

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

John C. Hayes, III, Circuit Court Judge

RECEIVED

OCT 26 2016

S.C. SUPREME COURT

DARRELL EFIRD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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REPORTER'S NOTE: ALL EXHIBITS WERE FILED WITH THE YORK
COUNTY CLERK OF COURT.

1 MS. HERVEY: Just briefly, your Honor. I just think
2 we need to - we had a meeting last week in chambers where
3 we discussed some pretrial issues; I would like to just put
4 some of that on the stand so that we understand and we are
5 all operating on the same page. And I have some things
6 just to give people - this is some more of our questions
7 that I have - I expect Mr. Boyd has some as well - in
8 attempting to clear things off my list let's go to there
9 first. And the last Number Four and Five Mr. Boyd's was
10 somewhat implicative of the state's last panel of questions
11 following the typical line of whether or not any member of
12 the jury panel has been a victim of sexual abuse themselves
13 and of that kind of nature.

14 THE COURT: All right. Do either of you have any
15 objections to the requested voir dire by the other?

16 MS. HERVEY: I have none, your Honor.

17 MR. BOYD: I have none, your Honor, and if you want to
18 combine four and five and combine somehow we have no
19 opposition to that. We are both getting the same
20 information.

21 THE COURT: I think what I would plan to do is the
22 defendant's Number Five; the state's Number Three, Four,
23 and Five. I simply will have them come down in front if
24 they need to respond so we can do it in a little bit more
25 privacy. The others I think we can ask openly and just

1 find out whether that will effect their ability to be fair.

2 MS. HERVEY: That's fine, your Honor.

3 THE COURT: The witness list - -

4 MS. HERVEY: This is the witness list of the state.

5 (DOCUMENTS HANDED UP TO THE COURT.)

6 THE COURT: Does the defense have a witness list?

7 MR. BOYD: I do, your Honor.

8 (DOCUMENTS HANDED UP TO THE COURT.)

9 THE COURT: All right, any pretrial matters we need to
10 take up at this time from either side?

11 MS. HERVEY: Just briefly one thing. on his witness
12 list, Number Five witness, is listed as Carrie Neely, that
13 is a typo, Carlson Neely, he is on my witness list as well.
14 That's the one duplicate just so that we're both on the
15 same page there. I am sure if you looked over that you can
16 find typo's on mine as well.

17 THE COURT: Do you agree it is the same person, your
18 Carson Neely?

19 MS. HERVEY: That's correct.

20 THE COURT: All right.

21 MS. HERVEY: The one other thing I wanted, this is the
22 state's written motion, we discussed this previously to
23 enforce the rape shield law which is that there are no
24 questions to be asked the victim regarding her sexual past
25 or must explain the origin of semen, pregnancy or disease.

1 Also there will be no testimony from the state relating to
2 any semen, pregnancy, or disease. The state feels there
3 should be no pertinent questions regarding that matter
4 unless and until the court would have an opportunity in
5 camera to review as such. We feel that either putting that
6 question out there before the jury would be unduly
7 prejudicial to the victim and in violation of the statute.
8 Mr. Boyd did indicate that he had one question regarding
9 the victim's participating in an abstinence type program or
10 something of that effect. The state doesn't feel that that
11 necessarily comes within that purview because it's
12 obviously the opposite thereof. There is also some
13 discussion about whether or not the victim may or may not
14 be pregnant. We feel that the questioning regarding that
15 would be inappropriate in this case. It is obviously
16 outside the bounds of the relevance so the jury could then
17 consider. As the court is aware the primary detective on
18 this case, Ms. Amanda Carter, is unavailable to the state
19 under going chemotherapy for breast cancer. Accordingly we
20 are at some what of a limited purview not having her
21 available to us however in the interest of not prolonging
22 this case any further we have forward and move forward with
23 the stipulation on the part of the defense this is an
24 evidence envelope which was delivered to me by Christopher
25 Bomar this morning an officer with the York County

1 Sheriff's Office. It contains a contract. As described on
2 the envelope, the plain envelope with contract documents
3 inside that was found inside the bedroom closet. Mr. Boyd
4 has indicated that there will be testimony obviously about
5 this contract and we are not in any way trying to wheel
6 that out in pretrial but there will be no objections to the
7 admission of this contract or no contest and that the three
8 parties who signed it Tabitha, Christine, and Darrell Efird
9 who in fact signed the document because that obviously the
10 state would have had to have this testimony and remain
11 there and perhaps a document examiner and again we don't
12 want to prolong it for that. We can come up with any
13 possible explanation as we want to the contract but its
14 admissibility and the three parties' signatures is not a
15 question.

16 If I am misspeaking please correct me.

17 MR. BOYD: That's correct, your Honor.

18 THE COURT: Okay. All right anything else?

19 MS. HERVEY: Just one last thing and I don't want to
20 belabor the issue. Your Honor, we delayed this trial for
21 two days as you well know to accommodate a funeral
22 yesterday that many members of the court attended. Carson
23 Neely who is the officer that took the statement of the
24 mother would have been the state's first witness and he
25 would have basically introduced the contract for that

1 purpose. Not the statement of the mother because it's not
2 prior consistent or inconsistent at that point; however, he
3 did take that statement. It may be necessary that we
4 furnish it to the mother. He is not available today. He
5 had a family emergency, he will be our last witness
6 tomorrow morning but I just wanted - I think there is no
7 real question that that is her statement but I wanted the
8 court to understand why we might not be doing things we
9 normally do in the course of it. This is kind of insularly
10 or preliminary but I do it in all criminal sexual cases
11 that I do charge this is the jury requesting charge but
12 will obviously come up with more but I know that Jackie
13 likes to be occupied in her spare time in searching jury
14 request I thought I would give her something to do during
15 the trial.

16 THE COURT: All right, anything else from the state?

17 MS. HERVEY: Nothing from the state at this time, your
18 Honor.

19 THE COURT: Do you plan to call them - Amanda Carter,
20 is she going to be able to testify?

21 MS. HERVEY: Yes. She told me that she is having a
22 good day and if she had to be here she would make that
23 effort. And her name may be referenced by Carson Neely and
24 out of the abundance of caution I put her on the list.

25 THE COURT: You going to ask the jury - nothing else

1 from the state?

2 MS. HERVEY: Nothing from the state.

3 THE COURT: From the defense?

4 MR. BOYD: Your Honor, I don't have any pretrial
5 motions as such. On the motion to enforce the rape shield
6 all I would intend to do is ask any questions about prior
7 sexual behavior. One issue that could come up I think
8 before my client was confronted with the allegations
9 approximately around Christmas of 2005 the victim who is a
10 student at the College of Charleston stayed at the College
11 of Charleston. It's my understanding she told her parents
12 that she was staying down there with her boyfriend. I don't
13 think that goes to any sexual activities. It's just where
14 she was staying. That's not a - basically just a place she
15 was staying that type of thing. I don't think that goes
16 into any - and not for the purpose of suggesting whether or
17 not a sexual activity occurred between them but that just
18 could come up.

19 MS. HERVEY: The state is not really sure of the
20 relevance of where she stayed in Charleston and that kind
21 of hinders our ability to respond to that.

22 THE COURT: It just depends. You know I can't
23 foreclose that at this point.

24 MS. HERVEY: I understand.

25 THE COURT: I think that the state is entitled to

1 present it's case and the defense is entitled to present
2 it's case so you just have to wait and see. It could be
3 relevant to their case. I wouldn't rule that out if it was
4 ask in the appropriate context depending on what the facts
5 are and the defense is trying to establish with that.

6 MS. HERVEY: If we get closer to that point and maybe
7 we can just get a heads up so maybe we can address that
8 ahead of time outside from the jury.

9 THE COURT: I would ask you to do that once we get
10 through the state's case and get the defense's case before
11 we actually get into it before the jury. Let's go ahead
12 and look at it at that point. I wouldn't rule it out at
13 this point.

14 MR. BOYD: Yes, sir.

15 THE COURT: Anything else?

16 MR. BOYD: Your Honor, I would just like to - I'll
17 respond to the request the charge at the appropriate time.
18 I don't think we need to address that issue now.

19 THE COURT: Okay.

20 MS. HERVEY: I just want to give them to you when I
21 had them. That's all, your Honor.

22 MR. BOYD: Your Honor, the number strikes is ten and
23 five.

24 THE COURT: I was going into that in just a second but
25 that's correct. Be ten for the defense and five for the

1 state. We would draw one alternate. Strikes would be two
2 for the defendant and one for the state. Anything else
3 from the defense?

4 MR. BOYD: No, sir.

5 THE COURT: Looks like we are ready to proceed.

6 So, please, ma'am, if you will have them bring us the
7 jury panel.

8 Counsel, on all the state
9 S questions I will them to respond down front. I don't
10 know what if we will let them stand or whether all of them
11 - -

12 MS. HERVEY: That's fine.

13 THE COURT: Whether they have any religious, emotional
14 bias et cetera. I think maybe that can be heard down here
15 and not in front of another juror. Likewise number one.

16 MS. HERVEY: Thank you, your Honor.

17 (COURT LEFT THE BENCH MOMENTARILY AT 10:25 A. M.)

18 (JURY PANEL ENTERED THE COURTROOM AT 10:30 A. M.)

19 MS. HERVEY: Your Honor, may we approach just briefly?

20 THE COURT: Yes, ma'am.

21 (BENCH CONFERENCE AT 10:35 A. M. OFF THE RECORD.)

22 THE COURT: Ladies and gentlemen of the jury panel,
23 give me your attention please. My name is Lee Alford and I
24 am the resident court judge for the Sixteenth Judicial
25 Circuit which is made up of York and Union Counties. We

1 today are about to go into a trial in the matter of the
2 State of South Carolina versus Darrell Efird E-f-i-r-d.
3 The state charges Mr. Efird with several offenses. They
4 charge him with three counts of criminal sexual conduct
5 with a minor in the second degree. They charge him with
6 criminal sexual conduct second degree. They charge him
7 with attempt to commit criminal sexual conduct in the first
8 degree and they charge him with incest. To these charges
9 the defendant has pled 'not guilty and we are about to go
10 into a trial on these charges. The state is represented in
11 this case by Assistant Solicitor's Mindy Hervey and Tisa
12 Weaver.

13 Counsel, please stand and let the jury see you.

14 (COUNSEL STOOD.)

15 THE COURT: Thank you. Is anyone on the jury panel
16 related by blood or marriage, friends with, or have any
17 other type social, business, or professional relationship
18 with either Windy Hervey or Tisa Weaver. If so please
19 stand?

20 (NO RESPONSE.)

21 THE COURT: Is anyone on the jury panel related by
22 blood or marriage, friends with, or have any other type
23 social, business, or professional relationship with anyone
24 who works in the Sixteenth Circuit Solicitor's Office. If
25 so please stand?

1 (NO RESPONSE.)

2 THE COURT: The defendant in this case Darrell Efird
3 is represented by Mr. James Boyd.

4 Mr. Boyd, would you please stand. I also ask Mr.
5 Efird to stand so the jury can see who he is.

6 (DEFENDANT AND DEFENSE COUNSEL STANDING.)

7 THE COURT: Thank you. You may be seated. Is anyone
8 on the jury panel related by blood or marriage, friends
9 with, or have any other type social, business, or
10 professional relationship with Darrell Efird. If so please
11 stand.

12 (NO RESPONSE.)

13 THE COURT: Is anyone on the jury panel related by
14 blood or marriage, friends with, or have any other type
15 social, business or professional relationship with that is
16 to say currently or formerly represented by or any other
17 relationship to Mr. James Boyd. If so please stand.

18 (NO REPSONSE.)

19 THE COURT: Ladies and gentlemen of the jury panel I
20 am going to go through a list of potential witnesses in
21 this case. All of these witnesses may not be called but
22 they may be called. What I am going to ask you to do is
23 when I call the witnesses name if you are related by blood
24 or marriage, friends with, or have any other type social,
25 business, or professional relationship with that particular

1 potential witness when I call their names I would ask that
2 you please stand. Tabitha Nicole Efird, Christine Efird,
3 Elizabeth Dixon spelled D-i-x-o-n, Doctor Allison DeFelice
4 spelled D-e-F-e-l-i-c-e. Amanda Carter who is with the
5 York County Sheriff's Department. Carson Neely who is with
6 the York County Sheriff's Department. Francis Smith, Kathy
7 Smith, Paige Efird, Heidi Cabatit spelled C-a-b-a-t-i-t,
8 Christine - I think I've already asked you that one.
9 Doctor Anger Schultz first name spelled A-n-g-e-r Shultz.

10 MS. HERVEY: That's Angus, your Honor.

11 THE COURT: I beg your pardon, should be Angus. Has
12 any member of the jury panel or a close family member of
13 yours been employed in any law enforcement, social
14 services, or victim's assistance occupation. If so please
15 stand.

16 Yes, ma'am, please give us your name and number if you
17 will.

18 A. My name is Bettina Glapinski, my number is eighty-two.

19 THE COURT: Yes, ma'am.

20 MS. GLAPINSKI: About two years ago or fifteen years
21 ago I worked for the York County DSS.

22 THE COURT: Ma'am, is there anything about that
23 employment that would interfere in any way with your
24 ability to give both the state and the defendant a fair and
25 impartial trial in this case?

1 MS. GLAPINSKI: I don't believe so.

2 THE COURT: I have to have a more definitive answer.

3 Either yes or no please ma'am.

4 MS. GLAPINSKI: No, sir.

5 THE COURT: Thank you, you may be seated. Anyone

6 else?

7 Yes, ma'am, please give us your name and number.

8 A. Forty-nine and my name is Sue Childers. I have a

9 grandson that is an attorney in Atlanta.

10 THE COURT: All right, ma'am, is there anything about

11 that relationship that would interfere in any way with your

12 ability to give both sides a fair and impartial trial in

13 this case?

14 MS. CHILDERS: No, sir, none whatsoever.

15 THE COURT: thank you, ma'am, you may be seated.

16 Yes, ma'am, please give us your name and number all

17 the way in the back. Yes, ma'am. Give us your name and

18 number please.

19 A. One hundred, Rebecca Helms.

20 THE COURT: Yes, ma'am.

21 MS. HELMS: My father retired after thirty-five years

22 with the York County DSS.

23 THE COURT: Which department?

24 MS. HELMS: Department of Social Services.

25 THE COURT: Ma'am, is there anything about that

1 relationship that would interfere in any way with your
2 ability to give both the state and the defendant a fair and
3 impartial trial in this case?

4 MS. HELMS: No, sir.

5 THE COURT: Thank you, ma'am, you can be seated.

6 Yes, ma'am.

7 A. Suzanne Dalesandro, Number Sixty-three.

8 THE COURT: Yes, ma'am.

9 MS. DALESANDRO: I am a volunteer guardian ad litem.

10 THE COURT: Ma'am, is there anything about your
11 experiences in that regard that would interfere in any way
12 with your ability to give both the state and the defendant
13 a fair and impartial trial in this case?

14 MS. DALESANDRO: No, your Honor.

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

16 Anyone else?

17 Yes, ma'am, please give us your name and number.

18 A. Betty Granger, Number eighty-seven. I'm a former
19 legal secretary; I've worked in law firms.

20 THE COURT: Ma'am, is there anything about that
21 experience that would interfere in any way with your
22 ability to give both sides a fair and impartial trial in
23 this case?

24 MS. GRANGER: No, sir.

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

1 Anyone else?

2 (NO RESPONSE.)

3 THE COURT: Is any member of the jury panel a member
4 of or contribute to any organization such as Mother's
5 Against Drunk Driving, or Citizen's Against Violence
6 Everywhere, or any other similar type organization which
7 abdicates for victim's rights or tougher penalties for
8 crimes? If so please stand.

9 Yes, ma'am.

10 A. Suzanne Dalesandro, number sixty-three, I make
11 contributions regularly to MADD.

12 THE COURT: Ma'am, is there anything about your
13 support of that organization that would interfere in any
14 way with your ability to give both sides a fair and
15 impartial trial in this case?

16 MS. DALESANDRO: No, your Honor.

17 THE COURT: Thank you, ma'am.

18 Yes, sir, please give us your name and number, sir.

19 A. Juror Number forty-six, William Chamberlin. I do make
20 contributions to MADD. I see no reason why that would
21 interfere with any partiality one way or the other.

22 THE COURT: Thank you, sir. Has anyone on the jury
23 panel been involved in the counseling of victims of child
24 abuse? If so please stand.

25 (NO RESPONSE.)

1 THE COURT: Ladies and gentlemen - I'm sorry. Yes,
2 ma'am, give us your name and number again please.

3 A. Suzanne Dalesandro, Number sixty-three. As a guardian
4 ad litem on several occasions I've had to deal with
5 children that had been removed from the home.

6 THE COURT: Again, ma'am, let me ask you, would that
7 experience interfere in any way with your ability to give
8 both sides a fair and impartial trial in this case?

9 MS. DALESANDRO: No, your Honor.

10 THE COURT: Thank you, ma'am. I am going to ask you a
11 series of questions now.

12 Ladies and gentlemen, I am going to ask you to listen
13 carefully as I go through these questions. If any of these
14 questions apply to you or you need to respond to any of
15 these questions, I am going to ask you to wait until I have
16 completed all of the questions and then if you need to
17 respond to one or more of these questions I will have you
18 come to the center aisle and come forward one at a time and
19 we will take your responses down front next to the court
20 reporter. We have to record your responses but we can do
21 that with a little more privacy down front next to the
22 court reporter. So again please listen carefully to these
23 questions. If you think one or more of them may apply to
24 you please come forward at the appropriate time. Has
25 anyone on the jury panel or a close relative of yours been

1 the victim of a violent crime or any crime of a sexual
2 nature? Does any member of the jury panel have any
3 personal bias for or against police, law enforcement, or
4 any other member of the criminal justice system that would
5 prevent them from being a fair and impartial juror in this
6 case? Does any member of the juror panel have any
7 personal, religious, emotional, or other bias against
8 sitting in judgment of others that would preclude you from
9 being a fair and impartial juror in this case? Has any
10 member of the jury panel or a member of your immediate
11 family ever been the victim of any type of sexual assault
12 or child molestation? Has any member of the jury panel or
13 a member of your immediate family ever been investigated by
14 law enforcement or the Department of Social Services as the
15 victim or as a perpetrator of any type of child abuse,
16 sexual, physical, or otherwise? Has any member of the jury
17 panel ever been the victim of any type of violent personal
18 assault?

19 Now, ladies and gentlemen of the jury, if any of these
20 questions apply to you, if you need to respond to any of
21 these questions, one or more of them, please come to the
22 center aisle at this time and we will take your responses
23 down front.

24 (COURT LEAVING BENCH TO COME TO COURTROOM CENTER
25 AISLE.)

1 THE COURT: Come on up please, ma'am. Come right here
2 if you will. Give us your name and number for the record.

3 A. Number Twelve, Janet Barnes.

4 THE COURT: Yes, ma'am.

5 MS. BARNES: I have a brother in law who is in prison
6 at this time for child molestation.

7 THE COURT: Let me ask you given the nature of the
8 allegations in this case is there anything about your
9 experiences in that regard that would interfere with your
10 ability to give both the state and the defendant a fair and
11 impartial trial in this case?

12 MS. BARNES: No.

13 THE COURT: Okay. Thank you, ma'am, you may return to
14 your seat.

15 Have her come on up. Come on up please, ma'am. Give us
16 your name and number for the record.

17 A. Kerrienne Cole and it's Number Fifty-three.

18 THE COURT: Yes, ma'am.

19 MS. COLE: My husband was actually molested as a child
20 by a man.

21 THE COURT: Okay. Is there anything about your
22 experiences in that regard that would interfere in any way
23 with your ability to give both the state and the defendant
24 a fair and impartial trial in this case?

25 MS. COLE: Yes, sir.

1 THE COURT: Thank you. You may return to your seat.
2 Give us your name and number for the record.

3 A. Connie G. Ellertsson, Number seventy-two.

4 THE COURT: Yes, ma'am.

5 MS. ELLERTSSON: I was sexually abused once by a
6 family friend. My sister was also sexually abused. My
7 half uncle was in prison for abusing his family members -
8 his adopted children.

9 THE COURT: Okay. Let me ask you given the nature of
10 the allegations in this case is there anything about your
11 experiences in that regard that would interfere in any way
12 with your ability to give both the state and the defendant
13 a fair and impartial trial in this case?

14 MS. ELLERTSSON: I don't believe so.

15 THE COURT: So your answer would be no. I have to
16 have a definitive yes or no.

17 MS. ELLERTSSON: Could you state the question again
18 for me?

19 THE COURT: Is there anything about your experiences
20 in that regard that would interfere in any way with your
21 ability to give both sides a fair and impartial trial in
22 this case?

23 MS. ELLERTSSON: No.

24 THE COURT: Thank you, ma'am, you may return to your
25 seat.

1 Come on up please. Give us your name and number for
2 the record.

3 A. Number Twenty-one, Ms. Eugenia Charlene Berry. My
4 sister in law was - I don't know in anyway.

5 THE COURT: Let me ask you given the nature of the
6 allegations in this case is there anything about your
7 experiences in that regard that would interfere in any way
8 with your ability to give both sides a fair and impartial
9 trial in this case?

10 MS. BERRY: Probably not.

11 THE COURT: I have to have a more definitive answer.

12 MS. BERRY: No.

13 THE COURT: All right, thank you, ma'am.

14 Yes, ma'am. Give us your name and number - -

15 A. Carol Tinder.

16 THE COURT: And your number.

17 MS. TINDER: 223.

18 THE COURT: Yes, ma'am.

19 MS. TINDER: My son-in-law was convicted of a CSC kind
20 of thing on my grandson.

21 THE COURT: Ma'am, is there anything about your
22 experiences in that regard that would interfere in any way
23 with your ability to give the state and the defendant a
24 fair trial - would interfere?

25 MS. TINDER: Yea. I don't think I could do it.

1 THE COURT: All right. I'm not going to require you
2 to serve on this particular jury but just stay with the
3 jury panel and follow the instructions okay.

4 MS. TINDER: Okay.

5 THE COURT: Give us your name and number for the
6 record.

7 A. Brenda Jennings.

8 THE COURT: And your number?

9 MS. JENNINGS: 1-1-8.

10 THE COURT: Yes, ma'am.

11 MS. JENNINGS: My sister was molested by my brother in
12 law when she was just eight years old.

13 THE COURT: Ma'am, is there anything about your
14 experiences in that regard that would interfere in any way
15 with your ability to give both the state and the defendant
16 a fair and impartial trial in this case?

17 MS. JENNINGS: No, sir.

18 THE COURT: Thank you, ma'am, you may return to your
19 seat. Thank you.

20 Juror Number Nineteen, Mr. Bennett, would you come
21 forward please. Come right here please, sir. Mr. Bennett,
22 I'm informed that when the jury was qualified down stairs
23 that you made a statement to the judge you qualified down
24 there, that you had a problem judging other people and
25 wouldn't be able to judge people, is that correct?

1 MR. BENNETT: Yes I don't feel that I'm competent to
2 do so.

3 THE COURT: Let me ask you whether that would
4 interfere that belief would interfere in any way with your
5 ability to serve on a jury in this case?

6 MR. BENNETT: I believe it would.

7 THE COURT: You think it would interfere?

8 MR. BENNETT: I know it would.

9 THE COURT: All right. Tell you what; I'm not going
10 to require you to sit if you feel that way as a juror as a
11 matter of fact. I'm going to go ahead and excuse you from
12 the panel this week. I'm going to have you sit in the back
13 of the jury room all the way back - excuse me, in the
14 courtroom, and just sit and observe this week. We won't
15 force you to serve on the jury. I want you just to observe
16 and see what you can learn about the process. I'm not
17 going to put you on a jury if you have those kind of
18 reservations and put you in that situation so I'm going to
19 excuse you from the jury panel. What I will ask you to do
20 then is when the jury leaves just sit in the back of the
21 room, back of the courtroom, the very back, and just
22 observe this week until I excuse you later in the week
23 okay. Thank you, sir.

24 THE COURT: Ladies and gentlemen, just a few more
25 questions. Has any member of the jury panel had any prior

1 knowledge about this case from any source before coming to
2 court today, if so, please stand?

3 (NO RESPONSE.)

4 THE COURT: Has any member of the jury panel formed or
5 expressed an opinion as to the guilt or innocence of the
6 defendant Darrell Efird, if so, please stand?

7 (NO RESPONSE.)

8 THE COURT: Has any member of the jury panel conscious
9 of any interest, biased or prejudiced, for or against the
10 defendant Darrell Efird, if so, please stand?

11 (NO RESPONSE.)

12 THE COURT: Can each member of the jury panel give
13 both the state and the defendant Darrell Efird a fair and
14 impartial trial in this case, if not, please stand?

15 (NO RESPONSE.)

16 THE COURT: Does any member of the jury panel know of
17 any reason whatsoever why he or she should not serve as a
18 juror in this particular case, if so, please stand?

19 (NO RESPONSE.)

20 THE COURT: Any additional questions requested of the
21 jury panel from the state?

22 MS. HERVEY: None from the state.

23 THE COURT: From the defense?

24 MR. BOYD: None, your Honor.

25 THE COURT: Madame Clerk, please give us a jury.

1. MADAME CLERK: When your name is called please bring
2 all your belongings and stand by the bailiff. Number
3 Twelve, Janet Barnes. What say you for the state?

