. That signifies to the Court there's a matter
25 of law that I must take up outside of your presence. Do

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1 not begin your deliberations; do not discuss the case
2 amongst yourselves. You may leave your notepads in your
3 chair.

4 Please rise for the jury. We will receive you
5 back in just a few moments.

6 (The jury is escorted from the courtroom at
7 2:11 p.m.)

8 THE COURT: Thank you. Be seated. Any motions
9 or matters?

10 MS. CAMPBELL: May it please the Court, your
11 Honor. At this time, on behalf of my client, I would
12 make a Motion for Directed Verdict. I would renew my
13 motion made previously, and in particular, my motion in
14 reference to Kendra Twitty and her testimony with regard
15 to the Child Sexual Assault Accommodation Syndrome. And
16 I would continue to object, in the sense that, I believe
17 what the State accomplished and did was to call it
18 something different than what it was. And I should have
19 had an opportunity, with that type of testimony, to have
20 an expert of my own for Mr. Barrett, to defend him
21 against that, and we were not granted that opportunity.

22 I would also renew my motion, which your Honor
23 obviously has already ruled on, but for the record, I'm
24 renewing the Motion to Quash the Indictments, as the
25 dates were changed in those Indictments. And any other

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1 objections that I had during the trial that were ruled
2 against me at this point. Thank you, your Honor.

3 THE COURT: All right. I need for you to go
4 through each Indictment, tell me the elements of each
5 Indictment, and the testimony that has been presented.

6 MS. CONCANNON: Thank you, your Honor. The
7 first Indictment that Mr. Gerald has been presented with
8 is 2012-1631. It charges him with the offense of
9 criminal sexual conduct with a minor in the second
10 degree. Minor got on the stand, was able to
11 testify to the incident personally. She was the victim.
12 Her story remained consistent from when she initially
13 disclosed, when she initially gave her interview to
14 Kendra Twitty as it was today. The only element --
15 which isn't even an element of the offense charged --
16 the only thing that was not exactly concrete and
17 identical in every testimony was the date of the
18 incident, and date is not an element of criminal sexual
19 conduct.

20 Minor stated that he -- that the Defendant,
21 Gerald Barrett, vaginally penetrated her with his penis
22 after already having assaulted her with her hands --
23 with his hands downstairs, which he also digitally
24 penetrated her. That would encompass a sexual battery
25 that Minor stated happened.

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1 And Minor is 14 years old -- was 14 years old
2 at the time of the incident. She was born in -- on New
3 , making her 14, and she's 15 today.

4 Mr. Barrett was 21 years of age at the
5 incident. That would go to the criminal sexual conduct
6 with the minor second degree. Ms. Twitty was able to
7 reiterate what Minor told her during the forensic
8 interview, and it matched Minor ' disclosure then, as
9 well as today.

10 Mr. Barrett is also charged in the Indictment
11 2012-GS-07-1632 with kidnapping. He did unlawfully
12 seize, confine, or abduct, carry away without authority
13 of law. Minor stated that he held her arms down. He
14 confined her to her bed. She stated she didn't -- she
15 couldn't go away, she couldn't escape, she had nowhere
16 to go. She stated that on the stand, as well as Kendra
17 Twitty, in her recitation of what was told to her during
18 the forensic interview.

19 He has also been charged with lewd act in
20 Indictment 2012-GS-07-1633. And the lewd act stems from
21 the incident that initially occurred earlier on in the
22 night downstairs on the chair.

23 Minor was 14 years old, and the Defendant was
24 over the age of 16 when this occurred. The Defendant
25 touched her breasts and her vaginal area, with his

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1 hands, on her skin, beneath her clothing. And she was a
2 child. She was a minor. She was 14 years old when it
3 happened. And he was above the age of 16 when he
4 participated in this. It states it's unlawful for a
5 person over 14 to willfully and lewdly commit
6 lewd or lascivious acts on the body of a child under the
7 age with the intent of arousing, appealing to, or
8 gratifying, and that's what he did when he began to
9 assault her downstairs, and first by groping and
10 fondling her breasts underneath her clothing, and then
11 following it up by groping and fondling her vaginal
12 area, as well inserting his finger inside of her vagina.
13 testified to that.

14 We've had different testimony, and from Shawn
15 Ward, as well as , placing the Defendant at the
16 residence. He's been there before. He was there when
17 it occurred. Shawn Ward testified that he gave him
18 permission to spend the night.

19 The -- ' testimony has been consistent
20 from day one. And the State would believe that all of
21 the elements have been met. And Investigator Adams was
22 also able to testify to the location and date that it
23 did occur in Beaufort County. has always been
24 consistent that it happened at the house that she lived
25 at with Mom and Shawn.

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1 As far as identification, Minor was able to
2 identify the Defendant. Shawn Ward was able to identify
3 the Defendant. And regarding date, even though we have
4 yet pinpointed, the testimony has always stated that
5 it's been around Saint Patrick's Day. And to a child,
6 she may not equate Saint Patrick's Day with March 17th.
7 She equated it with the parade instead of the actual
8 calendar date of the holiday. Thank you.

9 THE COURT: Any response?

10 MS. CAMPBELL: No, I don't have any response,
11 your Honor.

12 THE COURT: All right. Pursuant to Rule 19 of
13 the Rules of Criminal Procedure, and ruling on a motion
14 for directed verdict, the Court must view the evidence
15 and all reasonable inferences in the light most
16 favorable to the nonmoving party. I'm concerned only
17 with the existence or nonexistence of the evidence, not
18 as to the weight.

19 Mr. Barrett is charged with criminal sexual
20 conduct of a minor, age 11 to 14, second degree,
21 kidnapping, lewd act upon a child under 16. In order to
22 prove second degree criminal sexual conduct with a
23 minor, the State must prove that the Defendant engaged
24 in the sexual battery with the victim, must prove that
25 the victim was at least 11, but not more than 14 years

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1 old at the time of the sexual battery.

2 For kidnapping, the State must prove that the
3 Defendant knowingly and unlawfully seized, confined,
4 inveigle, decoyed, kidnapped, abducted, or carried away
5 another person without authority of law. For committing
6 a lewd act upon a minor, the State must prove that the
7 Defendant was over the age of 14. The State must prove
8 the Defendant willfully and lewdly committed a -- or
9 attempted to commit a lewd or lascivious act on or with
10 the body or the parts of a child under the age of 16,
11 with the intent to arouse, appeal to, or gratify the
12 lust, passions, or sexual desires of the Defendant or of
13 the child.

14 Minor testified that she was born
15 . She was 14 in March of last year,
16 2012. She stated that she was in her bedroom, and
17 Mr. Barrett came in, laid down beside her, and his
18 fingers touched and went inside of her lower private
19 area. She stated that at certain points, he was holding
20 her hands down with his hands. She stated that he put
21 his private into her private.

22 Minor also testified that prior to the
23 above sexual assault, she was sitting on the couch -- or
24 in a chair, watching TV downstairs, and the Defendant
25 sat down close to her. She indicated that she moved to

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1 the chair, and Bubba sat down with her. Minor
2 testified that Bubba's body was touching her in the
3 chair, that he further touched her lower private area
4 underneath her clothes, and his fingers went inside of
5 her.

6 In viewing the testimony that has been
7 presented in the light most favorable to the nonmoving
8 party, Motion for Directed Verdict on all three
9 Indictments is denied. Further, the Court stands by all
10 rulings prior -- made prior to this point. And there
11 has been no testimony that has been presented that would
12 change my initial ruling.

13 Note your exception to all of my previous
14 rulings and to my motion for directed verdict.

15 Mr. Barrett, we have now reached the stage of
16 the trial that you will present your defense. Have you
17 made a decision whether or not you will testify?

18 THE DEFENDANT: I don't wish to.

19 THE COURT: All right. Have you had enough
20 time to speak with your attorney concerning that matter?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: All right. And, Ms. Campbell,
23 you've had an opportunity, at least over the lunch hour,
24 to speak with your client and prepare him for trial?

25 MS. CAMPBELL: I have.

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1 THE COURT: All right. Do you have any
2 additional witnesses?

3 MS. CAMPBELL: I have spoken with my client
4 about that, and there will be no additional witness.

5 THE COURT: All right. So you rest at this
6 time?

7 MS. CAMPBELL: I would rest at this time, and
8 then I would have additional motions.

9 THE COURT: All right. All right. I will
10 allow you to rest in front of the jury. Let me hear
11 your motions.

12 MS. CAMPBELL: Your Honor, again, I would renew
13 the motions I made prior on the directed verdict. And
14 at this point, I would add that I believe the State has
15 failed to establish the jurisdiction. I believe that
16 there has been no testimony from the witness stand that
17 this crime occurred in Beaufort County.

18 THE COURT: I -- I have researched that,
19 because that's one of my biggest things that I always
20 make sure. And the detective -- one of the last
21 questions that she asked, was he gave the address of the
22 home and indicated it was in Beaufort County.

23 MS. CAMPBELL: And I appreciate that. But I
24 felt that my interpretation of what he had said
25 warranted me bringing that to the Court's attention and

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1 obtaining your ruling on that.

2 THE COURT: You have my ruling, because I am
3 very particular about jurisdictional issues. And so I
4 know for a fact that it -- that there was testimony that
5 it occurred in Beaufort County.

6 MS. CAMPBELL: Thank you so much, your Honor.
7 And, again, as I said, renew my motions for directed
8 verdict and the other motions. Thank you very much.

9 THE COURT: All right. I have heard nothing
10 that would make me change my ruling as to the motion for
11 a directed verdict. Are you requesting any lesser
12 included?

13 MS. CAMPBELL: I am not.

14 THE COURT: State requesting any lesser
15 included?

16 MS. CONCANNON: No, your Honor.

17 THE COURT: State prepared to go forward and
18 argue and charge at this time?

19 MS. CONCANNON: Yes, your Honor.

20 MS. CAMPBELL: I can. Would I like to? No. I
21 would prefer to argue and charge in the morning. But we
22 can proceed at this time, if that's what your Honor
23 would like to do. I would like to have over the
24 night to prepare my closing argument and to have
25 an opportunity to look at the evidence again and

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1 to -- although I had submitted proposed requests to
2 charge to your Honor, I would like to have an
3 opportunity to go back through those again and have sort
4 of a conference, if you will, with the bench about the
5 charges. I think I need to know what they are before I
6 do my closing.

7 THE COURT: What's the State's preference?

8 MS. CONCANNON: Your Honor, the State is
9 prepared to close and charge this afternoon. But it's
10 in your discretion. We will go in the morning, if
11 that's what --

12 THE COURT: I didn't hear your last --

13 MS. CONCANNON: We're prepared to go this
14 afternoon, but we can also go in the morning, if that's
15 what you so desire.

16 THE COURT: All right. I'm going to bring the
17 jury in and release them. We'll argue and charge it in
18 the morning. Is Mr. Hall released from his subpoena?

19 MS. CAMPBELL: He is.

20 THE COURT: All right. If you will please
21 let --

22 MS. CAMPBELL: As is Deputy Sheriff Glass. He
23 should be released as well.

24 THE COURT: All right.

25 Bring in the jury.

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1 You will need to rest in front of the jury.
2 MS. CAMPBELL: Yes, I will.
3 THE COURT: Thank you.
4 (The jury is escorted into the courtroom
5 at 2:25 p.m.)
6 THE COURT: Thank you. Please be seated.
7 Ms. Campbell?
8 MS. CAMPBELL: May it please the Court, your
9 Honor? On behalf of my client, at this time, the
10 Defense rests.
11 THE COURT: Ladies and gentlemen, you have now
12 heard all of the testimony that you will hear in this
13 case and received into evidence all the exhibits that
14 will be made part of the record in this case. What is
15 left is closing arguments on behalf of counsel, and then
16 I will instruct you on the law applicable to this case.
17 Ladies and gentlemen, we have determined that
18 we are going to break for the evening, come back in the
19 morning and argue and charge, so that you will have the
20 full day, and if you need any additional time to
21 deliberate -- hear closing arguments, the instructions,
22 and deliberations. Ladies and gentlemen, do not begin
23 your deliberations. I have not instructed you on the
24 law applicable to this case. Ladies and gentlemen, do
25 not do any independent research regarding this matter.

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1 Please go home, have a wonderful afternoon, and be back
2 in your jury room at 9:15. We will begin again promptly
3 once all 14 of you are here.

4 Please have a wonderful afternoon. I will see
5 you in the morning. Please rise for the jury.

6 (The jury is escorted from the courtroom
7 at 2:27 p.m.)

8 THE COURT: Thank you. Be seated.

9 Anything before we break for the afternoon?

10 MS. CONCANNON: Nothing from the State, your
11 Honor.

12 MS. CAMPBELL: Not from the Defense.

13 THE COURT: All right. I want to do a charge
14 conference now so I can prepare them over the evening
15 hour. I have Defendant's --

16 Have you had an opportunity to go over the
17 charges presented by the Defendant?

18 MS. CONCANNON: No, your Honor.

19 MS. CAMPBELL: I apologize, because I believe I
20 have one copy in here. And I can quickly make a copy
21 for the prosecution. Right in the back. Right there.

22 (Document is handed to the Deputy Clerk of
23 Court for copying.)

24 THE COURT: Mr. Shelton.

25 (A discussion is held off the record.)

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1 THE COURT: All right. As to the Defendant's
2 Request to Charge, I do not charge that specific
3 language, but it's encompassed in my general witness
4 charge. Defendant's Request to Charge, Number 2, the
5 last sentence is an incorrect statement of law. It's an
6 "or" not an "and." So I will be charging the applicable
7 section.

8 Defendant's Request to Charge, Number 3, is an
9 accurate statement of the kidnapping. So I will charge
10 that.

11 Defendant's Request to Charge, Number 4, is a
12 correct statement of lewd act on a minor, and it will be
13 charged.

14 Since Mr. Barrett did not testify, I will
15 include Defendant's Request to Charge, Number 5.

16 I will be including my standard reasonable
17 doubt charge, not Defendant's Request, Number 6.

18 Defendant's Request to Charge, Number 7, will
19 be included as to expert witnesses.

20 Defendant's Request to Charge, Number 8, will
21 be include.

22 Defendant's Request to Charge, Number 9, will
23 be included.

24 Defendant's Request to Charge, Number 10, as to
25 credibility of witnesses, will be included.

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1 And that is all I have.

2 Any questions concerning those? Pretty
3 straightforward.

4 MS. CAMPBELL: May I?

5 THE COURT: You may.

6 MS. CAMPBELL: The one request to charge that I
7 believe that your Honor disallowed or disapproved was
8 Request to Charge, Number 6, which is the two-sentence
9 definition of reasonable doubt. And my simple question
10 to the Court would be, do you have the kind -- a
11 reasonable doubt is the kind of doubt that would cause a
12 reasonable person to hesitate to act, is that phrase
13 included in your reasonable doubt charge?

14 THE COURT: Been a while since I gave a
15 criminal charge. Give me just a second. I charge
16 firmly convinced, and you must give the Defendant the
17 benefit of the doubt. That's the one I charge.

18 Any questions?

19 MS. CAMPBELL: Your Honor, so I believe what I
20 understand is that -- that my request to have the charge
21 as a kind of doubt that would cause a reasonable person
22 to hesitate to act is being then denied, to be included
23 in the charge to the jury? I'm not saying to substitute
24 it for your charge, but would you allow it to be charged
25 in addition?

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1 THE COURT: I charge firmly convinced. So I am
2 not charging the hesitate to act.

3 MS. CAMPBELL: Hesitate to act?

4 THE COURT: Yes.

5 MS. CAMPBELL: Okay. So would I be allowed,
6 then, to make this is a Court's exhibit?

7 THE COURT: I want you to always make, if you
8 can, a packet, and it can be Court's Exhibit 1.

9 MS. CAMPBELL: Well, I will approach, then, if
10 I may, and mark this as Defendant's Exhibit in this
11 matter.

12 THE COURT: All right. Do you not want to
13 charge -- give us the whole packet and make it
14 Court's 1? I think it's always a really good procedure
15 to use.

16 MS. CAMPBELL: I will be happy to do that, your
17 Honor.

18 THE COURT: All right. Thank you.
19 Does the State have any requests to charge?

20 MS. CONCANNON: No, your Honor.

21 THE COURT: All right. With that, is there any
22 further questions about the charge? There are no lesser
23 included?

24 MS. CAMPBELL: I would like to ask, if I may
25 approach.

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1 THE COURT: You may.

2 MS. CAMPBELL: And I believe this packet would
3 be Defendant's --

4 THE COURT: It Court's 1.

5 MS. CAMPBELL: I'm sorry. Court's 1. If I
6 may.

7 (Court's Exhibit No. 1 is marked for
8 identification.)