4 MS. HERVEY: Please present Ms. Barnes.

5 MADAME CLERK: The defense?

6 MR. BOYD: Excuse the juror.

7 MADAME CLERK: You may return to your seat. Number
8 One thirty six, Bobby Long.

9 What say you for the state?

10 MS. HERVEY: Please excuse Mr. Long.

11 MADAME CLERK: You may return to your seat. Number
12 One sixty-eight, Deborah Peters.

13 What say you for the state?

14 MS. HERVEY: Please present Ms. Peters.

15 MADAME CLERK: The defense.

16 MR. BOYD: Please excuse the juror.

17 MADAME CLERK: Your may return to your seat. Number
18 Fifty-nine, Randy Crenshaw.

19 What say you for the state?

20 MS. HERVEY: Present the juror please.

21 MR. BOYD: Swear the juror.

22 MADAME CLERK: You may have a seat in the jury box.
23 Number Eighty-seven, Betty Granger.

24 What say you for the state?

25 MS. HERVEY: Present Ms. Granger.

1 MADAME CLERK: The defense?

2 MR. BOYD: Excuse the juror.

3 MADAME CLERK: You may return to your seat. Number

4 Forty-six, William Chamberlain.

5 MR. BOYD: What number?

6 MADAME CLERK: Forty-six. What say you for the state?

7 MS. HERVEY: What number please?

8 MADAME CLERK: Forty-six.

9 MS. HERVEY: Present the juror please.

10 MADAME CLERK: Defense?

11 MR. BOYD: Swear the juror.

12 MADAME CLERK: You may have a seat in the jury box.

13 Number One sixty-one, Marcy Musgrove.

14 What say you for the state?

15 MS. HERVEY: Present the juror.

16 MADAME CLERK: Defense?

17 MR. BOYD: Swear the juror.

18 MADAME CLERK: You may have a seat in the jury box.

19 Number Two eighteen, Deborah Thompson.

20 What say you for the state?

21 MS. HERVEY: Present Ms. Thompson.

22 MADAME CLERK: Defense?

23 MR. BOYD: Swear the juror.

24 MADAME CLERK: You may have a seat in the jury box.

25 Number Seventy-two, Connie Ellertsson.

1 MS. HERVEY: Please present the jury. I'm sorry.

2 MADAME CLERK: What say you for the state?

3 MS. HERVEY: Present the juror.

4 MADAME CLERK: Defense?

5 MR. BOYD: Excuse the juror.

6 MADAME CLERK: You may return to your seat. Number

7 Sixty-eight, Michael Duda.

8 What say you for the state?

9 MS. HERVEY: Present the juror.

10 MADAME CLERK: Defense?

11 MR. BOYD: Swear the juror.

12 MADAME CLERK: You can have a seat in the jury box.

13 Number One, Kelly Adams.

14 What say you for the state?

15 MS. HERVEY: Present Ms. Adams.

16 MADAME CLERK: Defense?

17 MR. BOYD: Swear the juror.

18 MADAME CLERK: You may have a seat in the jury box.

19 Number Twenty-two, Robert Bigger.

20 What say you for the state?

21 MS. HERVEY: Excuse the juror please.

22 MADAME CLERK: You may return to your seat. Number

23 Two forty-three, Robin Wilson.

24 What say you for the state?

25 MS. HERVEY: Please present the juror.

1 MADAME CLERK: Defense?

2 MR. BOYD: Swear the juror.

3 MADAME CLERK: You may have a seat in the jury box.

4 Number Forty, Linda Sanders.

5 What say you for the state?

6 MS. HERVEY: What number?

7 MADAME CLERK: Forty.

8 MS. HERVEY: Did you say Sanders?

9 MADAME CLERK: I said Linda Sanders.

10 What's your name?

11 MS. HERVEY: I just want to make sure we're talking
12 about the same person.

13 THE COURT: Yes, ma'am.

14 MS. HERVEY: I'm okay. That's fine; present the
15 juror. Want to make sure the notes match up and
16 everything. Present the juror.

17 MADAME CLERK: Present the juror?

18 MS. HERVEY: Present the juror.

19 MADAME CLERK: Defense?

20 MR. BOYD: Excuse the juror.

21 MADAME CLERK: Say again, sir.

22 MR. BOYD: Excuse the juror.

23 MADAME CLERK: You may return to your seat. Number
24 Two thirty-seven, Amy Williams.

25 What say you for the state?

1 MS. HERVEY: Present Ms. Williams.

2 MADAME CLERK: Defense?

3 MR. BOYD: Excuse the juror.

4 MADAME CLERK: You may return to your seat. Number

5 One sixty-four, Edward Nivens.

6 What say you for the state?

7 MS. HERVEY: Hold on, what number?

8 MADAME CLERK: One, six, four.

9 MS. HERVEY: Present the juror.

10 MADAME CLERK: Defense?

11 MR. BOYD: Swear the juror.

12 MADAME CLERK: You may have a seat in the jury box.

13 Number One twenty-one, Henrietta Jones.

14 MS. HERVEY: One twenty-one?

15 MADAME CLERK: One twenty-one.

16 What say you for the state?

17 MS. HERVEY: Present the juror please.

18 MADAME CLERK: Defense?

19 MR. BOYD: Swear the juror.

20 MADAME CLERK: You may have a seat in the jury box.

21 Number One twenty, Maggie Johnson.

22 What say you for the state?

23 MS. HERVEY: Present the juror.

24 MADAME CLERK: Defense?

25 MR. BOYD: Swear the juror.

1 MADAME CLERK: You may have a seat in the jury box.

2 Number One fifty-five, Sarah McCullough.

3 What say you for the state?

4 MS. HERVEY: Present the juror please.

5 MADAME CLERK: Defense?

6 MR. BOYD: Swear the juror.

7 MADAME CLERK: You may have a seat in the jury box.

8 Number Two zero three, Kathy Smith.

9 What say you for the state?

10 MS. HERVEY: Present Ms. Smith.

11 MADAME CLERK: Defense?

12 MR. BOYD: Swear the juror.

13 MADAME CLERK: You may have a seat in the jury box.

14 This is for the Alternate. Number Eighty-three, Michael
15 Gleason.

16 What say you for the state?

17 MS. HERVEY: What was the number again?

18 MADAME CLERK: Eighty-three.

19 MS. HERVEY: Present the juror please.

20 MADAME CLERK: Defense?

21 MR. BOYD: Swear the juror.

22 MADAME CLERK: You may have a seat in the juror box.

23 THE COURT: Any questions concerning the selection
24 process from the state?

25 MS. HERVEY: The court's indulgence one moment,

1 your Honor. Nothing from the state, your Honor.

2 THE COURT: From the defense?

3 MR. BOYD: No, sir.

4 THE COURT: Thank you. Ladies and gentlemen of the
5 jury panel who were not selected on this particular case
6 I'm going to go ahead and excuse you at this time and would
7 ask you please to - excuse you for the balance of the day
8 and ask that you to call in tonight after seven o'clock to
9 your voice mail number and you will get a message at that
10 time as to when you even need to report back or call back
11 again as the case may be. Please enjoy your afternoon and
12 thank you for your patience and your service thus far this
13 week. We appreciate that and don't take it for granted.
14 You are excused at this time. Please call in tonight after
15 seven. Thank you.

16 (REMAINING JURY PANEL EXCUSED AT 11:08 A. M..)

17 MS. HERVEY: A quick question.

18 THE COURT: Yes, ma'am.

19 (BENCH CONFERENCE AT 11:09 A. M. OFF THE RECORD.)

20 THE COURT: The clerk will please swear the jury in.

21 MADAME CLERK: Ladies and gentlemen of the jury,
22 please rise and raise your right hand.

23 (WHEREUPON: JURY PANEL DULY SWORN at 11:10 A. M.)

24 MADAME CLERK: Let the record show that all affirm.

25 THE COURT: Thank you. Please be seated, ladies and

1 gentlemen. Ladies and gentlemen of the jury panel, we are
2 going to go ahead and take a break at this time. Some of
3 us have been at it for a while and we need to go ahead and
4 take a very quick recess. This will be a very short recess
5 and we will bring you back and get started with the trial.
6 I am going to ask Juror Number Sixty-eight, Michael J.
7 Duda, please raise your hand, sir.

8 That's you. I am going to ask you to serve as the
9 foreperson of the jury and I will explain the role of the
10 foreperson once we get back. Once we get back in we will
11 go through a little preliminary instructions to you and I
12 will explain that all to you. I'm telling you so the
13 bailiff can put you in the right seat when you come back.
14 I ask the Alternate,

15 Mr. Gleason, you're the alternate and I ask you to
16 keep that same seat when you come back. All of the other
17 seats are interchangeable but we like to keep the first
18 seat on the front role the foreperson there and the
19 alternate in the first seat on the back roll. All the
20 other seats I say are interchangeable so it really doesn't
21 matter where you sit but we like to keep those seats the
22 same. I will tell you this when we go back to the jury
23 room you can refresh yourselves for a quick break and then
24 if you have something to drink back there that you want to
25 bring back into the jury box I would allow you to do that.

1 So if you have water, coke, coffee, or something like that
2 if you want to bring it back into the jury box with you I
3 would allow you to do that. Please retire to the jury room
4 at this time and we will take a short break.

5 (JURY LEAVING COURTROOM AT 11:12 A. M. .)

6 THE COURT: All right. Let's take about five.

7 (SHORT RECESS AT 11:13 A. M. .)

8 THE COURT: All right counsel we will bring them in.
9 As I say I will give them preliminary instructions before
10 we actually get started and then we will have opening
11 statements.

12 Please bring them in, sir.

13 (JURY PANEL ENTERING COURTROOM AT 11:33 A. M. .)

14 THE COURT: Mr. Foreman, ladies and gentlemen of the
15 jury, as I told you before I am going to give you some
16 brief instructions before we actually started with the
17 trial. I suspect that most of you have not served on a
18 jury in General Sessions in Circuit Court before and I hope
19 this information will be helpful to you in understanding
20 the format of the trial and what to expect as we go through
21 the trial. The first thing that will happen after I have
22 completed this instruction to you is that an attorney for
23 the state who is an Assistant Solicitor will make an
24 opening statement to you and then the attorney for the
25 defendant will have the same opportunity to address you in

1 an opening statement. These opening statements by the
2 attorneys are not evidence in the case but you should pay
3 close attention because they are in essence going to
4 identify to you what they perceive or say the issues in the
5 case are. After they have made their opening statements to
6 you then the state will proceed by presenting the testimony
7 and evidence that they want you to consider. Now the
8 reason the state goes first is that the state has the
9 burden of proof in this case. This is no burden of proof
10 upon the defendant to prove his innocence. The burden of
11 proof is upon the State of South Carolina to prove the
12 charges against this defendant by evidence that satisfies
13 you the jury beyond a reasonable doubt before you can
14 return a verdict of guilty. If the state fails to meet
15 that burden of proof then your verdict must be not guilty.
16 After the Assistant Solicitor has presented to you the
17 evidence they want you to consider on behalf of the state
18 then the same opportunity will be afforded to the defense.
19 The defendant may but is not required to present any
20 testimony or evidence because the state has the burden of
21 proving the defendant guilty beyond a reasonable doubt.
22 The defendant does not have to prove he is innocent. He is
23 presumed innocent and that presumption stays with him
24 throughout the trial and may only be removed if the state
25 meets its burden of proving the guilt of the defendant

1 beyond a reasonable doubt.

2 What is evidence in the case? Evidence is the sworn
3 testimony you will hear from the witness stand to my right,
4 exhibits admitted into the record for your consideration by
5 me the presiding judge and any stipulation of fact by
6 counsel. Now exhibits may take many forms such as
7 documents, pictures, video tapes, maps, diagrams, and so
8 forth. Stipulations are agreements of facts by the
9 attorneys. If the attorneys enter into a stipulation of
10 fact that will be made known to you and you can consider
11 that along with all the other testimony and evidence and
12 give such weight and to it as you deem appropriate once you
13 begin your deliberations. Sworn testimony, exhibits, and
14 stipulations are the only evidence you may consider in your
15 deliberations of the innocence or guilt of the defendant.
16 You may not consider anything you heard from any other
17 source about this case in making your decision because that
18 is not evidence.

19 After you have heard all the evidence then the
20 attorneys for the state and the defendant will once again
21 appear before you and make what we call closing arguments.
22 And we call them arguments because the attorneys are
23 allowed at that time to argue their positions, will attempt
24 to persuade you as to their view or position as to the
25 facts. When you have heard final arguments from counsel I

1 will then charge you which simply means to instruct you as
2 to the law that applies to the issues in this case. You
3 will then retire to the jury room to deliberate and reach
4 your verdict. That is how a case is tried in General
5 Session Court whether it be this case or any other case.
6 Some cases take a half a day or a day. Some cases take
7 weeks but the same format applies in every case. As the
8 trial judge I have three functions to perform during the
9 trial. I am the presiding officer and therefore see that
10 the trial is run in an orderly manner. I decide based on
11 rules of civil and criminal procedure whether testimony and
12 exhibits are admissible into evidence for your
13 consideration. And at the conclusion of the trial I
14 instruct you as to the law you must apply to the facts in
15 this case in reaching your verdict.

16 You, ladies and gentlemen, are also judges in this
17 case. You are the judges of the facts. In other words you
18 determine the truth of the facts in this case. Under our
19 constitution I am not permitted as the judge of the law to
20 have an opinion about the facts so I do not get into
21 whether I believe a witness or not. That is not my
22 function. I am not even permitted to express an opinion if
23 I had one as to the facts in this case so you the jurors
24 determine what is the truth of the facts. I do not permit
25 jurors to take notes during the trial because it is my

1 experience that while writing notes you may miss something
2 very important for you to hear and you may fail to observe
3 a witness when testifying. It is important that you pay
4 careful attention to all testimony and introduction of
5 evidence since you must judge the credibility or
6 believability of the witnesses and the weight to give all
7 evidence introduced during the trial in determining the
8 truth of the facts. Now during the trial the attorneys may
9 object to the admissibility of certain testimony or other
10 evidence. I will either sustain the objection which means
11 I agree and the testimony or evidence may not be made part
12 of the record for your consideration. Or I will overrule
13 the objection which means as the judge of the law I have
14 determined that it is admissible as part of the record for
15 your consideration. The mere fact that I have admitted it
16 does not mean that you must believe it or disbelieve it. I
17 have simply determined that it is admissible under our
18 rules and it is up to you then to believe it or disbelieve
19 it and to assign such weight to it as you deem appropriate.

20 At the conclusion of the trial when we send you to the
21 jury room every exhibit that is admitted into evidence will
22 be sent to the jury room for you to examine further and to
23 consider. I remind you that one of the most important
24 aspects of your duty as a jury lies essentially in the oath
25 that you have just taken to well and truly try this case

1 and to determine the truth of the facts in this case. That
2 oath once again in a very essential way says that you are
3 the sole judges of the facts in this case. As the jurors
4 in this case it would be your exclusive duty to determine
5 the facts in this matter through your evaluation of the
6 witnesses and evidence that was received during the course
7 of the trial and to give such evidence what ever value,
8 weight, or effect as you deem appropriate with the goal of
9 reaching the truth in this matter. In doing so you would
10 have fulfilled your obligations as jurors and that is to
11 give both the state and the defendant a fair and impartial
12 trial in this matter.

13 Mr. Foreman, ladies and gentlemen of the jury,
14 whatever your verdict in this case it must be your
15 unanimous verdict. All twelve jurors must agree on the
16 verdict which the foreperson is authorized to write on
17 behalf of the jury.

18 Mr. Foreman, ladies and gentlemen, you are not to
19 discuss this case at any time during the trial until I tell
20 you and that will not occur until you have received all of
21 the evidence and I have instructed you upon the law. You
22 should not discuss the case among yourselves and you should
23 not discuss it with family, friends, or anyone else you
24 might see on a recess from court. You might say well
25 what's wrong with our discussing the case as we go along or

1 what's wrong if somebody finds out I'm on a jury and they
2 want to know something about the case; what's wrong with
3 discussing it with them? The problem with discussing the
4 case among yourselves and with anyone else including family
5 or friends is once you start discussing the case you start
6 forming opinions. You wouldn't be fair to both sides of
7 this case if you didn't wait until you've heard all of the
8 testimony and evidence and I have instructed you upon the
9 law that applies before you start forming opinions. Until
10 then you should keep an open mind. Wait until you have all
11 the information you need before you start forming opinions
12 or discussing the case.

13 Now if you should over hear the parties, their
14 attorneys, or witnesses talking about the case outside of
15 the courtroom you should not listen and move away from
16 them. If anyone should deliberately try to discuss the
17 case with you do not discuss it with them but make note of
18 that person and give the best description you can to the
19 bailiff upon your return. The bailiff will let me know and
20 I will deal appropriately with that person. No one should
21 try to discuss the case with you; if they do I certainly
22 wish to be made aware of it. If there should be any media
23 coverage of this trial - I do not know of any media
24 coverage at this time but we never know about that - but if
25 there should be any media coverage of the trial please do

1 not read, listen to, or watch any media account of this
2 trial until after the trial is over. There is no way we
3 can guarantee the accuracy of any other account or any
4 media account of this trial. And it's very important that
5 you base your decision solely on the testimony and evidence
6 that comes in during the course of the trial and from no
7 other source. If there should be any media coverage of the
8 trial and someone wanted to save it for you until after the
9 trial is over and the verdict is in you certainly are
10 welcome to read, listen to, or watch any media account at
11 that time. But in the mean time please do not do that.
12 Should there be any media coverage and I become aware of it
13 I will probably ask you if you've read, listened to, or
14 watched any media account and if you have to answer that
15 you have that is going to cause us a problem in the case
16 so please do not read, listen to, or watch any media
17 account of the trial until after it's over if there should
18 be any.

19 Now I'm concerned about your comfort, your ability to
20 see and hear the testimony and evidence so you can properly
21 do your job. I will try to take a break about every hour
22 and a half. If you need a break before the time a break is
23 taken please raise your right hand and let me know and I
24 will take a break as quickly after that as I can. If you
25 cannot hear or see something you need to hear or see during

1 the course of the trial please do not hesitate to raise
2 your right hand and let me know and I will make sure you
3 are able to hear or see so you can properly do your job. I
4 try to anticipate that but some of you are much further
5 away from the witness stand or where the attorneys may be
6 standing than I. If I fail to do that please do not
7 hesitate to raise your hand let me know you can't see or
8 hear. If you wish to communicate with the court other than
9 needing a break or the inability to see or hear please
10 write the message down on a tablet provided for you back in
11 the jury room. Give that to the bailiff; the bailiff will
12 bring it to me and I will probably correspond in like
13 manner or I will bring you back out into the courtroom and
14 respond as the case may be. That's how we should
15 communicate you now having been sworn as jurors in this
16 case. I want to explain the role of the alternate.

17 Mr. Gleason, you are the alternate. The role of the
18 alternate is the same as the first twelve jurors chosen
19 because if for any reason an emergency should develop with
20 regard to one of the first twelve jurors chosen and we had
21 to excuse that juror you would automatically fill in for
22 the missing juror. You could not do that if you hadn't
23 listened carefully to the testimony and evidence and were
24 in a position to deliberate and help reach a verdict in
25 this case. I want to explain the role of the foreperson.

1 Mr. Duda, I have asked that you please serve as the
2 foreperson of this jury. The foreperson is asked to serve
3 as spokes person for the jury back to the court. So if
4 it's a matter that needs to come to the attention of the
5 court from the jury I would ask that you write the message
6 down on a tablet provided for you in the jury room and give
7 it to the bailiff and as I said I will correspond then
8 appropriately to your questions. Once we've reached the
9 delivery stage of the trial we ask that the foreperson
10 serve as the moderator and maintain some order in those
11 deliberations and to make sure everyone who wishes to be
12 heard and participates in those deliberations be allowed to
13 do so. And then once the jury reached the unanimous
14 verdict to record that verdict on a verdict form which will
15 be provided to you and explained to you at the appropriate
16 time at the conclusion of the trial. The primary role of
17 the foreperson is the same as every other juror and that's
18 to listen carefully to the testimony and evidence so you
19 will be in a position to deliberate and help reach a
20 verdict in this case.

21 Thank you for your kind attention, ladies and
22 gentlemen. I hope this information will be helpful to you
23 as we get started with the trial. We're to that part of
24 the trial where counsel will make their opening statements
25 to you. I ask that you listen attentively now as counsel

1 address you in opening statement.

2 MS. HERVEY: May it please the court, your Honor.

3 THE COURT: Solicitor.

4 MS. HERVEY: Good morning, ladies and gentlemen of the
5 jury. Again my name is Mindy Hervey and I am an Assistant
6 Solicitor here in the Sixteenth Circuit which comprises both
7 York and Union County. An assistant solicitor is somebody
8 that you see on TV and were normally called district
9 attorneys or state attorneys or prosecutors or names like
10 that but South Carolina has once again in their
11 individuality retained this old English term called the
12 solicitor. But that's basically what I do and I feel the
13 need to explain to you that after I graduated from law
14 school when I told my dad who is a tool and die maker that
15 I was going to be an assistant solicitor he was quite upset
16 that he contributed to law school now that I was a door to
17 door salesman. He also got a response to give those notes
18 of visiting signs and put them on the house and I couldn't
19 come in. But that's what I do and it's what I've been
20 doing pretty much for most of my career. I've worked with
21 law enforcement both in aiding and investigating criminal
22 cases that occur here in York and Union County and then I
23 aid them in aiding witnesses who come into court and
24 resolving those cases that we can't resolve except for any
25 other way except in front of a jury. You all have been

1 selected in the case of the State versus Darrell Efird and
2 as the judge tells you a little bit of the nature of the
3 facts you are here to ascertain what happened here in York
4 County predominately between Darrell Efird and his daughter
5 Tabitha Efird who is sitting on the front row here in the
6 black shirt. You have been selected here as jurors because
7 you don't know anyone involved. That's why we ask you
8 those questions about do you know anybody, do you have any
9 personal bias. We ask you those questions to make sure
10 that you can render a fair and impartial verdict. And some
11 of you may feel ill equipped to sit in judgment and decide
12 this case. And that I am sure that child molestation may
13 be a foreign concept to you. However we bring you in here
14 we ask that you use the same experiences that you use day
15 to day in evaluating whether a sales person is telling you
16 everything he should about a car you want buy. Or people
17 at work would tell you everything you need to know. Or
18 even your child who comes to you and says I didn't do it
19 but that's not really the whole truth they did some part of
20 it. Those same life experiences in evaluating witnesses
21 are what you will use in order to ascertain whether or not
22 the defendant is indeed guilty of the charges with which he
23 has been indicted. That is what we ask you to do. To use
24 that common everyday life experience before you in
25 accessing what is here. We ask that you pay attention. We

1 understand that we take you away from your families and
2 your jobs and your lives out here but this the only way
3 that the criminal justice system works here in the United
4 States is by process of jury trial and that is why we
5 realize your service is so important to us. We understand
6 the sacrifice but we also understand that it is a very
7 important case. It's important to both to Tabitha and both
8 to Mr. Efird in evaluating what happened between those two
9 as their relationship developed through the years. I
10 understand that this is not a fun case for you. It's not
11 an armed robbery where in somebody who may have left their
12 driver's license and identifies them or anything like that.
13 This by its very nature is something that most people never
14 want to think about, never want to confront and never want
15 to acknowledge that it happens here in their own community.
16 It is an egregious type of case but nonetheless it deserves
17 the same attention, the same due process, and the same
18 resolution that all other crimes that occur here deserve
19 and that is why you are here.

20 As you listen to the evidence that is presented you
21 will appreciate that in some way this is a very simple case
22 and in some ways it is a very complicated one. This is not
23 CSI. York County forensic technicians do not drive around
24 in Hummers. They drive around in about ten-year-old Ford
25 Explorers if that. There isn't not going to be any DNA.

1 There is not going to be any fingerprints. Child abuse is
2 a type of case that doesn't leave a necessarily tail-tale
3 trail behind as evidence. Disclosure doesn't happen for
4 years - for years - and as a result of that evidence of a
5 freshly committed crime has since then been long washed
6 away. So you in this case will predominantly be left with
7 the testimony of the witnesses and the people involved. So
8 we ask that you all pay attention to them and to their
9 testimony and ascertain whether you think they are telling
10 you everything or whether their holding something back, if
11 they are being forthright and frank, is their emotion
12 genuine, is their reaction sincere. And those life
13 experiences that you use everyday are the same ones that
14 you will use to solve this case.

15 I must prove to you this evidence beyond a reasonable
16 doubt. The judge charged you that is my burden and I must
17 reach that burden especially in this case given the nature
18 of these charges. We have to have that evidence for you
19 all to be secure with the defendant's guilt, for the state
20 to be secure in bringing the case forward. We need that.
21 So I must prove to you beyond a reasonable doubt. A lot of
22 people hear that term on TV and they don't really give it
23 much thought to those phrases that you hear that ah I don't
24 know what that means. Beyond a reasonable doubt is exactly
25 what it sounds. It's beyond a doubt that would cause you

1 to reasonably hesitate to act. It's not a general
2 reluctance not to think about this matter. It's not a
3 reservation to confront when this occurs in your community.
4 But is a reasonable, rational, consistent reason to doubt
5 the guilt of the defendant. So as you go through what you
6 need to do is see how the pieces of the puzzle fit together
7 or don't fit together. And it's that reasonableness, that
8 consistency, that the state feels will leave you at the end
9 of this trial firmly convinced of the defendant's guilt.
10 Before we go forward and the purposes of the opening
11 arguments is for me in part to tell you where we are going
12 from here because if as you went along and you didn't know
13 where we were going in the end you might get confused about
14 the journey, why we turn down this road, why is she asking
15 that question so part of this process is really an effort
16 on my part to educate you. And I want to talk to you
17 generally about the nature of the charges so you understand
18 them. When the judge reads criminal sexual conduct with a
19 minor second degree, first degree, I know all of you are
20 going well I didn't go to law school, I don't know what
21 degrees he's talking about, so I want to take this time and
22 explain that to you so you understand as we go forward what
23 evidence to look for if you don't see it or if you do so
24 that you will appreciate having to go forward.

25 The defendant has been charged with three counts of

1 criminal sexual conduct with a minor in a second degree.
2 Three counts that details three years. Basically you will
3 read the indictments and there is a period of years that
4 result, 2000, 2001, 2002 that basically relates to years in
5 Tabitha's life. Criminal sexual conduct in the second
6 degree with a minor is defined as a sexual battery and I
7 will explain that to you in a minute with a minor age
8 fourteen to sixteen. Criminal in contrast just so you will
9 understand where we are going. First degree would be a
10 minor fourteen years and under. So they have different
11 degrees based on the year of the child realizing that
12 molesting very small children may require a different
13 result than children of a medium age and we kind of go up.
14 So criminal sexual conduct will result with a minor will
15 focus on the evidence of what sexual battery occurred
16 between Tabitha and her father between those years of her
17 life that she's fourteen to sixteen years old. Sexual
18 battery is not solely limited to rape or sexual intercourse
19 and I always feel a little reluctant in doing opening
20 arguments in cases like this because I feel like I suddenly
21 become your sex ed teacher that's going to use all these
22 terms that no one else uses in their every day life except
23 sex ed teachers. But sexual battery is defined as
24 penetration of any orifice no matter how slight of any
25 kind, mouth, vagina, anus, with any object, finger, penis,

1 tongue or some even foreign objects can be used. So it
2 doesn't include that whole kind of traditional rape that
3 has to be true sexual intercourse. It includes any sexual
4 battery. You will hear it in the indictment oral sex is
5 falatio or cunnilingus. You will hear digital penetration
6 which is with a finger, vaginal penetration which is the
7 penetrating of the vagina or anal penetration or anal
8 intercourse which would include sodomy so it encompasses
9 all of those type of things.

10 The charge is then moved to criminal sexual conduct
11 second degree not with a minor. All right, so you have
12 three with a minor for those three years, those three ages,
13 and then without a minor once she turns beyond sixteen
14 because in the State of South Carolina the age of consent
15 is sixteen. For the purposes of a sexual act you are no
16 longer a minor at sixteen and for that reason the law
17 changes and it takes a different turn. Under the age of
18 sixteen consent is never an issue. A six-year-old and an
19 eleven-year-old and a fourteen-year-old and a fifteen-year-
20 old cannot consent to a sex act with their father or with
21 anyone. Consent is not an issue in child molestation cases
22 because you've not reached that age where you are capable
23 of forming that consent. Moreover you are not really
24 capable of giving it or withholding it given the fact that
25 you are living in the home with these people. You live with

1 that everyday. This isn't a situation where it's a
2 stranger and you can run to the police on a whim. There is
3 so much emotional coercion in those type of things involved
4 that consent becomes a very gray issue beyond that age.
5 What you will hear is that the sexual abuse continued
6 beyond Tabitha's sixteen years; that it continued basically
7 until she graduated high school and beyond; that her father
8 started molesting her at a very young age. The younger age
9 occurred not here in York County; that once they moved to
10 York County, fourteen, fifteen, sixteen, she's scared. And
11 once she turns sixteen and starts driving like all
12 teenagers do the sexual abuse continued even up until once
13 she graduated high school. So for that period between
14 sixteen and eighteen is the predominate focus of the
15 criminal sexual conduct second degree. Not a minor any
16 more. Criminal sexual conduct second degree not a minor
17 over sixteen is sexual battery again accomplished by
18 aggravated coercion - threats. Threats with a deadly
19 weapon, threats of harm, extortion, blackmail, any of those
20 type of things. That's the focus of a criminal sexual
21 conduct in the second degree. And you will hear that some
22 of that conduct started earlier to get her to go along with
23 that. But that it continued and it became more important
24 as Tabitha became more unsure in order to continue to get
25 her to go along with these acts.

1 The next charge - and this is the final degree one so
2 I won't require too much math at the end here is criminal
3 sex - attempted to commit criminal sexual conduct in the
4 first degree. What you will hear is that Tabitha did go
5 away to college and that she would return home like most
6 college students did on summer and on breaks, Christmas,
7 Thanksgiving, those kind of things. And then the abuse
8 continued when she would come home well beyond even the age
9 of eighteen. And then you will hear that one year she
10 comes home from college and by this time she is going on -
11 she is mature, she's found out what life is outside the
12 home, what life is outside living in a world of sexual
13 abuse. And her ability to go along with that has weight in
14 her resistance has grown. And that he tried to have sex
15 with her one night over Christmas break and that she
16 resisted and that a physical altercation ensued. That is
17 why it is an attempt to commit CSC in the first degree. It
18 didn't happen. Her parents or her mother and a friend came
19 home, they interrupted it, she ran to her room and hid so
20 it's just an attempt. But based on what had happened all
21 her life it's very obvious what was going to happen that
22 night. The CSC in a first degree is not threats; not just
23 this is what's going to happen to you if you don't do this
24 but this is what's going to happen to you if you tell. CSC
25 first degree is actual aggravated force. It's more than a

1 threat. It's some type of physical force. An aggravated
2 force may make you think that somebody is going to go to
3 the hospital but is holding someone down, penning them
4 down, striking them, those kind of things meant to affect
5 the sexual act so he's charged with that.

6 The final charge is incest which is consent is really
7 not an issue but it just says that that sexual conduct
8 occurred between two immediate families members here in the
9 State of South Carolina in York County. So beyond being
10 the threats and the coercion and kind of thing to just
11 document the very unnatural and the legal relationship
12 would develop is a charge of incest. So those are the
13 things that you need to look for as you listen to this
14 evidence that is presented by the state. As uncomfortable
15 as it may be it is nonetheless very important and very
16 necessary for you all to fulfill your oath, to render a
17 verdict at the end of this trial. The state's evidence
18 will be primarily three witnesses - four witnesses, I'm
19 sorry, four witnesses. You will hear from the mother; you
20 will hear from the daughter, you will hear from one of the
21 investigators Carson Neely, and you will hear from an
22 expert, Doctor Allison Defelice. Those are the four
23 witnesses that the state will present to you. The primary
24 focus of this case will be a contract of silence that was
25 signed by all the parties after the incident that Christmas

1 wherein they were promised certain things in exchange for
2 their silence about the abuse. Now the defense may and
3 very likely will although they have no burden to try to
4 suggest alternative theories for that contract. But I
5 submit to you that the focus of your evidence in your
6 deliberation will counter on that contract as you will see
7 it. You will also hear from Doctor Defelice because while
8 she is not a counselor that treated Tabitha or anything of
9 that kind I think it is important that Doctor Defelice who
10 works at the ARC which is a state center for child sexual
11 abuse to explain to you really what goes on with children
12 and how it affects them in ways because I think it is very
13 counter intuitive for jurors a lot of time both to think in
14 these terms. You impart in adult logic and adult
15 rationality and adult level of responsibility on someone
16 who is nonetheless grown up in a very compromised
17 situation. That would be the focus of the state's case.
18 We ask that you listen to these witnesses; that you
19 evaluate their testimony and that you give us your
20 attention. I appreciate the opportunity to present this
21 case to you on behalf of the York County Sheriff's office,
22 on behalf of Tabitha. I appreciate your services as we go
23 forward. I know that you will serve and pay attention to
24 these witnesses because I think the truth lies therein and
25 you will see it as the state has seen it. Thank you.

1 MR. BOYD: May it please the court.

2 THE COURT: Counsel.

3 MR. BOYD: Good morning. My name is Jim Boyd and I
4 practice law in Rock Hill. I'm a sole practitioner there
5 on Ebenezer Road and I am representing Darrell Efird in
6 this case. You heard the solicitor tell you what the
7 charges are and I want to talk a little bit about what we
8 think the evidence will show in this case. On December the
9 28th of 2005 Darrell Efird had the shock of his life and his
10 world basically began falling down around him. A nightmare
11 for him began. On that date, on that evening he was in a
12 heated argument with his wife and they had had some issues
13 prior to this. But they were in a very heated argument
14 over money; over his wife's spending of money and it
15 escalated. The argument escalated to the extent that
16 Darrell was packing his bags and he was about to leave the
17 house. Their daughter Tabitha was home for Christmas break
18 at that time. In the mist of this argument Tabitha came
19 into the room and made an accusation in front of both of
20 them that her father had molested her for years. Darrell -
21 that basically stopped that argument as you can imagine and
22 Ms. Efird, Christine Efird, and her daughter Tabitha left
23 the house at that time. Darrell Efird was in shock,
24 basically didn't know what was going to happen and
25 basically sat there waiting not knowing whether the police

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1 were going to come to arrest him or what was going to
2 happen. Then a little while later he received a call from
3 his wife asking him to meet Tabitha and her at Denny's
4 Restaurant and he went there and he met with them. And at
5 that restaurant they talked and Tabitha basically dictated
6 terms that she wanted to keep quite about this. Now
7 Darrell didn't know what to do and he knew at this point
8 that if an accusation like this became public no matter
9 whether or not he was guilty of it his life was basically
10 ruined whether he went to court or whether he was found not
11 guilty of it didn't matter. Once an accusation like this
12 is in public the person basically has a scarlet letter on
13 them that this is a child molester. So he agreed to terms
14 that were put forth to him at that time and Tabitha
15 dictated the terms of what she wanted. And Tabitha had
16 been - the family had lived - she graduated from Fort Mill
17 High School; they had lived in Wallace, and they had lived
18 in some other places and Tabitha had been a very good
19 student as she went along. In high school she was
20 basically an A student. Maybe some B's but basically an A
21 student. She upon graduation from high school she was able
22 to get a life scholarship from the State of South Carolina
23 to go to school. So her education was being financed by
24 that and also being financed by some parent student loans
25 that her father had signed to pay for her education. So

1 Tabitha went off to the College of Charleston. She went
2 there; she went through her fall semester and she did okay
3 in her fall semester. She didn't make great grades but she
4 did pretty well. Didn't make the straight A's that she
5 made in high school but did pretty well. The fall semester
6 her grades plunged. I'm sorry, spring semester her grades
7 plunged. She started failing courses, things changed
8 totally. She came home in the summer between summer break
9 of 2005, she worked at the same - her father helped her get
10 a job at INA where she worked there during the summer. She
11 had a wreck in August of that year. Then after she went
12 back to school in the fall and her grades continued to be
13 bad at that time. Her parents went to get her - down to
14 the College of Charleston to get her during the Christmas
15 break of 2005 and on that ride home her father told her -
16 she had lost her life scholarship by that time because of
17 her grades; that she wasn't applying herself in school and
18 he wasn't going to pay for it any more. And after that
19 during the spring break of that time these accusations came
20 forward. The agreement - an agreement was signed and
21 Tabitha dictated the terms she wanted. Some of the things
22 you will see that she dictated and she would get in this
23 agreement is the pay back all loans for her degree. She
24 was to get a car within two years. She was to get her cell
25 phone paid for for the next two and a half years. She was

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1 to receive fifty dollars a week. Darrell Efird knowing
2 that the accusation would ruin him agreed to do this. But
3 basically he was extorted into signing this agreement at
4 that time. She went back to school in the spring of 2005
5 and time came for the spring break of approximately March.
6 At that time she was wanting a car that the parents already
7 had, the car that was paid for and it was told she could
8 have it but she would have to pay for the insurance and
9 expenses of it. She didn't like that and had an argument
10 with her mother on the phone about that. She didn't come
11 home and in March of 2005 Darrell was charged with these
12 charges.

13 Now Darrell is her father and during the course of
14 their lives he has obviously like all fathers been alone
15 with his child on many occasions so we cannot come in here
16 and prove to you that molestation didn't take place during
17 these times. There is no way to prove that because
18 basically he's father he was with her alone at some time.
19 However the law has given something to people accused of
20 crimes called a presumption of innocence. You all have
21 heard that statement from time to time and probably given
22 it lip service that someone is presumed to be innocent
23 until they are proven guilty. However the natural
24 inclination of anyone is to think the worst and think - if
25 you read in the paper that someone is guilty is to assume

1 they caught the person that did this or that person is
2 guilty. Or as you are sitting out there for jury selection
3 this morning and you hear the judge tell what Darrell Efird
4 is charged with and you think oh my word this person did
5 that? But he is presumed to be innocent because it is not
6 possible especially in a case like this for someone to come
7 in and prove that it didn't happen. And if you are looking
8 to us to prove that it did not happen we cannot do that.
9 But I submit to you under the facts and circumstances of
10 this case the state will not be able to prove to you that
11 he is guilty. And another way of putting it it's not up to
12 him to come into this courtroom and prove to you that what
13 Tabitha Efird says is not true. It's up to the state to
14 prove that the accusation she is making is true. And there
15 is a certain burden of proof that the state has to meet to
16 do that and that is called proof beyond a reasonable doubt.
17 There are several what they call burdens of proof in our
18 system. Some people or some of you may have been on a
19 civil jury and a civil jury like a car wreck or something
20 the burden of proof is the greater weight of the evidence
21 which ever side it tilts over so slightly for that's what
22 you rule. In family court some of them to prove adultery
23 there has to be proof of what's called clear and convincing
24 evidence. But in a criminal case it has to be proof beyond
25 a reasonable doubt which is the highest burden of proof in

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1 the legal system. So unless the state can prove beyond any
2 reasonable doubt that Darrell Efird committed this offense
3 then he is entitled to a verdict of not guilty. He has
4 waited for this date in this courtroom anxiously for this
5 case and he is apprehensive about it right now because
6 frankly the fact that you're innocent doesn't mean you're
7 going to be found not guilty and he knows that. He also
8 knows that no matter what your verdict may be there is
9 going to be the stigma that he was charged with this and
10 this is going to follow him and people are going to look at
11 him like that's the guy that was accused of molesting his
12 daughter. That's stigma is going to be with him no matter
13 what happens here. But what I ask - that's not your
14 problem. Your job is to listen to the facts of this case
15 and make the determination as to whether or not the state
16 has proven this case, these accusations, beyond a
17 reasonable doubt. And we ask you to listen to the
18 testimony carefully and keep that in mind. We are
19 confident that after you've heard all of the evidence in
20 this case you will see that there is plenty of reasonable
21 doubt in your case and your verdict should be not guilty.
22 Thank you.

23 MS. HERVEY: May we approach, your Honor?

24 (BENCH CONFERENCE AT 12:07 P.M.)

25 THE COURT: Mr. Foreman, ladies and gentlemen of the

1 jury, the first witness we have is expected to be a rather
2 lengthy witness so we are not going to get started with the
3 first witness because it will carry us well into the lunch
4 hour so we are going to go ahead and recess for lunch at
5 this time. What I am going to ask you to do, I have
6 something else I have to do, so what I am going to ask you
7 do is by the courtroom clock about five or six minutes
8 after twelve. What I'm going to ask you to do is to get
9 some lunch and be back in the jury room ready to go at one
10 forty-five. That will give everybody plenty of time to get
11 lunch and for me take care of other matters so we will get
12 start back at one forty-five. Again please do not discuss
13 this case with anybody during the break. Please enjoy your
14 lunch and be back at one forty-five. Thank you.

15 (JURY PANEL LEAVING COURTROOM AT 12:06 P.M..)

16 THE COURT: We are going to start promptly at one
17 forty-five.

18 MR. BOYD: Your Honor, may I inquire about my client's
19 status?

20 THE COURT: What was his status before the trial?

21 MR. BOYD: He's out on bond.

22 THE COURT: The position of the state?

23 MS. HERVEY: The condition of bond hadn't been met,
24 the bond is revoked, your honor.

25 THE COURT: He will remain incarcerated during the

1 trial. It's a serious charge; it's not a DUI or something.

2 Thank you.

3 (COURT RECESSED FOR LUNCH AT 12:10 P.M.)

4 (BACK ON THE RECORD AT 2:10 P.M.)

5 THE COURT: Counsel, you ready to proceed?

6 MR. HERVEY: Yes, your Honor.

7 MR. BOYD: Defense ready, your Honor.

8 THE COURT: Please bring the jury in.

9 (JURY ENTERING COURTROOM AT 2:11 P.M.)

10 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE PREPARED FOR
11 IDENTIFICATION.)

12 THE COURT: Good afternoon, Mr. Foreman, ladies and
13 gentlemen of the jury, I hope you had a pleasant lunch. We
14 are now ready to resume with the trial.

15 Counsel, you ready to proceed?

16 MS. HERVEY: Yes, your Honor.

17 THE COURT: Please call your first witness.

18 MS. HERVEY: The state calls Christine Efird to the
19 stand please. If you will come forward to the clerk and be
20 sworn.

21 MADAME CLERK: Please raise your right hand; place
22 your left on the bible.

23 (WHEREUPON: CHRISTINE EFIRD,
24 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

25 MADAME CLERK: Thank you. You may have a seat.

1 CHRISTINE EFIRD BY MS. HERVEY:

2 Q. Could you state your name and spell your last name for
3 the record please?

4 A. Christine Smith Efird E-f-i-r-d.

5 Q. I'm just going to ask you to see if you can say in
6 that same tone of voice so these last jurors back can hear
7 you in the court room. There is a microphone to the right
8 if you can do not turn away from that for the same purpose.

9 Ms. Efird you and I have never met and never spoke have we
10 not?

11 A. No.

12 Q. Other than this morning when I handed you a subpoena
13 that would be the only encounter we've ever had?

14 A. Right. Yes.

15 Q. And just so everybody understands your roll in this to
16 whom are you married, Ms. Efird?

17 A. To Darrell Efird.

18 Q. And how long have you been married to him?

19 A. Twenty-three years.

20 Q. And is that your first and only marriage?

21 A. I had one marriage prior to the final one.

22 Q. So you've been married one time previously?

23 A. Yes.

24 Q. But you have been married to Mr. Efird for twenty-
25 three years?

1 A. Yes.

2 Q. So it would be fair to say that marriage was when you
3 were much younger, would that be fair to say?

4 A. Yes.

5 Q. And how many children do you have?

6 A. Two.

7 Q. And what are their names?

8 A. Kathy and Tabitha.

9 Q. Kathy and Tabitha?

10 A. Yes.

11 Q. And was Kathy raised by you?

12 A. Until she was eight.

13 Q. Until she was eight. And then by whom was she raised?

14 A. Her grandparents.

15 Q. So she went and - past the age of eight she's raised -
16 is it your grandmother that she was raised or your mother,
17 I'm sorry, or her father's parents?

18 A. Her mother. My mother, I'm sorry.

19 Q. So Kathy was raised by her maternal grandmother in
20 essence your mother?

21 A. Yes.

22 Q. Who is Kathy's father?

23 A. Kent Mace.

24 Q. Not the defendant Darrell Efird?

25 A. No.

1 Q. Did you have her prior to your relationship beginning
2 with Mr. Efird?

3 A. Yes.

4 Q. And about how old was she when you started the
5 relationship with Mr. Efird?

6 A. Somewhere around six months.

7 Q. So she was still a baby?

8 A. Right.

9 Q. All right. And about how old was she when you
10 married him? Was it about that same age?

11 A. A year old.

12 Q. A year old. Okay. When you meet and married Mr.
13 Efird and you're having Kathy where are you all living at
14 the time?

15 A. In Cheraw, South Carolina.

16 Q. And about how old are you when you marry Mr. Efird?

17 A. Twenty.

18 Q. And how old is Kathy now?

19 A. She'll be twenty-four her birthday.

20 Q. And who is Tabitha's father?

21 A. Darrell Efird.

22 Q. And when is Tabitha's birthday?

23 A. 7/14/86.

24 Q. 1986. So how long are you and Mr. Efird together
25 before Tabitha is born?

1 A. Almost three years.

2 Q. So how many years separate Tabitha and Kathy?

3 A. Somewhere around three years.

4 Q. Somewhere around three years. And at what point if
5 you recall do you all move to York County or the Fort Mill
6 area?

7 A. 2001.

8 Q. Around 2001?

9 A. June 2001.

10 Q. The summer of 2001, is that right?

11 A. Yes.

12 Q. What is the purpose of that move?

13 A. My husband's job transferred him to York, to Fort
14 Mill.

15 Q. And for whom did you husband work at that time?

16 A. ENA USA.

17 Q. What does ENA USA do if you know?

18 A. Their a bearing company. They make bearings for cars
19 and other stuff.

20 Q. So they had a plant of some kind there in Cheraw and
21 then they had a plant here in Fort Mill and he got
22 transferred?

23 A. Yes.

24 Q. What does he do for them if you will?

25 A. He was on a gauge - I mean a lab inspector.

1 Q. Lab inspector. Did your husband ever go to college of
2 any kind?

3 A. One year of technical college.

4 Q. And during while Tabitha was younger in school, in
5 elementary and that type thing were you working at the
6 time?

7 A. I was working for ENA also. Then I quit and went to
8 work for the school system so that I could be near my kids.

9 Q. And what did you do for the school system then?

10 A. Substitute and then was hired on as an aide.

11 Q. A teacher's aid?

12 A. Yes.

13 Q. What do you do now? Are you employed anywhere? Are
14 you in school anywhere now?

15 A. No. I'm not in school at all. I'm not in school now.

16 Q. Have you ever gone back to school or anything of that
17 nature?

18 A. Yes.

19 Q. What - and recently since you've moved to Fort Mill
20 did that happen?

21 A. 2002.

22 Q. 2002?

23 A. I started at Winthrop.

24 Q. At Winthrop University in Rock Hill?

25 A. Yes.

1 Q. And what was the purpose of you going back to school
2 there?

3 A. To get a teaching degree.

4 Q. And did you complete that program?

5 A. No not the teaching degree.

6 Q. Did you complete any other degrees or did you change
7 your major or something like that?

8 A. I changed majors to environmental studies.

9 Q. And did you get a degree in that when you graduated?

10 A. Yes, 2007.

11 Q. In 2007, so this year?

12 A. Yes.

13 Q. Would it be in May?

14 A. Yes.

15 Q. And what is your degree in?

16 A. Environmental studies with a Minor in Geology.

17 Q. And are you working in that field now?

18 A. No.

19 Q. Are you seeking employment at this time?

20 A. Yes.

21 Q. Okay. So for the most part though in Tabitha's child
22 hood you are a substitute teacher or when you were working?

23 A. Yes.

24 Q. Are you ever gone eight to five or is she in daycare
25 on a routine daily basis that kind of thing?

1 A. No.

2 Q. Not for any substantial length of time?

3 A. No. Early in childhood yes but not during her school
4 years.

5 Q. All right. And you moved here to Fort Mill. Do you
6 remember what street you lived on?

7 A. The first street was Lee Street in Fort Mill.

8 Q. Lee Street. Was that in York County?

9 A. Yes.

10 Q. And then where did you move after that?

11 A. Holbrook.

12 Q. And was Tabitha still with you when you moved to
13 Holbrook?

14 A. Yes.

15 Q. And did you live anywhere else?

16 A. Wilson Street.

17 Q. Since 2001 is it fair to say that you remained in York
18 County?

19 A. Yes.

20 Q. And where - do you still live with Darrell Efird?

21 A. Yes.

22 Q. Have you remained with him since you married him?

23 A. Yes.

24 Q. Have you ever separated from him for any particular
25 reason?

- 1 A. Just one night.
- 2 Q. One night?
- 3 A. Yes.
- 4 Q. Okay. Other than that there was no other reason to -
- 5 - -
- 6 A. No.
- 7 Q. - - - separate or anything like that?
- 8 A. No.
- 9 Q. Do you have a rental residence here in Fort Mill that
- 10 Tabitha doesn't live with you?
- 11 A. No.
- 12 Q. Have you moved since these events came to light?
- 13 A. Yes.
- 14 Q. But you still remain in York County?
- 15 A. Yes.
- 16 Q. And where do you live here in Fort Mill? Are you
- 17 living in an apartment, a house, a trailer?
- 18 A. A trailer rental.
- 19 Q. Okay. And are you - have you ever lived in a house
- 20 here in Fort Mill?
- 21 A. Yes.
- 22 Q. And was that a rental or mortgage or - -
- 23 A. Rental.
- 24 Q. A rental?
- 25 A. Yes.

1 Q. Have you all ever had a mortgage on a house or
2 anything like that?

3 A. In Marlboro County.

4 Q. In Marlboro County you did?

5 A. Yea.

6 Q. And about how long did you have that house?

7 A. Somewhere close to seven years I believe.

8 Q. And did you live in it prior to moving here to Fort
9 Mill or is that just at some period during your time down
10 in Cheraw?

11 A. No prior to moving.

12 Q. So you had sold that house to move here?

13 A. Yes.

14 Q. Subsequent to the transfer?

15 A. We rented for a while and it eventually sold.

16 Q. Okay. When you are going to school at Winthrop are
17 you a full time student?

18 A. Yes.

19 Q. Or is some semesters part time and some full time or
20 is it predominately full?

21 A. It's full time.

22 Q. Predominately full time?

23 A. Yes.

24 Q. And how did you pay for that?

25 A. Student loans.

1 Q. Student loans?

2 A. Yes.

3 Q. And was that taken out in your name and Darrell's name
4 or just your name?

5 A. Just my name.

6 Q. And can it be safe to assume from that that you all
7 are capable of paying for that out of the marital income?

8 A. No.

9 Q. Or was that just a choice you made?

10 A. No we wasn't able to.

11 Q. And prior to Tabitha going away to college how many
12 cars did you all have?

13 A. Two.

14 Q. What two cars?

15 A. Uh - until her wreck we had a Honda and then a van.

16 Q. A mini van?

17 A. Yes. And after her wreck we had purchased a '99 Ford
18 Taurus.

19 Q. A Taurus?

20 A. Yes.

21 Q. And who was driving the Taurus?

22 A. Darrell was.

23 Q. Darrell did?

24 A. Yes.

25 Q. So for the most - during Tabitha's school year it was

1 for the most part the mini van or a van or the predecessor
2 thereof the family vehicle?

3 A. Uh-huh.

4 Q. And you purchased the Honda around the time Tabitha
5 begins driving or some time thereafter?

6 A. Right.

7 Q. So for the most part growing up you're a one car
8 family is that fair to say?

9 A. Sometimes. I mean most of the time we had two cars
10 but there had been times that we had one car.

11 Q. All right. So any time that you are going to school
12 at Winthrop and Darrell is working at INA are you dropping
13 him off in the morning and then going to school?

14 A. No.

15 Q. No? How are you getting back and forth to Winthrop?

16 A. With the van.

17 Q. With the van?

18 A. Yes.

19 Q. How was Darrell getting to work then?

20 A. The Taurus.

21 Q. With the Taurus?

22 A. Right.

23 Q. Prior to you purchasing the Taurus how - -

24 A. He would drive the Honda.

25 Q. And how would you describe your relationship with

1 Darrell? Was it a pretty typical marriage or was it a
2 marriage that you had problems or nothing more than what
3 you would consider usual?

4 A. I would say a typical marriage because all marriages
5 have their ups and downs.

6 Q. But obviously never any fights or anything like that
7 that would cause you to separate from him more than that
8 one night you say?

9 A. I wouldn't say that. I mean we fought pretty hard and
10 I always come back to you know to the house.

11 Q. To him?

12 A. Yes.

13 Q. Because you love him?

14 A. Yes.

15 Q. And in those years that you would fight was there one
16 subject more than others that you would fight about or
17 would it just depend on where you were in the marriage?

18 A. No most of it was money.

19 Q. And was it just physical kind of we don't have enough
20 money to buy everything we want kind of marriage or were
21 there more significant financial problems than that?

22 A. More problems than that.

23 Q. And what were those problems a result of?

24 A. Me being bi-polar.

25 Q. Pardon me.

1 A. Me being bi-polar.

2 Q. You being bi-polar?

3 A. Yes.

4 Q. And how did that contribute to your finance battles?

5 A. I would spend money without thinking about what I was
6 doing and I didn't know at the time that I was bi-polar.

7 Q. And when you were spending money is it household items
8 or clothes or those kinds of things or is it anything more
9 unusual?

10 A. It was just anything.

11 Q. Just anything?

12 A. Yea.

13 Q. I want to draw your attention obviously to the events
14 of Christmas of 2005. Do you recall what year Tabitha was
15 in school at that point?

16 A. That was the end of - she had finished one year and
17 that was the end of her first semester the second year.

18 Q. So would it be fair to say and correct me if I am
19 wrong the Christmas break of her sophomore year?

20 A. Yes.

21 Q. Okay. And where did Tabitha go to school?

22 A. College of Charleston.

23 Q. And how is she paying for her school to the best of
24 your knowledge?

25 A. Her first semester she had a life scholarship. Her

1 grades were good enough from high school being almost an
2 all A student. She got a life scholarship which was I
3 think twenty-five hundred dollars and then the rest of the
4 money was parent loans.

5 Q. Parent-student loans, those kind of things?

6 A. Yes.

7 Q. So you all are not paying anything out of pocket.
8 Would that be fair to say? Maybe some spending money here
9 and there?

10 A. No. Now we're paying - we have to pay interest on the
11 loans.

12 Q. You all are paying interest on the loans?

13 A. Yea that started automatically once we took out the
14 loans.

15 Q. And was it deferred until she got done with school?

16 A. The loan has been but we have to pay the interest.

17 Q. Okay. And are you paying a similar type interest on
18 your student loans?

19 A. No mine has been deferred.

20 Q. You've been able to defer yours?

21 A. Yes.

22 Q. And why are you able to do that with yours and not
23 with hers?

24 A. Because I'm the student that took out the loan and we
25 are - like it's the parent that took out the loan and so

1 it's a different type of loan.

2 Q. But again beyond those loans that you're co-signing or
3 signing to that effect there is no marital income really
4 being dedicated to her tuition there at the College of
5 Charleston?

6 A. Right.

7 Q. And the scholarship when she had it did not even cover
8 the full tuition at the College of Charleston?

9 A. Right.

10 Q. Did it cover the room and board?

11 A. No.

12 Q. Were you using the loans to pay to provide that for
13 her as well?

14 A. Oh yes.

15 Q. So even that with the room and board or those kinds of
16 things is not coming out of pocket money?

17 A. Right.

18 Q. And Tabitha goes away to college the first year. She
19 come home that Christmas?

20 A. Yes.

21 Q. Does she come home the following summer?

22 A. Yes.

23 Q. And the Christmas of her sophomore year she obviously
24 comes home.

25 A. Yes.

1 Q. And when she first goes away to school does she have a
2 car or does she take her car with her to school?

3 A. No.

4 Q. Are you not allowing her to take the car or does she
5 not have the car for some other reason?

6 A. Well we felt that where the college is located in
7 Charleston that she really didn't need a car because she
8 could get to everything just walking in that area. She had
9 room and board paid for and she had a meal plan so
10 everything was covered and if she needed anything we were
11 able to send it to her or go down and see her and take her
12 things.