9 MS. CAMPBELL: Will I have an opportunity to
10 see a copy? Some judges will give us a copy of their
11 charge --

12 THE COURT: No, ma'am.

13 MS. CAMPBELL: -- prior to my closing.

14 THE COURT: I don't. No.

15 MS. CAMPBELL: Okay. So then I would assume
16 that I do not need to ask the Court for the typical
17 criminal trial charges, which I did not, which would,
18 obviously, unanimous verdict and those sorts of things.
19 That's all going to be in your charge?

20 THE COURT: Correct.

21 MS. CAMPBELL: All right. Thank you very much.

22 THE COURT: Thank you.

23 MS. CONCANNON: No objections. Nothing further
24 from the State regarding the charge.

25 THE COURT: All right. See you at 9:15, ready

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1 to go.

2 I do not have the verdict forms printed, but I
3 typically print a verdict form for each charge, check
4 guilty, check not guilty, just so you know. So there
5 will be three separate verdict forms.

6 MS. CAMPBELL: Thank you, your Honor.

7 THE COURT: All right. We're at ease. Thank
8 you.

9 COURT IN ADJOURNMENT, at 2:35 p.m.

10 (End of Volume II of IV. Day three of the
11 trial to commence tomorrow, May 22, 2013. at 9:15 a.m.)

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REPORTER'S CERTIFICATE

STATE OF SOUTH CAROLINA)
) ss.
COUNTY OF BERKELEY)

I, **ROLAYNE M. VOLPE**, Certified Court Reporter, CCR, and Registered Professional Reporter, RPR, do hereby certify that the transcript of the foregoing proceedings, **VOLUME II OF IV**, accurately reflects the events that occurred before me to the best of my ability at the time and place set out on the caption hereto, the witnesses having been duly cautioned and sworn, or affirmed, to tell the truth, the whole truth, and nothing but the truth.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken or to any attorney or counsel employed by the parties hereto, nor financially interested, directly or indirectly, in the outcome of this action.

CERTIFIED AND SIGNED on this 17th day of February,
2014.

ORIGINAL

ROLAYNE M. VOLPE, CCR/2018
Certified Court Reporter and
Registered Professional Reporter
Commission Expires: 8/31/2021

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) GENERAL SESSIONS COURT
FOURTEENTH JUDICIAL CIRCUIT

State of South Carolina,)
Plaintiff,) Case Nos: 2012-GS-07-1631
vs.) 2012-GS-07-1632
GERALD THOMAS BARRETT, JR.,) 2012-GS-07-1633
Defendant.)

ORIGINAL

TRANSCRIPT OF JURY TRIAL
VOLUME III OF IV
HEARD BEFORE JUDGE KRISTI LEA HARRINGTON
ON MAY 22, 2013

ROLAYNE M. VOLPE, CCR, RPR
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1 The above-styled cause came on for hearing on
2 the 22nd day of May, 2013, at 9:05 a.m., before Judge
3 Kristi Lea Harrington, presiding over the General
4 Sessions Court for the County of Beaufort, when the
5 following proceedings were had and entered of record, to
6 wit:

7 PROCEEDINGS

8 VOLUME III OF IV

9 (Defendant is present with his counsel.)

10 THE COURT: Any objections to the verdict
11 forms? From the State?

12 MS. CONCANNON: No, your Honor.

13 THE COURT: From the Defendant?

14 MS. CAMPBELL: No, your Honor.

15 THE COURT: Anything before we bring in the
16 jury?

17 MS. CONCANNON: Not from the State, your
18 Honor.

19 MS. CAMPBELL: Your Honor, I would just like
20 to put on the record -- and I have consulted with
21 Ms. Concannon -- it's my understanding, on behalf of
22 Mr. Barrett, I will be taking the opportunity to have
23 last argument. The State will have their argument.
24 Then I will argue on behalf of Mr. Barrett. And then
25 I've explained to Mr. Barrett that you will then give

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1 the jury the law in this case.

2 THE COURT: Thank you. We'll be at ease until
3 the jury comes in. I just wanted to make sure you had
4 seen the verdict forms.

5 (A recess is taken from 9:09 a.m. until
6 9:17 a.m; at which time, the proceedings continue
7 as follows:)

8 THE COURT: All the jurors are here. Anything
9 before we bring them in? From the State?

10 MS. CONCANNON: No, your Honor.

11 THE COURT: From the Defendant.

12 MS. CAMPBELL: No, your Honor.

13 THE COURT: All right. Let's bring in the
14 jury. Thank you.

15 (The jury is escorted into the courtroom
16 at 9:18 a.m.)

17 THE COURT: Thank you. Please be seated.

18 Good morning, ladies and gentlemen. Did
19 every member of the panel comply with the Court's
20 instructions? If you failed to follow my instructions
21 over the evening hours, please stand.

22 Let the record reflect that all 14 jurors have
23 indicated that they complied the Court's instructions.

24 Ladies and gentlemen, as you were told
25 yesterday when we recessed for the evening, you had

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1 heard all the evidence in this case and received into
2 evidence all the exhibits that will be made part of the
3 record. As I indicated to you, all of those exhibits
4 that have been entered into evidence will go back with
5 you during your deliberation.

6 What you will hear now is closing arguments on
7 behalf of the parties. After you've heard closing
8 arguments, I will instruct you on the law applicable to
9 this case. Ladies and gentlemen, the State will go
10 first with their closing argument, and then Ms. Campbell
11 will go forward with her closing arguments. And then I
12 will instruct you on the law. Please remember what is
13 contained in closing arguments is not to be considered
14 evidence. It is merely the attorney's contention as to
15 what the evidence has shown you. I will instruct you on
16 the law that is applicable to this case. Please give
17 your strict attention.

18 Ms. Concannon?

19 MS. CONCANNON: Thank you, your Honor. May it
20 please the Court?

21 CLOSING ARGUMENTS

22 BY MS. CONCANNON:

23 Ms. Campbell came in here yesterday speaking
24 about this torch of innocence, this big flame, this
25 presumption of innocence that Gerald Barrett, Jr., had

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1 when he walked in those doors. And she's right. When
2 he set foot in this courthouse, he's presumed innocent.
3 But flame by flame and flicker by flicker, that torch
4 was extinguished. Gerald Barrett, Jr., he is the one
5 that put that flame out. He extinguished it, he dug a
6 hole, he buried it, and he stomped on it. But someone
7 else carries that torch today: Minor She has that
8 torch today. And it may not be as perfect or as pretty
9 as it was when it came in here yesterday, but she's the
10 one that carries it today.

11 This trial really wasn't about Minor This
12 trial was about Gerald Barrett, Jr. and what he did.
13 And because of that, the Defense tried to get you to
14 look elsewhere. They tried to take your distraction
15 [sic] away from the testimony, away from the truth.
16 Now, we're all lucky enough we live on the coast and
17 live by the water. And if you go to the beach and you
18 put your toes in the sand, the sand kind of stirs up a
19 little bit and it gets cloudy and you can't really see
20 your feet anymore. Well, if you wait a second and stop
21 and stay still, the sand sinks back to the bottom and
22 you see your toes again. That's the truth. All these
23 distractions will settle, and you'll see the truth. It
24 is screaming at you. And the truth is, is that he raped
25 her. He committed two sexual assaults on her.

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1 Now, some of these distractions that
2 Ms. Campbell wanted you to focus on were the date that
3 this happened. Well, Minor has never swayed that it
4 happened around Saint Patrick's Day of last year.
5 Children like to equate traumatic situations with maybe
6 holidays or birthdays or something that stands out to
7 them. But, again, Minor is a child, and she did not know
8 that Saint Patrick's Day was not necessarily the date of
9 the parade. She equated Saint Patrick's Day with the
10 parade. She didn't know that it was March 17th. She
11 thought it was the day that she celebrated it. It's not
12 Christmas Day, it's not New Year's Eve, New Year's Day,
13 or her birthday. She didn't know the date that it
14 happened. She just knew it happened, it happened at
15 Mom and Shawn's house, and it happened around Saint
16 Patrick's Day. That has never changed. She has
17 maintained that story from when she disclosed to her
18 friends and sister, when she told Kendra Twitty about
19 it, when she told police about it, and when she told you
20 about it yesterday. That has never changed.

21 Next, the Defense wanted to get into Minor s --
22 was she maybe smoking? Irrelevant. Even her, as a
23 15-year-old girl, knew that has nothing to do with this
24 case; and, no, I'm not smoking cigarettes. It has
25 nothing to do with this.

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1 She next wanted you to look at, well, Minor's
2 cutting herself. Well, that's insulting. She is a
3 14-year-old child. Even adults do not talk about their
4 depression or their cutting or how they're coping with
5 their depression. Minor, herself, knew, not relevant.
6 Has nothing to do with this case that we are here about.
7 Has nothing to do with the fact that she was raped by
8 Gerald Barrett, Jr.

9 She next wanted you to think of the domestic
10 violence that maybe Minor has been exposed to. Sad, yes.
11 Maybe shed some light on her family dynamic? Yes. Has
12 anything to do with this? No. Nothing to do with the
13 fact that, again, she was raped by Gerald Barrett, Jr.

14 She next wanted you to think that, if this
15 happened, there should have been pools and piles of
16 blood everywhere, puddles. There should have been blood
17 everywhere. This wasn't a gunshot. This wasn't a knife
18 attack. This was a sexual assault. And Kristin Dalton
19 explained to you that, you know what, the amount of
20 blood that Minor reported is consistent with the sexual
21 assault that occurred. She reported blood that maybe
22 was the same amount as a period to her, and that is
23 consistent with what happened. There doesn't have to be
24 puddles and pools of blood to make this story true.

25 She wanted you to pay attention to all these

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1 distractions. But I think the more important thing to
2 pay attention to is what questions were not asked to
3 Minor, what they didn't want you to look at, what they
4 didn't want you to focus on. And that is the truth.
5 She was never asked about the rape. She was never asked
6 about the lewd act that happen downstairs. She was
7 never asked it if happened at Mom's house. She was
8 never asked what he did to her. She was never asked
9 if he held her down, if he pinned her down, if he
10 restrained her to her bed. She was never asked, Did he
11 put his penis inside of you? No. Because that's the
12 truth, and they did not want you to focus on that.

13 So let's talk about what really did happen, the
14 facts that were -- that were said on that witness stand.
15 Minor was sexually assaulted not once, but twice by that
16 man. First, he attacked her downstairs in her own home.
17 He groped her bare breasts, her 14-year-old body, with
18 his hands. Second, he placed his hands down her pants
19 and penetrated her with his fingers. He sexually
20 assaulted her with that lewd act downstairs.

21 He was not done. He went upstairs to her
22 bedroom. He pinned her down. He held her arms down so
23 she could not move. She could not go anywhere. She was
24 stuck. She was forced. She was confined to her bed.
25 So she shut her eyes. That was her escape. He put his

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1 entire weight on top of her, he held her down, and he
2 forced his penis inside of her. He raped her.

3 After the assault, Minor went to the bathroom.
4 She wanted to get it off of her. She wanted to wash it
5 off of her. She was ashamed. She was embarrassed. She
6 first went to the bathroom; she used the restroom. And
7 she said to you, as she told y'all, yeah, when I wiped,
8 there was a little bit of blood, and there was also this
9 weird white stuff. Weird white stuff. That's what a
10 14-year-old girl would call it. She doesn't know what
11 it. She probably still today doesn't know what that is.
12 But it is indicative of what happened. He forced her,
13 he raped her, and he left that on her.

14 So now let's talk about who Minor disclosed to
15 and when she told. We heard a little bit about Minor's
16 family dynamic. She doesn't come from the best home.
17 Her family's a little broken. So who was she going to
18 tell? She was going to tell the people she felt closest
19 to. Those are her friends and her sister, people around
20 her age who she could confide in, who she felt
21 comfortable telling this to. She didn't want to tell
22 grown-ups. She did not want to tell grown-ups. She was
23 embarrassed. She was ashamed. She couldn't believe
24 this happened to her. And she told you up there, she
25 was scared. She didn't want to talk to police about

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1 this. She didn't want to talk to anybody about this.

2 She was scared and ashamed.

3 When she had to tell Kendra Twitty about this
4 in the interview, she shut down. She was soft-spoken
5 at the beginning question, and she was able to get out a
6 little bit about herself. But once the questions were
7 asked regarding the specifics of the sexual assault,
8 she shut down. She could not even say the words because
9 she was so ashamed, so scared, and so embarrassed about
10 what happened to her. She had to write it down. You
11 read the words that she wrote down, words that nobody
12 should ever have to think or say or write down: He
13 raped me. He got on top of me, and I thought I was
14 dying.

15 You saw her walk through those very doors and
16 come up here and get on that witness stand. Her head
17 was hung down. She walked with a slow pace. She was
18 soft-spoken. She couldn't look up. She could barely
19 even look in that direction. She was -- her shame and
20 her horror was written all over her. And her demeanor
21 just showed the truth more, that -- that, in fact, he
22 raped her.

23 Another thing that needs to be acknowledged is
24 that the story she told y'all yesterday that she was
25 brave enough to say and relive again, because every time

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1 she says it, she's taken back to that very night, is the
2 same story she disclosed. It's the same story she told
3 police officers; it's the same story she said in her
4 interview to Kendra Twitty in July of last year; and
5 it's the same story she said to y'all yesterday. The
6 facts have never changed. That's because the truth has
7 never changed. The truth has remained the same since
8 the night it happened. It remained the same the first
9 time she told her friends. It remained the same the
10 first time she had to talk to the police about it. It
11 remained the same the first time she had to talk to
12 Kendra Twitty about it. And it remained the same when
13 she told y'all. And it's still the same right now. The
14 facts of the assault have never changed: He touched her
15 downstairs, he groped her downstairs, and then raped her
16 upstairs.

17 Gerald Barrett is a guilty man. He is first
18 guilty of the lewd act for groping her and fondling her
19 bare skin and digitally penetrating her on the couch
20 downstairs. Second, he is guilty of criminal sexual
21 conduct in the second degree with a minor. Minor was 14
22 years old when this happened to her. Her life may never
23 be the same. Gerald Barrett was a grown man. He's an
24 adult in every sense of the word. Even if you want to
25 consider, well, maybe he thought she was consenting

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1 because she wasn't really trying to go anywhere. No.
2 She was 14 years old. She cannot consent to something
3 like this. She does not have the wherewithal to know
4 what is happening. She knows that it -- she can't do
5 it. But Minor never indicated that she wanted it, that
6 she liked it, that she -- it was her idea. From the
7 beginning she has said, He held me down, and he forced
8 himself on me. Consent is not there. He forced a
9 14-year-old child to have sex with him.

10 And, finally, he is also guilty of kidnapping.
11 Minor was confined to her own bed. She had nowhere to
12 go. She was stuck. She had no escape. He took his
13 adult body, put it on top of her, pinned her arms down.
14 She was lifeless underneath his weight and his strength
15 and his might. She could not go anywhere. She was
16 stuck. He held her down and forced his penis inside of
17 her and raped her. The only escape she had was to close
18 her eyes and try to survive, and that's what she did.
19 And that is what she told you because that is the truth.
20 The truth was there the very day this happened. The
21 truth was there when we started this trial. The truth
22 is still here today. And that truth is, that man is
23 guilty. Thank you.

24 MS. CAMPBELL: May it please the Court?

25 THE COURT: Yes, ma'am.

1 CLOSING ARGUMENTS

3 Solicitor.

20 The soldiers in that case were not guilty. And
21 that American jury was true to the law, they were true
22 to the facts, and they were true to the evidence. They
23 found the soldiers not guilty. Now, it was not a
24 popular decision, but it was the right decision. And I
25 use this example for you to illustrate my point that in

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1 this case, you and you alone are the judges of the facts
2 and the evidence or the lack of evidence in this case.
3 And not a single person can argue with you and your
4 decision on that issue.

5 So what has the State of South Carolina asked
6 you to do? What did they ask you to do? They asked you
7 with what they have brought into this courtroom to take
8 it and roll it up and -- and put it into the form of a
9 bullet and put it in a gun and point it at Gerald
10 Barrett, Jr., and fire that verdict of guilty. You
11 can't take it back. You can't put it back in the gun.
12 You can't correct a wrong decision, and you can't put
13 the bullet back in the gun.

14 So what do they give you? What do you have to
15 work with? Well, we know three things. We know, number
16 one, that Minor is not reliable. We know, number
17 two, that Investigator Adams did not fully and fairly
18 investigate this case. And we know, number three, that
19 Shawn Ward -- and you saw him here, you saw how he
20 slouched down in his chair, leaned back, and how he told
21 you that he threw away the most critical piece of
22 evidence in the sexual assault case that we're here
23 today about. Gone. And I would tell you that every
24 single one of those facts, one, two, and three, is
25 reasonable doubt. And we're going to talk about that in

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1 a few minutes and what that means.