13 Q. She comes back the summer between her freshman and
14 sophomore year; she gets a job, is that correct?

15 A. I'm sorry.

16 Q. She works between her freshman and sophomore year,
17 that summer?

18 A. Yes.

19 Q. She gets a job?

20 A. Yes.

21 Q. And then she comes home that Christmas?

22 A. Yes.

23 Q. And when do these events come to light for you? Do
24 you recall the first time that you became aware of that?

25 A. The charges?

1 Q. Uh-huh.

2 A. I'm thinking it's around December the 28th. She comes
3 in and Darrell and I are having a heated argument.

4 Q. Do you recall what you are arguing about?

5 A. Money.

6 Q. Was she in any way involved in the argument?

7 A. No. She just come out of her bedroom and just all in
8 my face telling me, you know, that he's been doing this all
9 these years and everything. And I immediately tell her to
10 pack a bag that we are leaving.

11 Q. And where do you all go?

12 A. To her sister's house in Rock Hill and sit in the
13 driveway.

14 Q. And so her sister Kathy - - -

15 A. Uh-huh.

16 Q. - - - raised by - and just so - because we all know
17 these people but understand the jury does not so I just
18 want you to understand where I am going with these - Kathy
19 is not raised by you but is raised by her grandmother has
20 at some point moved to Rock Hill as well.

21 A. Right.

22 Q. And is living in a house here in Rock Hill similar to
23 an apartment where you are living?

24 A. Yes. At that time.

25 Q. At that time. And you went to her house, correct?

1 A. Yes.

2 Q. And is there a reason you went to her house?

3 A. Well I wanted to go somewhere to talk with Tabitha and
4 find out what was going on.

5 Q. Is there a reason you couldn't do that at your own
6 house?

7 A. Well I didn't want to talk in front of her dad. I
8 wanted to find out what she wanted to tell me in
9 confidence.

10 Q. And did you actually go inside of her sister's house?

11 A. No.

12 Q. And is her sister there at the time?

13 A. No.

14 Q. And was her sister just out that night or was her
15 sister traveling for the holidays?

16 A. Her sister was out of town for the holidays.

17 Q. Were you all go over there to feed a cat or anything
18 like that?

19 A. Yes. She had the keys and she had made arrangements
20 with her sister to take care of the cats.

21 Q. And so - but you don't actually go inside the house?

22 A. No.

23 Q. And where do you go from your sister's house? I'm
24 sorry, her sister's house; your other daughter's house?

25 A. From there to Denny's.

1 Q. To Denny's?

2 A. Yes.

3 Q. And which Denny's would that be?

4 A. In Rock Hill.

5 Q. And why do you go to Denny's?

6 A. To meet with her dad to talk.

7 Q. And whose decision was it to take her to talk with her
8 dad?

9 A. She said that she wanted things in writing and she
10 started listing things and I told her I said well we need
11 to sit down the three of us and talk.

12 Q. Why was the decision not made then to take her to law
13 enforcement?

14 A. Once I talked to her and told her I said well we can
15 go on to the sheriff's department it's up to you, what do
16 you want to do? She decided that she did not want to go.

17 Q. You're the mother though. Why don't you make a
18 decision on her better half?

19 A. Because I - she had - I don't know. It's just the
20 tone of voice that she had.

21 Q. So you end up at Denny's; you meet Darrell there?

22 A. Yes.

23 Q. Was that predetermined when you left the house or did
24 you have to call him?

25 A. I had to call him.

1 Q. And is there a reason you go to Denny's?

2 A. She wanted to go to a public place and talk.

3 Q. And so you end up at Denny's with Darrell?

4 A. Yes.

5 Q. And there's it's discussed that you are going to put
6 some terms in writing?

7 A. Yes. She's told - she told us what terms that she
8 wanted.

9 Q. Mr. Boyd, do you have any objections to State's
10 Exhibit Number One?

11 MR. BOYD: No. No objection.

12 MS. HERVEY: Your Honor, at this time we move State's
13 Exhibit Number One into evidence.

14 THE COURT: Made without objection.

15 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE, PREMARKED FOR
16 IDENTIFICATION, OFFERED INTO EVIDENCE.)

17 BY MS. HERVEY:

18 Q. Let me show you State's Exhibit Number One and ask you
19 if you recognize this document?

20 a. Yes I do.

21 Q. And was that document generated at Denny's or was that
22 document generates someplace else?

23 A. At our home.

24 Q. So at some point subsequent to Denny's you return to
25 your house?

1 A. Yes.

2 Q. And I think Tabitha goes with you.

3 A. Yes.

4 Q. And in whose handwriting is this document?

5 A. Mine.

6 Q. Let's start with - if you could just read the first
7 line of the document. We will go through it step by step.

8 A. Okay. Let's see - the first line would be Tabitha
9 Christine can revise at anytime 12/28/05.

10 Q. All right let's stop there and just so you understand
11 - so we understand what we are all meaning by these terms
12 when you're writing them all - - -

13 A. Uh-huh.

14 Q. - - - is 12/28 the date you wrote the contract?

15 A. Yes.

16 Q. All right. And is Tabitha Christine, that's you?

17 A. Yes.

18 Q. Can revise at any time?

19 A. Yes.

20 Q. Okay.

21 A. And it's in my handwriting because Tabitha had told me
22 that her handwriting is like chicken scratch which actually
23 her handwriting is not the greatest in the world and
24 she wanted to be able for someone to read this.

25 Q. Okay. So the next line is for Tabitha?

1 A. Yes.

2 Q. And what's the next line after that?

3 A. These are the conditions for which Tabitha is entitled
4 to from Darrell Ray Efird her father.

5 Q. All right. What's the first thing?

6 A. Fifty dollars a week for the spring semester for 2006.

7 Q. And had you been giving that to her prior to this
8 contract or was that something new?

9 A. We had been giving her money but I'm not sure of the
10 amount.

11 Q. And was that money coming from you or did she get
12 loans above and beyond her tuition from which to live on?

13 A. She got loans above and beyond and she would go
14 through that money and we would have to give her money out
15 of our income.

16 Q. Okay. The second line is what or the second term?

17 A. Agree to pay back all loans for her bachelor's degree.

18 Q. All right. And the third line.

19 A. For her to receive a car within two years of this
20 date.

21 Q. Is there any reason why she didn't get a car
22 immediately?

23 A. Because of the earlier stated. Because she was in the
24 middle of Charleston we really didn't see a need. We
25 figured within two years that she would be more able to

1 maneuver around or you know be able to drive in Charleston
2 a lot better. She would know the town better.

3 Q. Right. But Tabitha is dictating these terms. I think
4 I'm wanting a car now, don't you?

5 MR. BOYD: Your Honor, I'm going to object to the form
6 of the question.

7 THE COURT: All right.

8 BY MS. HERVEY:

9 Q. You stated that it was in your opinion that she didn't
10 need a car at this point because she was in the town and it
11 is in your opinion, you and your husband's, that she would
12 be better familiar with the town in two years. I don't
13 understand that statement in contrast to you saying that
14 Tabitha was dictating the terms of this agreement.

15 MR. BOYD: Same objection. I'm going to object to the
16 form.

17 THE COURT: I am going to allow a little leeway here
18 recognizing that the witness may be a little hostile. Even
19 though she called her under our rules she's allowed to -
20 she doesn't vouch for her credibility so I will allow her
21 to proceed.

22 Proceed.

23 BY MS. HERVEY:

24 Q. I don't understand that. Could you please explain it
25 to me?

1 A. Okay. What's in that two years down the road she
2 would be graduating and we didn't know if she would be
3 going to a college there in Charleston because she was pre-
4 med at the time and we didn't know if she would go to the
5 Medical University in Charleston or if she would apply
6 somewhere else.

7 Q. So the next line is Number Four I believe.

8 A. First that the home to be paid for each month from
9 there on for the next two and a half years.

10 Q. Okay. And the next line.

11 A. Agreement of no unusual contact.

12 Q. And it's little unusual, is that just a typo?

13 A. I think so.

14 Q. But obviously at that point the word intended is
15 unusual?

16 A. That is.

17 Q. And what is meant by the term of that line?

18 A. I guess phone calls, anything out of the ordinary.

19 Q. Were phone calls out of the ordinary in your
20 relationship with your daughter?

21 A. No. It's just, you know, I wanted to cover the
22 basics.

23 Q. Number Six.

24 A. No threats of any kind or nature.

25 Q. Number Seven.

1 A. Agreement that the parties will not be any where alone
2 together.

3 Q. And does that mean you and Tabitha or Tabitha and her
4 father or the three of you?

5 A. Tabitha and her father.

6 Q. Number Eight.

7 A. Discussion only with psychiatrist.

8 Q. Number Nine.

9 A. Will tell mom if anything happens.

10 Q. Number Ten.

11 A. All information pertaining to this matter stays
12 between the three of us as long as these rules are
13 followed.

14 Q. Number Eleven.

15 A. From this day forward this matter will not - will not
16 be discussed or argued about between the three of us.

17 Q. And the next line I believe there's two stars, is that
18 correct?

19 A. Yes.

20 Q. And what does that say?

21 A. If any of these rules are broken then there will be
22 legal consequences against him for any and all actions.

23 Q. And what is meant by that?

24 A. I don't know exactly. You will have to ask Tabitha
25 about it because that - I mean all of this is written - it

1 was dictated to me by Tabitha.

2 Q. All right. But you understood why she wasn't getting
3 a car for two years but you don't understand what that
4 phrase meant?

5 A. I guess she means that she would go to the law which I
6 guess it was covered earlier up here in the contract also.

7 Q. Okay. And the next line.

8 A. It was signed by Tabitha Nicole Efird.

9 Q. And the next line.

10 A. Darrell Ray Efird.

11 Q. And the next line.

12 A. Christine Smith Efird.

13 Q. And you recognize that? Is that your husband's
14 signature?

15 A. Yes.

16 Q. And is that your daughter's signature?

17 A. Yes.

18 Q. And is that your signature?

19 A. Yes.

20 Q. Let's go to Page Two of the agreement please. Read
21 the top line.

22 A. Christine and Tabitha can revise at any time 12/28/05.

23 Q. The next line.

24 A. For Christine.

25 Q. And that is you?

- 1 A. Yes.
- 2 Q. So the terms on this page apply to you?
- 3 A. Yes.
- 4 Q. What you are going to get?
- 5 A. Yes.
- 6 Q. Okay. The next line.
- 7 A. These are the conditions for which Christine is
- 8 entitled to from Darrell Ray Efird her husband.
- 9 Q. First one.
- 10 A. Funding for a place of residence.
- 11 Q. Second one.
- 12 A. Funding for the remainder of her schooling.
- 13 Q. Is that meaning your education at Winthrop or is that
- 14 some how different or beyond that?
- 15 A. Winthrop I guess.
- 16 Q. And also I want to go back to that first one. It says
- 17 funding for a place of residency. Does that mean that he
- 18 continues to provide for you in the marital home or does
- 19 that mean funding if you wanted to leave the marital home?
- 20 A. Uh - I can't remember at the time but Tabitha was
- 21 telling me these things to write down and she wanted me to
- 22 leave him so I'm thinking that it was meaning for him to
- 23 provide rent for me to stay somewhere.
- 24 Q. Did you ever tell your daughter no I don't need these
- 25 things?

1 A. No I didn't.

2 Q. Did you ever tell your daughter no I don't want these
3 things?

4 A. No because she wanted me to be taken care of is what
5 she said.

6 Q. The third line please.

7 A. The Ford Three star van to be paid for by Darrell.

8 Q. Was that van - had that van been paid off or were you
9 still making car payments on that?

10 A. No it was repossessed.

11 Q. At the time? The time the contract was written out
12 to?

13 A. We were making payments on it. It has been
14 repossessed since then.

15 Q. It has since been repossessed?

16 A. Yea.

17 Q. All right. But at the time he's supposed to continue
18 making those car payments?

19 A. Yes.

20 Q. All right. The next one.

21 A. No unwanted physical contact.

22 Q. And by unwanted was that in Tabitha's term or your
23 term?

24 A. That was in Tabitha's term.

25 Q. She wanted though to leave open the fact that you

1 could have wanted physical contact with him?

2 A. She didn't want me to have any physical contact with
3 him.

4 Q. Right but it doesn't say no physical contact.

5 A. I know.

6 Q. Okay. Number Five.

7 A. No threats of any kind or nature.

8 Q. Number Six.

9 A. My cell phone is to remain on and paid for by Darrell.

10 Q. And Number Seven.

11 A. The internet is to remain on and paid for by Darrell.

12 Q. And Number Eight.

13 A. The agreement that it will - that it will up to me -
14 it's supposed to be up to me to decide about our marriage.

15 Q. Number Eight in the agreement that it will be up to me
16 to decide about our marriage?

17 A. Yes.

18 Q. Number Nine.

19 A. All information pertaining to this matter stays
20 between the three of us as long as the rules are followed.

21 Q. And Number Ten.

22 A. From this day forward this matter will not be
23 discussed or argued about between the three of us.

24 Q. And the asterisk.

25 A. If any of these rules are broken then there will be

1 legal consequences against him for any and all actions.

2 Q. And who signed this page as well?

3 A. Myself, Darrell, and Tabitha.

4 Q. And are you aware of where this contract was located
5 by law enforcement?

6 A. Yes.

7 Q. Where at?

8 A. In a locked box in the back of our closet.

9 Q. In your bedroom closet?

10 A. Yes.

11 Q. Not in Tabitha's room?

12 A. No.

13 Q. Did you make a copy of it at that time?

14 A. No.

15 Q. Was Tabitha given a copy of it?

16 A. No. She asked me to make sure I held onto it and
17 that's what I did.

18 Q. Your Honor, at this time if we could just publish
19 State's Exhibit Number One briefly to the jury so they can
20 examine it.

21 THE COURT: Yes, ma'am.

22 MS. HERVEY: Thank you.

23 (STATE'S EXHIBIT NUMBER ONE PUBLISHED TO THE JURY
24 PANEL FOR VIEWING.)

25 MS. HERVEY: Are they done? I'm having a hard time -

1 if they're not that's fine. I lost track of it.

2 I'm sorry, your Honor.

3 THE COURT: Are you ready to proceed, Solicitor.

4 Just hand it down front and just put it right there on
5 the corner please, ma'am. Thank you.

6 MS. HERVEY: I'm just going to hand this back to you.

7 I have a couple of more questions and then I'll be done.

8 You stated that it was kept in a locked box in your bedroom
9 closet. Was that just like a fire safe or something where
10 you all kept important documents or - -

11 A. Yes.

12 Q. - - - was that something that you had the key to or
13 was that something that both you and Darrell had the key
14 to?

15 A. I had the key to.

16 Q. So he would have no access to that box?

17 A. No.

18 Q. And you stated that the terms of these agreements were
19 Tabitha's effort to afford you the opportunity to leave
20 Darrell?

21 A. Yes.

22 Q. Is there a reason why she felt your internet access
23 was so important to that decision?

24 A. Uh I'm not sure. I would assume it was so I could
25 finish school.

1 Q. And Number Eight where it says in the agreement that
2 it will be up to me to decide about our marriage was it
3 ever a part of this scheme of hers that she said if you
4 don't leave Darrell then I'll go and I will tell law
5 enforcement?

6 A. I don't remember it from that night. We discussed a
7 lot of things but I don't remember it.

8 Q. You don't recall that?

9 A. No.

10 Q. But what is written in the contract is obviously it
11 leaves it up to you to decide about the marriage?

12 A. No.

13 Q. So to the extent that she's dictating she's not
14 putting in there things beyond what you're willing to put
15 in there, is that correct?

16 A. I'm sorry, can you restate that?

17 A. Would you have put in there that if I have to - if I
18 do not leave my husband Darrell then she can go to the
19 authorities?

20 A. If she had worded it that way yes.

21 Q. You would have agreed to that?

22 A. Yes.

23 Q. So no matter what she said you would agree to it.

24 A. At that time I was trying to get her calmed down, she
25 was upset.

1 Q. So you're writing this contact was just an effort to
2 calm her down?

3 A. Yes.

4 Q. I have no further questions of this witness.

5 CHRISTINE EFIRD BY MR. BOYD:

6 Q. Let me ask you when - before you moved to York County
7 when you and your husband were living in the - you all were
8 in where Marlboro County?

9 A. Marlboro County.

10 Q. Okay. And you can set that down here, you don't need
11 to hold that. When you were living there he was working
12 for INA there, is that correct?

13 A. Yes.

14 Q. And I believe you testified you worked for INA for a
15 period of time also, is that correct?

16 A. Yes.

17 Q. Okay. And then after that you was a teacher's aide,
18 is that correct?

19 A. I started volunteering in the school system and then
20 started working as a substitute that led into a teachers'
21 assistant position.

22 Q. All right. What were your basic working hours when
23 you did that?

24 A. From eight till three - - -

25 Q. Three in the afternoon?

1 A. - - - basically. Yes.

2 Q. Okay. What was Darrell's working hours during that
3 time?

4 A. From eight till three thirty. I mean from seven till
5 three thirty, I'm sorry.

6 Q. Seven till three thirty?

7 A. Yes.

8 Q. Okay. So you all got off close to the same period of
9 time?

10 A. Yes.

11 Q. Did - and Tabitha was in school then, is that correct?

12 A. Yes.

13 Q. And so she got out of school what time, about three

14 - - -

15 A. Yes.

16 Q. - - - or a little before?

17 A. Somewhere around three, three ten is what the school
18 time was. Most of the time we would stay until about three
19 thirty because I would talk with her teachers and get
20 things together for the next day.

21 Q. All right. And then when you - after you moved to
22 York County I think Tabitha was in Fort Mill High School,
23 is that correct?

24 A. Yes.

25 Q. Okay. And were you working any at that time?

- 1 A. Yes.
- 2 Q. All right. Where did you work then?
- 3 A. Then for Charlotte Mecklenburg Schools.
- 4 Q. All right. What time did you get home at that time?
- 5 A. Usually about four thirty.
- 6 Q. All right. What time did Darrell get off from work
- 7 when he was working? Was he still working for INA?
- 8 A. Yes.
- 9 Q. And what time would he get off from work?
- 10 A. When we first moved up here he was commuting back to
- 11 Cheraw where we were originally from for the first six
- 12 months. So for the first six months he would stay during
- 13 the week with my sister-in-law and her - or his brother and
- 14 sister-in-law and the weekends he would be home.
- 15 Q. All right. And how about when he started to work for
- 16 INA in Charlotte or in this area?
- 17 A. It was seven to three thirty I believe.
- 18 Q. And where was INA located?
- 19 A. At Carowinds.
- 20 Q. All right. Let me - and you started to school, was
- 21 that correct?
- 22 A. Yes.
- 23 Q. Okay. What were you hours at Winthrop or was it
- 24 different times?
- 25 A. It was different times. There were some classes I had

1 from five to six fifteen. There was other classes that I
2 had starting at six thirty and ending at nine fifteen.

3 Q. All right. Now as Tabitha became a teenager would you
4 say you and she had a rocky relationship?

5 A. Very rocky.

6 Q. All right. And did you all argue a lot?

7 A. Argued, fought, fussed, yes.

8 q. All right. What would you argue - what would you and
9 Tabitha argue about?

10 A. Just different things she would want to do. She was -
11 she was mature for her age and I really didn't want her to
12 get out and get into any trouble so it would be anything
13 from going to Carowinds to you know spending the weekend
14 with a friend that I may not of approved of.

15 Q. All right. And when you all would had arguments - let
16 me - were these heated arguments you would have with her?

17 A. Very heated.

18 Q. Okay. And were you intimidating to her?

19 A. Uh - no because she would meet me head to head. I
20 mean it would be at some points it would be a push and
21 shove situation and I would have to give up because she was
22 getting the best of me.

23 Q. All right. So you would - would you characterize that
24 she was when it came to her relationship with you she was
25 head strong?

1 A. Yes.

2 Q. All right. The - now I believe you discussed about
3 you and your husband had a lot of arguments about money, is
4 that correct?

5 A. Yes.

6 Q. All right. Would these be heated arguments?

7 A. Yes.

8 Q. Okay. Sometimes get loud - - -

9 A. Yes.

10 Q. - - - and voices raised, shout at each other?

11 A. Yes.

12 Q. Okay. And I believe you described that at that time
13 you didn't know you were bi-polar but it was caused mainly
14 by your spending habits, is that correct?

15 A. Yes.

16 Q. Okay. And he would get upset because you had spent
17 more money than really you could afford to have over things
18 he didn't feel were necessary, is that correct?

19 A. That's correct.

20 Q. And the - when - at that point I believe you said you
21 didn't know you were bi-polar, is that correct?

22 A. That's correct.

23 Q. Okay. And when did you discover you were bi-polar?

24 A. It's been between three and four years now.

25 Q. Okay. And are you on any medication for that now?

1 A. I take twenty-five hundred milligrams of Depakote a
2 day plus right now I'm taking forty milligrams of Ativan.

3 Q. Now let me - when Tabitha was growing up did she and
4 her father have a lot of arguments?

5 A. Didn't seem to. They had a good relationship.

6 Q. All right. As opposed to the relationship with you
7 who was the parent she argued with the most?

8 A. Me.

9 Q. Okay. And did she ever appear to you to be scared to
10 be alone with her father?

11 A. No. There's been plenty of times that I would want to
12 go to Wal-Mart and want her to go with me and she would
13 want to stay home and watch a movie or whatever. It didn't
14 matter what was going on. At the time she just didn't want
15 to go with me.

16 Q. All right. So then that would be times her father
17 would be in the home?

18 A. Sometimes he was there and sometimes he wasn't.

19 Q. Okay. But if father was at home and you would want
20 her to go to say Wal-Mart she would choose to stay home?

21 A. Yes sometimes.

22 Q. Okay. And did she ever appear to you to try to avoid
23 Being alone around her father?

24 A. No.

25 q. Did Tabitha ever tell you she was being sexually

1 abused by her father up until the date in December of 2005?

2 A. No.

3 Q. Was Tabitha a good student as far as grades went?

4 A. Yes.

5 Q. Okay. And in high school did she - I believe you
6 testified she made mostly A's, is that correct?

7 A. Yes.

8 Q. Okay. Was she in the Beta Club?

9 A. Yes.

10 Q. And that's the club with smart students, is that
11 correct?

12 A. Yes.

13 Q. That's a extra curricular activity or club at the
14 school?

15 A. Yes.

16 Q. Okay. And did Tabitha engage in other extra
17 curricular activities in school?

18 A. In middle school she was in band and show choir and
19 mock trial. And in high school she was in the chorus both
20 at Marlboro County High School and Fort Mill High School.

21 Q. Okay. And did - and you mentioned mock trials, is
22 that a thing where students actually participate in
23 courtroom trials, mock trials?

24 A. Yes.

25 Q. It's a competition, is that correct?

1 A. Yes

2 Q. She was in that. And did she have friends?

3 A. Yes.

4 Q. Okay. Like a normal high school student, is that
5 correct?

6 A. Yes.

7 Q. In high school did she date some?

8 A. Oh yes.

9 Q. Okay. And did - so was - besides the arguments with
10 you was she a problem child?

11 A. No. I wouldn't consider her a problem child. Working
12 in the school system I've seen problem children and I
13 wouldn't consider Tabitha having problems. The argument
14 that we did was just normal teenage girls things I would
15 think.

16 Q. All right. And let me - I believe you testified that
17 she got a life scholarship for college, is that correct?

18 A. Yes.

19 Q. And is that a scholarship that is basically run by the
20 State of South Carolina?

21 A. Oh yes.

22 Q. All right. And there were also her college was being
23 financed also by parent-student loans, is that correct?

24 A. Yes.

25 Q. Is that basically a loan that is taken out by the

1 parents and the payment is deferred until the student is
2 out of college?

3 A. The payment is deferred but you have to pay the
4 interest.

5 Q. But the principal is deferred, is that correct?

6 A. Right.

7 Q. And she had this and went to the College of
8 Charleston, is that correct?

9 A. Yes.

10 Q. Now I believe she would have started the College of
11 Charleston in the fall of 2004, is that correct?

12 A. That's correct.

13 Q. Okay. So she would have been eighteen years old when
14 she started college, would that be correct?

15 A. Yes.

16 Q. All right. The - after she went into college did you
17 notice any changes about her?

18 A. Well the first semester her grades kind of slipped and
19 she lost the life scholarship. But the second semester her
20 grades dropped tremendously. She just - I don't think she
21 was putting her all into her studying. I think maybe she
22 was you know in more involved in actually getting out and
23 living life.

24 Q. All right. And so her grades slipped tremendously, is
25 that correct?

1 A. Yes. She failed two of her courses that she took that
2 spring semester. She failed a couple of classes the next
3 semester.

4 Q. Now she - and so that was the - would have been the
5 spring of 2005, is that correct?

6 A. Yes.

7 Q. Okay. Did she come home in the spring of 2005 for the
8 summer?

9 A. Yes.

10 Q. All right. And during the summer when she was in the
11 spring of 2005, that summer, did she work anywhere?

12 A. Yes. She worked at INA, USA, the same place where her
13 father worked.

14 Q. And let me ask you, did she have a wreck in August of
15 2005?

16 A. In 2005 a drunk driver turned in front of her and she
17 hit the drunk driver in a super - a Ford super cab at
18 fifty-five mile an hour and she was driving a little Honda
19 Civic.

20 Q. All right. And was she injured at that time?

21 A. She was bruised up real bad but they checked her at
22 the hospital and said that that's all she had was just you
23 know bruises.

24 Q. Okay. So that was an accident with a drunk driver and
25 it wasn't her fault - - -

1 A. Right.

2 Q. - - - is that correct?

3 A. Right.

4 Q. Okay. And after that did she go back to school for
5 that spring semester to the College of Charleston?

6 A. Yes.

7 Q. All right. The - in the spring of - I'm sorry, the
8 fall semester she would have been nineteen at that time - -
9 -

10 A. Yes.

11 Q. - - - is that correct?

12 A. Yes.

13 Q. And that would be the start of her sophomore year in
14 college?

15 A. Yes.

16 Q. The - when she was in - after the wreck did you at
17 that time period did you notice any additional change in
18 her behavior.

19 A. Yes. It seemed to be that we got along a little bit
20 better. I don't know what happened but things were better
21 between us. But then she started arguing with her dad more
22 about money you know about needing a car and things like
23 that.

24 Q. Okay. So it got better between the two of you - - -

25 A. Uh-huh.

1 Q. - - - when she started arguing with her father more.

2 A. Yes.

3 Q. And these were things about wanting more money, is
4 that correct?

5 A. Yes.

6 Q. And wanting a car - - -

7 A. Yes.

8 Q. - - - is that correct? Okay. And then let me ask
9 you, did she come home for the Christmas break in December
10 of 2005?