2 Now, how do we know that Minor is not
3 reliable? Well, you judge the believability, the
4 credibility of the witnesses from that stand. And you
5 can consider their demeanor, how they act, how they
6 speak, how they walk, how they talk. You can look at
7 bias or prejudice or motives and consistencies or
8 inconsistencies. And I'll tell you, I don't know how
9 many of you are parents, but if you have children and
10 your child is telling you a lie, they will not look at
11 you. They are fixated on the ground. They are fixated
12 with their eyes away from the parents' eyes. When you
13 catch them in the lie, when you push them on the lie,
14 they do not look you in the face. And if you look at
15 the demeanor of Minor when she came into this
16 courtroom, she would not look any of us in the face.
17 And the only time that she looked up is when she was
18 confronted with difficulties about her story.

19 I don't know what her motives were. I don't
20 know what was going on in Shawn Ward's house. I don't
21 know what she was being subjected to there. None of us
22 do. We don't have any information on that. I don't
23 know if she wanted to go back to Aiken, South Carolina,
24 if it had something to do with the boyfriend, C. ,
25 back there. But I will tell you this: As much as the

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1 State wants you to believe that the story is consistent,
2 it's not. It's, in fact, bounced all over the place.
3 And I think that is clear. And what I would say to you
4 is, yes, the truth does stay the same. It's a lie that
5 conforms to fit its needs as it gets bigger and deeper.

6 Now, this -- the Grandma Mary, she came in
7 here -- the stepmother grandmother, she came in here, if
8 you remember her testimony -- some of you may have
9 written it down -- she said the first she heard about
10 sexual assault taking place was at spring break. Now,
11 that's three full months ahead of July 2012. And it
12 took three months for this to be reported? What was
13 going on? I don't know; you don't know. What was
14 happening at 106 Pinecrest [sic]? Where is the
15 testimony that should be here from the other person that
16 was living in that house, Brandace Smith, Minor
17 mother? Absolutely no testimony.

18 Now, I'll tell you this also -- and you're
19 going to have this back in the jury room with you, in
20 the -- and the State put it in evidence. And I want you
21 to look at it very carefully because, if you'll notice,
22 what it doesn't say is it doesn't say that Bubba raped
23 me. It doesn't say Gerald Barrett, Jr., raped me. It
24 says: He raped me.

25 I don't know -- well, I'll, first off, say

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1 this: It is relevant. It is my job to bring out the
2 fact that Minor had mental problems and mental
3 disturbances long before Gerald Barrett was in the cross
4 hairs of whatever was going on at 106 Pine Street [sic]
5 and that whatever had been happening to her prior to
6 that had caused her such a level of trauma that she
7 would want to destroy her own body and cut it open. If
8 I know that, if that's part of the evidence in this case
9 and I don't bring that out, I'm not doing my job. I'm
10 not sworn to -- to know something and not bring it to
11 your attention. I can't do that.

12 Now, that mental disturbance I think might
13 explain the absolutely bizarre nature of what she did
14 testify to, that while she says she was being sexually
15 assaulted downstairs in Shawn Ward's house, that she was
16 texting on her phone. Ask yourselves this: The two
17 people who testified about that night, who got home
18 first that night, Saint Patrick's Day Parade on Hilton
19 Head? Shawn Ward says, Oh, Minor got home first. Minor
20 testifies: No, Shawn Ward got home first. Now, ask
21 yourself this also: Who are the two people who
22 destroyed evidence in this case, evidence that you might
23 like to have? Minor destroyed her clothes, destroyed the
24 sheets, all gone. She testified to that. Shawn Ward
25 testified to you -- now, this is where a sexual assault

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1 is supposed to have taken place of a teenage girl in his
2 house. And when asked about it, he says: I got rid of
3 that bed, but I don't know where I put it. I don't know
4 where it is now. I have no idea.

5 Now, the Beaufort County Sheriff's Office, it's
6 their responsibility to both Minor and to
7 Gerald Barrett, Jr., to fully and fairly investigate the
8 allegations in this case. Now, I will tell you
9 that Officer Adams testified that Beaufort County has a
10 certified, fully functioning, ready to roll DNA lab. We
11 use it all the time. It's there for just this type of
12 situation. I mean, you know, we can look -- we don't
13 need to be experts to know DNA's going to stay around
14 millions of years. Dinosaur DNA, you can get it. And
15 if there was sex taking place in that bed, in a bed at
16 that house, there's going to be evidence of it. If you
17 believe that a sexual assault took place there and that
18 the man who assaulted her ejaculated, it's going to be
19 there. You're going to find it. But even if you don't
20 even believe that, don't you think you should look for
21 it? Don't you think you should go to the location of
22 the assault? I don't care if it's a month or two months
23 or three months, you should go. You should look for the
24 evidence because who can do that? Officer Adams told
25 you who can do that. The officers, police. They can go

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1 get a search warrant. You can't get a search warrant.
2 I can't get a search warrant. Gerald Barrett can't get
3 a search warrant. He can't go in that home. The only
4 person you can rely on to do that is law enforcement.

5 What did they do? Well, they got an arrest
6 warrant from March 19th. They indicted him for March
7 19th. Gerald Barrett received counsel. He prepared for
8 trial. He notified, after he was aware of the
9 allegations, the State of South Carolina, You know what,
10 I wasn't there. I was somewhere else. Here's my notice
11 of my *alibi*. That's a problem. That doesn't fit. We
12 need to move it. And it was moved. And we move it all
13 the way back to, oh, Saint Patrick's Day on Hilton Head.
14 Changed the date, moved the date, denying him fairness.

15 Now, you go and you talk to the one person
16 you've never talked to before, and that's Shawn Ward,
17 and you do that nine months later. And he is none too
18 pleased with it, but he does give you what you need to
19 move the date. And any man, as I said before, the third
20 factor, that knows that there's an allegation that a
21 teenager in his house suffered sexual assault, picks up
22 that bed, throws it away, moves it away. I don't know
23 where it is. He says he doesn't know where it is.
24 That's suspicious. That's reasonable doubt right there.
25 Right there.

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1 Also we heard testimony about a party. There
2 was a party. There were people in that house coming and
3 going. Where are they? Where are the other people that
4 ought to be here to say, Hey, I was at that party. I
5 saw Gerald Barrett there. I'll tell you who tells you
6 he was there. Shawn Ward tells you he was there that
7 night. Nobody else.

8 And I'll speak just a little bit about
9 Kendra Twitty and Kristin Dalton. I'll tell you they're
10 cut from the same cloth. They read from a script. They
11 testify the same every time. They work for the same
12 company. They get paid to do what they do. They have
13 no firsthand knowledge about anything in this case, no
14 direct evidence. They're not a witness to anything.
15 And I say to you, you should discard their testimony
16 completely and in its entirety. It's biased; it's
17 prejudiced for the state of South Carolina. It's not my
18 job, as Ms. Concannon would tell you. And they like to
19 say that. They like to say I'm here muddying the
20 waters. That's not my job. I don't stand up here -- I
21 don't talk to witnesses; I don't question witnesses; I
22 don't investigate cases to try and confuse anyone. I am
23 trying to help you see, to work for my client, to put
24 the burden of proof where it squarely belongs, and
25 that's this table right here, as I told you when we came

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1 into this courtroom. And I -- and Ms. Concannon wants
2 to diminish -- diminish the presumption of innocence,
3 and take the presumption that belongs only to a criminal
4 defendant, and move it over to someone else? You can't
5 do that. That's not the way this -- this works. That's
6 not the way the integrity of this system operates.

7 I trust you. Gerald Barrett trusts you.
8 I'm asking you to trust yourselves to lay down those
9 emotions, prejudices, wishes, any passionate feelings
10 you might have that may take over reason, and to view
11 this case with these bedrock rules in mind.
12 Gerald Barrett is presumed innocent, just as any of
13 you would be. And the burden is on the State, the
14 Government, for proof of guilt beyond a reasonable
15 doubt. And reasonable doubt is when a reasonable man
16 might hesitate to act. And if the State of South
17 Carolina said to you, Here's the thing. I got these two
18 bridges. I got these two mountains, and I'm building
19 you a bridge to cross. And that bridge has been built
20 by Minor . And you're going to walk from this
21 mountain to that mountain. If you hesitate before you
22 step on that first plank of that bridge, that's
23 reasonable doubt, that is not guilty, and you must find
24 him not guilty.

25 And as I said to you at the beginning of the

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1 trial, what can a man do but scream and shout, I'm
2 innocent? Does no good for him to get up here and
3 testify. If he testifies, I lose the right to argue to
4 you last. He says he's innocent. He's always said, I
5 wasn't there. I'm innocent.

6 Don't walk across that bridge. Don't allow
7 yourself to put what evidence you've been given into
8 that gun and to shoot it across this courtroom at
9 Gerald Barrett. You can't take it back. It's too
10 important. It's too important to this courtroom, it's
11 too important to the Court, and it's too important to
12 all of us to do that. Thank you for your time.

13 CHARGE TO THE JURY

14 THE COURT: Ladies and gentlemen, I remind you
15 that during this trial you and I have certain duties to
16 perform. As the trial judge, it is my responsibility to
17 preside over the trial of this case and to rule upon the
18 admissibility of the evidence as it has been offered
19 throughout this trial. You are to consider only the
20 competent evidence before you. If there was any
21 evidence that was ordered stricken from the record, you
22 must disregard that testimony. You are to consider only
23 the testimony that has been presented from the witness
24 stand as well as the exhibits that have been made part
25 of the record in this case.

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1 I have the additional duty to charge you the
2 law applicable to this case. I am the sole judge of the
3 law in this case. It is your duty to accept the law and
4 apply the law exactly as I state it to you now.
5 If you have any idea as to what the law is or what the
6 law ought to be and it does not agree with what I'm
7 about to tell you, you must abandon your own ideas
8 because you are sworn to apply the law and accept the
9 law exactly as I state it to you now.

10 In every case tried in this court before a
11 jury, the jury becomes the sole and exclusive judges of
12 the facts. Please remember a trial judge may not make
13 any comment regarding the fact to a trial jury. You,
14 the jury, are the sole judges of the facts in this case.
15 Do not infer from anything that I have said during the
16 progress of this trial that I have any opinion about the
17 facts in this case. The law does not allow me to have
18 an opinion about the facts of this case. This is a
19 matter solely for you, the jury, to determine. It is
20 your duty to determine the effect, value, and weight of
21 the evidence that has been presented throughout this
22 trial.

23 The Indictments in this case charge Mr. Barrett
24 with the criminal sexual conduct with a minor 11 to 14
25 years of age, second degree; kidnapping; and lewd act

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1 upon a child under 16. I remind you, the fact that
2 Mr. Barrett was arrested, charged, and indicted in this
3 case is not evidence in this case and cannot be
4 considered by you as evidence of guilt in this case, nor
5 does it create any presumption or inference of guilt.
6 An Indictment is simply the formal document that
7 contains the charges made against the Defendant. It is
8 the formal document by which this case is brought into
9 court.

10 Just as the Indictments in this case are not
11 evidence, any terminology or labels used in this case to
12 refer to individuals involved in this case cannot be
13 considered as evidence. For example, the use of the
14 words "defendant" and "victim" are merely formal labels
15 and may not be considered by you as evidence.

16 The Indictments in this case allege three
17 different offenses against the Defendant. The charges
18 are, Indictment Number 1, criminal sexual conduct with a
19 minor 11 to 14 years of age, second degree; Indictment
20 Number 2, kidnapping; and Indictment Number 3, lewd act,
21 committing a lewd act upon a child under 16. There is
22 no significance in the way that I read the Indictments.
23 It's simply, something has to go first when I read the
24 Indictments to you.

25 Each Indictment charges a separate and distinct

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1 offense. You must decide each Indictment separately on
2 the evidence and the law applicable to it uninfluenced
3 by your decision as to the other Indictments.

4 Mr. Barrett may be convicted or acquitted on
5 either all, or of the offenses charged. You will be
6 asked to write a separate verdict for each of the three
7 Indictments.

8 Mr. Barrett has pled not guilty to each
9 Indictment. A person charged with committing a criminal
10 offense in South Carolina is never required to prove
11 himself innocent. I charge you it is an important rule
12 of law that the defendant in a criminal trial, no matter
13 what the seriousness of the charge may be, will always
14 be presumed to be innocent of the crime for which the
15 Indictment was issued unless guilt has been proven
16 by evidence satisfying you of that guilt beyond a
17 reasonable doubt.

18 The presumption of innocence does not end when
19 you begin your deliberations. It accompanies the
20 Defendant throughout the trial until you reach a verdict
21 of guilt based upon evidence satisfying you of that
22 guilt beyond a reasonable doubt. The presumption of
23 innocence is not just a legal theory. It is not just a
24 legal phrase. It is the substantial right to which
25 every defendant is entitled unless you, the jury, are

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1 satisfied from the evidence of the Defendant's guilt
2 beyond a reasonable doubt.

3 The State has the burden of proving Mr. Barrett
4 guilty beyond a reasonable doubt. Some of you may have
5 served as jurors before in civil cases where you were
6 told that it was only necessary to prove that a fact is
7 more likely true than not true such as by a greater
8 weight or preponderance of the evidence. In criminal
9 cases, the State's proof must be more powerful than
10 that. It must be beyond a reasonable doubt. Proof
11 beyond a reasonable doubt is proof that leaves you
12 firmly convinced of the Defendant's guilt. There are
13 very few things that we know with absolute certainty in
14 this world, and in criminal cases, the law does not
15 require proof that overcomes every possible doubt. If,
16 based on your consideration of the evidence, you are
17 firmly convinced that Mr. Barrett is guilty of the crime
18 charged, you must find him guilty. If, on the other
19 hand, you think there is a real possibility that
20 Mr. Barrett is not guilty, you must give him the benefit
21 of the doubt and find him not guilty.

22 There are two types the evidence that are
23 generally presented throughout a trial: direct evidence
24 and circumstantial evidence. Direct evidence is the
25 testimony of a person who has actual knowledge of the

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1 facts, such as an eyewitness. It is evidence which
2 immediately establishes the main fact to be proved.
3 Circumstantial evidence is proof of a chain of facts
4 and circumstances indicating the existence of a
5 fact. It is evidence which immediately establishes
6 collateral facts from which the main fact may be
7 inferred. Circumstantial evidence is based on inference
8 and not on personal knowledge or observation.

9 You should weigh all of the evidence in this
10 case, and after weighing all of the evidence, if you are
11 not convinced of the guilt of Mr. Barrett beyond a
12 reasonable doubt, you must find him not guilty. The
13 rules of evidence ordinarily do not permit witnesses to
14 testify to opinions or to conclusions. An exception
15 exists for witnesses we call expert witnesses. A
16 witness who by education and experience has become
17 expert in some art, science, or profession may state an
18 opinion as to relevant and material matter in which the
19 witness claims to be an expert and may also state the
20 reasons for that opinion. You should consider any
21 expert opinion given in this case, and like any other
22 evidence, give it the weight that you think it deserves.
23 If you decide that the opinion of an expert witness is
24 not based upon sufficient education or experience or if
25 you conclude that the reasons given in support of that

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1 opinion are not sound or that the opinion is outweighed
2 by other evidence, you may disregard that opinion
3 entirely. An expert witness' testimony is to be given
4 no greater weight than that of other witnesses simply
5 because the witness is an expert. Further, you are not
6 required to accept an expert's opinion even though it is
7 not contradicted.

8 Necessarily, you must determine the credibility
9 of the witnesses who have testified in this case.
10 Credibility simply means believability. It becomes your
11 duty as jurors to evaluate the evidence and analyze the
12 evidence and determine which evidence convinces you of
13 its truth. In determining the believability of the
14 witnesses who have testified in this case, you may
15 believe one witness over several witnesses or several
16 witnesses over one witness. You may believe a part of a
17 testimony of a witness and reject the remaining part of
18 the testimony of that same witness. You may believe the
19 testimony of a witness in its entirety or you may reject
20 the testimony of a witness in its entirety. You may
21 consider whether the witness has exhibited to you any
22 interest, bias, prejudice, or other motive in this case,
23 and you may also consider the appearance and demeanor of
24 the witness while on the witness stand.

25 I instruct you and emphasize, the fact that

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1 Mr. Barrett did not testify is not a factor to be
2 considered by you in any way in your deliberation and in
3 your consideration on the question of the guilt of
4 Mr. Barrett. It must not be considered by you in any
5 way or in any manner whatsoever. A defendant has the
6 constitutional right to remain silent and the assertion
7 of this right must not be considered by you in your
8 deliberations. I repeat: Under your oath, you are to
9 draw no conclusion whatsoever from the fact Mr. Barrett
10 did not testify in this case.

11 Mr. Foreperson, I require and emphasize to you,
12 the fact Mr. Barrett did not testify should not even be
13 discussed in the jury room.

14 The Defendant is not required to prove his
15 innocence. The burden of proof remains on the State to
16 prove guilt beyond a reasonable doubt. In order to
17 establish criminal liability, criminal intent is
18 required. For example, the mental state required to be
19 proven by the State for a particular crime might be
20 purpose, intent, knowledge, recklessness, or criminal
21 negligence. Criminal intent must be proven by the State
22 beyond a reasonable doubt. Criminal intent is always a
23 matter that must be determined by the jury from the
24 circumstances surrounding the situation. There is no
25 way to prove intent to a mathematical certainty.

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1 Because there is no way to tell with exact certainty
2 what a person had in mind, the law says that criminal
3 intent may be inferred from the circumstances shown to
4 have existed at the time. This is how you make a
5 determination of whether or not the element required and
6 the intent was present. It is not necessary to
7 establish intent by direct and positive evidence, but
8 intent may be established by inference in the same way
9 as any other fact by taking into consideration the acts
10 of the parties and all of the facts and circumstances in
11 this case. Criminal intent is a mental state. It is
12 conscious wrongdoing. It is up to you to determine
13 what the Defendant intended to do based upon the
14 circumstances shown to have existed. Criminal intent
15 can arise from action or a failure to act. It may
16 also arise from negligence, recklessness, or to an
17 indifference to duty or to consequences that is
18 considered by the law to be the equivalent of criminal
19 intent.

20 Mr. Barrett is charged with criminal sexual
21 conduct with a minor 11 to 14 years of age, second
22 degree. The State must prove beyond a reasonable doubt
23 that the Defendant engaged in a sexual battery with
24 the victim. A sexual battery is sexual intercourse,
25 cunnilingus, fellatio, anal intercourse, or any

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1 intrusion, however slight, of any part of a person's
2 body or of any object into the genital or anal openings
3 of another person's body except when the intrusion is
4 accomplished for a medically recognized treatment or
5 diagnostic purposes.

6 The State must then prove beyond a reasonable
7 doubt that the victim was at least 11 years old, but not
8 more than 14 years old, at the time of the sexual
9 battery.

10 Mr. Barrett is charged with kidnapping. The
11 State must prove beyond a reasonable doubt that the
12 Defendant knowingly and unlawfully seized, confined,
13 inveigled, decoyed, kidnapped, abducted, or carried away
14 another person without authority of law. To do a thing
15 unlawfully is to do it willfully against the law.
16 Knowingly means with knowledge; consciously, not
17 accidentally. Seize means to take hold of suddenly or
18 forcibly. Confine means to limit, restrict, or enclose
19 within bounds, imprison, or shut or keep in. Inveigle
20 means to lure, entice, or lead astray by false
21 representations, promises, or other deceitful means.
22 Decoy means to lure by as if by decoy. A decoy is
23 something to entice a person into a trap. Kidnap is to
24 remove a person against his will by unlawful force or by
25 fraud. Abduct means to carry off secretly or by force

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1 for an illegal purpose. Carry away means to remove.

2 The State does not have to prove that the
3 Defendant did all of these things. Instead, if you find
4 beyond a reasonable doubt, if you find that the
5 Defendant did any of these things, you may find the
6 Defendant guilty of kidnapping. Something done without
7 authority of law is something which the law does not
8 sanction, permit, allow, condone, or provide
9 justification for. The kidnapping does not have to be
10 for any personal or monetary gain, for any illegal
11 purpose, but may be for any reason whatsoever.

12 Mr. Barrett is charged with committing a lewd
13 act upon a child under the age of 16. The State must
14 first prove beyond a reasonable doubt that the Defendant
15 was over the age of 14. Next, the State must prove
16 that the Defendant willfully and lewdly committed or
17 attempted a lewd or lascivious act on or with the body
18 or its parts of a child under the age of 16 years with
19 the intent to arouse, appeal to, or gratify the lust,
20 passions, or sexual desires of the Defendant or of the
21 child. Willfully means voluntarily and intentionally
22 with a specific intent to do something the law forbids.
23 Lewd means obscene, lustful, indecent, or lecherous.
24 Lascivious means tending to insight lust, lewd,
25 indecent, obscene, or tending to deprave the morals in

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1 respect to sexual relations.

2 Ladies and gentlemen, I am now going to go over
3 the verdict forms with you.

4 Mr. Foreman, it is your responsibility to
5 complete the verdict forms, but I'm going to go over the
6 verdict forms with you.

7 Ladies and gentlemen, please understand there
8 is no significance in the way that I'm going over the
9 verdict form. It's simply something has to go on the
10 paper first. There are three Indictments, and I must go
11 over them in some sort of order.

12 State of South Carolina, County of Beaufort
13 versus Gerald Barrett, Jr., Defendant in the Court of
14 General Sessions for the 14th Judicial Circuit,
15 Indictment 2012-GS-07-1631, verdict form: We, the jury,
16 find Gerald Barrett, Jr., not guilty; or we, the jury,
17 find Gerald Barrett, Jr., guilty of criminal sexual
18 conduct with a minor victim age 11 to 14 years, second
19 degree. It must be a unanimous decision. After you
20 completed this verdict form and the unanimous decision,
21 meaning all 12 of you must agree, you will sign and date
22 the verdict form.

23 Indictment 2012-GS-07-1632: We, the jury, find
24 Gerald Barrett not guilty; or we, the jury, find
25 Gerald Barrett guilty of the kidnapping of Minor

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1 Once again, once you have completed this verdict form
2 reaching a unanimous decision, all 12 of you must agree,
3 you will sign and date the verdict form.

4 Indictment Number 2012-GS-07-1633: We, the
5 jury, find Gerald Barrett not guilty; or we, the jury,
6 find Gerald Barrett guilty of lewd act, committing a
7 lewd act upon a child under 16.

8 Once again, Mr. Foreman, it must be a unanimous
9 decision. Once you have reached a unanimous decision on
10 this verdict form, you will sign the verdict form and
11 date it.

12 Ladies and gentlemen, this will be last
13 time that I say this to you. Do not begin your
14 deliberations; do not discuss this case amongst
15 yourselves. We will be gathering the verdict forms and
16 the exhibits to come back to you. Please take all of
17 your items with you. And once the bailiff has brought
18 the verdict forms and the items to you, he will indicate
19 to you that you may begin your deliberations. Do not
20 begin any discussions regarding this case at all until
21 you are told to do so.

22 To my two alternates, I'm going to hold you for
23 just a few moments to make sure that my first twelve
24 have begun their deliberations. Do not begin your
25 deliberations; do not discuss this case with anyone. We

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1 will keep the two alternates separate from the 12, and
2 then I will release you at the appropriate time.

3 Ladies and gentlemen, you will receive your
4 further instructions from the bailiff in just a few
5 moments.

6 Please rise for the jury.

7 (The jury is escorted from the courtroom
8 at 10:06 a.m.)

9 THE COURT: Thank you. Be seated.

10 Any objection, correction to the charge as
11 read? From the State?

12 MS. CONCANNON: Not from the State, your Honor.

13 MS. CAMPBELL: No, your Honor.

14 THE COURT: And State's 1 through 6 and 11 will
15 be going back; is that correct?

16 MS. CONCANNON: That's correct.

17 MS. CAMPBELL: I believe that's correct. May
18 we look at them before they're sent back, your Honor?

19 THE COURT: You may look at them, yes.

20 MS. CAMPBELL: Thank you.

21 MS. CONCANNON: Your Honor, I do have the
22 pre-marked exhibits.

23 THE COURT: You'll need to give those to the
24 court reporter since they have been marked. Thank you.

25 MS. CAMPBELL: May we go over with the court

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1 reporter the exhibits.

2 THE COURT: I have already gone over. It
3 is 1 through 6 and 11. Now, you may look to make sure
4 that that reflects your --

5 MS. CAMPBELL: That's what I --

6 THE COURT: But the court reporter and I have
7 agreed upon 1 through 6 and 11. And that is the
8 official court record.

9 MS. CAMPBELL: Yes, ma'am.

10 MS. CONCANNON: And these are the pre-marked
11 ones that were not in evidence.

12 THE COURT REPORTER: Thank you.

13 MS. CAMPBELL: Thank you.

14 THE COURT: They may begin their deliberations
15 once you give them those items. Thank you.

16 Anything before we're at ease awaiting a
17 verdict?

18 MS. CONCANNON: No, your Honor.

19 MS. CAMPBELL: No, your Honor.

20 THE COURT: Thank you. We're at ease.

21 (A recess is taken from 9:43 a.m. until
22 10:18 a.m.)

23 THE COURT: We have a note: We would like to
24 have written definitions of all three charges that were
25 presented on the stand.

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1 Any objection to sending a charge -- the charge
2 back, or do you wish for me to bring them in and charge
3 them on the -- on the three statutes?

4 MS. CONCANNON: The State doesn't have an
5 objection as long as the entire charge is sent back.

6 THE COURT: Okay.

7 MS. CAMPBELL: Your Honor, I would object to
8 any written charges going back into the jury room. It's
9 not evidence. I believe if they would like that, you
10 could bring them back here and recharge them on the
11 charges. But I would also request that you recharge
12 them on the burden of proof and reasonable doubt in
13 addition to that anytime we recharge.

14 THE COURT: If I bring them back, I'm just --
15 they've only asked for the definitions. If they ask for
16 any -- I'll have them clarify if they need definitions
17 as to that, I will.

18 MS. CAMPBELL: Okay.

19 THE COURT: I'm going to have the Foreperson
20 indicate to the Court what definitions he wants.

21 MS. CAMPBELL: Okay.

22 THE COURT: All right. I'm now going to
23 release the alternates since we have had a note. The
24 alternates --

25 We have a note. Any objection?

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1 MS. CONCANNON: No objection.
2 MS. CAMPBELL: No objection.
3 THE COURT: All right. So this will be
4 Court's 2, then, court reporter?
5 THE COURT REPORTER: Yes, your Honor.
6 THE COURT: First note will be Court's 2.
7 Let me go release the alternates.
8 (Jury Note Number 1 is marked for
9 identification as Court's Exhibit Number 2.)
10 (A recess is taken. The Judge resumes the
11 bench at 10:23 a.m.)
12 (The Defendant is present with his counsel.)
13 THE COURT: Let's bring back the jury.
14 (The jury is escorted into the courtroom
15 at 10:24 a.m.)
16 THE COURT: Thank you. Be seated.
17 Mr. Foreman, I have received a note that
18 indicates that you need the written definitions of all
19 three charges that were presented; is that correct?
20 THE FOREPERSON: That is correct.
21 THE COURT: So what I understand in that note
22 is that you need for me to go over the statute as to the
23 three charges; is that what you're asking?
24 THE FOREPERSON: Well, ma'am, we just wanted
25 to see it in writing. Obviously, you went through the

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1 law relatively quickly. And we just want to see in
2 writing what the charges are if that's okay.

3 THE COURT: I will -- I can reread the charges
4 to you. You need for me to reread to you the charges?
5 I will not be providing a written copy.

6 THE FOREPERSON: Okay. Yes. Let's reread.

7 THE COURT: All right.

8 Second Degree, Criminal Sexual Conduct with a
9 Minor: Mr. Barrett is charged with criminal sexual
10 conduct with a minor 11 to 14 years of age, second
11 degree. The State must prove beyond a reasonable doubt
12 that the Defendant engaged in a sexual battery with the
13 victim. A sexual battery is sexual intercourse,
14 cunnilingus, fellatio, anal intercourse, or any
15 intrusion, however slight, of any part of a person's
16 body or of any object into the genital or anal openings
17 of another person's body except when the intrusion is
18 accomplished for medically recognized treatment or
19 diagnostic purposes. The State must then prove beyond a
20 reasonable doubt that the victim was at least 11 years
21 old but not more than 14 years old at the time of the
22 sexual battery.

23 Kidnapping: Mr. Barrett is charged with
24 kidnapping. The State must prove beyond a reasonable
25 doubt that the Defendant, knowingly and unlawfully,

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1 seized, confined, inveigled, decoyed, kidnapped,
2 abducted, or carried away another person without
3 authority of law.

4 To do a thing unlawfully is to do it willfully
5 against the law. Knowingly means with knowledge
6 consciously, not accidentally. Seized means to take
7 hold of suddenly or forcibly. Confine means to limit,
8 restrict, or enclose within bounds, imprison, or shut or
9 keep in. Inveigle means to lure, entice, or lead astray
10 by false representations, promises, or other deceitful
11 means. Decoy means to lure by as if by decoy. A decoy
12 is something to entice a person into a trap. Kidnap is
13 to remove a person against his will by unlawful force or
14 by fraud. Abduct means to carry off secretly or by
15 force for an illegal purpose. Carry away means to
16 remove.

17 The State does not have to prove that the
18 Defendant did all of these things. Instead, if you find
19 beyond a reasonable doubt that the Defendant did any of
20 these things, you may find the Defendant guilty of
21 kidnapping. Something done without authority of law is
22 something which the law does not sanction, permit,
23 allow, condone, or provide justification for. The
24 kidnapping does not have to be for any personal or
25 monetary gain for any illegal purpose, but may be for

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1 any reason whatsoever.

2 Lewd Act on a Minor: Mr. Barrett is charged
3 with committing a lewd act upon a child under the age
4 of 16. The State must first prove beyond a reasonable
5 doubt that the Defendant was over the age of 14. Next,
6 the State must prove that the Defendant willfully and
7 lewdly committed or attempted a lewd or lascivious act
8 on or with the body or the parts of a child under the
9 age of 16 years with the intent to arouse, appeal to, or
10 gratify the lust, passions, or sexual desires of the
11 Defendant or of the child.

12 Willfully means voluntarily and intentionally
13 with the specific intent to do something the law
14 forbids. Lewd means obscene, lustful, indecent, or
15 lecherous. Lascivious means tending to insight, lust,
16 lewd, indecent, obscene, or tending to deprave the
17 morals in respect to sexual relations.

18 Do you need anything further, Mr. Foreman?

19 (There's a discussion among the jurors off the
20 record.)

21 THE FOREPERSON: There's a little confusion
22 about the age brought up in the first charge, 11 to 14,
23 and then in the third charge, over 14 but under 16. Can
24 you clarify that?

25 THE COURT: Please remember, the Indictments in

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1 this case allege three different offenses against the
2 Defendant. The charges are, Indictment Number 1,
3 criminal sexual conduct with a minor 11 to 14 years of
4 age, second degree; kidnapping; and lewd act, committing
5 a lewd act upon a child under 16.

6 Remember, there was no significance in the
7 order that I referenced the above Indictments. It's
8 simply something must go first when I read them to you.
9 Each Indictment charges a separate and distinct charge.
10 You must decide each Indictment separately on the
11 evidence and the law applicable to it uninfluenced by
12 your decision as to any other Indictment. Mr. Barrett
13 may be convicted or acquitted on either or all of the
14 offenses charged. And, again, you are asked to write a
15 separate verdict form for each offense.

16 Anything further, Mr. Foreman?

17 (There's a discussion among the jurors off the
18 record.)

19 THE FOREPERSON: We're okay. Thanks.

20 THE COURT: All right. Please go and continue
21 your deliberations.

22 Rise for the jury, please.

23 (The jury is escorted from the courtroom
24 at 10:31 a.m.)

25 THE COURT: Thank you. Be seated. Any

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1 objection?

2 MS. CONCANNON: No, your Honor.

3 THE COURT: Any objection?

4 MS. CAMPBELL: Your Honor, again, for the
5 record, I would like for your Honor to have charged
6 reasonable doubt as you charged the Indictments again
7 and the -- and the offenses again. And I understand
8 that you decided not to do that, but, for the record, we
9 did request it.

10 THE COURT: All right. Thank you.

11 All right. We're at ease.

12 Counsel, why don't you approach for just a
13 moment?

14 (Court in recess from 10:32 a.m. until
15 1:13 p.m.)

16 (Jury Note Number 2 is marked for
17 identification as Court's Exhibit Number 3.)

18 THE COURT: All right. We need to bring in the
19 jury.

20 Mr. Shelton, I understand you haven't had an
21 opportunity to take a break. Are you okay?

22 MR. SHELTON: I'm fine. Thank you for asking.

23 THE COURT: Shouldn't take but a moment.

24 THE COURT: I'll be giving the Allen Charge,
25 just so you understand.

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1 MS. CAMPBELL: For the record, would it be
2 possible for us to know what the note says?