11 A. Yes.

12 Q. All right. How did she get back to Fort Mill?

13 A. We went down and picked her up. That's what we had
14 been doing since she had been at the College of Charleston.

15 Q. So when she would come home you and her father both
16 would go down and pick her up?

17 A. Yes.

18 Q. All right. And when she came back - you all came back
19 from Charleston and you all were together, is that correct?

20 A. Yes. Yes.

21 Q. While you all were in the car did her father Darrell
22 have a discussion with her about money and how things were
23 going in school?

24 A. Yes.

25 Q. And what did that conversation consist of?

1 A. We were telling her or he was telling her that she
2 needed to work on getting her grades up. That if she
3 wanted a car she would need to get a job and pay for
4 insurance and the housing because you have to house a car
5 if you live on campus. That was four hundred dollars per
6 semester that she would have to pay for all of that but her
7 grades was our biggest concern.

8 Q. All right. And did he discuss with her about the
9 loans and paying for her college education?

10 A. Yea. He told her that if she was just going to just
11 flunk out that we were not going to finance any more loans
12 because that was a waste of money.

13 Q. And you all came home, is that correct?

14 A. Yes.

15 Q. All right. And she stayed at your home during the
16 Christmas break - - -

17 A. Yes.

18 Q. - - - is that correct?

19 A. Yes.

20 Q. And you testified about December the 28th.

21 A. Yes.

22 Q. Now I believe you said you and Darrell were in the
23 mist of an argument - - -

24 A. Yes.

25 Q. - - - is that correct? And was this argument about

1 money again?

2 A. Yes.

3 Q. And about your spending, is that correct?

4 A. Yes.

5 Q. And he was upset with you about spending you had done,
6 is that correct?

7 A. Yes.

8 Q. That argument between you and Darrell became very
9 heated, is that correct?

10 A. Yes.

11 Q. You all raised your voices. You all were basically
12 shouting at each other at that point - - -

13 A. Yes.

14 Q. - - - is that correct?

15 A. Yes.

16 Q. Okay. And basically it became so heated that Darrell
17 was - he had decided to leave, is that correct?

18 A. That's correct.

19 Q. So he was basically packing his bags and he was going
20 to leave the home, is that correct?

21 A. Well we had several cable boxes and things from
22 Comporium. He was unplugging everything, packing it up and
23 getting ready to take it back the next morning to leave the
24 home to find somewhere else to live.

25 Q. Okay. And in the middle of that argument Tabitha came

1 in, is that correct?

2 A. Yes.

3 Q. Okay. And was this argument going on in a bedroom or

4 - - -

5 A. No.

6 Q. - - - what part of the home?

7 A. Actually I was standing in the edge part of the living
8 room and he was standing in the kitchen.

9 Q. All right. And in the - Tabitha came in, is that
10 correct?

11 A. Yes.

12 Q. And how did she word it at that time if you recall?

13 A. I'm not sure. It just floored me to the point that I
14 - it shocked me. It was something to the effect that he
15 had been abusing her for years that's the reason he wanted
16 to leave.

17 Q. Okay. That was the reason he wanted to leave - - -

18 A. Uh-huh.

19 Q. - - - she said? Okay. And did you tell Tabitha that
20 she and you needed to talk about it?

21 A. I told Tabitha we needed to talk and to pack a bag for
22 we were going to leave.

23 Q. Okay. And did you do that?

24 A. Yes.

25 Q. Okay. I believe you testified earlier you went to

1 your daughter's home who was gone for the holidays, is that
2 correct?

3 A. Yes.

4 Q. You all sat in her driveway, is that correct?

5 A. Yes.

6 Q. And you and Tabitha talked at that point?

7 A. Yes.

8 Q. Okay. And did you tell Tabitha that you all could go
9 to the police about this?

10 A. Yes.

11 Q. Okay. What did Tabitha say to that?

12 A. She kind of got quite and just decided that she would
13 rather do something else I guess because suddenly she said
14 well maybe not that I would rather have it in writing.

15 And I said what?

16 And she said I want it in writing. And that's when
17 she was discussing the list of things that she wanted on a
18 piece of paper.

19 Q. Okay. And while you all were sitting in the car did
20 you all discuss what she wanted?

21 A. She discussed some of the things that she was wanting.

22 Q. Okay. But not all of them?

23 A. Not all of them.

24 Q. And how did - did you end up making a call to Darrell?

25 A. Yes.

1 Q. Okay. And what was the purpose of that call?

2 A. Because she wanted to meet in a public place to talk.

3 Q. And was that her request?

4 A. Yes.

5 Q. Okay. And how was it decided upon about Denny's?

6 A. I had thought about Denny's because of the fact that
7 it was open and this was one thirty, two o'clock in the
8 morning.

9 Q. And you all met at Denny's, is that correct?

10 A. Yes.

11 Q. Okay. Did the - what was discussed at that time?

12 What did Tabitha say at that time?

13 A. That the only way that she would go back to the house
14 is if she drew up a paper stating that he wouldn't touch
15 her and then she started listing things. And I told her I
16 said I don't have anything to write with. I said we can go
17 back to the house.

18 And she said okay. And I sent Darrell home first and
19 told him to go to the bedroom - our bedroom and lock the
20 door. And I told Tabitha I said we'll go in. I said you
21 know if you think that you don't want to be near him I said
22 we'll go in the bedroom and we'll lock the door and we'll
23 sit down and talk about it. And there was nothing to do
24 but for that piece of paper to be wrote.

25 Q. Okay. I believe you said you wrote it up?

1 A. Yes because her handwriting is terrible.

2 Q. Did she - whose idea was it to write up this
3 agreement?

4 A. Hers.

5 Q. All right. And whose idea was it to put these items
6 in there?

7 A. Hers.

8 Q. Okay. And whose - part of this - one page of it is
9 benefits to you from Darrell.

10 A. Right.

11 Q. And whose idea was it for you to get these things?

12 A. She wanted me to be taken care of by him. She thought
13 that or I guess she thought that me being married to him

14 - -

15 MS. HERVEY: Your Honor, I object, that's a
16 speculation.

17 THE COURT: I sustain the objection.

18 BY MR. BOYD:

19 Q. All right. What did she tell you?

20 A. She told me that she wanted to make sure I was taken
21 care of by him.

22 Q. And did - and I believe you've already testified
23 everybody signed this agreement - - -

24 A. Yes.

25 Q. - - - is that correct?

1 A. Yes.

2 Q. And I believe actually the signature by Darrell is in
3 black ink, is that correct?

4 A. That's correct.

5 Q. Okay. Did he come in and sign it after it was written
6 up?

7 A. No. I took it to him.

8 Q. So you took it to him. But it was written up already
9 at the time that he signed it, is that correct?

10 A. Yes.

11 Q. Did he have anything to do with preparing this
12 agreement?

13 A. No.

14 Q. Okay. He didn't have any input as to what was in this
15 agreement?

16 A. No.

17 Q. Okay. So basically what happened you and Tabitha sat
18 down, this was drawn up, the two of you drew it up, - - -

19 A. Yes.

20 Q. - - - and then it was taken in to him and said look at
21 it and sign it, is that correct?

22 A. Yes.

23 Q. Okay. Did - after that date did everybody stay in the
24 house there in Fort Mill until Tabitha went back to school?

25 A. Yes.

1 Q. Okay. And Tabitha went back to the College of
2 Charleston at that point?

3 A. Yes.

4 Q. After she got back during - is spring break normally
5 in March, is that correct?

6 A. Yes.

7 Q. Or was at that time... So that would have been the
8 spring of 2006 at that point, is that correct?

9 A. That's correct.

10 Q. All right. And Tabitha would still be nineteen years
11 old at that point - - -

12 A. Right.

13 Q. - - - is that correct? Her birthday is in July, is
14 that correct?

15 A. That's correct.

16 Q. Okay. And then when she - did you have a telephone
17 conversation with her about coming home for the spring
18 break?

19 A. Yes I talked with her and asked if she was coming home
20 for spring break and she said no. Then Monday of her
21 spring break she called me wanting to know what time I went
22 to school and I told her what time I went to school. I had
23 a feeling that she may try to come in the house for some
24 reason. I didn't know if she was coming to get all her
25 things and leave or you know what the deal was. She didn't

1 seem upset when I talked to her but for the sake of me I
2 guess it's just being bi-polar I put a piece of tape on her
3 bedroom door just to see if she - if it was opened during
4 the time that I was gone to school and when I come back it
5 hadn't been.

6 Q. All right. Let me ask you this prior to the spring
7 break or up to that point did you and she have a discussion
8 about a car?

9 A. It was the same discussion again about if she wanted a
10 car she would have to pay for the upkeep. She would have
11 to pay for the insurance, she would have to pay for the
12 housing of it but I would have given her the Taurus at the
13 time if she would have taken that.

14 Q. Okay. So you had a Taurus at the time - - -

15 A. Yes.

16 Q. - - - is that correct? And the Taurus was paid for,
17 is that correct? There was no liens on it?

18 A. Right.

19 Q. All right. So she could have that, is that correct?

20 A. Yes.

21 Q. But she would not. But she would have to pay for the
22 upkeep and the insurance and all that?

23 A. Yes.

24 Q. Okay. And basically that's what you told her - - -

25 A. Yes.

1 Q. - - - is that correct? Did you and she argue about
2 that?

3 A. Yes because she thought that we should pay for the
4 insurance and the housing and everything.

5 Q. I believe it was in March that warrants were taken out
6 and Darrell was arrested, is that correct, March of 2006?

7 A. Yes.

8 Q. Let me - and are you familiar - I believe you were
9 living on Wilson Street at that time, is that correct?

10 A. Yes.

11 Q. Okay. And are you familiar with a file cabinet that
12 is beside a white and gold dresser?

13 A. Yes.

14 Q. Okay. And who has access to that file cabinet?

15 A. I do.

16 Q. Okay. And let me ask you this. Did you ever in your
17 home on Wilson Street or any of the other homes you lived
18 in see a large blue dildo?

19 A. No.

20 Q. Did you ever see any - a glow in the dark vibrator?

21 A. No.

22 Q. Did you ever see a pink vibrator?

23 A. No.

24 Q. If the court would indulge me for just one moment.

25 THE COURT: Yes, sir.

1 MR. BOYD: Thank you, that's all the questions I have.

2 MS. HERVEY: Just briefly, your Honor.

3 RE-DIRECT BY MS. HERVEY:

4 Q. You stated you were bi-polar?

5 A. Yes.

6 Q. And do you also suffer from migraines?

7 A. Yes.

8 Q. And how long have you suffered from those?

9 A. Probably twenty years if not better.

10 Q. Do you take any medication associated with them?

11 A. Yes.

12 Q. And when you get those migraines do you lay down for a
13 while? How do you handle those kind of things when you do
14 get them?

15 A. I usually lay down.

16 Q. And do you lay down associated with any type of
17 medication?

18 A. Sometimes. I try to lay down without taking anything.
19 I lay a wash cloth across my head.

20 Q. But there have been times where you would have taken
21 medication?

22 A. Yes.

23 Q. And you stated that you moved up here that summer - I
24 believe when Tabitha was in high school but that Darrell
25 had to drive back to Cheraw. Is that your testimony?

1 A. I'm sorry.

2 Q. You stated that you all went ahead and moved up here
3 in the summer but for the next six months Darrell had to go
4 back to Cheraw?

5 A. Yes because the transfer didn't come through at the
6 time but we decided to move up here during the summer so
7 that Tabitha would start the school year at the beginning
8 of the year instead of the middle.

9 Q. Would it be fair to say that Tabitha could be
10 described by some people as a daddy's girl?

11 A. Not to the extent of getting everything she wants no.

12 Q. Would it be fair to say that Darrell spoiled her more
13 than you did?

14 A. Probably.

15 Q. And you stated that on the night the argument happened
16 or this disclosure happened that Darrell was packing his
17 things to leave.

18 A. Yes.

19 Q. Was that an unusual occurrence or was that a pretty
20 novel thing?

21 A. Uh well he packed several times to leave but we've
22 always worked things out.

23 Q. And just briefly a follow up on this last
24 conversation. I believe you testified and in response to
25 Mr. Boyd's question that sometime between Christmas of 2005

1 and spring break of 2006 that Tabitha called you back and
2 reinitiated this argument about her wanting a car, is that
3 correct?

4 A. Yes.

5 Q. And at that time you repeated that she would need to
6 pay for the insurance and those kind of things?

7 A. Yes.

8 Q. Did she ever threaten to go to the authorities with
9 the sexual abuse allegations in order to get you all to pay
10 for those things?

11 A. No.

12 Q. I have nothing further of this witness, your Honor.

13 MR. BOYD: I have nothing further.

14 THE COURT: Thank you, ma'am, you may stand down.

15 Next witness going to be rather lengthy or?

16 MS. HERVEY: The next witness will be Tabitha, yes,
17 sir.

18 THE COURT: We better take a break. We've been about
19 a hour and fifteen or twenty minutes.

20 Mr. Foreman, ladies and gentlemen of the jury, we will
21 take a short recess at this time. You may refresh
22 yourselves during the break. Please do not begin
23 discussing the case though. Thank you.

24 (JURY PANEL LEAVING THE COURTROOM AT 3:26 P.M.)

25 THE COURT: Okay. Let's take about ten minutes.

1 MS. HERVEY: Thank you, your Honor.

2 (SHORT RECESS AT 3:30 P.M.)

3 (BACK ON THE RECORD AT 3:45 P.M.)

4 THE COURT: All right, sir, please bring the jury in.

5 (JURY PANEL ENTERING THE COURTROOM AT 3:46 P.M.)

6 THE COURT: Counsel ready to proceed?

7 MS. HERVEY: Yes, your Honor. State calls Tabitha
8 Efird.

9 MADAME CLERK: Please raise your right hand, place
10 your left on the bible.

11 (WHEREUPON: TABITHA EFIRD,
12 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

13 MADAME CLERK: Thank you, you may be seated.

14 TABITHA EFIRD BY MS. HERVEY:

15 Q. Please state your name spelling your last name for the
16 record.

17 A. Tabitha Nicole Efird E-f-i-r-d.

18 Q. And, Tabitha, just so everybody understands who you
19 are as you go through this your mother just testified is
20 Christine, is that correct?

21 A. Yes.

22 Q. And your father is Darrell Efird, the defendant?

23 A. That is correct.

24 Q. And how old are you now, Tabitha?

25 A. I am about to be twenty-one on Saturday actually.

1 Q. On Saturday?

2 A. On Saturday.

3 Q. And so what is your date of birth?

4 A. 7/14 1986.

5 Q. And this past year are you still - this past year did
6 you just finish up a semester at school?

7 A. Yes I did actually.

8 Q. And where was that?

9 A. The College of Charleston.

10 Q. So for the '06, '07 school year you were a what in
11 college?

12 A. I am - well a sophomore because of my grades. I went
13 as a sophomore for two years and a first semester junior.

14 Q. So that will be your third year of school?

15 A. Yes.

16 Q. And then counting back '05, '06 would have been your
17 sophomore year?

18 A. Yes.

19 Q. '04, '05 your freshman year?

20 A. Yes.

21 Q. '02, '03, would that have been your senior year in
22 high school?

23 A. Yes.

24 Q. Were you a graduating class of '03 or '02?

25 A. Two or - '03, '04, sorry.

1 Q. '03, '04, I'm sorry.

2 A. Was my senior year of high school, sorry, I got
3 confused.

4 Q. That's fine. I'm not trying to confuse you so please
5 correct me. So you were in the Class of '04?

6 A. Yes.

7 Q. And then '02, '03 would have been your junior year?

8 A. My junior year.

9 Q. And then obviously going back.

10 A. Going back.

11 Q. What high school did you graduate from?

12 A. Fort Mill High School.

13 Q. And where did you live at the time?

14 A. We lived at a uh 111 A Wilson Street which is in Fort
15 Mill, sorry.

16 Q. And with whom did you live?

17 A. My mother and my father.

18 Q. And is that for the most part who you grew up with?

19 A. Yes.

20 Q. And do you have any other siblings?

21 A. I have a half sister that's my mom's daughter. Her
22 name is Kathy Smith.

23 Q. No brother's or nothing like that?

24 A. No.

25 Q. And it was previously testified to that your sister

1 was living with your grandmother at some point early on in
2 your life?

3 A. From early on yes.

4 Q. And so for the most part you were raised as an only
5 child?

6 A. Yes.

7 Q. And you're now at the College of Charleston?

8 A. Yes.

9 Q. What is your major?

10 A. I changed from pre-med to chemistry - straight to
11 chemistry and then I changed from that to English because
12 I've always wanted to write and I decided that you know
13 since I'm my own person now and I can stand on my own two
14 feet I can do whatever I want to with my college degree so
15 I decided to become an English major so I can get a job in
16 the writing area hopefully in journalism.

17 Q. And how are you paying for the last year of school,
18 Tabitha?

19 A. I went to a friend of mine who sent me to a financial
20 aide advisor who helped me put through loans in my name in
21 my name alone.

22 Q. So you have just student loans now?

23 A. I have just student loans - straight student loans.

24 Q. And have you worked the past year?

25 A. Yes. I've worked a number of jobs actually. When I -

1 in 2000 - February of 2006 I had a job with Einstein
2 Speigleberg. I left there because I didn't have insurance
3 and I needed insurance. I went to Walden Books in
4 Charleston, South Carolina, in the Charleston Place Hotel
5 and I worked there until August - I would say actually
6 until July of 2006. And I left there and went to the
7 College of Charleston Library to work as a librarian there
8 so.

9 Q. And where did - so you went to Fort Mill High School?

10 A. Yes.

11 Q. Where did you go to elementary school?

12 A. Wallace Elementary Middle School.

13 Q. Wallace?

14 A. Wallace Elementary Middle School. Though I did go to
15 Marlboro County High School for a year before we moved up
16 here so.

17 Q. So your freshman year was at Marlboro County?

18 A. Yes.

19 Q. Okay. And you moved there in the summer between your
20 freshman and - - -

21 A. My sophomore year yes.

22 Q. - - - sophomore year? Okay. And you were a good
23 student in high school is that fair to say?

24 A. Yes. I worked really hard to be a good student.

25 Q. And had you always been a good student or were you

1 just kind of goofing off in high school?

2 A. I had my moments in middle school where I didn't get
3 as good a grades. Even in my first year of high school at
4 Marlboro County High School I didn't do quite so well. I
5 didn't feel like I was being challenged enough there so you
6 know there were a couple of classes that I didn't do so
7 well in so.

8 Q. And did you like school?

9 A. Some of it. I loved being able to get away from
10 everything and learn. I've always loved to learn because
11 you know knowledge is power.

12 Q. And what kind of extra curricular activities did you
13 do in high school?

14 A. In high school? Mainly chorus. That's really all I
15 did in high school. Every once in a while I went out with
16 friends but that's all I really did so.

17 Q. And have you participated in any similar kind of
18 extra curricular activities while you were at college?

19 A. No. I haven't taken any chorus classes. I do go out
20 with friends but nothing out of the ordinary.

21 Q. But you don't do anything with sports or chorus?

22 A. No. No. Too clumsy for sports really.

23 Q. Okay. And when you were in high school were there
24 ever any disciplinary problems or anything like that? Did
25 you ever get suspended or that kind of thing?

1 A. No. I was always pretty good in classes. I was the
2 class clown. I don't know why. Every once in a while I
3 made jokes and cut up and carried on and I still do it even
4 now in college but you know nothing that I got in trouble
5 for so.

6 Q. And when you went off to college was that a smooth
7 transition for you? Did you immediately do well in school?
8 Did you have any problems in adjusting to college life and
9 being on your own?

10 A. I had a problem adjusting at first because it was like
11 I went from everything I knew which I hadn't known for very
12 long at that but I went from everything I knew to something
13 totally and completely different. I had no family around,
14 I had no real friends, I had to make friends, you know, get
15 used to being in harder places, you know, harder classes.
16 You're not used to it when you're in high school. Even if
17 you take college prep classes you're not ready for it. You
18 hit that first class you know like wow this is so different
19 so.

20 Q. Were your parents supportive of you going to college?

21 A. They were. They wanted me to get a college education
22 and you know finish up and get a good job. They mostly
23 wanted me to go to pre-med. They wanted that because they
24 had convinced me that I wanted it at one point. I had you
25 know thought about it but never really was totally

1 convinced about that's what I wanted to do. I know I don't
2 have the math skills to do it so.

3 Q. So math is not your strongest subject?

4 A. No. No definitely not.

5 Q. And were they supportive in terms - you said they
6 wanted you to go to college. Why did they pay for while
7 you were at college?

8 A. They would get - they got loans in their names and
9 they took out the loans and when I got my loans back they
10 would either - for the first semester they gave them to me
11 and I did you know go through the loans because you know I
12 am a college student. I did get my shopping sprees every
13 once in a while sorry. And go shop and get stuff. I take
14 after my mom in that respect and I do go random shopping.
15 But other than that I mean they gave me a little bit of
16 money. Other than that it was mostly loans that I had you
17 know gotten back.

18 Q. Did you have a cell phone?

19 A. Yes I did but they paid for it. They had bought me a
20 cell phone before I left for college so.

21 Q. Did you have a car?

22 A. No I did not. The Honda at home was supposed to be
23 mine. It was a birthday present for my sixteenth birthday.
24 It was supposed to be mine but they never allowed me to
25 have it. And I wasn't really in need of one. I didn't

1 really want one. I wanted it you know to be able to drive
2 back and forth from home you know or to Wallace to see
3 people but other than I didn't want one because I didn't
4 need it. College of Charleston is really downtown
5 Charleston so there is a lot there that you can do.

6 Q. And how often would you come home while you were in
7 college?

8 A. Pretty often. I mean I would come home for breaks and
9 some weekends and just whenever they felt like coming and
10 getting me they would come and get me and bring me home.

11 Q. And were there ever any problems between you and your
12 parents while you were in college that developed that were
13 different from the kind of normal things that you would
14 have as a child?

15 A. I mean there had always been weird situations between
16 me and my father but we really didn't fight as much. I
17 mean my mom and I fought like you know normal people did
18 but nothing really to the extent that it was different.

19 Q. How would you describe your overall relationship with
20 your mother?

21 A. My mother? Mother and teenage you know daughter
22 mother that kind of relationship. Even when I was younger
23 we were more acting like me a teenager and her an adult
24 because you know we fought a lot. But I love her, always
25 have so.

1 Q. What kind of things did you fight about?

2 A. All kinds of stuff. We fought about you know what I
3 wanted to do, who I wanted to hang out with. We fought
4 about money sometimes because you know as a teenager I
5 wanted money. Every once in a while we fought about my
6 relationship with my father. She held it against me that I
7 was closer to my father sometimes than she was.

8 Q. Would it be fair to say that overall you were closer
9 to your father than your mother?

10 A. I was a daddy's girl, I really was. He spoiled me
11 rotten. I won't lie. When I was younger especially he
12 would get me stuff that I would want. That would be what
13 he would do. He would just make sure that you know I was
14 there taken care of.

15 Q. When you say get your stuff that you want are you
16 talking toys or a pony?

17 A. I never asked for a pony but yes he got me toys and he
18 you know he got me a lot of stuff that I ask for.

19 Q. Did you ever fight with your father?

20 A. Occasionally. More often than you know they made it
21 out to be. I did fight with my father mostly about stuff
22 that you know not normal teenage fights with fathers; not
23 normal child fights with fathers.

24 Q. Would it be fair to say you fought with your mother
25 more than your father?

1 A. Oh yes.

2 Q. You stated that you wouldn't have normal fights. What
3 would be the unusual or not normal topics that you all
4 would fight about?

5 A. Me and my father?

6 Q. Yes.

7 A. We would fight about him touching me or messing with
8 me while I didn't want it; making advances on me when I
9 didn't want it. That started really early and just kept on
10 going so.

11 Q. And when you say started really early do you recall
12 approximately what ages you were?

13 A. I was about four when it started. My mama was gone
14 one night; he came into my room and fingered me while I was
15 half asleep. He put his hands up under the cover and
16 started fingering me and then he would just you know tell
17 me I was a good girl and leave. I just - I didn't know
18 what to do. I was confused about what that meant.

19 Q. You stated that he would finger you. Would you have
20 your clothes on or would this be under your clothes?

21 A. Under my clothes.

22 Q. And you stated that he would finger you. Do you know
23 where he would finger you?

24 A. In my vagina.

25 Q. And you stated you recall that happening around the

1 time you were four?

2 A. Around four.

3 Q. Other than your vagina did he ever touch you anywhere
4 else that was unusual?

5 A. He would mess with my breast you know when I wasn't
6 full - you know developed. There was a couple of times he
7 would force me to give him a blow job. Even that young he
8 would force me to go down on him. And you know he would
9 touch me other places but I mean really was mostly
10 fingering me and causing me to go down on him or him to go
11 down on me and it just - it was very different.

12 Q. And when you said that he would go down on you is that
13 still touching you with his finger or is that with his
14 tongue or something else?

15 A. With his tongue.

16 Q. And is that again in the vaginal area or somewhere
17 else?

18 A. The vaginal area.

19 Q. And you stated you remember this happening around
20 four, or kindergarten, that time frame?

21 A. Kindergarten and earlier and a little bit later.

22 Q. Do you remember whether it continued when you started
23 going to elementary school?

24 A. Yes it continued throughout my childhood actually.

25 Q. And did it ever progress beyond touches with the

1 finger and touches with the tongue?

2 A. Yes. When I was eight years old when mom was gone
3 once again or either she was laying down with a headache, I
4 can't remember which, but he came into the room while I was
5 dressed for bed and ready and had the lights off; he came
6 in, he started off by fingering me and then he got on top
7 of me and put his penis inside of me.

8 Q. How did you react to that?

9 A. I fought him. I told him that he was hurting me and I
10 wanted him to stop but he didn't. When he got through he
11 got off of me and he told me that if I ever told anybody I
12 would be in a worse place and he would end up going to
13 jail.

14 Q. And did he ever express any other threats to you other
15 than going to a worse place or him going to jail?

16 A. Not when I was younger. He would talk about you know
17 you will go to jail or I will go to jail or you know you
18 will end up in a worse place. When I got older he started
19 mentioning threats about if I told anybody he would hurt me
20 and then go after my sister.

21 Q. And you stated that you recall that first time that
22 there was actually sexual intercourse you were around
23 eight?

24 A. Yes.

25 Q. And do you recall if it - was there a pattern to it or

1 would it happen frequently or unfrequently or ever once in
2 a while? Do you remember how often - about how often this
3 happened?

4 A. I was pretty frequent. Really any time my mom was
5 lying down with a migraine, any time she was gone. Any
6 time he could get me alone. He would take me on car rides
7 sometimes and do it while we were in the car. I mean he
8 did just anything he could when he had the chance.

9 Q. And once you began to develop do you remember about
10 what age you reached puberty or that kind of thing?

11 A. Around twelve he started using condoms because I had
12 gotten my period. We found out I was allergic to latex
13 actually that way. I was having a bad allergic reaction
14 and we couldn't figure out why but the only thing that I
15 could surmise was the fact that he had used a latex condom
16 on me. And not too long after that we went to Doctor
17 Schultz who was my doctor at the time and she confirmed
18 that I had allergies and she sent me to an allergy
19 specialist who confirmed that I was allergic to latex.

20 Q. Were you allergic to just latex or did you have other
21 allergies?

22 A. I have other allergies. I'm allergic to pretty
23 much anything that moves. I'm allergic to all kinds of
24 insects and stuff so.