3 THE COURT: It says: After a great deal of
4 deliberation and two rounds of voting on each count, we
5 have a hung-jury situation.

6 MS. CAMPBELL: Thank you, your Honor.

7 THE COURT: I will be giving the Allen Charge
8 pursuant to that.

9 MS. CAMPBELL: Thank you.

10 THE COURT: Please take your sunglasses off
11 your head. Thank you.

12 (The jury is escorted into courtroom
13 at 1:15 p.m.)

14 THE COURT: Thank you. Please be seated.

15 Mr. Foreman, I understand you have sent us a
16 note and you have been unable -- and as you indicated,
17 what you call a hung jury situation. I understand that
18 you have stated you've been unable to agree on a
19 verdict; is that correct?

20 THE FOREPERSON: That is correct.

21 ALLEN CHARGE

22 THE COURT: As I instructed you earlier, the
23 verdict of -- of you, of the jury, must be unanimous,
24 meaning all 12 of you must agree. When a matter is in
25 dispute, it isn't always easy for even two people to

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1 agree. So when 12 people must agree, it becomes even
2 more difficult. In most cases, absolute certainty
3 cannot be reached or expected; however, you have a duty
4 to make every reasonable effort to reach a unanimous
5 verdict. In doing this, you should consult with one
6 another, express your own views, and listen to the
7 opinions of your fellow jurors. Tell each other how
8 you feel and why you feel that way. Discuss your
9 differences with open minds. Although the verdict of
10 the jury must be unanimous, every one of you must agree
11 and every one of you has the right to your own opinion.
12 The verdict you agree to must be your own verdict, the
13 result of your own convictions. And you should not give
14 up your firmly held beliefs merely to be in agreement
15 with your fellow jurors. The majority should consider
16 the minority's opinion, and the minority should consider
17 the majority's opinion. You should carefully consider
18 and respect the opinions of each other and re-evaluate
19 your own opinion for reasonableness, correctness, and
20 impartiality. You must lay aside all outside matters
21 and re-examine the questions before you based upon the
22 law and the evidence in this case.

23 If you do not agree on a verdict, I must
24 declare a mistrial. In that case, it does not mean
25 anybody wins. It just means that at some future time, I

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1 will try this case with some other jury sitting where
2 you now sit. The same participants will come in and the
3 same lawyers will ask basically the same questions and
4 get basically the same answers, and we will go through
5 the whole process again. You were selected in the same
6 manner and from the same source as any future jury will
7 be. And there is no reason for me to suppose that the
8 case will ever be submitted to 12 more intelligent,
9 impartial, conscientious, and competent jurors who sit
10 before me here today. I ask you, therefore, with my
11 instructions in mind, to return to your deliberations
12 with the hope you can arrive at a verdict within a
13 reasonable time.

14 Please go and continue your deliberations with
15 all of my instructions in mind.

16 Thank you, Mr. Foreperson.

17 (The jury is escorted from the courtroom at
18 1:18 p.m.)

19 THE COURT: Thank you. Please be seated.

20 Any objections to the charges that I read?

21 From the State?

22 MS. CONCANNON: No, your Honor.

23 THE COURT: From the Defense?

24 MS. CAMPBELL: No, your Honor.

25 THE COURT: Thank you. We'll be at ease.

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1 MS. CAMPBELL: Your Honor, my client would like
2 to use the restroom.

3 THE COURT: All right.

4 MS. CAMPBELL: And if I could coordinate with
5 the detention center? Thank you.

6 THE COURT: Thank you. And he has not had
7 lunch because I have not had lunch. So I know that he
8 has not.

9 Can we have lunch arrangements for him?

10 THE COURT OFFICER: Yes, ma'am.

11 THE COURT: All right. Thank you. If you will
12 accomplish that for me. Thank you.

13 MS. CAMPBELL: Thank you, your Honor.

14 (Court in recess from 1:20 p.m. until
15 3:18 p.m.)

16 THE COURT: Thank you. Be seated.

17 We have another note. Is it possible to arrive
18 at a verdict on two of the three charges but remain
19 undecided on the third charge?

20 MS. CONCANNON: Yes. I mean. . .

21 THE COURT: All right. I know what the answer
22 is. I need your response to what I need to tell the
23 jury.

24 MS. CONCANNON: The State is fine with two --
25 verdicts on two and not on one. a hung jury on one

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1 charge.

2 MS. CAMPBELL: Your Honor, I believe they're
3 considering each Indictment separately. They can reach
4 a decision on two of the two and not on the other.

5 THE COURT: I understand what the rule is.
6 What do you want me to -- how do you want me to respond
7 to the jury? Do you want me to bring them back in? Do
8 you want me to send a yes? Do you want do have a more
9 formal response?

10 MS. CAMPBELL: May I read their note and --

11 THE COURT: I just read it to you.

12 MS. CAMPBELL: Okay.

13 THE COURT: Is it possible to arrive at a
14 verdict on two of the three charges but remain
15 undecided; hung jury, on the third charge?

16 MS. CAMPBELL: The answer is yes. And we can
17 write a note and send it back and say yes.

18 THE COURT: I'm just going to bring them in.
19 Bring in the jury.

20 MS. CAMPBELL: Thank you, your Honor.

21 THE COURT: Thank you.

22 THE BAILIFF: Your Honor, the jury is entering.

23 THE COURT: Thank you.

24 (The jury is escorted into the courtroom
25 at 3:20 p.m.)

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1 THE COURT: Thank you. Please be seated.

2 I understand that you indicated and asked: Is
3 it possible to arrive at a verdict on two of the three
4 charges but remain undecided on the third charge?

5 Remember when I instructed you the last time
6 that Mr. Barrett is charged with three separate
7 Indictments. Ladies and gentlemen, please remember that
8 each Indictment charges a separate and distinct charge.
9 You must decide each Indictment separately on the
10 evidence and the law applicable to it.

11 Mr. Bartlett -- excuse me, Mr. Barrett may be
12 convicted or acquitted on either or all of the offenses
13 charged. You will be asked to write, again, the
14 separate verdict for each separate offense.

15 Did that answer your question, Mr. Foreman?

16 THE FOREPERSON: It did.

17 THE COURT: Please go and continue your
18 deliberations.

19 (The jury is escorted from the courtroom at
20 3:22 p.m.)

21 THE COURT: Court's 4.

22 (Jury Note Number 3 is marked for
23 identification as Court's Exhibit Number 4.)

24 THE COURT: Thank you. Be seated.

25 Any objection to the --

State versus Gerald T. Barrett, Jr.
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1 THE BAILIFF: Jury is clear, your Honor.

2 THE COURT: Any objection to the charge?

3 MS. CONCANNON: Not from the State.

4 THE COURT: Any objection?

5 MS. CAMPBELL: No, ma'am.

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

7 (Court in recess from 3:22 p.m. until
8 3:26 p.m.)

9 MS. CAMPBELL: May it please the Court, your
10 Honor. On behalf of Mr. Barrett, I would object to the
11 instruction given to the jury in response to their
12 question. Upon further review, I do believe it's within
13 the jury's province and right to reach a decision on two
14 of the Indictments but not on the third. And the
15 instruction that was given, in my interpretation, was
16 that they had to reach a decision on all three
17 Indictments.

18 THE COURT: They have to reach some decision
19 whether it's acquitted, not acquitted, or -- guilty, not
20 guilty, or a hung jury. They have to reach -- we can't
21 just leave an Indictment hanging out there. There must
22 be some decision on each Indictment.

23 MS. CAMPBELL: Correct. And I believe -- in my
24 interpretation, it was unclear that one of the options
25 was that they could not reach a verdict and have it be a

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1 hung jury and a mistrial. It seemed as if they were
2 being instructed that they had to reach a decision --

3 THE COURT: Ms. Campbell, was there something
4 about my question, Was there any objection to what I
5 instructed the jurors, that was unclear at the time?

6 Please bring the jury back in.

7 I'm sorry. Was there something -- because you
8 didn't object when I first released the jury to go back
9 to continue deliberating.

10 MS. CAMPBELL: That's correct. And as I said
11 for the record, upon further reflection, as I reflected
12 upon what had been instructed, I felt it was important
13 for me to bring that to the Court's attention.

14 (Respite.)

15 (The jury is escorted into the courtroom at
16 3:28 p.m.)

17 THE BAILIFF: Your Honor, the jury is entering.

18 THE COURT: Thank you. Please rise.

19 Thank you, please be seated.

20 Ladies and gentlemen, there was some objection
21 to the last instruction that I gave you, so I just
22 wanted to make sure that everyone is abundantly clear.

23 There are three Indictments. You must issue
24 something for each Indictment. Your question to the
25 Court was could you find -- could perhaps one be a hung

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1 jury? That is -- whatever your verdict or decision on
2 each Indictment, each Indictment must have some decision
3 by the jury.

4 Any objection to that? From the State?

5 MS. CONCANNON: No, your Honor.

6 THE COURT: From Ms. Campbell?

7 MS. CAMPBELL: No, your Honor.

8 THE COURT: Thank you.

9 Yes, you have another question?

10 THE FOREPERSON: I just want to be clear
11 because it wasn't clear when we walked back in there
12 with some of the group members. If we are hung on
13 one -- one of the charges, but we have come up with a
14 unanimous decision on the two other charges, we can say
15 we're -- we have no verdict on one, but we have a
16 verdict on two and three; is that correct?

17 THE COURT: On which -- whatever your decisions
18 are, if you will write it on the verdict form. If there
19 is not an appropriate check place, then if you will
20 indicate that to the Court, I will look at the verdict
21 forms when you have completed those verdict forms. If
22 they are not acceptable, then I'm going to send those
23 back to you.

24 Did that answer your question?

25 THE FOREPERSON: Now I understand.

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1 THE COURT: If they are not completely -- if
2 they are not filled out completely, then I will send
3 those back to you.

4 Please remember that the law does not allow me
5 to have an opinion about the facts in this case. So
6 there is no right or wrong verdict. The verdict form, I
7 was referring only to what is completed on the verdict
8 form.

9 Any objection to that from the State?

10 MS. CONCANNON: No, your Honor.

11 MS. CAMPBELL: No, your Honor.

12 THE COURT: All right. Did that answer your
13 question?

14 THE FOREPERSON: Yes.

15 THE COURT: Thank you.

16 THE BAILIFF: Thank you, your Honor.

17 And, again, the steps, please, folks.

18 THE COURT: If you have any further questions,
19 Mr. Foreman, please let me know.

20 (The jury is escorted from the courtroom
21 at 3:31 p.m.)

22 THE COURT: Thank you. Be seated.

23 Outside the presence of the jury, any objection
24 or correction to the charge as read?

25 MS. CONCANNON: Not from the State, your Honor.

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1 MS. CAMPBELL: No, your Honor.
2 THE COURT: Thank you.
3 I suppose in the future, Ms. Campbell, that we
4 should have a box for -- a line for hung jury?
5 MS. CAMPBELL: I couldn't say. I don't know,
6 your Honor. It's been a long day. And I apologize if I
7 was late in making my understanding known.
8 THE COURT: Thank you.
9 All right. We're at ease.
10 (Court is recess from 3:32 p.m. until
11 3:39 p.m.)
12 THE COURT: Thank you. Be seated. Anything
13 before we bring in the jury?
14 MS. CONCANNON: Not from the State, your Honor.
15 MS. CAMPBELL: No, ma'am.
16 THE COURT: Thank you.
17 THE BAILIFF: Your Honor, the jury is entering.
18 THE COURT: Thank you. Please rise.
19 (The jury is escorted into the courtroom
20 at 3:40 p.m.)
21 THE COURT: Okay. I understand that you have
22 reached a verdict. If you will hand the verdict forms
23 to the Bailiff. Thank you.
24 (Documents are handed to the Judge.)
25 THE COURT: Thank you. All right. Madam

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1 Clerk?

2 JURY'S VERDICT

3 THE DEPUTY CLERK OF COURT: In the State of
4 South Carolina versus Gerald Barrett, Jr., Indictment
5 Number 2012-GS-07-1631, we, the jury, find Gerald
6 Barrett, Jr. -- the jury could not reach a unanimous
7 decision in this verdict.

8 THE COURT: All right. And you'll need to read
9 what it is. The charges at --

10 THE DEPUTY CLERK OF COURT: Oh, I'm sorry. In
11 Charge Number 2, we, the jury, find Gerald Barrett, Jr.,
12 with a undecided decision in criminal sexual conduct
13 with the a minor, victim age 11 to 14 years of age,
14 second degree.

15 THE COURT: Thank you.

16 THE DEPUTY CLERK OF COURT: Sorry.

17 THE COURT: Okay.

18 THE DEPUTY CLERK OF COURT: Case Number
19 2012-GS-07-1632, we, the jury, find Gerald Barrett, Jr.,
20 not guilty of kidnapping Minor .

21 And the Verdict Number 2012-GS-07-1633, we,
22 the jury, find Gerald Barrett, Jr., guilty of lewd act,
23 committing a lewd act upon a child under 16.

24 Ladies and gentlemen of the jury, if this is
25 the -- if this is the decision of each and every one of

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1 you, please indicate by raising your right hand.

2 Thank you.

3 THE COURT: Let the record reflect that all 12
4 jurors have raised their right hand.

5 Anything further required of the jury? From
6 the State?

7 MS. CONCANNON: Not from the State, your Honor,
8 no.

9 THE COURT: From the Defendant?

10 MS. CAMPBELL: Your Honor, I would ask that the
11 jury be polled on the guilty verdict on the lewd act.

12 THE COURT: All right.

13 Will you -- is there some reason you don't want
14 them polled on all three?

15 MS. CAMPBELL: I am just requesting that they
16 be polled on the lewd act verdict which was guilty for
17 my client.

18 THE COURT: All right. Madam Clerk, I want you
19 to poll as to the guilty verdict, and then I want you to
20 poll as to the two remaining verdicts. That make sense?

21 THE DEPUTY CLERK OF COURT: Yes, ma'am.

22 THE COURT: Thank you. And, please, juror
23 numbers, not names.

24 THE DEPUTY CLERK OF COURT: Yes, ma'am.

25 JURY POLLED

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) GENERAL SESSIONS COURT
FOURTEENTH JUDICIAL CIRCUIT

State of South Carolina,)
Plaintiff,) Case Nos: 2012-GS-07-1631
vs.) 2012-GS-07-1632
GERALD THOMAS BARRETT, JR.,) 2012-GS-07-1633
Defendant.)

ORIGINAL

TRANSCRIPT OF JURY TRIAL
VOLUME IV OF IV
HEARD BEFORE JUDGE KRISTI LEA HARRINGTON
ON MAY 23, 2013

ROLAYNE M. VOLPE, CCR, RPR
Court Reporter for the State of South Carolina at Large
Post Office Box 342
Summerville, South Carolina 29484

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1 (Side-bar.)

2 THE COURT: We'll be at ease.

3 MS. CAMPBELL: Your Honor, where would you like
4 me to speak to Mr. Barrett?

5 THE COURT: I am in a situation that I don't
6 know where the -- where the best place is. I --
7 considering that we just had a Supreme Court opinion
8 that was released yesterday morning, I think in light of
9 that and what Dykes means for your client as far as his
10 future and the fact that the lewd act was added to the
11 violent list in 2010.

12 MS. CAMPBELL: All right.

13 THE COURT: And then amended to the CSC third
14 statute in June of 2012 and how that will -- both of
15 those things will affect his future.

16 MS. CAMPBELL: In July of 2012.

17 THE COURT: I believe it was June 18th, 2012.

18 MS. CAMPBELL: Correct.

19 THE COURT: All right. Thank you.

20 MS. CAMPBELL: Thank you, your Honor.

21 THE COURT: Thank you.

22 (A recess is taken from 9:34 a.m. until
23 9:50 a.m.)

24 THE COURT: And, Counsel, let me hear from you.
25 You've indicated that you have had time to meet with

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1 your client to discuss the fact that this is, in fact,
2 a violent offense, and that it will require lifetime
3 monitoring -- GPS monitoring.

4 MS. CAMPBELL: I have discussed with my client
5 that that is the viewpoint that the Court takes of the
6 offense, that it is a violent offense, and that GPS
7 monitoring is required. I have also discussed with my
8 client and gone over the Dykes case with my client and
9 would like at this time, on behalf of my client, to put
10 two matters on the record.