25 Q. Tree, mold, pollen, any of that?

1 A. Tree, mold, pollen, pretty much anything. There was
2 an allergy thing that they did on my back - an imprint on
3 my back - and when they did that I pretty much broke out
4 everywhere the thing touched me. There was like one type
5 of mold that I wasn't allergic to so it was pretty bad.

6 Q. And did you get allergy shots as a result of that

7 - - -

8 A. Yes.

9 Q. - - - or did you just have to take medicine?

10 A. I ended up having to take allergy shots. I think it
11 was like once every two weeks, maybe once every week so.

12 Q. You stated that you determined around that time also
13 you learned you were allergic to latex?

14 A. Yes.

15 Q. And you stated that he had starting using condoms when
16 you were about the age you were twelve?

17 A. Yes.

18 Q. Did he continue to use those condoms even if you were
19 allergic to them?

20 A. No. He actually started using non-latex as hand
21 gloves. As a condom he would take one of the fingers and
22 roll it over as his penis and use it as a condom - as a
23 substitute for a condom.

24 Q. And did he ever use anything else in terms of
25 protection with you?

1 A. He used inserts which are little pill like things that
2 insert in the woman and releases spermicide so.

3 Q. And you stated that there were times that he would
4 threaten you if you told. Did he ever use any other kind
5 of methods in order to get you to engage in this kind of
6 conduct?

7 A. Bribery. He would tell me if I didn't do something
8 for to him that I wouldn't get something. For example if I
9 didn't you know have sex with him I couldn't have a
10 relationship with a boy. If I didn't have sex with him I
11 couldn't have a car. That was actually how he gotten me -
12 that's how he talked me into getting a car. He would make
13 a deal with me that if I had sex with him or did something
14 for him or he did something on me a certain amount of times
15 a week that he would buy me a car.

16 Q. Is that the first thing he bought you or were there
17 other things?

18 A. There were other things. There were trips; people I
19 could hang with that my mom didn't want me around, just a
20 lot of stuff. He used to bribe me with toys and stuff when
21 I was younger so.

22 Q. And you stated that it happened pretty frequently.

23 A. Pretty frequently.

24 Q. Are you able to say once a week, every other week,
25 once a month?

1 A. I would say at least once a week.

2 Q. And would there be one thing in particular you would
3 do more often than not or did it vary?

4 A. More than not he would force me to give him a blow job
5 or either he would have sex with me.

6 Q. And did he ever penetrate you with anything other than
7 some part of his body?

8 A. Yes. There was a big blue dildo and two vibrators,
9 one was pink and smooth. One that would glow in the dark
10 and had ripples and stuff on it. He told me when I was
11 younger that they were my mom's toys and that he used them
12 on her but that he was going to use them on me because it
13 was a special treat.

14 Q. And do you recall about how frequently he would use
15 those? Was that rare or common or do you even recall?

16 A. It's rare. It was rarely - mostly he would do it only
17 when my mom wasn't around and when he didn't you know want
18 - if he didn't want sex.

19 Q. And did this continue once you moved to Fort Mill?

20 A. Yes. It continued on when we moved to 212 Lee Street
21 which was the first place we moved to in Fort Mill. He
22 would do this often but not very often. It was just
23 anytime that we were alone together and my mom was at the
24 store or anything he would do it. But it wasn't as often
25 as I would say when we were at Wallace. But when we moved

1 to 1950 Holbrook Road that's when he started going more
2 often. He would do stuff with me more often. I believe at
3 that time was when my mom was going to college so it was
4 easier for him to do it when she wasn't around.

5 Q. Would it be fair to say she wasn't around as much when
6 he was there once she started going to school at Winthrop?

7 A. Yes. She had lots of night classes.

8 Q. And once you went off to college did anything change
9 then?

10 A. It changed because I didn't have to be around him as
11 much and he didn't get as much chances. But when I came
12 home or when they came up to see me he would try to corner
13 me and touch me or mess with me. And when I come home he
14 would you know try to get us alone together. If I refused
15 he would get upset and start trying to hurt me. He would
16 talk about you know if I didn't you know do what he wants
17 me to do he would pull all my finances from me and I would
18 not have no where - I would have nowhere to go so.

19 Q. Did you ever express a desire not to go home?

20 A. I did. Every once in a while I would just pretend
21 like I really just don't want to come home and they would
22 be like well come home anyways. So I didn't really want to
23 fight them on that because it was hard enough you know
24 going to school and not having to deal with that. And then
25 in Thanksgiving of 2005 I had told them I wasn't going to

1 come home. I just wasn't going to come home; I couldn't do
2 it any more and I told them I just wouldn't come home and
3 my mom and my dad started calling me each one separately to
4 try to convince me to come home. My dad called me and he
5 was like well if you don't come home now you have to come
6 home Christmas because the dorms closed anyway so you know
7 your punishment will be worse then than it would be now.

8 Q. And how did he intend on punishing you?

9 A. Sexually. He would you know actually assault me in
10 some way.

11 Q. And did this happen obviously once you turned sixteen?

12 A. Yes.

13 Q. During your junior and senior year in school?

14 A. Yes.

15 Q. And you came home like for Christmas I think in
16 December of 2005?

17 A. Yes I did.

18 Q. And other than Christmas was that a fairly typical
19 time for you and your family?

20 A. I did everything I could to avoid being alone with him
21 so yea it was pretty much a typical time. We fought as
22 usual but we didn't fight as much. We - you know I avoided
23 being alone with him. I tried you know just hanging out
24 with you know family and friends and staying away from him.
25 I would hide in my room a lot so that he wouldn't have any

1 chance to be alone with me.

2 Q. Was there a real chance that he was alone with you?

3 A. Yes. One night when I was there my mom was off at a
4 friend's house, Heidi Capitt. She was there with Heidi
5 and she was supposed to be home before he got off work but
6 she didn't quite make it home. I had been playing a video
7 game while I was in the living room and I had fallen asleep
8 on the couch waiting for my mom to get back and he come
9 home. He caught me in the living room and he was trying to
10 persuade me to have sex with him and I wouldn't and he
11 reached out and grabbed me and I tried fighting him off.
12 And at that time he was going to try to rape me and my mom
13 and Heidi pulled up and so he let me go and I went running
14 to my bedroom.

15 Q. And you stated he was trying to persuade you. How was
16 he trying to persuade you?

17 A. Telling me that if I had sex with him he would do
18 stuff for me. I believe he was trying to convince me to
19 have sex with me and he would buy me an IPOD that I wanted
20 for Christmas.

21 Q. You stated that he grabbed you. Was there any other
22 physical contact with you that day?

23 A. He tried to but not really. He grabbed me by both
24 arms and tried to shake me at one point but he didn't hold
25 me down or anything?

1 A. Are you on the couch, are you standing up?

2 A. I'm standing up trying to get away from him.

3 Q. Was it in one room or another room?

4 A. It's in the living room of the house which is at the
5 front of the house. The living room is here; the hall way
6 is here; my bedroom is there; their bedroom is there and
7 the bathroom is right here. So I was trying to get from
8 the living room to my bedroom and he had grabbed me.

9 Q. And you stated he was trying to persuade you to have
10 sex with him. Do you remember what specific words or acts
11 that he may have mentioned during that time?

12 A. Not particularly. He was just trying to get me to
13 have sex. He wanted me to at least you know go down on him
14 or something.

15 Q. And you stated that your mom and a friend came home.
16 What happened then?

17 A. He let me go as soon as he heard the car in the drive
18 because he has pretty good hearing. He let me go and I
19 went to my bedroom.

20 Q. Did you tell your mother or Heidi at that time what
21 had happened between the two of you?

22 A. No. I stayed in my room because I was too scared to
23 come out.

24 Q. Would that be the only extensive sexual contact that
25 Christmas break?

1 A. No. He had tried to persuade me to go for rides with
2 him and everything but that was pretty much the only
3 physical contact that we had had yes.

4 Q. And what happened that you eventually did tell?

5 A. They were fighting and I just couldn't take it
6 anymore. I had been so upset about him trying to rape me
7 and after all these years - I had been begging him for
8 years and years to stop; just not do it anymore; that I
9 couldn't take it anymore. And I just got to the point
10 where I was like I can't do this anymore you know I just
11 can't. I can't take this. So I was on the phone with my
12 boyfriend that I had been pretty serious with at the time
13 and I told him I said you know I can't do this anymore. I
14 said I got to go.

15 And he said well what's wrong? And I just hung up on
16 him and I went in there and my mom and dad were fighting
17 and they were arguing and I was like - I stood at the door
18 way from the hallway into the kitchen and said something
19 about the fact that he had been molesting me. I'm not
20 exactly sure what I said but I remember that you know I
21 told me mom I said I looked at her and I told her I said
22 you know I can't do this anymore I can't. And I looked at
23 him and I said you can't keep treating me this way and you
24 can't keep treating her this way. I said you know for
25 years you've abused me. You've sexually assaulted me, you

1 just molested in me every way possible. I just can't do
2 this anymore. So I told her and him you know there - and
3 yea you know I was angry because I couldn't - I couldn't
4 deal with it any more.

5 Q. When you say he can't, stop treating her this way.

6 What do you mean by that?

7 A. Because he treats her and me both like we're dogs that
8 he can just order around and especially me he would do that
9 sexually with. He would act like he can just tell me you
10 know oh you got to do this and you have to do it. And I
11 felt like that for years. And I just couldn't deal with it
12 any more.

13 Q. Do you recall whether or not he was packing to leave
14 or anything like that?

15 A. No I don't. They were in the kitchen and there was
16 nothing in the kitchen that he would have packed so I don't
17 remember him packing anything. But I was shacking and I
18 was upset so I don't - I might have missed something.

19 Q. And upon that you tell your mother this did he respond
20 in any way?

21 A. She looked at him and asked him is it true and he
22 never denied it. I don't remember if he ever confirmed it
23 but he never denied it. He went really quite. She told me
24 to go pack a bag and I got my bag and I got my phone and
25 left.

1 Q. And once you leave where do you go?

2 A. She drives over to my sister's house and parks in the
3 driveway and we --

4 Q. Who's decision was it to go to your sister's house?

5 A. My mothers. She parks in the driveway and I beg her
6 to let me go inside and just go to bed. Just let me go in
7 and sleep there or else go in and talk there but she
8 refused to go inside. She just sat down in the car and
9 said no we're going to talk this out. And I told her
10 everything and told her you know it's been going on since I
11 was four and how violent it had gotten and how often it had
12 happened and I talked to her about it and everything. And
13 then she decided that she wanted to talk to my father so
14 she called him. After I begged her not to she called him
15 and told him to meet us at Denny's. I asked her not too
16 and I asked her not to take me back there. I didn't want
17 to go anywhere near him. I asked her just to leave me at
18 my sister's house. I begged her and she never once said
19 okay. I begged her to just leave me there and let me spend
20 the night because Kathy had given me her keys. I could
21 have spent the night there and I would never had to went
22 around him again. I could just stay there the rest of the
23 Christmas and then just went back to school. I wouldn't
24 have had to go back around him but she forced me to go back
25 to Denny's.

1 Q. How was she forcing you to go to Denny's?

2 A. I was in the car with her and she refused to let me
3 get out and go in so.

4 Q. And so you end up at Denny's?

5 A. I end up at Denny's with her and him and she starts
6 talking to him about the contract and what the terms shall
7 be. And every time I went to say something he told me to
8 shut up that he wasn't talking to me he was talking to my
9 mother that he doesn't want to talk to me. And that's how
10 he reacted every time I went to say something. All I
11 wanted to do was just go to the police. I just really
12 wanted to go to the police and leave it at that because I
13 couldn't do it anymore.

14 Q. How does the subject of the contract come up?

15 A. My mom and him were discussing things that he had to
16 do so that me and her won't go to court. And at that point
17 I was so scared. I didn't want to fight it. So I just sat
18 there quietly after the third time he told me to shut up.

19 Q. And do you draw up the contract at Denny's?

20 A. No. We go back to the house after I begged her not to
21 take me back there. She's seeing him home first and told
22 him to go into his room and lock the door. We went in and
23 we went to my bedroom and she sat there on the pad and
24 wrote it down what she was wanting on the contract and I
25 was like I really just want to go. I want to go to the

1 police. I just want to go. I don't want to do this any
2 more. So she was like well we're going to do this contract
3 and you know then you'll be safe. And a part of me knew
4 that I would never be safe from him. So she drew up the
5 contract and she just had me so scared that I signed it.
6 She had her laptop and had typed it up on her laptop so I
7 think she had it in my room by that time. Yes she brought
8 it into my room and she typed it up in there as well. So
9 she took the copy that she had written up and had my dad
10 sign it. She didn't want us to be in the same room
11 together mostly because I was so scared of him.

12 Q. Let me go back to the contract and just specifically
13 what's in it with you a little bit before we get to who
14 signed it and everything. Let me show you State's Exhibit
15 Number One for the record.

16 (WITNESS EXAMINING DOCUMENT.)

17 Q. That fifty dollars a week during the spring semester
18 of 2006 who came up with that figure?

19 A. That would be my mom. They had taken my - they were
20 planning on taking my loans from me like they had been
21 doing so that they could distribute it out before I would
22 spend it all. They had actually done that the year - the
23 semester before. So the fifty dollars a week - I had been
24 getting I think forty dollars a week the previous semester.
25 And she come up with the fifty dollars a week because she

1 thought it was fair. It was a little bit more than what I
2 had been getting but it was my loans given back to me.

3 Q. The agreement to pay back all the loans for your
4 bachelor degree whose idea was that?

5 A. That was my mom's as well. Mostly because I didn't
6 know if I would be able to finish college you know with
7 everything going on. But she agreed that you know I needed
8 to finish college first.

9 Q. For you to receive a car within two years of the date?

10 A. That was my mom's idea because I explained to her how
11 I got the car to start with. About - when we were sitting
12 in my sister's driveway I explained to her how he had
13 bribed me into having the car and everything so she thought
14 it only fair that he have to give me a car to replace the
15 one that I had you know had to do stuff for.

16 Q. Is there a reason why you didn't get a car right away,
17 why you got it within two years?

18 A. I don't know. I mean I really didn't agree with this.
19 I just wanted to report and this is what she came up with
20 and that's why she wanted it within two years.

21 Q. So for a cell phone for you to be paid each month they
22 were already doing were they not?

23 A. Yes they were already doing that.

24 Q. The agreement of no unusual contact?

25 A. That was me. I did not want him touching me at all

1 and I wanted an agreement that said that. That's all I
2 wanted if I wasn't going to get being able to report
3 because if he touched me again I don't know what I would
4 have done.

5 Q. No threats of any kind or any nature?

6 A. That was so I wouldn't you know break down because you
7 know I'm tired of being threatened for years you know.

8 Q. The agreement of the parties will not to be anywhere
9 alone together?

10 A. That was also my mom because she wanted to make sure
11 that you know he had no chance of touching me again. I did
12 agree with that one though because I don't want him alone
13 with me. I don't want him near me. I don't want anything
14 to do with him.

15 Q. Then turn to the back page where it refers to your
16 mother. Were you dictating these terms as well?

17 A. No, ma'am. I didn't really care about any of these.
18 I felt kind of like I was being put out on a limb for my
19 mom because she wanted this stuff. She wanted money for a
20 place of residency. She wanted all this stuff and I just -
21 I don't know why she wanted this stuff but that's what she
22 wanted so.

23 Q. Did you discuss with your mother that night her
24 leaving your father for any reason?

25 A. I told her I wanted her to leave him with me because I

1 didn't know if he would abuse her in anyway to keep her
2 from you know leaving him or something.

3 Q. Did you get a copy of that contract, the actual signed
4 copy?

5 A. She did give me a copy to send to Elizabeth my
6 psychologist. So I gave it to Elizabeth when I got back
7 from school - got back to school.

8 Q. A copy of that one or a copy of a typed one?

9 A. A copy of a typed one from the computer. She printed
10 it out in her room and gave it to me.

11 Q. But you don't get a copy of that actual signed
12 agreement?

13 A. No I don't get a copy of this actual signed one.

14 Q. Who keeps that?

15 A. She does. She told me that she was going to put it in
16 somewhere safe where he can never find it. Little did I
17 know she would put it in a locked box in her closet.

18 Q. So you signed this contract and then you all go to bed
19 in the house that night?

20 A. Yes.

21 Q. And get up the next day and is everything back to
22 normal or back to abnormal so to speak?

23 A. Back to abnormal and then you know she made sure we
24 weren't alone together or anything. My biggest concern was
25 getting back to school at that time. I kept away from him

1 and didn't fight with him as much because I just wanted to
2 get back to school and get away from them because I
3 couldn't take it. I knew that once I got back to school if
4 I took my time I could report.

5 Q. You could report?

6 A. Uh-huh.

7 Q. So you returned to school at some point?

8 A. I returned to school and - -

9 Q. Did you - who took you to school? I'm sorry to
10 interrupt you.

11 A. My mom and my father took me back.

12 Q. And you go back the next day?

13 A. No I go back when school starts back.

14 Q. And is that the middle of January?

15 A. It's early January so. I think it was January the 5th
16 that year. I'm not sure.

17 Q. And once you go back to school how do things progress
18 from there?

19 A. When I get back to school I start talking to people
20 around campus. I talked to my psychologist. I talked to
21 CARE which is a victim's advocate group on campus that
22 support victims of sexual assault. They help deal with
23 people who have been raped. They deal with people who have
24 been in any kind of crime whatsoever. So you go to them
25 when you're being a victim pretty much and they help you

1 out. They are victim advocates on campus and I had been
2 talking to them for a little while. They had me - they
3 told me you know if you want to report - -

4 MR. BOYD: Objection to hearsay.

5 THE COURT: Sustain as to hearsay.

6 MS. HERVEY: Your Honor, it just explains why she does
7 the next step. It's not offered for the truth of the
8 matter asserted. It just explains the chronology that
9 leads up to her disclosure.

10 THE COURT: I think she can testify as to what she did
11 based on the conversation but you can't testify as to what
12 somebody said. That's hearsay and they're not here to
13 testify.

14 MS. HERVEY: Do you understand the judges ruling?

15 A. Yes.

16 Q. As a result of your conversation with these kind
17 people what happened after that?

18 A. I decide to report but first I wanted to talk to some
19 of my mother's side of the family and let them know. I
20 would have talked to my mom but she didn't seem to want to
21 see me. She wanted to see me there at the house but she
22 didn't want to see me around her family. She only wanted
23 me to come home and I couldn't do that. I told her I just
24 couldn't go anywhere near the house. So instead I go to
25 her side of the family's house in Cheraw, her moms, and I

1 spend the week with my aunt Barbara.

2 Q. Is this spring break or are you taking a week away
3 from school?

4 A. This is spring break - during spring break. I go to
5 Gail Beverly's house which was my mom and my friend from
6 when I was growing up and that's where I spend the week at
7 is actually spend the night there and everything.

8 Q. And how do you get to there? Did they come and get
9 you?

10 A. They come and got me.

11 Q. And do you report to the authorities from Cheraw?

12 A. No I waited until I got back to school and called the
13 York County Sheriff's Department and talked to Tina.

14 Q. And would Tina be a Victim Advocate here?

15 A. Yes that was the official victim advocate the first
16 one that I spoke to.

17 Q. And did she then refer you to Amanda Carter?

18 A. Yes.

19 Q. And you gave her a statement and disclosure what had
20 been happening to you?

21 A. Yes I did.

22 Q. And subject to that charges were made against your
23 father?

24 A. Yes it was.

25 Q. And have you had any contact of any kind with your

1 mother since that time?

2 A. I have talked to my mom on occasion thinking that she
3 was supportive of me because she had said that she was. I
4 only talked to her after my aunt - I'm sorry, she's not
5 really my aunt but she is a very close friend. Her name is
6 Gail Beverly. She passed away this past Christmas and
7 that's when I ran into my mom for the first time since I
8 had reported. That would have been the first time I
9 actually had contact with her and she tried to pick up
10 where we had left off as friends you know more than family.
11 And she tried to talk to me and she talked to me over the
12 phone a couple of times here and there. She sent me mail
13 and talked to me.

14 Q. And did they continue to - the past year at the
15 College of Charleston have they paid for that?

16 A. No not as far as I know. I mean they haven't paid for
17 any of my loans. My loans are now in my name. They've
18 been in my name since before I reported. I had everything
19 transferred over to my name.

20 Q. And why did you do that?

21 A. Because I wanted to make sure that I had somewhere to
22 go and that was really the only place I had to go because
23 my parents had taken everything from me. They were my
24 parents, they are my parents. They were who I - I love
25 them I mean even now. Even though he did what he did I

1 still care about my parents. They were where I had to go.
2 They were my home, they were my roots and I had to have
3 somewhere to go so. I made sure that I had loans and stuff
4 in my name so that I could stay at the College of
5 Charleston and finish up school and I would pay back the
6 school in my own time. That's why I've been working so
7 many jobs was so I could finish paying for school and
8 everything.

9 Q. And have you been home since you reported this to the
10 authorities?

11 A. No. I haven't been anywhere near them in their house
12 since then.

13 Q. So your mother's testimony about putting tape on the
14 door and believing that you had been there do you recall
15 going there?

16 A. No I don't recall that. I think I did give my sister
17 my keys and told her if she wanted to go she could because
18 I was already down there the weekend before on spring break
19 so.

20 Q. The court's indulgence just one moment. Nothing
21 further at this time.

22 MR. BOYD: Your Honor, I have one matter of law I need
23 to take up before we begin the cross examination.

24 THE COURT: All right. Mr. Foreman, ladies and
25 gentlemen of the jury, we will take a short break. There

1 is a matter I need to take up with counsel at this point.
2 It will be just a very short break. Please retire to the
3 jury room.

4 (JURY PANEL LEAVING COURTROOM AT 4:30 P.M.)

5 MR. BOYD: Your Honor, this deals with the issue
6 earlier about Thanksgiving break and her staying with her
7 boyfriend. I believe her testimony here was that she
8 stayed there during Thanksgiving; her parents wanted her to
9 go home; she stayed down there because she was afraid. I
10 think she's opened the door to cross examination as to why
11 the reason she actually stayed down there. I think that
12 doors been opened by the state at this point.

13 THE COURT: Ms. Hervey.

14 MS. HERVEY: I don't know that it needs to go into the
15 fact that she was staying with her boyfriend versus a
16 friend. She could have stayed with them more than anybody
17 else as equally. You know if she somehow went off with her
18 boyfriend somewhere over the Thanksgiving break I think it
19 creates a dangerous inference. It's beyond the rape the
20 law was meant to protect. If she wanted to go off with
21 friends I don't think it has to be a boyfriend in that kind
22 of respect.

23 THE COURT: I don't think the rape shield statute goes
24 that far. I think that if it's - it is certainly the rape
25 statute is to protect from having an alleged victims'

1 reputation intact in that regard but the matter that ties
2 factually to the case even if they would otherwise be a
3 violation of the rape shield. If it's tied into the facts
4 of the case the defense is entitled to get into those and I
5 think that they would be able to ask her if there was
6 another motivation as to why she didn't come home and there
7 is another reason she didn't come home I think they have a
8 right to ask her that. If her choice was to stay with a
9 boyfriend rather than come home I think they have a right
10 to ask her that. I think they could go there.

11 But, Mr. Boyd, please keep in mind just how far you
12 can go with that which is not very far off. You can ask
13 her that where she stayed and why she stayed. If that's
14 the line of questioning if she would have preferred to stay
15 with her boyfriend is the reason she didn't want to come
16 home I think you can ask her that. But I think that's as
17 far as you can go with that.

18 MR. BOYD: I'm not going to get into - ask anything
19 about what they may have done together as far as any sexual
20 activity. That's no proper and I'm not going there.

21 THE COURT: Okay. Just wanted to make sure we have an
22 understanding on that.

23 All right, please bring the jury back, sir.

24 (JURY PANEL ENTERING COURTROOM AT 4:35 P.M.)

25 THE COURT: All right, is counsel ready to proceed?

1 TABITHA EFIRD BY MR. BOYD:

2 Q. You all moved to Fort Mill. I believe it was in 2001,
3 is that correct?

4 A. Yes, sir.

5 Q. Okay. In your last year of high school in Fort Mill
6 that you made good grades, is that correct?

7 A. Pretty much yes.

8 Q. In fact all your - your last grades there the last
9 year were in the nineties and some of them even a hundred
10 but you made in the nineties pretty much on everything, is
11 that correct?

12 A. I believe so yes.

13 Q. Okay. And you were in high school in the Beta Club,
14 is that correct?

15 A. That's correct.

16 Q. And basically that's the club for smart kids, isn't
17 that correct?

18 A. Pretty much yes.

19 Q. You entered the College of Charleston in the fall of
20 2004?

21 A. That's correct.

22 Q. And how did you choose the College of Charleston as
23 the school you were going to go to?

24 A. The truth? The farthest away I could get from my
25 parents without going out of the State of South Carolina.

1 Q. Okay. Did you - -

2 A. Mostly because I wanted to make sure that I could use
3 the life scholarship.

4 Q. All right. But did you choose the College of
5 Charleston?

6 A. It was a compiled effort kind of thing. Mostly I
7 wanted to go there because one of my father's kin folk had
8 went there and graduated there in pre med and graduated
9 from there.

10 Q. And your plan was to go into pre med and be a doctor
11 at that point, is that correct?

12 A. At that point yes.

13 Q. And that was something your parents wanted you to do
14 also?

15 A. Pretty much yes. They wanted me to be a doctor and
16 get a good job and get good money basically.

17 Q. Okay. And that's both your father and your mother
18 wanted you to do that - - -

19 A. Yes.

20 Q. - - - is that correct? I believe you said one of your
21 father's relatives had been to the College of Charleston?

22 A. Yes. And my aunt Tammy I believe he said.

23 Q. All right. So he approved of you going to the College
24 of Charleston?

25 A. Yes.

1 Q. There was no pressure for you to stay at a local
2 college like Winthrop or anything like that?

3 A. There was at first but not really. They wanted me to
4 go wherever I wanted to go at the time.

5 Q. You entered the college of Charleston. You got a life
6 scholarship, is that correct?

7 A. That's correct.

8 Q. Your parents or your father - you had those student
9 parent loans, is that correct?

10 A. That's correct.

11 Q. You entered the College of Charleston in the fall of
12 2004?

13 A. That's correct.

14 Q. That year I believe you took seventeen hours didn't
15 you?

16 A. I believe so.

17 Q. A pretty heavy load?

18 A. A very load.

19 Q. In fact at that time you made - that fall semester you
20 made three B's. You made a B plus and you made two C's, is
21 that correct?

22 A. I believe so. I'm not really sure of my grades.

23 Q. Well so you passed everything?

24 A. As far as I know yes.

25 Q. That was actually six courses you were taking, is that

1 correct?

2 A. That's correct.

3 Q. Okay. And you did that. And then the spring of 2005

4 came and you took fourteen hours that semester, is that

5 correct?

6 A. That's correct.

7 Q. Your grades dropped pretty bad that semester didn't

8 they?

9 A. They did.

10 Q. You made one B plus at the time, is that correct?

11 A. That's correct.

12 Q. And you made a C?

13 A. I believe so.

14 Q. You made a D?

15 A. I'm pretty sure.

16 Q. And you made two F's, is that correct?

17 A. I'm not sure which classes were the two F's were in.

18 Q. But you did make two F's?

19 A. I'm not asking you which classes were the two F's in

20 because I have a hard time with some of those classes. I'm

21 not sure if I failed two classes but I know I failed at

22 least one. One of them should be pre cal; the other one

23 might be chemistry. I'm not sure.

24 Q. Chemistry is one of the courses you would need to be a

25 doctor, is that correct?

1 A. That is correct.

2 Q. I believe you made an F in Principals of Chemistry
3 Lab, is that correct?

4 A. I believe so yes.

5 Q. And you also made an F in Introductory Calculus, is
6 that correct?

7 A. That would be pre calculus.

8 Q. And you made a D in the Principals of Chemistry, is
9 that correct?

10 A. That's correct. The D was a result of the fact that I
11 failed the lab exam. The lab exam was very difficult to
12 say the least.

13 Q. But in any event you made the two F's?

14 A. Yes. I had a semester I believe to bring up my grades
15 to keep the life scholarship.

16 Q. All right. And the fall of 2005 you took thirteen
17 hours that semester, is that correct?

18 A. I believe so.

19 Q. And in that you passed everything didn't you?

20 A. I'm not sure.

21 Q. I believe - didn't you made two B's and you made a C
22 plus and you made one D, is that correct?

23 A. I believe so.

24 Q. Any way you lost your life scholarship - - -

25 A. I believe so.

1 Q. - - - is that correct, because of your grades? And I
2 believe you described earlier part of it was being away
3 from your home and being on your own, is that correct?

4 A. Yes, sir.

5 Q. Were you partying too much?

6 A. No. I went out occasionally but even my room mate
7 thought I was anti social because I didn't go out with
8 them. They ask me to and I would be like no I really don't
9 want to.

10 Q. And you had some trouble with a room mate didn't you?

11 A. Yes.

12 Q. Okay. In fact you and your room mate had some
13 difficulty to the extent that you sought counseling down
14 there over the room mate problem, is that correct?

15 A. Yes I did.

16 Q. And got into counseling - - -

17 A. Got into counseling correct.

18 Q. - - - is that correct. Okay. Because you and your
19 room mate did not get along?

20 A. Well she was upset half the time and I couldn't figure
21 out why. She was doing things with her boyfriend while I
22 was trying to sleep at night and I had asked her quite a
23 few times to stop and yet she kept doing it. That was
24 mostly why I went to counseling because it's kind of
25 interrupting to wake up - to be woken up in the middle of

1 the night after maybe two hours of sleep with somebody
2 having sex in the room in the bed beside you.

3 Q. But in any event you all weren't getting along?

4 A. No not really. No.

5 Q. Now so this would have been the fall of 2005. And
6 then the fall of 2005 that was actually - it was Christmas
7 time on Christmas break in which you first made these
8 allegations, is that correct?

9 A. It's not correct because I had talked to my mom. When
10 I was younger and I was six years old I actually told my
11 mother. She says she doesn't remember it even when I've
12 told her you know that Christmas but she says she doesn't
13 remember but I had told her when I was six years old that
14 my father had been touching me. But it was the first time
15 since then that I had - -

16 Q. All right. So you say you told that when you were six
17 years old?

18 A. Yes I did.

19 Q. Okay. And then you said - but the allegation you made
20 in 2005, the Fall of 2005 semester was the semester that
21 that came out, is that correct?

22 A. That's true.

23 Q. So that would have been your third semester of
24 college?

25 A. That's correct.

1 Q. You would have been nineteen years old at the time?

2 A. That's correct.

3 Q. You're twenty years old now, is that correct?

4 A. That's correct.

5 Q. Okay. So at that time you had lost your life

6 scholarship?

7 A. I lost it at the end of that semester because I had

8 made that one D and it brought down my grades too much and

9 I lost the life scholarship.

10 Q. All right. Now on that Thanksgiving prior to that

11 Christmas you had stayed down there, is that correct?

12 A. That is correct.

13 Q. Okay. You had stayed in the dorm, is that correct?

14 A. That is correct.

15 Q. You stayed with a boyfriend at that time?

16 A. That was correct.

17 Q. Okay.

18 A. He was an RA there at the dorm and I felt safer - -

19 Q. I'm sorry. A Resident Assistant?

20 A. A resident assistant who lives in the dorm and is

21 specific to each floor to help the residents with any

22 problems they should have. Actually I had started staying

23 with him when one of my room mates had started having

24 problems with me for some reason. I couldn't really tell

25 you why. So I started staying with him and just kind of

1 you know stayed away from her.

2 Q. Now is this another room mate or the room mate we were
3 referring to earlier?

4 A. It's another room mate. They change when you come
5 back for the fall semester.

6 Q. So you had problems with the first room mate?

7 A. Yes.

8 Q. And you had to get counseling over that?

9 A. Yes, sir.

10 Q. And you had problems with this second room mate and
11 you started staying with a Resident Assistant?

12 A. Pretty much. She's not my room mate. She's my suite
13 mate. The room I stayed in had four rooms, two people in
14 each room, and for some reason she just didn't like me and
15 I didn't get why but she didn't like much of any body
16 according to everybody in the room. So it might not just
17 been me. It might have been everybody but I got tired of
18 the confrontations that would come so I would just not go
19 back to the room.

20 Q. And you told your parents where you were staying
21 didn't you?

22 A. Yes I did.

23 Q. Okay. And did you tell your father also you did a lot
24 of drinking down there - - -

25 A. No.

1 Q. - - - that Thanksgiving?

2 A. No I did not. I do not recall telling him I did any
3 drinking. I pretty much stayed away from drinking as much
4 as possible. My boyfriend the RA was over the age of
5 twenty-one so he drank a lot but I really didn't drink.

6 Q. Okay. So you're saying you stayed away from drinking
7 as much as possible?

8 A. I stayed away from major drinking but he drank so I
9 guess you could say I was around it.

10 Q. Okay. You have a MySpace web site, is that correct?

11 A. That is correct.

12 Q. For people who may not know basically MySpace is a web
13 site that a lot of young people go to put up things about
14 themselves and that type of thing?

15 A. That's correct.

16 Q. And on your MySpace site did you put down that you
17 don't smoke you do drink?

18 A. Yes. It was a joke actually for a friend of mine was
19 there to make up on my space board. At that time I had
20 been drinking every once in a blue moon but nothing that
21 was recent actually when I sat that up though. I think it
22 was 2006 when I sat that up.

23 Q. And you were actually twenty years old when you put
24 that up, is that correct?

25 A. Yes 2006.

1 Q. Which the age you are now as of Saturday - - -

2 A. That's correct.

3 Q. - - - is that correct?

4 A. That's correct.

5 Q. Okay. And you also - so this would have been in the
6 past year. You also put on that MySpace that you were at
7 the College of Charleston and studying to be a doctor, is
8 that correct?

9 A. That was before I decided that I wanted to go to pre -
10 to English from premed yes.

11 Q. But actually by the time you turned twenty your grades
12 had pretty much shot you from being a doctor isn't that the
13 case?

14 A. No not correct. I've seen people come from F's to A's
15 and make it into a good college - a different college like
16 MUSC.

17 Q. And get into medical school with F's on the
18 transcript?

19 A. If you bring your grades up that much they have to
20 assume that there is something that really inspired you and
21 if you can you know explain the grades then they can take
22 you as a student.

23 Q. When you were coming home for Christmas did your
24 father discuss with you - both your parents were in the
25 car, is that correct?

1 A. Yes, sir. Well unless they were coming up to visit it
2 was really always both of them when they come up.

3 Q. So both of them then. So ever time when they come
4 down - -

5 A. Not every time but most of the time it was both of
6 them.

7 Q. Okay. And did your father discuss with you the poor
8 grades you were making?

9 A. He had mentioned them but he did not say anything
10 about if I didn't bring my grades he wouldn't pay for it.
11 He never said that to me.

12 Q. So when you were coming back that was mentioned, is
13 that correct?

14 A. It was mentioned the fact that the grades was low but
15 not the fact he that would stop paying if I didn't bring
16 them up.

17 Q. Now the incident you talked about in which you
18 confronted your parents about this they were having an
19 argument, is that correct?

20 A. Yes.

21 Q. A pretty loud argument, is that correct?

22 A. Pretty much.

23 Q. And they were arguing basically about money is that
24 correct?

25 A. That's correct.

1 Q. Okay. In fact they had argued about that numerous
2 times in the past is that fair to say?

3 A. That is fair.

4 Q. Okay. And in fact I believe you said earlier that you
5 were kind of like your mother in spending so she had some
6 spending habits about spending money didn't she?

7 A. Yes.

8 Q. Okay. And at that point in 2005 your father was the
9 only person in the family making any money, is that
10 correct?

11 A. In 2005? Yes.

12 Q. Because your mother was going to school?

13 A. Yes my mother was going to school and I was going to
14 school and they had told me not to get a job.

15 Q. But your mother wasn't working and your father was
16 working and your mother was spending money, is that
17 correct?

18 A. That's correct.

19 Q. The argument they were having didn't have anything to
20 do about you?

21 A. They were fighting about all kinds of stuff. Money
22 happened to be the big issue but there were other stuff
23 going on.

24 Q. But they weren't arguing about you?

25 A. No.

1 Q. And at that point you came in there and that's when
2 you confronted him or confronted them about it while both
3 of them were present, is that correct?

4 A. I had been on the phone with my boyfriend that I had
5 spent the Thanksgiving break with. I had been talking to
6 him and talking about some of the things that I had been
7 going through because I had actually told my psychologist
8 and him before Thanksgiving started. The Thanksgiving
9 break started so they knew what was going on. They knew it
10 wasn't a good idea for me to be home and both of them had
11 tried to find a place for me to go for Christmas but there
12 was really no where for me to go. So I was on the phone
13 with him talking to him about what was going on and he said
14 something you know and I said you know I can't do this any
15 more; I can't deal with him doing this any more. I can't
16 deal with being a victim any more and I told my boyfriend
17 that I loved him and hung up.

18 Q. All right. My question to you was - you testified to
19 that earlier. My question to you both of your parents were
20 present when you made that accusation, is that correct?

21 A. That's correct.

22 Q. You did it in the middle of an argument, is that
23 correct?

24 A. That's correct.

25 Q. Okay. And in fact the arguments between your parents

1 had been something that upset you pretty much and pretty
2 badly in the past, is that correct?

3 A. Not really. I mean they fought about money all the
4 time so it didn't really upset me. It upsets me because
5 they're arguing because any child or teenager who sees
6 their parents arguing gets upset.

7 Q. Let me show you this. I'm just going to ask you if
8 you can identify it.

9 MS. HERVEY: Your Honor, can I see that report?

10 He's given me a lot of things; I just want to make
11 sure.

12 (SOLICITOR HERVEY REVIEWING DOCUMENT.)

13 BY MR. BOYD:

14 Q. I'm just going to ask you if you can identify this and
15 ask you if this is a note that you wrote?

16 A. This is a poem.

17 Q. My question is - you can explain it - my question did
18 you write that first?

19 A. That I did.

20 Q. Okay. It's dated at the bottom, is that correct?

21 A. 2002.

22 Q. All right. What month?

23 A. July.

24 Q. Okay. If I can see it back a minute. Now let me -
25 you said this is a poem, is that correct?

1 A. It's a poem.

2 Q. All right. Was this poem written to any particular
3 person or written to yourself?

4 A. Pretty much not written to anybody in particular. I
5 write poems all the time based on anything that I hear or
6 see and I do it now even. I write poems.

7 Q. Okay. Let me show it to you back.

8 MS. HERVEY: Your Honor, before we go are we working
9 this as an exhibit or just for the interest of protecting
10 the record does he have a document that's going around
11 without any inclination as to where it's going.

12 MR. BOYD: I'm not putting it into evidence at this
13 time.

14 THE COURT: Are you going to ask about something
15 that's not into evidence?

16 MR. BOYD: I'm going to ask her about if she wrote and
17 what she wrote. I don't think I have to put the document
18 itself into evidence. I'm going to ask her about two
19 particular sentences she wrote.

20 MS. HERVEY: I think it still needs to be marked for
21 ID.

22 MR. BOYD: I don't have a problem with that.

23 THE COURT: Let's mark it for ID.

24 MS. HERVEY: We may move it in later but I just think
25 for the purpose of that I don't want it to go away

1 somewhere else.

2 (WHEREUPON: DEFENDANT'S EXHIBIT NUMBER ONE MARKED FOR
3 IDENTIFICATION.)

4 THE COURT: What is that ID, ma'am, please?

5 MADAME COURTREPORTER: One. Defense One.

6 THE COURT: Defense One?

7 MADAME COURT REPORTER: Yes, sir.

8 THE COURT: I just want the record to be clear.

9 Defense Number One. Go ahead.

10 BY MR. BOYD:

11 Q. In this there is a sentence in the - I think the Fifth
12 Paragraph down you state the most important people in my
13 life hate each other and hate me even more. Now are you
14 talking about your mother and your father when you are
15 referring to the two most important people in your life?

16 A. Yes. Actually yes.

17 Q. Okay. You also state in the paragraph down below that
18 because no matter how hard I try I will never be good
19 enough for them, is that correct?

20 A. That's correct.

21 Q. Okay. You are - at that point you're referring to
22 them hating each other; that your mother and your father
23 aren't getting along, that they yell at each other, that
24 they argue, is that correct?

25 A. Not really that they hate each other and argue. It's

1 just that they seem to hate each other at times. I mean
2 every family has those moments where they hate each other
3 no matter what. I mean you fight with your sister, you
4 fight with your wife, you fight with your spouse no matter
5 what. It was just - I wrote this because you know there
6 were times that they hate each other. They said it to each
7 other. It was one of those things that I just wrote when I
8 was thinking about that.

9 Q. So you wrote that and you were writing this basically
10 a poem for yourself, is that correct?

11 A. That's correct.

12 Q. So the thing that was upsetting to you was the fact
13 that your parents are fighting and seem to hate each other?

14 A. No. This was in 2002.

15 Q. That's correct.

16 A. Which was - -

17 MS. HERVEY: Your Honor, I'm going to object to him
18 going that's correct. He's asking her - he's indorsing
19 some answers and not endorsing the other. I don't think
20 that we need his editorializing on her testimony.

21 THE COURT: Just ask the question please, sir.

22 BY MR. BOYD:

23 Q. It was stated in 2002 wasn't it?

24 A. Yes, sir.

25 Q. And that's 2002. That is a time when apparently - is

1 it not correct your parents you think hate each other?

2 A. I think they hate each other but they weren't fighting
3 at the time.

4 Q. Okay. And that's something upsetting you, is that
5 correct?

6 A. Yes.

7 Q. Okay. And in 2002 that's a period of time which
8 according to you you are being sexually abused by your
9 father, is that correct?

10 A. Yes.

11 Q. Is that correct?

12 A. Yes.

13 Q. Okay. And this is not meant to be seen by anybody but
14 you, is that correct?

15 A. That's correct.

16 Q. Okay. You didn't mention anything about abuse in here
17 did you?

18 A. No because he had taken some of my stuff that I had
19 written in before and looked through it so I knew I
20 couldn't write anything about him abusing me anywhere
21 because if I did he might take it.

22 Q. But you can write about he and his wife hating each
23 other, is that correct?

24 A. Yea. They know that. I mean when you're screaming at
25 each other pretty loudly where neighbors can hear people

1 know that you hate each other so.

2 Q. Now you have - in August of 2005 you had a wreck, is
3 that correct?

4 A. That is correct.

5 Q. Okay. After the wreck you went back to school, is
6 that correct?

7 A. That is correct.

8 Q. Let me ask you, is this something that you addressed
9 to your dad, is that correct?

10 A. That is my handwriting.

11 Q. Is this a card you sent to your dad?

12 A. Yes it is.

13 Q. Okay. What did you say in that card?

14 A. The card actually says thank you so much, bless your
15 heart for being so nice and my handwriting it says thanks
16 for all the help you've done for me throughout and I really
17 appreciate it. And it says love Tabby which is my
18 nickname.

19 Q. Mark this for ID Two only.

20 (WHEREUPON: DEFENDANT'S EXHIBIT NUMBER TWO MARKED FOR
21 IDENTIFICATION.)

22 A. There's not exactly a date on it so I am not exactly
23 sure when it was given but . . .

24 Q. But it would have been sometime after the wreck and
25 before you made the accusation?

- 1 A. I'm not sure. It could have been any time.
- 2 Q. Well it refers to the wreck.
- 3 A. Oh it refers to the wreck. Okay. I couldn't remember
- 4 what I said.
- 5 Q. So it would have to be after that wouldn't it?
- 6 A. Yes.
- 7 Q. Now you stated earlier that the abuse started at four,
- 8 is that correct?
- 9 A. That is correct.
- 10 Q. Okay. And actual penetration started at eight years
- 11 old?
- 12 A. That's correct.
- 13 Q. And when you say penetration he would actually
- 14 according to you having actual sexual intercourse with you
- 15 during that period of time, - - -
- 16 A. That's correct.
- 17 Q. - - - is that correct?
- 18 Q. And that would have been starting at eight years old.
- 19 Full penile penetration, is that correct?
- 20 A. That is correct.
- 21 Q. And I believe you described that it hurt during that
- 22 period in time, - - - -
- 23 A. That is correct.
- 24 Q. - - - is that correct?
- 25 Q. You later said at times that a dildo was used - - -

1 A. That is correct.

2 Q. - - - and some vibrators, is that correct?

3 A. That is correct.

4 Q. And I believe didn't you tell - told Amanda Carter
5 with the Sheriff's Office that he still had these objects
6 in a file cabinet in a house on Wilson Street that sits
7 beside his white and gold dresser, is that correct?

8 A. As far as I knew he still had them so that's what I
9 put in there. Like I said on there as far as I know he
10 still has them.

11 Q. And they were located at that location?

12 A. They were located at that location but it had been
13 since the summer of 2005 since he was able to penetrate me
14 with anything. So I don't know if he still had those are
15 not for sure. I just put what was there when I last saw
16 it.

17 Q. Okay. Now in the contracts that were written up - let
18 me back up a minute. You said that you had gotten loans in
19 your name, is that correct?

20 A. That's correct.

21 Q. And you had some assistance in doing that, is that
22 correct?

23 A. That is correct.

24 Q. Were you able to get some of the loans in your own
25 name or get financial assistance because you are a victim

1 of abuse?

2 A. That is correct.

3 Q. Okay. So being a victim of abuse - actually you
4 wouldn't have qualified unless you had actually been a
5 victim of abuse, is that correct?

6 A. I might have qualified anyways but yes. Most of the
7 stuff was transferred over it was because of the fact that
8 I was a victim of abuse.

9 Q. And that was through the College of Charleston
10 financial aide, is that correct?

11 A. That is correct.

12 Q. And in one - in the contract here I believe you were
13 to receive fifty dollars a week during spring semester of
14 2006, is that correct?

15 A. That is correct which would be my loans given back to
16 me because they took what was surplus - a surplus of the
17 loans that I usually - it usually comes to me and put in
18 their bank accounts so that they can give me the fifty
19 dollars a week.

20 Q. And then the agreement to pay back all loans for your
21 bachelor's degree and all is written in big capital letters
22 in that?

23 A. That would be my mom's handwriting yes.

24 Q. Okay. So that would be the student loans or parent
25 loans that had been taken out, is that correct?

1 A. That is correct.

2 Q. And for you to receive a car within two years of this
3 date that would have been two years approximately when you
4 were out of college you were to get a car?

5 A. Correct.

6 Q. So upon graduation of college you would receive a car?

7 A. Correct.

8 Q. And also the cell phone would be paid for each month
9 and stays on during the next two and a half years so you
10 would have a cell phone that would be paid for for the
11 remainder of college provided you graduated in two and a
12 half years?

13 A. That is correct. My mom came up with all of those
14 though.

15 Q. I understand what you're saying. And basically at
16 that point in 2000 - in the spring of 2006 were you staying
17 on campus or off campus?

18 A. I was staying on campus in a dorm that I had been
19 staying in.

20 Q. Okay. Now do you know Paige Efird?

21 A. Yes I do.

22 Q. Okay. And is that your father's brother's wife?

23 A. That is.

24 Q. You have known her for probably all of your life or
25 pretty close?

1 A. Pretty much. I'm not sure exactly when she married my
2 uncle but she's been there pretty much all my life.

3 Q. Okay. Do you remember complaining to her about your
4 mother being too controlling?

5 A. I talked to her when me and my mom were fighting every
6 once in a while so I've talked to her about the fact that
7 my mom has been you know controlling and manipulative in
8 the past.

9 Q. And when you were in high school you told her that if
10 your parents split up you wanted to go live with your
11 father didn't you?

12 A. I'm not sure. I do not recall that so.

13 Q. In high school you told Paige Efird that you wanted to
14 save your virginity didn't you?

15 A. I do not recall saying that but if I said it you know
16 what was I supposed to do tell her that I lost my virginity
17 at eight to my father? I mean why would I want to tell
18 somebody? I feel bad enough about it when I wake up and
19 look in the mirror in the morning as if I feel dirty. I
20 feel nasty. Why would I want somebody else to know that so
21 that they can think the same thing about me?

22 Q. I ask you if you told her that?

23 A. I don't recall telling that.

24 Q. You don't recall, is that your answer, is that
25 correct?

1 A. That's correct.

2 Q. You had talked to her actually since making this - the
3 report of your father's abuse, is that correct?

4 A. I talked to her right after but I haven't talked to
5 her since.

6 Q. At one point you told her that regardless of the
7 outcome of this case you were going to sue him for money
8 didn't you?

9 A. No I did not. His sister Sidney - I'm sorry, Ramsey
10 had said something about suing me but I never said anything
11 about suing him.

12 Q. My question was did you tell Paige Efird - - -

13 A. Not that I recall.

14 Q. - - - you were going to sue him for money? And do you
15 know Heidi Capatee, is that the right way?

16 A. That is correct.

17 Q. Okay. And how long have you known her?

18 A. I'm not entirely sure. She started working at Wallace
19 Elementary Middle School with my mom and that's how I met
20 her.

21 Q. Okay. And she's a teacher, is that correct?

22 A. That is correct.

23 Q. And you one summer went to Maine with her, is that
24 correct?

25 A. That is correct.

TABITHA EFIRD: CROSS EXAMINATION BY MR. BOYD
REDIRECT EXAMINATION BY MS. HERVEY

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1 Q. Okay. So she took you to Maine on a trip, is that
2 correct?

3 A. That is correct.

4 Q. Your parents allowed you to go with her?

5 A. My mom was with us yes.

6 Q. Okay. Your mom went with you?

7 A. My mom was with me.

8 Q. And while on that trip you wanted to come home didn't
9 you?

10 A. I'm not for sure. I might have.

11 Q. And didn't you tell her to call and want your father
12 to come and get you and bring you back from Maine?

13 A. I do not recall that but I might have. It depends on
14 if me and my mom were fighting. If we were fighting then I
15 might have wanted to get away from her.

16 Q. Okay. You would want to get away from your mother
17 because you were fighting?

18 A. There are times that you fight with somebody you just
19 want to get away from them for that moment no matter if who
20 you are going with is worse than they were.

21 Q. No further questions.

22 TABITHA EFIRD BY MS. HERVEY:

23 Q. Do you recall approximately when this trip to Maine
24 was?

25 A. Uh not exactly. Uh - -

1 Q. Was it during high school, middle school or elementary
2 school?

3 A. High school I believe. It was in the summer and I'm
4 not exactly sure when. I cannot remember for the lack of
5 me. I had actually forgotten about the trip altogether so.

6 Q. I ask the court's permission to approach the witness.

7 THE COURT: Yes, ma'am.

8 Q. Would you hand me State's or Defendant's, I'm sorry
9 for ID only Number One.

10 Mr. Boyd, do you have any objection to me moving this
11 into evidence as State's Exhibit Two?

12 MR. BOYD: No.

13 THE COURT: Okay. It will be without objection.

14 MS. HERVEY: Thank you.

15 (WHEREUPON: STATE'S EXHIBIT NUMBER TWO MARKED,
16 ENTERED INTO EVIDENCE.)

17 Q. Is this document written in your own handwriting?

18 A. That is.

19 Q. What happened to this document? Where did it go after
20 you wrote it? Is that something you left at home or - -

21 A. This was left at home. I have lots of poetry that I
22 read around. When I write poetry I put it in the diary and
23 leave them there. Either I write them actually in the
24 diary. This was actually torn out of one of my notebooks
25 so.

1 Q. If you could just read the whole thing for the jury
2 please.

3 A. My life - I'm sorry. My life is as unconstant and as
4 unsure as a tornado in the mid summers time. It has never
5 been constant and sure for me. It is always different no
6 matter how things seem to change from day to day no matter
7 if it's good or bad. I hate the way it is really bad one
8 day and really good the next. The most important people in
9 my life hate each other and hate me even more. I try my
10 best to live my life without upsetting them but I can't no
11 matter how hard I try because no matter how hard I try I
12 will never be good enough for them and I hate that about
13 myself and hopefully it will go away but until then I am
14 stuck here.

15 Q. Thank you. Do you recall approximately when it was
16 written?

17 A. 2002. July 3rd, 2002 is what the date is on it.

18 Q. I believe Mr. Boyd showed you a Defendant's Exhibit
19 for ID only. It was a card you sent to your father?

20 A. Yes.

21 Q. And you sent your father other cards over the years?

22 A. Yes. He's my father. No matter what he was my
23 father. I cared about him as much as any child cares about
24 their father or mother.

25 Q. Mr. Boyd stated that you got these loans transferred

1 into your name and was able to pay for college since the
2 time of these allegations. Tabitha, did you make these
3 allegations up to extort money from your father to pay for
4 college?

5 A. No. I just wanted it to stop that's all I wanted. I
6 wanted him to stop. Every time - there are times that I
7 hate myself because I let him do this to me. There are
8 times that I just hate myself for not reporting earlier and
9 I can't help that and I know I can't. It's just I wanted
10 it to stop and that was the only way to get it to stop.
11 Even though he said you know if I sign this contract I'll
12 stop. I didn't believe him because he said that for years.
13 He said that for years and years. He said it would stop.
14 I fought with him and tried to get him to stop. I tried to
15 beg him to stop for years and he just wouldn't. He
16 wouldn't stop no matter what and I was just so tired of it.
17 I had to do something and this was the only thing that I
18 knew how to do. If I could have see any other way to get
19 him to stop without having to report I would have but this
20 is the only way he would stop.

21 Q. Thank you. The state has nothing further.

22 THE COURT: Thank you, ma'am, you may stand down.

23 MS. HERVEY: May we approach just briefly, your Honor?

24 (BENCH CONFERENCE AT 5:13 P.M. OUT OF THE HEARING OF
25 THE JURY.)