11 THE COURT: Yes, ma'am.

12 MS. CAMPBELL: In terms of the Dykes case, as I
13 read the case, it requires your Honor to make a finding
14 on the record as to whether or not Mr. Barrett is a --
15 likely to re-offend, and -- and if that is the case,
16 then the GPS monitoring would be appropriate. In light
17 of my interpretation of the case, I would ask your
18 Honor to order a Presentencing Report to be done by
19 the Department of Probation, Parole, and Pardon Services
20 to address the issue of re-offending in terms of
21 Mr. Barrett and his propensity for any conduct that
22 might require the GPS monitoring under Dykes.

23 Second matter in reference to 16-160 and
24 16-170, under what I believe is the rule of law, that
25 all sentencing benefits should be given to the

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1 Defendant. Today, as my client is being sentenced,
2 lewd act is not included in 16-160. 16-170 says: Any
3 crimes not included are nonviolent. And should the
4 legislature had intended subsequent to changing lewd
5 act to CSC third, that it be clear to the bench and
6 to counsel that this be treated as either violent or
7 nonviolent. They had an opportunity to do so; they did
8 not. And --

9 THE COURT: You agree that criminal sexual
10 conduct third degree is considered a violent offense?

11 MS. CAMPBELL: It is covered by the statute,
12 yes, ma'am.

13 THE COURT: All right.

14 MS. CAMPBELL: That the particular statute that
15 Ms. Barrett was convicted of -- as -- is not covered in
16 16-160. And that 16-170 indicates if it's not covered
17 in this, then it's a nonviolent.

18 And I have explained to him both of those
19 matters, my position, the Court's position, and, again,
20 would ask that the Presentencing Report take place in
21 order to fully inform your Honor, and, really, all
22 the parties involved as to what the true nature of
23 Mr. Barrett, in terms of re-offending would be. Thank
24 you, your Honor.

25 THE COURT: What's the State's position as to a

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1 pretrial -- Presentence Report?

2 MS. CONCANNON: The State has no objection to a
3 Presentence Report.

4 THE COURT: Is that you -- who does the
5 presentence?

6 MS. CONCANNON: Probation. I'm sorry. I'll go
7 get probation.

8 THE COURT: Why is probation not here? They
9 knew we were sentencing.

10 MS. CONCANNON: I cannot answer that, your
11 Honor.

12 THE COURT: Then, Counsel, the issue becomes --
13 I'm not to be in Beaufort for the remainder of the year.
14 So how will we impose sentence?

15 MS. CAMPBELL: Obviously, we could come to your
16 Honor and be happy to do that. I'm sure that we can
17 make transportation arrangements for Mr. Barrett, and
18 I'm certainly capable of getting myself there.

19 THE COURT: So that is -- that would not be an
20 issue as far as imposing sentencing?

21 MS. CAMPBELL: It would not be from our
22 perspective.

23 MS. CONCANNON: No.

24 THE COURT: All right. I agree; I do believe
25 that a presentence investigation would be beneficial

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1 in addressing all of the issues that the Court needs
2 to have answers to prior to imposing a sentence.
3 Specifically, under the Dykes case, now, with requiring
4 GPS monitoring, there are some findings that I need to
5 make. I also am requesting information on his progress
6 with -- under the YOA. And I think that that report
7 will give me all of the information that I need to craft
8 a sentence that is appropriate to address what the
9 victim -- the punishment on behalf of the victim, as
10 well as rehabilitation, that I am hearing that that's
11 what you're requesting; is that correct?

12 MS. CAMPBELL: Yes, your Honor.

13 THE COURT: All right. So if you will just
14 let me know when the presentence investigation is
15 completed and make sure that I have a copy, and we will
16 schedule that accordingly. Anything further?

17 MS. CAMPBELL: Yes, your Honor. For the
18 record, because your Honor is ordering the Presentencing
19 Report, my client's time within which to file his
20 appeal, I understand, would be stayed and would not
21 begin to run -- the ten days would not begin to run
22 until the date of sentencing, then?

23 THE COURT: That is correct. There's nothing
24 to appeal at this point until I impose the sentence.

25 MS. CAMPBELL: Correct.

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1 THE COURT: So his appellate rights are stayed.

2 Anything further?

3 MS. CAMPBELL: No, your Honor.

4 THE COURT: Madam Solicitor, do your victims
5 understand what is happening?

6 MS. CONCANNON: I will explain to them if they
7 have any questions.

8 THE COURT: Okay.

9 MS. CONCANNON: The State would like to add
10 as part of he Presentence Report that he also be
11 interviewed by a doctor who is specialized in sexual
12 predators.

13 THE COURT: I agree.

14 I'm not sure if you heard that. You were
15 speaking to your client. I'm also requesting that a
16 sexual offender assessment be done by a doctor that is
17 certified in that area.

18 MS. CAMPBELL: I believe that's appropriate.

19 THE COURT: I don't know who you use in
20 Beaufort County. Do you have a preference?

21 MS. CAMPBELL: Not in Beaufort County.
22 Dr. McKee -- Dr. McGehee (phonetics) out of Columbia, I
23 am familiar with his work. He's worked as an expert for
24 us before in that area, and he has done a number of very
25 thorough and valuable reports for the Court.

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1 THE COURT: Who does the State --
2 MR. SHELTON: I can't remember his name. I'm
3 so sorry. He's out of Summerville.
4 THE COURT: Dr. Burke?
5 MR. SHELTON: Dr. Burke. Exactly.
6 THE COURT: All right. I'm going to request
7 Dr. Burke. I am familiar with the -- I'm familiar with
8 reading the -- the reports that he provides.
9 MS. CAMPBELL: Okay.
10 THE COURT: And since we're going to be doing
11 the sentencing, most likely, either in Berkeley or
12 Charleston, then he would be able to travel if you
13 needed him to testify.
14 MS. CAMPBELL: Okay.
15 THE COURT: All right. So I think that
16 resolves a couple of different issues as well. So I'm
17 ordering an assessment by Dr. Burke, and you may need to
18 indicate -- you may need some paperwork for me to fill
19 out to get that assessment done. All right?
20 Anything else?
21 MS. CONCANNON: Not from the State, your Honor.
22 MS. CAMPBELL: No, your Honor.
23 THE COURT: Mr. Barrett, good luck to you. I
24 will see you sometime in the future after your report.
25 has been done.

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1 And, Ms. Smith, good luck to you as well.

2 Thank you.

3 All right. We're at ease in this matter.

4 WHICH WAS ALL THE EVIDENCE ADDUCED AT THIS

5 CAUSE.

6 (The hearing of this cause concluded

7 at 10:19 a.m., on May 23, 2013.)

8 (End of Volume IV of IV, May 23, 2013.)

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Reported By:

Rolayne M. Volpe, CCR, RPR

Official Court Reporter for the State of South Carolina

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS

COUNTY OF BEAUFORT) 14TH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,) TRANSCRIPT OF RECORD
V.) 2012-GS-07-1633
GERALD T. BARRETT, JR.,)
DEFENDANT.)

OCTOBER 2, 2013

CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE KRISTI L. HARRINGTON, JUDGE

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

MARY CONCANNON, ASSISTANT SOLICITOR

PATRICK HALL, ASSISTANT SOLICITOR

ATTORNEYS FOR THE STATE

TRASI CAMPBELL, ASSISTANT PUBLIC DEFENDER

ATTORNEY FOR THE DEFENDANT

SHARON L. VIZER

CIRCUIT COURT REPORTER

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NO EXHIBITS WERE INTRODUCED

1 Wednesday, October 2, 2013

2 THE COURT: Counsel, if you'll state your name for
3 the record.

4 MS. CONCANNON: Thank you, Your Honor. Mary
5 Concannon, C-o-n-c-a-n-n-o-n.

6 MR. HALL: Thank you, Your Honor. Patrick Hall,
7 H-a-l-l.

8 MS. CAMPBELL: Trasi Campbell, it's T-r-a-s-i,
9 public defender in Beaufort.

10 THE COURT: And you represent Mr. Barrett?

11 MS. CAMPBELL: I do, Your Honor.

12 THE COURT: And we are here for the sole purpose of
13 sentencing; is that correct?

14 MS. CAMPBELL: That is correct.

15 THE COURT: Have you had an opportunity to review
16 the presentence investigation prepared by Agent Cabiness
17 (phonetic)?

18 MS. CAMPBELL: I have.

19 THE COURT: Have you had an opportunity as well to
20 go over that with your client?

21 MS. CAMPBELL: Yes.

22 THE COURT: The State has had an opportunity to
23 review that report as well?

24 MS. CONCANNON: Yes, Your Honor.

25 THE COURT: And, Ms. Campbell, you've also had an

1 opportunity to review the evaluation by Dr. Burke
2 (phonetic); is that correct?

3 MS. CAMPBELL: Yes.

4 THE COURT: And have you had an opportunity to go
5 over that report with your client as well?

6 MS. CAMPBELL: Yes.

7 THE COURT: Have you also received a copy of that
8 report?

9 MS. CONCANNON: I have, Your Honor.

10 THE COURT: All right. We are here for the
11 sentencing on indictment 2012-GS-07-1633; is that
12 correct?

13 MS. CONCANNON: Yes, Your Honor.

14 THE COURT: All right. And, Ms. Campbell, I know
15 that your client is not required to sign the indictment
16 nor are you required to sign -- excuse me, the sentencing
17 sheet because it was a guilty verdict. Have you had an
18 opportunity -- the State is indicating that this is a
19 violent offense. Do you agree with that?

20 MS. CAMPBELL: Your Honor, I did the research on
21 this. I do believe that it's classified as a violent
22 offense at the time before the law was repealed, and I
23 have also looked into the particular statutory provision
24 that deals with how violent offenses are handled in the
25 department of corrections and I've talked with my client

1 about that, and the parole eligibility aspects of that as
2 well. We've discussed that as well.

3 THE COURT: Do you also -- the State has also
4 indicated on the sentencing sheet that this is a
5 mandatory GPS, due to the nature of the offense; do you
6 agree with that?

7 MS. CAMPBELL: That is correct.

8 THE COURT: What is your position as to whether or
9 not this is a serious or most serious offense?

10 MS. CAMPBELL: My position is that it is neither.

11 THE COURT: And that is not checked on the
12 sentencing sheet. I just wanted to make sure that that
13 is correct.

14 MS. CONCANNON: That is correct. It is not a
15 serious or most serious.

16 THE COURT: Ms. Campbell, do you need any more time
17 to meet with your client before we go forward with this
18 sentencing?

19 MS. CAMPBELL: I do not.

20 THE COURT: Mr. Michel, if you'll swear
21 Mr. Barrett.

22 GERALD T. BARRETT, JR., after having been
23 duly sworn, testified as follows:

24 THE CLERK: State your full name for the record,
25 please, and spell --

1 THE DEFENDANT: Gerald Thomas Barrett, Jr.

2 THE CLERK: Spell your last name, please.

3 THE DEFENDANT: B-a-r-r-e-t-t.

4 THE CLERK: Thank you.

5 THE COURT: All right. Mr. Barrett, we are here to
6 go forward with your sentencing here today. My first
7 question to you is are you ready to go forward today?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Have you had time to meet with your
10 attorney? And I understand we are in Charleston County
11 because I will not be back in Beaufort County for the
12 foreseeable future. Are you prepared to go forward here
13 in Charleston County today?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And have you had an opportunity to go
16 over the report from Dr. Burke as well as the report from
17 Agent Cabiness?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Do you need any additional time to meet
20 with her before we go forward with sentencing?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: All right. Thank you. I'm going to
23 hear from the State, and then I'll give you all the
24 time -- I'll be happy to hear -- I understand there's
25 some family members --

1 MS. CAMPBELL: Yes.

2 THE COURT: That would wish to address the Court.
3 So you all may have a seat.

4 Ms. Concannon, I'll be happy to hear from you.

5 MS. CONCANNON: Thank you, Your Honor. May it
6 please the Court. In May of this year the defendant,
7 Mr. Barrett, Jr., was convicted of a lewd act on a minor,
8 the victim named ^{Minor} . The incident occurred
9 back in March. You heard all the testimony at trial. We
10 were there for, I believe three days at trial hearing
11 testimony, first pretrial, then into the trial itself.

12 There are a few things I wanted to focus on in the
13 sentencing hearing. First would be Mr. Barrett's prior
14 record. He does have a prior record. He's been in and
15 out of the judicial system since he was nine years old.
16 We won't get into his juvenile record, but as adult in
17 2007 he has a petty larceny, in 2009 he has a burglary in
18 the second degree nonviolent, as well as a financial
19 transaction card fraud for which he received a Y. O. A.
20 on both of those convictions.

21 And I believe the most important conviction that he
22 has on his prior record is from August 25, 2011,
23 contributing to delinquency of a minor. He was given
24 credit for 90 days credit for time served. If you recall
25 the trial testimony of M. " " , who was the victim

1 in that case --

2 THE COURT: Can you, just for the record, because
3 we have different a court reporter, if you'll spell her
4 name.

5 MS. CONCANNON: Yes, Your Honor. It is -- her
6 first name is M.K. Her last name M.K. ,
7 M.K.

8 She was 14 years old at the time of the incident.
9 Mr. Barrett did waive presentment. He pled guilty to a
10 count two from this charge. It was originally charged as
11 a criminal sexual conduct with a minor in the second
12 degree. She was 14 years old at the time of the incident
13 from which he pled guilty to.

14 And if I may, for the record, read the count two
15 for which he pled guilty. It says that in Beaufort
16 County, South Carolina on or about between July 15th,
17 2011 and July 26th, 2011 the defendant, Gerald Barrett,
18 Jr., did contribute to the delinquency of a minor by
19 causing or influencing M.K. , age 14, to
20 willfully endanger her morals by engaging in sexual
21 intercourse with the defendant.

22 Your Honor, I do have a certified true copy of that
23 conviction as well as the burglary second degree
24 conviction.

25 THE COURT: And he pled guilty to the contributing?

1 MS. CONCANNON: He did plead guilty to the
2 contributing.

3 THE COURT: Did he plead guilty to the burglary?

4 MS. CONCANNON: Yes, Your Honor, he did. The
5 reason they wanted to point out --

6 THE COURT: Ms. Campbell, you are not objecting to
7 either one of those convictions? You agree that he has a
8 burglary conviction?

9 MS. CAMPBELL: I do.

10 THE COURT: All right.

11 MS. CAMPBELL: I believe that -- right. I was the
12 attorney on the contributing charge and Mr. Bell, from my
13 office, was the attorney on the burglary. Yes, they are
14 both convictions.

15 THE COURT: All right. Thank you.

16 MS. CAMPBELL: Thank you.

17 MS. CONCANNON: Thank you. The reason that I
18 wanted to elaborate on the contributing charge is I
19 believe the facts are just too similar to the facts that
20 he was found guilty of in this case. It shows that he
21 will do this again. He has done this at least twice that
22 the State is aware of and likely more times. He does
23 have other pending sex related charges in the 14 Circuit
24 Solicitor's Office, Your Honor.

25 THE COURT: Tell me what the time frame was, as far

1 as this event and the event for the contributing.

2 MS. CONCANNON: The contributing event occurred in
3 July of 2011, and the lewd act, which he was convicted
4 of, was the following March of 2012, so roughly seven
5 months apart with these two incidents.

6 THE COURT: You may continue.

7 MS. CONCANNON: Thank you, Your Honor. It just
8 shows that he has a -- he's repeated this behavior, this
9 predatory violent behavior towards these girls on at
10 least two separate occasions, and the State would concede
11 more. We have more pending charges, as I stated, with
12 Mr. Barrett in our office, which I know we're not here
13 today on those. I just believe it shows that he has a
14 pattern of this behavior.

15 He is a sexual predator. He has a type. They are
16 young, they are attractive and they are vulnerable, and
17 that is who he attacks and that's who is most susceptible
18 to actions. The incidents are just too similar to be
19 ignored at this sentencing hearing, the State contends.

20 Aside from his prior record I did want to elaborate
21 just a little bit on the evaluation by Dr. Burke as well
22 as the report submitted by probation and parole. I know
23 Your Honor has a copy of the report as well as
24 Ms. Campbell, and the State has gone through the report
25 page by page and there are just a few different points

1 that I'd like point out that I think are important for
2 this sentencing. I'm sure Ms. Campbell has some points
3 as well that she would like to point out.

4 He did go through numerous tests in this
5 evaluation. I would like to add to the Court that I'm
6 not quite familiar with all of these tests but I did a
7 little bit of research on some of these and it's quite
8 new to me, a new area to me, but I would like to point to
9 the Static 99 Test performed Dr. Burke. And it states
10 that Barrett is in the 40 percent risk of re-offending
11 over the next 40 years, and that places him in the
12 moderate to high risk category.

13 And while 40 percent to the year may not seem
14 extremely high, when it comes to this sort of behavior
15 that Mr. Barrett is exhibiting 40 percent is just too
16 much of a risk that the State is willing to take. We
17 feel that 40 percent shows that there's likelihood he
18 will re-offend and we feel that nothing lower than the 15
19 years maximum sentence would be appropriate.

20 I also would like to go down further in the report
21 where Dr. Burke combined the Static 99 and Stable 2007
22 Test. When combined together it placed Mr. Burke -- my
23 apologies, Mr. Barrett in 64 to 83rd percentile risk
24 comparison of similar samples in that origin of
25 offenders. Again, 84 percent -- 83 percentile is

1 exceedingly high and we feel that that is just too great
2 of a risk to be placed back into society. He's too great
3 of a threat on these victims.

4 I further wanted to go on, and the evaluation by
5 Dr. Burke even went so far as to say that even if, even
6 though Mr. Barrett has been tried and convicted of this
7 crime, even if in fact he was not innocent -- was not
8 guilty, which the State concedes he is guilty of this
9 crime, that there is still a 40 percent chance that he'll
10 be accused of a similar crime in the next 15 years. And
11 again, a 40 percent chance -- although he may be in the
12 department of corrections, with which that would be their
13 recidivism rate across the board, forty percent of these
14 sexual offenses is just too high for the State to bear.
15 We feel that he is a threat to the community.

16 He is a threat to Beaufort County or whoever he
17 will be released to. We cannot have him on our streets.
18 Fifteen years is the most appropriate sentence for the
19 crime that he has been convicted of.

20 And finally I wanted to go into some of the
21 pretrial testimony that was testified to prior to the
22 commencement of this trial. You heard from two victims,
23 one M.K. , who I mentioned earlier who
24 Mr. Barrett pled guilty to having sexual relations with
25 her while she was 14 years old, just seven months prior

1 to attacking Minor in this case, and also A.W.
2 (phonetic) A.W. who alleges that Mr. Barrett did on one
3 occasion, likely two occasions, also have sexual
4 intercourse with her. She was only 12 years old when
5 those incidents occurred. That case is still pending in
6 the solicitor's office.

7 The separate victims, these separate incidents show
8 a trend, show a pattern, show that the defendant,
9 Mr. Barrett, is a predator. He's a sexual deviant. He
10 is a sexual predator. He preys on young, pretty,
11 vulnerable victims. That is who he goes after and that
12 is who he attacks. And the State feels that anything
13 lower than the 15 years would just not be acceptable. We
14 are asking you to sentence Mr. Barrett to the maximum 15
15 years. We are scared when he's released any time prior
16 to that he will attack again. He is a predator.

17 Your Honor may be wondering why Ms. Minor, our
18 victim, is not here, her family is not here. I would
19 like to just shed a little bit of light on that. I'm not
20 sure if you all remember, Mike is her stepfather. The
21 family dynamic is all over the place with Minor's family.
22 Most of the family has moved to Florida and were unable
23 to attend this morning's hearing and Minor is now in the
24 care of her mother.

25 Repeated phone calls were left, unanswered. I did

1 speak with her father, told him the sentencing was today
2 and we left a message when it was changed, the time from
3 9:30 to 11:30. We didn't hear from them, but their
4 statements at trial I think would still be true today,
5 that they all feel that 15 years is appropriate.

6 Minor was brave enough to get on the stand and
7 testify and tell the truth and tell what happened, and
8 that helped the State convict Gerald Barrett, Jr. of this
9 crime and we feel nothing below the 15 years would be
10 appropriate. Thank you, Your Honor.

11 THE COURT: All right. Ms. Campbell?

12 MS. CAMPBELL: May it please the Court, Your Honor.
13 You know, just because the solicitor calls Mr. Barrett a
14 sexual deviant and calls him a sexual predator does not
15 make him one. Dr. Burke, who is an expert in this field,
16 did not label him as sexual deviant, nor label him a
17 sexual predator.

18 I'd like to go back and address basically the two
19 main points that the solicitor addressed, and then I have
20 some of my own to make on behalf of Mr. Barrett, and then
21 if his family wishes to address, Your Honor.

22 In reference to the facts regarding Mary Kollaros,
23 Mary testified that albeit legally unable to consent that
24 she considered herself at the time to be dating Gerald
25 Barrett, that they were boyfriend and girlfriend.

1 THE COURT: That doesn't change the fact that he
2 pled guilty, correct?

3 MS. CAMPBELL: Correct. He pled guilty to
4 contributing to the delinquency --

5 THE COURT: What she believes is of no moment. It
6 is what the law believed.

7 MS. CAMPBELL: Correct.

8 THE COURT: Okay. All right. Thank you.

9 MS. CAMPBELL: And I prefaced what I said with it's
10 not the law, that at 14 she cannot legally consent to
11 have a sexual relationship with Gerald Barrett. However,
12 my point in saying that is that she did not make the
13 assertion that he beat her, that he tied her up, that he
14 held her down.

15 THE COURT: Ms. Campbell.

16 MS. CAMPBELL: Yes.

17 THE COURT: It is against the law for your client
18 to have engaged in sexual intercourse with that child,
19 correct?

20 MS. CAMPBELL: Correct.

21 THE COURT: All right. I don't need to hear about
22 anything making it in your mind or your client's mind
23 that it was better.

24 MS. CAMPBELL: And that --

25 THE COURT: I think you want to make it seem

1 different that he didn't force her, that there may have
2 been some understanding that force was not used but she
3 did not have the capability to consent, whatever she
4 thought, correct?

5 MS. CAMPBELL: Correct.

6 THE COURT: All right. Thank you.

7 MS. CAMPBELL: And, Your Honor, I apologize the
8 only reason I address that is because the State has at
9 length tried to connect the circumstances of Minor case
10 to M. s case and again --

11 THE COURT: Ms. Campbell, I was there.

12 MS. CAMPBELL: Correct.

13 THE COURT: I heard from that victim. I heard from
14 the current victim. All right. I understand what the
15 State's position is. I understand what your position is,
16 and I understand what your client has pled guilty to.
17 All right. I take great offense at the fact that we're
18 trying to mitigate or that someone tries to mitigate when
19 they have intercourse with a child by using the statement
20 that that child consented. Thank you.

21 MS. CAMPBELL: Thank you, Your Honor. In reference
22 to the Static 99, which the State relied heavily on in
23 their argument to Your Honor, I think it's very important
24 that we point out that Dr. Burke himself felt that the
25 Static 99 Test was overrepresenting Mr. Barrett's risk at

1 this time. And, in fact, as Your Honor I know has a copy
2 of it, he says, I believe that this Static 99 score
3 overrepresents Mr. Barrett's risk at this time.

4 If that is the case, if Dr. Burke himself believed
5 that the testing was overrepresenting his risk to
6 re-offend, or his risk to engage in similar conduct or
7 recidivism then it falls to the next few tests that those
8 figures may also be off, and may be overrepresenting
9 Mr. Barrett's risk to the community, risk for recidivism.

10 And I think it's important that the record reflect
11 that Dr. Barrett (sic) himself made the note that the
12 Static 99 was overrepresenting the risk at this time.
13 And if that be the case, Your Honor, you know, even the
14 moderate to mid range of, you know, recidivism that
15 Dr. Burke talks about would probably more likely be lower
16 than moderate or mid range, closer to that than the
17 higher range.

18 Also on the few pages after that on the Limestone
19 V. S. P. Assessment Section C. Mr. Barrett's pedophilic
20 approximation quotient. His -- and this is key for us,
21 his quotient numbers match non pedophilic child molesters
22 and non exclusive pedophilic offenders.

23 And so I think it's important that we make sure
24 that we understand that Dr. Burke is scoring him in this
25 section not to meet criteria that would be of a concern

1 for pedophilia or anything of that nature.

2 The V. S. -- the voice stimulus set basically
3 showed statistically no difference in any arousal levels
4 in what was shown on that for Mr. Barrett, and that was
5 important for us.

6 And the last page where Dr. Burke gives his
7 conclusion I would like to make sure the record is clear
8 that Mr. Barrett, according to Dr. Burke, the expert in
9 this case, does not appear to have chronic sexual
10 interest in any deviant stimuli as evidenced by that
11 Visual Sexual Preference Test, and I think that he goes
12 on further down here to explain some of the other,
13 perhaps, discrepancies in the testing.

14 And then he recommends on the last page for Your
15 Honor and for all of us that Mr. Barrett could benefit
16 from intensive outpatient program that may specialize in
17 a sexual disorder because as noted earlier Mr. Barrett
18 himself is the victim of sexual abuse and that that
19 sexual abuse needs to be addressed for his care and for
20 everyone's care.

21 I think that the P. S. I. -- I'll move to that at
22 this point. I think that the P. S. I. that Beaufort
23 County did, frankly, it appears sort of a lot of cutting
24 and pasting from the incident reports and from the Hope
25 Haven report. It was their opinion that he should be

1 sentenced to the department of corrections with community
2 supervision but they did not make a recommendation here
3 on or for any length of time.

4 I'm asking Your Honor to sentence Mr. Barrett in,
5 as Dr. Burke says, the moderate sort of mid range,
6 something in the six to seven years mid range of the
7 possible maximum sentence.

8 If Mr. Barrett returned from the meeting with
9 Dr. Burke in the extremely high risk category then
10 perhaps the lengthy prison sentence of 15 years would
11 have been appropriate. That's our plea to Your Honor
12 today, for a mid range sentence which according to
13 Dr. Burke matches some of the findings that he had for
14 Mr. Barrett.

15 And at this point I will turn it over to
16 Mr. Barrett and/or his family if they wish to address
17 Your Honor.

18 THE COURT: All right. Ms. Campbell, he is
19 currently on Y. O. A. parole?

20 MS. CAMPBELL: He is.

21 THE COURT: Was on Y. O. A. when this was
22 committed?

23 MS. CAMPBELL: That is correct.

24 THE COURT: And so tell me about that. Tell me
25 what you know about that.

1 MS. CAMPBELL: Well, it's a Y. O. A. parole from
2 the conviction that he had -- I want to say Jasper maybe.

3 THE COURT: The burglary?

4 MS. CAMPBELL: Yeah.

5 THE COURT: He was on Y. O. A. parole for the
6 burglary?

7 MS. CAMPBELL: Oh, Beaufort, right, from Mr. Bell.
8 Correct. And it's my understanding that the Y. O. A.
9 parole, I mean, that's going to have to be taken up with
10 them, and we've talked about that. That's a totally
11 separate matter from the concerns that he has in the
12 sentencing.

13 THE COURT: But you've gone over with him that this
14 conviction --

15 MS. CAMPBELL: Yes, it will be revoked, is what I
16 believe.

17 THE COURT: It could be.

18 MS. CAMPBELL: Yes, it could be.

19 THE COURT: It will somewhat impact his Y. O. A.
20 parole.

21 MS. CAMPBELL: Yes, ma'am. I've advised him of
22 that. Yes.

23 THE COURT: Because since he hasn't been sentenced
24 they have been unable to do that.

25 MS. CAMPBELL: Correct.

1 THE COURT: How is he doing on probation -- on his
2 Y. O. A. parole?

3 MS. CAMPBELL: Well, my understanding is other than
4 these matters -- well, except for, you know, there were
5 some issues with --

6 THE COURT: Drug use.

7 MS. CAMPBELL: The drug and alcohol counseling, the
8 alcohol use, and there was one positive test for
9 marijuana, I think, on the report.

10 THE COURT: So would we classify that as he was
11 successful, not successful?

12 MS. CAMPBELL: Moderately successful.

13 THE COURT: All right. So tell me who you want me
14 to hear from.

15 MS. CAMPBELL: May I have just one moment?

16 THE COURT: You may have all the time you need.

17 (WHEREUPON, Ms. Campbell speaks privately with her
18 client and his family.)

19 MS. CAMPBELL: May it please the Court, Your Honor.
20 My client does not wish to address the Court at this
21 time.

22 THE COURT: All right.

23 MS. CAMPBELL: However, his mother and father and
24 sisters are here and they would like to address the
25 Court.

1 THE COURT: All right. Mr. Barrett, I understand
2 that you do not wish to address the Court and in no way
3 will I take that into consideration, just as I advised
4 the jury that they were not to take into consideration
5 the fact that you did not testify. You have those
6 constitutional rights I do not consider.

7 I understand that that may be a decision that your
8 attorney has indicated to you that you should not or may
9 not want to address the Court, so I just want to relay
10 any fears that you may have about that I consider or not
11 consider the fact that you are not addressing the Court.
12 All right.

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: All right. Just with that being said
15 is there anything you wish to tell me?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: All right. Thank you.

18 All right, Ms. Campbell. If you'll just have --

19 You can stand right there. I'll need you to state
20 your name for the record, and again please tell us your
21 last name.

22 FEMALE SPEAKER: My name is Valerie Barrett, and
23 it's spelled B-a-r-r-e-t-t.

24 THE COURT: Thank you.

25 FEMALE SPEAKER: The only thing I would like to say

1 is Jerry has made several bad choices in his life but he
2 has never -- he doesn't have the heart to hurt anybody,
3 not purposely. That's all I've got to say.

4 THE COURT: Thank you, Ms. Barrett. And I'm just
5 going to take the opportunity, there comes a time when
6 the Court has to look at, and Ms. Campbell has to look
7 at, and the State looks at that the difference between a
8 bad person and bad choices, and I don't know necessarily
9 that the State is saying that your son is a bad person
10 but I think everybody in this room agrees that he has
11 made severe -- a lot, a lot of bad choices in his short
12 life. All right.

13 And, Mr. Barrett, the reason I make that
14 distinction is because it is important for you to
15 understand that your past decisions don't necessarily
16 impact your future decisions; do you understand?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: All right.

19 MALE SPEAKER: I'm Gerald Barrett's father, Gerald
20 Barrett, Sr., B-a-r-r-e-t-t. My son has grew up in a
21 fairly bad family, Your Honor. We've had our problems.
22 I was a fairly bad drug addict user, alcohol. He's seen
23 a lot of that and maybe I have put a reference on him in
24 a bad way, but he's a fairly good kid. He's my kid and I
25 guess I would say that, but your leniency or whatever

1 will be appreciated.

2 THE COURT: Thank you, Mr. Barrett.

3 Ms. Campbell, I understand you said two of his
4 sisters were here. Those are his sisters?

5 MS. CAMPBELL: These are Gerald's sisters, Your
6 Honor, and I don't believe that they wish to address the
7 Court, his older sister and his younger sister.

8 THE COURT: All right. Just note for the record
9 that they are here.

10 And again, anything further, Ms. Campbell?

11 MS. CAMPBELL: No, Your Honor.

12 THE COURT: And, Mr. Barrett, anything before I
13 impose sentence?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: I understand there was a not guilty on
16 the kidnapping, the criminal sexual conduct. Are you
17 going to retry it? What is the State's position as to
18 that, because it was a mistrial on that one.

19 MS. CONCANNON: That's correct, Your Honor. It was
20 a mistrial. I may be in talks with Ms. Campbell to see
21 if there's anything we can do to avoid another trial. I
22 would hate to put my witness, victim on the stand again
23 but I can't tell the Court at this time yes or no. I'm
24 just not sure.

25 THE COURT: What is the State's position as to --

1 again, I'm going to impose sentence, as to a -- you don't
2 have a trial date for the pending charges, correct?

3 MS. CONCANNON: No, Your Honor. There is no trial
4 date for the pending charges.

5 THE COURT: And again, Ms. Campbell, just for the
6 record, I am not considering that there are pending
7 charges.

8 MS. CAMPBELL: Yes, Your Honor.

9 THE COURT: I'm just trying to make sure that we
10 clean up as much paperwork-wise today that we can. All
11 right.

12 MS. CAMPBELL: Yes, ma'am.

13 THE COURT: Anything further, Ms. Campbell?

14 MS. CAMPBELL: No, Your Honor.

15 THE COURT: All right. Anything further,
16 Mr. Barrett?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: You understand and your attorney has
19 advised you that you are facing 15 years in the
20 department of corrections on this offense?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And you understand that I can also fine
23 you in an amount in the Court's discretion?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Or both. Do you understand that's a

1 possible punishment?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Pursuant to this you will be required
4 after you have served your time in custody, assuming that
5 that's what I impose upon you, to a mandatory lifetime
6 GPS; do you understand that, sir?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: And this is also mandatory required
9 reporting; is that correct?

10 MS. CAMPBELL: That's -- it's required for the
11 sexual offender registry, yes.

12 THE COURT: Do you understand what that means,
13 Mr. Barrett?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Can you explain that to me.

16 THE DEFENDANT: That I am required to report, just
17 like probation.

18 THE COURT: All right. You are required --
19 Ms. Campbell, have you explained to him that it's not
20 like probation. There's a different place that he has to
21 go sign up as a sexual offender?