1 THE COURT: All right. Mr. Foreman, ladies and
2 gentlemen of the jury, we are going to go ahead and recess
3 for the afternoon. By the courtroom clock it's almost a
4 quarter after five. We are going to go ahead and recess
5 for the evening. I'm going to ask you to be back in the
6 jury room - we will start in the morning at nine o'clock so
7 I am asking you if you will to please be back in the jury
8 room ready to go in the morning at nine o'clock. On the
9 over night recess again please do not discuss the case
10 among yourselves or with anyone else including family or
11 friends. And if anyone should try to discuss the case with
12 you do not discuss it with them and let me know upon your
13 return to the bailiff and I will deal with that person.
14 Again I remind you that I do not know of any media coverage
15 and there may not be any but if there should be please do
16 not read, listen to, or watch any media account of this
17 trial until after the trial is over. Please have a
18 pleasant night tonight and be back in the jury room in the
19 morning at nine. Thank you.

20 (JURY PANEL LEAVING COURTROOM AT 5:16 P.M.)

21 THE COURT: I'll hear from you now, Mr. Boyd.

22 MR. BOYD: Yes, your Honor. This regards Doctor
23 DeFelice's testimony. My understanding - I've talked to
24 the doctor of what her testimony would be. She's reviewed
25 basically the police file. She's reviewed - I think she's

1 in the courtroom during this testimony but obviously I
2 haven't talked to her since this and my understanding her
3 testimony would be concerning the signs of sexual abuse and
4 delayed disclosure. Some of the things she did tentative
5 disclosure non symptoms or signs like non supportive mother
6 or threats that type of thing. Certainly it may be a
7 possibility I think she could testify as to the reasons
8 that children may not disclose sexual abuse but to go
9 farther and give an opinion in this particular case based
10 on view in this case, your Honor, I think goes beyond the
11 bounds of what expert testimony would be allowed for. I'm
12 sure in custody cases they allowed testimony concerning
13 rape trauma syndrome but here we have a situation in which
14 the doctor has not examined the victim and she's going to
15 give an opinion. I think she should be precluded from
16 giving opinions about this particular victim when she
17 hasn't even had - has not even talked to the victim and
18 particularly if she goes farther about things about my
19 client and about this is typical for there to be threats
20 and that type of thing. She certainly hasn't examined my
21 client and can't give an opinion as to any kind of opinion
22 as to him or Ms. Efird or any of that. I would point out,
23 your Honor, in a section in the administrative code Section
24 11-4 dealing with psychologist and I point out 100-4 - -

25 THE COURT: What's the cite, I'm sorry?

1 MR. BOYD: A 100-4 C 6 states a psychologist rendering
2 a formal professional opinion about a person for example
3 about the fitness of a parent in a custody hearing shall
4 not do so without direct and substantial professional
5 conduct with a formal assessment of that person. I mean if
6 she's going to give opinions concerning this particular
7 victim I think that would be improper in this case. I
8 also, your Honor, would think there is an analysis as if it
9 can be done under Rule 403 pursuant to the case law that
10 the probative value out weighs any prejudicial affect also
11 and I would ask the court to weigh that also.

12 THE COURT: All right. Does the state wish to be
13 heard?

14 MS. HERVEY: Yes, sir, your Honor, I do. Specifically
15 I think that we need to understand what the state would
16 intend to call Doctor DeFelice to be. I think perhaps that
17 Mr. Boyd may misunderstand that the purpose of her
18 testimony - Doctor DeFelice and I don't know if you've ever
19 seen her testify before but I'm going to run a little bit
20 through. She is the director of the ARC which is the
21 Assessment and Resource Center in Columbia. This is kind
22 typical of what you hear from Child Advocacy Center's so
23 she deals there in terms of doing forensic interviews on
24 children who are believed to be victims of sexual abuse,
25 assessing them, and then she's testified accordingly in

1 court. She also teaches nationally on how to interview
2 children, what children typically experience in terms of
3 being victims of sexual abuse and what type you see in
4 those type symptoms. I don't think she's going to go to
5 the point where Mr. Boyd you know the statement in terms of
6 saying he's an unfit parent that's never going to be an
7 expression of her. She's not weighing that opinion for the
8 purpose of a family court making a decision on what to do.
9 But what you look at in terms of why an expert is allowed
10 to testify is do they assist the trier of facts in
11 understating the specialized knowledge they wouldn't
12 necessarily understand. I think for a jury to understand
13 why a child doesn't tell, why they accommodate, why they
14 still love their father, why they still send him cards,
15 things that Mr. Boyd has certainly put an issue in the
16 cross examine notion of the victim that they need to
17 understand accommodation syndrome, delayed disclosure,
18 tentative disclosure, those type of things that we
19 typically see in victims of sexual abuse that is consistent
20 with what Tabitha did. And I don't think she's going to
21 render an ultimate opinion. And I told you in chambers
22 she's not going to say in my opinion the sexual abuse in
23 this case occurred. She's not going there in any way shape
24 or form and the state does not elicit that opinion from her
25 ever. What we will say is why do children go through this

1 for so long? Why do they put up with it? Why would
2 Tabitha? How did the threat, how does the emotional
3 coercion how does that effect her development, how does
4 that effect her self esteem or any other child who would go
5 through when the allegations are made. Obviously her
6 testimony is going to be based on assuming those facts to
7 be true but that goes to the weight of that testimony you
8 heard and not to the admissibility. There's no way this
9 jury can understand what she went through without a more
10 scientific understanding of what children do go through
11 because you are begging the question of why it took her so
12 long to disclose and those type of things. And for that
13 reason the state feels that her testimony is probative.
14 There are numerous experts called, your Honor, even
15 psychologist who give testimony while not having some type
16 of specialized conduct. They review documents, they review
17 records and those kinds of things and it's appropriate.
18 Again her lack of contact would be something that Mr. Boyd
19 can bring up on cross examination but that goes to weight
20 and not to admissibility. Mr. Boyd states well we have to
21 weigh probative value versus the prejudicial effect. All
22 my evidence is prejudicial but I don't see how this is some
23 how more unduly prejudicial than any other evidence that
24 the state is going to put before this jury. She is a
25 learned, reasonable, respectable expert to stay within the

1 boundaries to what she can testify to. I think that's well
2 within their effort how this is more duly unprejudicial.
3 She's not going to diagnosis him as a pedophile; she's not
4 going to say he's a pedophile, but obviously kids do
5 experience threats in these cases. I don't think she's
6 jumping off any kind of deep end boundary there if she
7 states often children are threatened. Even without threats
8 children often fear these things. Tabitha expressed this;
9 that's typical of what children express. If there are any
10 inconsistencies she would also be willing to point those
11 out. This is not something where it's going to be a
12 focused thing and we only got her with one view without an
13 explanation of the facts. So for that reason the state
14 feels that Doctor DeFeliece's testimony is appropriate,
15 probative within the guidelines of expert testimony. And
16 Mr. Boyd's concerns but can be address by the court but it
17 does not precluded her from testifying, your Honor.

18 THE COURT: Well an expert in this field can testify
19 concerning the scientific data that's being gathered and
20 what she knows provided of course she is qualified as an
21 expert in the particular field and whatever field she's
22 qualified in. She can testify as to scientific knowledge
23 or information or data that's been provided or that she's
24 aware of. She can testify concerning those things. She
25 can testify as to these syndromes. I think she certainly

1 can testify concerning those in general. And I think she
2 can testify then as to why if someone didn't report or
3 delayed reporting what some of the reasons might be. And
4 she can testify as to why you know if she can testify as
5 I've heard experts testify why a child who has been
6 sexually abused over a number of years can still love their
7 parents and they do still in fact love their parents or the
8 perpetrator. Sometime not even a parent; it may be an
9 uncle or a grandfather or somebody like that. So I think
10 they can testify and explain to the jury how that can be.
11 She can't testify and give an opinion about the particular
12 facts in this case. I think she can testify what is
13 consistent or inconsistent with the model that she has in
14 so far as this case is concerned. But she can't give the
15 ultimate opinion in this case as to whether Mr. Efird would
16 be a pedophile or not or whether sexual abuse actually
17 occurred in this case. Or that she believes the victim
18 over other witnesses and that sort of thing. She can't go
19 that far because that would be outside the bounds. Not to
20 say that testimony has not been elicited in some cases that
21 I've tried or an attempt to maybe do that but she cannot go
22 that far. But she can testify generally and help the jury
23 understand any information that's been developed over the
24 years by experts as to why a witness generally particularly
25 one who's been sexually abused as a child might act one way

1 or another or whether that is consistent with sexual abuse
2 and not consistent with sexual abuse. And of course on
3 cross examination you can ask her the same questions, is
4 this consistent or inconsistent, if it's inconsistent with
5 sexual abuse and this kind of thing, so I think you are
6 free to ask those. But I think as far as they are allowed
7 to testify in general terms. And I think they can testify
8 as to whether something is consistent or inconsistent with
9 the models that they have or the information that they
10 have. They can't give ultimate opinions. I think that's
11 what your real concern is in this case. Or give an
12 opinion about the particular facts in this case. She
13 cannot do that. She can't go that far. So I would agree
14 with you and I understand your concern in that regard. But
15 they can talk generally about in so far as educating the
16 jury as to information that they have in general why
17 certain things happen or do not happen and whether it's
18 consistent or inconsistent. But they can't give ultimate
19 opinions in the case so that will be the understanding of
20 the court. Now do you have any further questions about
21 that or do we need to further clarify where we are, Mr.
22 Boyd?

23 MR. BOYD: No, sir, I don't think so. If the question
24 comes up - if it goes too far I will just object
25 at the time.

1 THE COURT: That's what you will have to do because I
2 don't know what the questions are going to be either nor
3 the answers but I would generally caution that the expert
4 witness can testify in general terms about the studies and
5 what experts have found to be true generally but not to get
6 into an opinion as to the facts in this particular case.
7 You can't go that far. In other words the witness can
8 educate the jury generally but she can't get into the
9 jury's providence in this case as to the ultimate issues in
10 this case. Sometimes an expert can do that but they can't
11 do that in this case because that would be outside the
12 bounds of what an expert can do because they're not
13 testifying as to an examination - a mental examination or a
14 mental evaluation and the results of that. That's not what
15 they are doing. They are testifying concerning generally
16 what their studies show or generally help the jury
17 understand that because I think the average person does not
18 understand you know some of these studies and mock studies
19 have shown in so far as children who have been sexually
20 abused and how they might act or might not act and why they
21 would or wouldn't report and that kind of thing. So I
22 think generally she can go into that. We just don't want
23 to get into the specifics of this case and render an
24 opinion of the specific facts in this particular case.

25 MR. BOYD: Your Honor, as I stated we will stay within

1 those boundary lines and that was our intention all along.

2 THE COURT: All right. And we will careful there. Of
3 course Mr Boyd can object if he thinks she goes too far or
4 she's getting into an opinion as to particular facts in
5 this case. So we will play it by ear. I think generally
6 we understand each other don't we? I just want to be sure
7 we are on the same page.

8 MS. HERVEY: Yes, sir. See you in the morning.

9 THE COURT: Okay. We'll start in the morning at nine.
10 We'll probably get started promptly then at nine.

11 MS. HERVEY: Thank you, your Honor.

12 THE COURT: All right thank you. Remind everybody we
13 are going to try to start at nine. It's a little early in
14 the morning to start.

15 (COURT ADJOURNED AT 5:30 P.M.)

16 (END OF TRANSCRIPT.)

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1 THE COURT: We're waiting on a juror. Let the record
2 reflect that one of the jurors, Ms. Musgrove, Juror Number
3 One Sixty-one had called in to the clerk's office to say
4 that her son had gotten sick at camp and she was at the
5 emergency room and could not get here. The reason for the
6 delay is she didn't tell the clerk's office she was on a
7 jury, this particular jury so she thought she was part of
8 the jury panel. Any rate she's not here and they're
9 sending in a medical statement and we will need to go
10 forward and then we'll use the alternate as one of the
11 twelve so now we have just twelve jurors. Ask them to
12 bring the jury in.

13 Are we ready to proceed?

14 MS. HERVEY: Yes, your Honor.

15 THE COURT: Mr. Boyd?

16 MR. BOYD: Yes, your Honor.

17 THE COURT: Okay.

18 (JURY PANEL ENTERING THE COURTROOM AT 9:35 A. M.)

19 THE COURT: Good morning, Mr. Foreman, ladies and
20 gentlemen of the jury, I hope you had a pleasant night last
21 night. We - one of our jurors juror Number one sixty one,
22 Ms. Musgrove, has had an emergency in regard to her son who
23 was at camp and she had to go to the emergency room so she
24 is not here and is not going to be here for the balance of
25 the trial.

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1 So, Mr. Gleason, as it turns out you are no longer an
2 alternate. You are now one of the twelve jurors and so you
3 will now be one of the first twelve and we will not have an
4 alternate in this case.

5 Are we now ready to resume with the trial? Counsel
6 ready to proceed?

7 MS. HERVEY: Yes, your Honor.

8 THE COURT: Please call your next witness.

9 MS. HERVEY: The state calls Doctor DeFelice.

10 MADAME CLERK: Please raise your right hand.

11 (WHEREUPON: ALLISON DEFELICE,
12 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

13 MADAME CLERK: Thank you. You may have a seat.

14 DOCTOR ALLISON DEFELICE BY MS. HERVEY:

15 Q. Doctor DeFelice, if you could state your name and
16 spell your last name for the record please.

17 A. Certainly. My name is Doctor Allison Foster DeFelice
18 which is spelled D-e-F-e-l-i-c-e.

19 Q. And Doctor DeFelice, with whom are you currently
20 employed?

21 A. I am employed with the South Carolina Department of
22 Mental Health and I am a director of a Children's Advocacy
23 program that they run in coordination with the Children's
24 Hospital of Palmetto, Richland and the University of South
25 Carolina School of Medicine. It's called the ARC the

1 Assessment and Resource Center. We just call it the ARC.

2 Q. And in association with the University of South
3 Carolina do you have any other teaching or professional
4 responsibilities?

5 A. Yes I do. In addition to being the program director
6 of the ARC I am an assistant professor with the School of
7 Medicine in the Department of NeuroPsychiatry and
8 Behavioral Science.

9 Q. And specifically in that field what subject matter do
10 you focus on?

11 A. My entire career specialized on sex offending and
12 sexual victimization; child abuse. I should have explained
13 this but what the ARC does is it's a child abuse evaluation
14 and treatment center, a children's advocacy center.

15 Q. And what is just your educational background consist
16 of?

17 A. For college I went to Emory University in Atlanta,
18 Georgia and I majored in psychology and English literature.
19 And then I worked for about a year at a residential
20 treatment facility for troubled adolescents in Kennesaw,
21 Georgia. And then I moved to Columbia, South Carolina to
22 begin my doctoral work at the University of South Carolina.
23 And I got my - received my PhD in clinical psychology in
24 1996. As part of that training you do what's called a pre-
25 doctoral internship year and so I interned for a year with

1 the Department of Mental Health William S. Hall Psychiatric
2 Institute and that's where the ARC - that's the part of the
3 organization that has - that runs the ARC. So I interned
4 at the ARC for a full year before becoming its director.

5 Q. And just briefly what - your responsibilities. What
6 do you do at the ARC? You say you are a director. Is that
7 administrative or is it more hands on?

8 A. It's definitely more hands on. We are a team where
9 everyone provides direct service but I also supervise the
10 team. So I conduct and have conducted since 1994 forensic
11 interviews of children and adolescents and those are
12 investigative interviews of youth where there is a
13 suspicion of abuse or suspicion that they have witnessed a
14 violent crime or something like that. So I conduct
15 interviews on a weekly basis of children of all ages. I
16 supervise and train others in how to conduct appropriate
17 investigative interviews. I supervise our therapy team
18 which provides what we called evidence based treatment.
19 That's practiced treatments for traumatized kids and abused
20 children. We also provide statewide training as an ongoing
21 component of our work so I am a faculty member of a
22 national training program called Finding Words. And we
23 have a class called Finding Words South Carolina where we
24 teach law enforcement investigators, prosecutors, DSS case
25 workers and other children advocacy center employees how to

1 integrate their services and provide the best interventions
2 in child abuse investigations. Those are my primary duties
3 and then of course I am affiliated with some national
4 organizations as well to do that that same kind of
5 training.

6 Q. So do you do that training ever beyond a statewide
7 scope here or as part of a national level?

8 A. Yes. I teach for the - through the National Advocacy
9 Center in Columbia which is affiliated with the National
10 District Attorneys Association. I teach for the National
11 Children's Advocacy Center which is based out of
12 Huntsville, Alabama and as the National Resource for Child
13 Abuse Professionals. And there are a range of other
14 national conferences that I've provided workshops and
15 seminars for over all the years of my practice.

16 Q. And you stated and you used the term forensic
17 interview. If you could just educate the jury about what
18 is a forensic interview, why it's so important and how you
19 integrate it into what you do?

20 A. Certainly. Forensic interview is different from
21 mental health assessment or something like that. It's
22 forensic meaning that its fact finding; it is connected to
23 the legal system. So there are a lot of standards that
24 must be met in terms of how we - under what setting we
25 interview kids, how we ask questions, how it is documented.

1 And so the purpose is to assist in determining whether
2 something may have occurred and to collect the best
3 information from the child without contaminating what the
4 child says and preserving it so that the multi-disciplinary
5 team, the law enforcement officers, the DSS case workers,
6 guardian ad litem; who ever is involved in the case has the
7 best preserved statement from the child to look at and to
8 work from. And this also helps reduce trauma to kids if
9 they can give information in a way that is non-traumatic
10 and non-leading and it's well preserved then maybe they
11 don't have to be asked repeatedly by multi-professionals to
12 keep telling what happened to them.

13 Q. And ancillary to that or related to that how is it
14 important to your work to be familiar with the psychology
15 of victims of sexual abuse and how that may impact their
16 ability to come into the courtroom or their treatment and
17 counsel them later?

18 A. Right. It's critical. It's not - when I talked about
19 - it's not as simple as teaching people a series of
20 questions to ask. That's why the Finding Words course is a
21 five day, forty hour course. We have to be sensitive to do
22 our jobs well. We have to understand the dynamics of child
23 sexual abuse or chronic child physical abuse, understanding
24 child development. And so the impact of abuse and what the
25 data tell us about what are the common phenomena, how do

1 victims typically react. And when we understand those
2 dynamics and we understand child development and children's
3 - the way children remember things at different times, how
4 they use language. There are lots of specialized bodies of
5 knowledge and a tremendous amount of research that goes
6 into understanding how to best pull that information
7 together and then set conditions to collect information
8 from a victim or an alleged victim. And how to understand
9 what they say and why they say it the way they do. Why
10 maybe they didn't say something at a particular point in
11 time. And so we have to understand the wide range of
12 issues in dynamics to do our job well.

13 Q. And have you ever published in this area in respect to
14 child abuse or interviewed children or those type of
15 issues?

16 A. Yes. I most recently published in the National
17 Monograph that actually pertains a lot to juvenile
18 defendants and their competencies. And I published a
19 chapter on child development and the capacities of
20 adolescence. Both in terms of capacities that affect
21 adolescent victims as well as adolescence who may be in
22 trouble with the law. I have been invited to publish in
23 the area of Memory of Suggestibility for the National
24 Children's Advocacy Center in Huntsville. I published in my
25 graduate school work on other issues of motherhood mental

1 illness. But most of my work - I've got a research under
2 progress but to be honest I'm less of a publisher and much
3 more of a practitioner and a teacher.

4 Q. And have you ever been qualified as an expert in a
5 court of General Sessions or any other court before?

6 A. Yes I have.

7 Q. And beyond the Court of General Sessions what other
8 types of courts you've been qualified as an expert in?

9 A. General Sessions in several circuits of the State of
10 South Carolina. Also in Fort Collins, Colorado; United
11 States Court Martial for the Air Force and the Army. And
12 of course South Carolina Family Courts. And I believe
13 that's all.

14 Q. Your Honor, at this time we would proffer Doctor
15 DeFelice as an expert in the child abuse syndrome and the
16 dynamics that children go through when they are victims of
17 sexual abuse and assessing those children for the purposes
18 of forensic analysis.

19 THE COURT: Any voir dire?

20 MR. BOYD: I have no questions.

21 THE COURT: Without objections she is so qualified.

22 Counsel, let me give the jury a final charge of
23 instructions with regard to expert witnesses.

24 Mr. Foreman, ladies and gentlemen of the jury, I
25 charge you that although lay witnesses are limited to

1 testifying about the facts within their knowledge they are
2 not allowed to give opinions. Certain witnesses who by
3 training, education or experience are considered as experts
4 in a particular field may give opinions in that field based
5 upon the facts of the matter and their conclusions. And
6 these opinions constitute evidence to be considered by you
7 in connection with all of the other evidence and testimony
8 in the case. And it is for you the jury to give it such
9 weight as you in your experience and discretion may
10 determine. By this I mean that you must weigh such evidence
11 or accept it or reject it in the same manner as you treat
12 all other evidence in the case. The value of expert
13 testimony does not depend upon the skill and knowledge
14 professed by experts but upon the skill and knowledge the
15 actually possess. Expert testimony is given for the
16 purpose of enlightening you and not for the purpose of
17 controlling your judgment.

18 Counsel, you may proceed.

19 MS. HERVEY: Thank you, your Honor.

20 And just so that the court is aware, Doctor DeFelice,
21 you were here yesterday were you not?

22 A. That's correct I was here.

23 Q. And you were able to observe Tabitha testify?

24 A. Yes I was.

25 Q. And did you review any other materials to make you

1 familiar with this case just briefly?

2 A. Yes I did. I reviewed the general sessions case file
3 summary of the York County Sheriff's Office; the law
4 enforcement incident interview report; the written
5 statement that Tabitha provided to law enforcement which is
6 five pages in length. I reviewed the contract that we
7 heard testimony about yesterday between Tabitha, her mother
8 and her father, and the voluntary statement given by
9 Tabitha's mother Christine Efird. And I also heard the
10 testimony of Ms. Efird yesterday.

11 Q. Ms. Efird being Christine the mother?

12 A. Yes.

13 Q. We have multiple Ms. Efird's - - -

14 A. Yes.

15 Q. - - - just so everybody's on the same page.

16 A. I'm sorry, yes.

17 Q. If you could, Doctor DeFelice, just generally explain
18 to the jury what being a victim of sexual abuse has on a
19 child particularly focusing on the child when the abuse
20 starts in an elementary school kind of age?

21 A. Okay. Obviously victims of child sexual abuse come in
22 many forms. There is no one profile that matches every
23 victims experience so that's first and foremost. There are
24 some things that we certainly know are common themes. One
25 of the most common things of course is that child sexual

1 abuse is not typically perpetrated by a stranger; not
2 particularly perpetrated in a single event. It is
3 typically perpetrated by someone who is a family member.
4 That's the most predominate pattern of a care giver, a
5 father, a step-father; it is typically a male. And so
6 inherent in the experience of sexual abuse is the
7 relationship between this family, this primary caregiver
8 typically an adult with the responsibility and the power to
9 care for, to supervise, to maintain the living environment,
10 to give the privileges, to take away the privileges, to
11 give love and affection and to have relationships with the
12 other family members, the mother, the siblings. So it's a
13 very complicated relationship and one of the things that we
14 have to understand is that the molestation is occurring
15 within a very complicated, robust, relationship so we can't
16 look at it in a vacuum. When child sexual abuse begins
17 with a very young child like a preschool age child that
18 preschool child has only her capacity as a four year old or
19 as a preschooler to work with the situation so she can only
20 understand it in her concrete literal way of understanding
21 what her abilities are as a four year old versus what the
22 abilities are of the adult. And of course four year olds
23 are naive about what sex is even if they know about private
24 parts, even if they know privacy they don't understand. It
25 would be most uncommon for them to appreciate what the

1 meaning is behind certain touches and certain activities.
2 And obviously preschoolers are kids who still get a lot of
3 hands on care from their caregivers so there can be a
4 tremendous amount of course of confusion. Confusion and
5 the belief that well if my father's doing this it must be
6 you know it must be okay or it must be just what's done.
7 One of the things I lecture about around the country is how
8 very young children do not have the ability to critically
9 appraise what's happening in their family. In other words
10 because their family is their universe they don't yet have
11 the ability to step out and say you know something's wrong
12 in my family. Preschoolers do not criticize or critically
13 evaluate their families. They simply live what they are -
14 they know what they live and they live what they know.
15 That ability to see their family and analyze it and compare
16 it to other people's families will come later in time. So
17 when you asked me about a preschooler and sexual abuse that
18 - they are inherently naive, limited; they don't have the
19 cognitive ability to understand or evaluate what's
20 happening to them and so they are quite powerless generally
21 speaking to change what's happening to them.
22 Q. So how does that impact whether or not a child would
23 disclose or tell what is going on between he or she and a
24 family member to other people lacking that critical
25 appraisal ability?

1 A. Sure. Well preschoolers and of course this is one
2 thing that makes them delightful too when they're given
3 rules by adults they generally do follow them. And if they
4 don't follow them they feel that they are breaking the rule
5 and they like to hide that fact, to not report that fact so
6 they can be really cute law abiding little kids. So in
7 that same way if a perpetrator simply tells a child this is
8 a secret or you will not tell or if you tell there will be
9 consequences that's all the four year old needs to know.
10 So there is generally not much of a rebellion against that
11 in a preschool age child but preschooler's are really
12 interested in following the rules. They are interested in
13 abiding by what the grown ups want because that's how they
14 get the goodies, that's how they get positive reinforcement
15 and praise and hugs and permission and all the things that
16 children want. So it's typical for them to accept, to
17 believe in the threats, to believe in the pact, and when
18 they nod their heads and they don't tell they feel that
19 they've now you know agreed to a certain term. And of
20 course children have to think long and hard before rising
21 up against a parent and being disrespectful or rebelling.
22 Q. And once a child goes into the elementary school age
23 and the abuse continues through that time frame in their
24 lives, six to ten that kind of area, would the abuse
25 dynamic change both for the child or both for the way the

1 act is perpetrated?

2 A. Yes. Typically speaking child abuse again there are
3 many patterns but what we call the intra familial pattern,
4 the parent child pattern, like many patterns there is -
5 there is a - the relationship is being built and cultivated
6 and in our field we refer to the concept of grooming and so
7 there is essentially you know it's almost like there's the
8 foot in the door, there's the beginning of the
9 relationship. It does in fact develop over time. As the
10 child gets older and the relationship has become - the
11 child has come more what we call habituated to the
12 behavior. In other words it's become a part of what the
13 child accommodates. It's just a part of life. And you
14 know a repeated event where the child wasn't - where the
15 crime wasn't discovered so the relationship is basically
16 flourishing under secrecy. So it may - the body is
17 changing, the relationship is intensifying, it is common if
18 the incestuous relationship continues that it will move
19 from more - I don't know what word to give - less intrusive
20 behaviors like fondling to oral sex to more intrusive
21 higher risk offenses like sexual intercourse. You asked me
22 about the pattern but you also asked me about the impact on
23 the child. Child aging from six to ten, the elementary
24 school years, does grow more aware typically if they are
25 not home schooled and completely cut off from social norm.

1 Not to say that home school is completely cutting off but I
2 mean if some are exposed to making friends and realizing
3 that things are different in other people's homes or they
4 are getting the lesson outside of the home about
5 inappropriate touching and what to do if somebody is
6 harming them. So they will get the lesson. They will
7 start to realize this is really wrong it shouldn't be
8 happening. At some level the child gets that. The problem
9 is that having that knowledge and having the sense that one
10 can change what's happening that's two very different
11 things. And in our field we talk about that in terms of
12 the dynamic of entrapment. So there is entrapment and
13