22 MS. CAMPBELL: I don't know that I've explained to
23 him -- I don't know that I've explained to him where he
24 needs to report but he has to report to the sheriff's
25 department. You know, I think it's now every six months.

1 THE COURT: Correct.

2 MS. CAMPBELL: He has to let them know where he's
3 living and circumstances of his housing, and there's
4 certain restrictions on where he can live.

5 THE COURT: Right. Ms. Campbell, did you also
6 explain to him with the record that he has now
7 accumulated the potential that he will be classified as s
8 sexually violent predator?

9 MS. CAMPBELL: Mr. Barrett understands that. Yes.
10 We've discussed that.

11 THE COURT: And, again, I just like to tie up as
12 many loose ends and make the sentencing as informative as
13 possible for any future issues that may arise.

14 Mr. Barrett, I have used a lot of terms; sexually
15 violent predator, sex offender registry, those things; do
16 you understand what all those mean?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Any questions for the Court?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: Based upon my discussion does the State
21 have anything further regarding -- related to those
22 matters?

23 MS. CONCANNON: Nothing further from the State,
24 Your Honor.

25 MS. CAMPBELL: Your Honor, if I could just have one

1 second?

2 THE COURT: Take all the time you need,

3 Ms. Campbell.

4 (WHEREUPON, Ms. Campbell talks privately with her
5 client.)

6 MS. CAMPBELL: Thank you, Your Honor.

7 THE COURT: Anything further?

8 MS. CAMPBELL: No, Your Honor. Actually, Your
9 Honor, for the record, my client has been in the
10 detention center since June 12, 2012.

11 THE COURT: June 12, 2012.

12 MS. CAMPBELL: That's correct.

13 THE COURT: I'm assuming you're telling me that
14 because you are requesting --

15 MS. CAMPBELL: Credit for time served.

16 THE COURT: -- credit for time served since June 12
17 of 2012?

18 Any objection to that incarceration date?

19 MS. CONCANNON: No objection, Your Honor.

20 THE COURT: All right. It's the order of the Court
21 on indictment 2012-GS-07-1633 that you be committed to
22 the State Department of Corrections for a term of 12
23 years provided upon the service of nine years. The
24 balance is suspended, place you on probation for four
25 years.

1 Terms and conditions, you are to enroll in a sexual
2 offender treatment program and complete. There's to be
3 no contact with the victim, the victim's family by you or
4 anyone at your request. That includes face-to-face
5 discussions, it also includes any texting, e-mailing,
6 anything of that nature. Do you understand what that
7 means?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: I understand that there is capability
10 for -- whether or not it's condoned by the department of
11 corrections, that you may post on Facebook and do things
12 of that nature. That includes anything that you post on
13 Facebook or any electronic media. There is to be no
14 contact with the victim; do you understand?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: You are subject to mandatory GPS. You
17 are to be placed upon the sex offender registry. Good
18 luck to you.

19 MS. CAMPBELL: Thank you, Your Honor.

20 MS. CONCANNON: Thank you, Your Honor.

21 THE COURT: And, Ms. Campbell, since the sentence
22 was imposed today, today starts your appeal.

23 MS. CAMPBELL: Correct. Thank you, Your Honor.

24 And if it pleases the Court, I'm going to try and speak
25 to my client before they take him --

1 THE COURT: All right. If you'll --

2 THE DEPUTY: I'll put him in the booth.

3 THE COURT: All right. Thank you.

4 MS. CAMPBELL: Thank you very much.

5 (WHEREUPON, the hearing concluded.)

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1 C E R T I F I C A T E

2

3 I, Sharon L. Vizer, Official Court Reporter for the
4 14th Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate and
6 complete transcript of record of all the proceedings had
7 and the evidence introduced in the hearing of the
8 captioned case in Circuit Court on the 2nd day of October
9 2013.

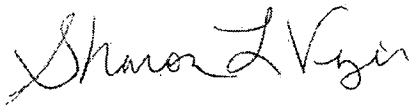
10 I do further certify that I am neither of kin, counsel
11 nor have an interest to any party hereto.

12

13

December 10, 2013

14



15

SHARON L. VIZER

16

CIRCUIT COURT REPORTER

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25



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	)	SESSIONS
COUNTY OF BEAUFORT	)	INDICTMENT NOS:	)	
	)	2012-GS-07-1631,1632,1633	)	
STATE OF SOUTH CAROLINA,	)		)	
versus	)		)	
	)	MOTION TO DISALLOW	)	
	)	1. QUALIFICATION OF KENDRA TWITTY	)	
	)	AS AN EXPERT	)	
	)	2. USE OF THE TERMINOLOGY "FORENSIC	)	
GERALD BARRETT, JR.,	)	INTERVIEWER"	)	
Defendant.	)	3. TESTIMONY FROM KENDRA TWITTY	)	
_____	)		)	

The Defendant, Gerald Barrett, Jr., by and through his undersigned counsel, hereby respectfully requests that the State of South Carolina, pursuant to the opinion issued by the State of South Carolina Supreme Court in January 2013 in State v. Kromah, (Appellate Case No. 2009-140328), be prevented from qualifying Kendra Twitty as an Expert, using the terminology referring to her as a "forensic expert", and presenting her testimony in this case.

The Defendant will move before this Honorable Court for a hearing on this matter on May 20, 2013 at 9:00 a.m., or as soon as the Defendant may be heard, for an Order in accordance with this motion. Grounds for this motion are detailed herein below.

The South Carolina Supreme Court noted in Kromah, attached hereto, that "the title of "forensic interviewer" is a misnomer. The use of the word forensic indicates that the interviewer deduces evidence suitable for use in court. It also implies that the evidence is deduced as the result of the application of some scientific methodology. The exact scientific methodology applied apparently defies identification. The RATAC style of interviewing is not scientific. It merely

represents the objectives and topics of discussion between the interviewer and the child. Somehow RATAC is supposed to convert the interviewer into a human truth-detector whose opinions of the truth are valuable and suitable for the jury's consumption".

The Court went on to explain that "forensic interviewers might be useful as a tool to aid law enforcement officers in their initial investigative process, but this does not make their work appropriate for use in the courtroom. The rules of evidence do not allow witnesses to vouch for or offer opinions on the credibility of others, and the work of a forensic interviewer, by its very nature, seeks to ascertain whether abuse occurred at all, i.e., whether the victim is telling the truth, and to identify the source of the abuse. Part of the RATAC method, which is not without its critics, involves evaluating whether the victim understands the importance of telling the truth and whether the victim has told the truth, as well as the forensic interviewer's judgment in determining what actually transpired. For example, an interviewer's statement that there is a "compelling finding" of physical abuse relies not just on objective evidence such as the presence of injuries, but on the statements of the victim and the interviewer's subjective belief as to the victim's believability. However, an interviewer's expectations or bias, the suggestiveness of the interviewer's questions, and the interviewer's examination of possible alternative explanations for any concerns, are all factors that can influence the interviewer's conclusions in this regard. Such subjects, while undoubtedly important in the investigative process, are not appropriate in a court of law when they run afoul of evidentiary rules and a defendant's constitutional rights".

Based upon these statements by the South Carolina Supreme Court, the Defendant asserts that Kendra Twitty should not be qualified as an "expert" by this Court. He further contends that her testimony should be excluded in its entirety. However, if this Honorable Court, after a hearing on this matter, deems it appropriate for Kendra Twitty to testify, then the Defendant asks that the State of South Carolina be disallowed from calling her a "forensic" interviewer. And, if she is to testify, then, in keeping with the parameters set forth in Kromah, she be limited to the following:

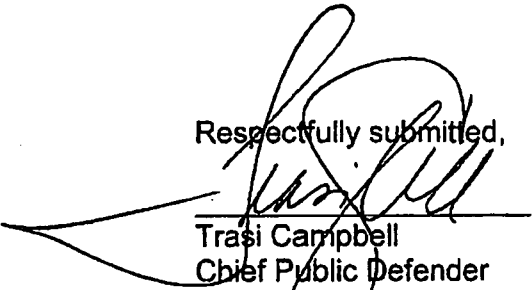
- the time, date, and circumstances of the interview;
- any personal observations regarding the child's behavior or demeanor;
or
- a statement as to events that occurred within her personal knowledge

Specifically, again in keeping with the South Carolina Supreme Court ruling in Kromah, Kendra Twitty should not in any way during her testimony address the following:

- that the child was told to be truthful;
- a direct opinion as to a child's veracity or tendency to tell the truth;
- any statement that indirectly vouches for the child's believability, such as stating the interviewer has made a "compelling finding" of abuse;
- any statement to indicate to a jury that the interviewer believes the child's allegations in the current matter; or
- an opinion that the child's behavior indicated the child was telling the

truth.

Respectfully submitted,


Trasi Campbell
Chief Public Defender
Beaufort County
Attorney for the Defendant

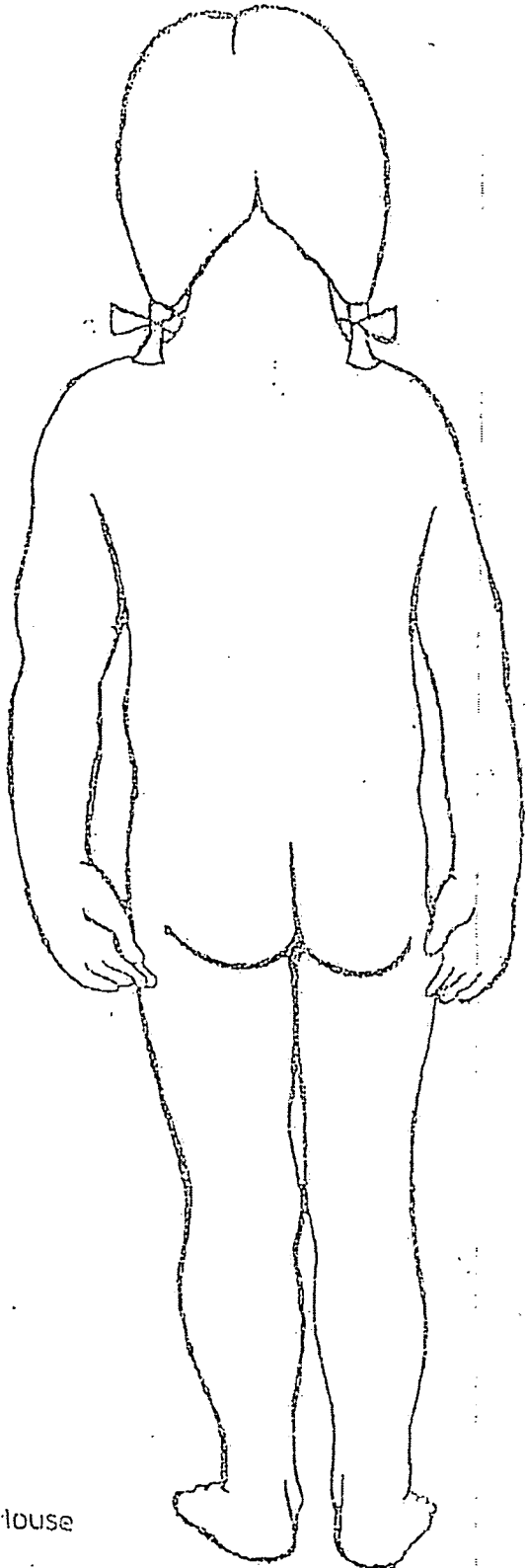
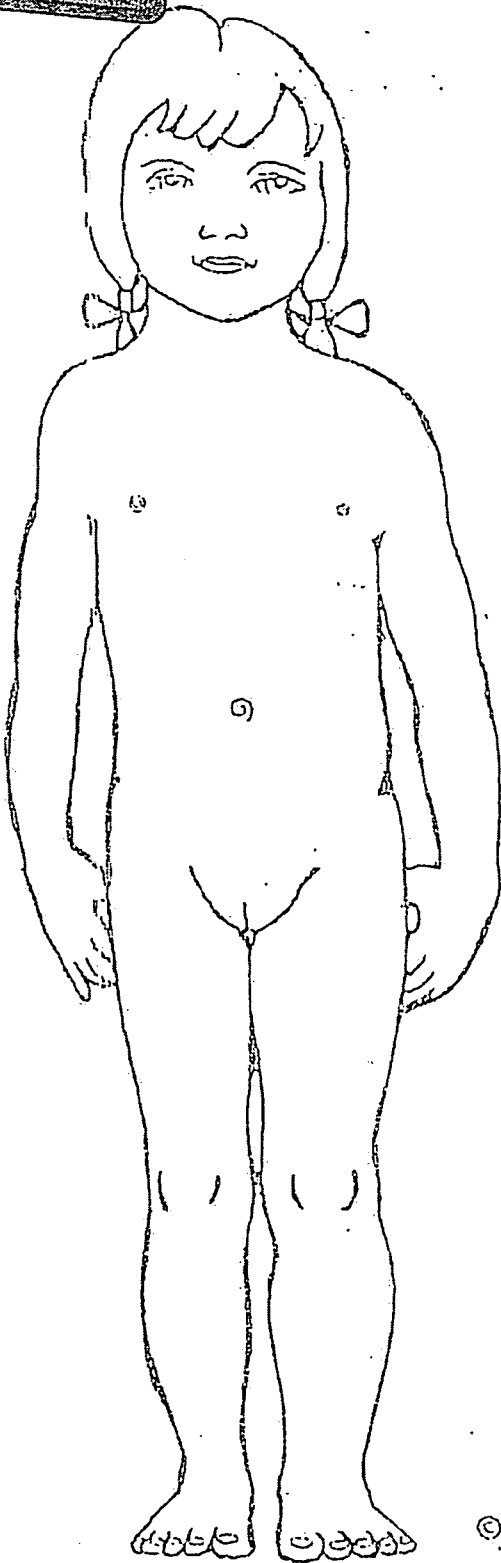
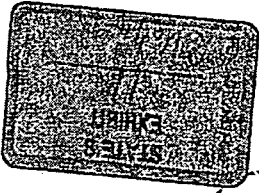
Beaufort, South Carolina

5/20, 2013

01/20/2009 10:02 FAX 6447233

CAC Aiken County

008/013



Minor
 7-20-2012
 After St. Patty's Day -
 2 days after St. Patty's
 He raped me. ^{March or April 2012}
 Step-mom - Katie
 Day

he took his pants down ^{Katie}
 and got on top of me ^{AM}
 and I thought I was dying.
 So I cried and he heard ^{Se.} told
 a noise so he ran down ^{T.}
 stairs and ~~texted~~ ^{Sh.} ten
 minutes later he ^{A.} texted
 and said come down stairs ^(Sister 11/4)
 so I shut my door and
 locked it so he wouldn't
 come back and I ~~went~~ took
 a shower and then got
 some pants and a t-shirt
 on and went back to sleep.

333

WITNESSES

J. Adams, BCSO

ARREST WARRANT NUMBER

2012A0710300043

ACTION OF GRAND JURY

True Bill

Melinda Beene
Foreperson of Grand Jury
Date: AUG 28 2012

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2012GS0701633

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

August Term 2012

THE STATE

vs.

Gerald Barrett Jr

Indictment for

Lewd Act, committing or attempting lewd act
upon child under 16

SC Code: 16-15-0140
CDR Code:2468

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 BEAUFORT)

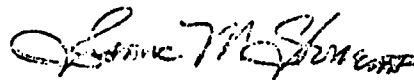
INDICTMENT
2012GS0701633

At a Court of General Sessions, convened on August 23, 2012, the Grand Jurors of Beaufort County present upon their oath:

Lewd Act, committing or attempting lewd act upon child under 16

That in Beaufort County, South Carolina, on or about, the Defendant, Gerald Barrett Jr, 1990-01-14, a person over fourteen years of age, willfully and lewdly did commit or attempt to commit a lewd or lascivious act upon the body, or any part or member thereof, of a child under the age of sixteen (16) years, to wit: Minor , date of birth , with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of said child, in violation of Section 16-15-140, 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.

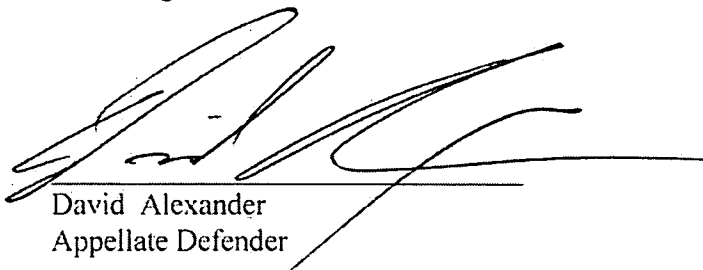


Solicitor

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."

November 9th, 2015



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT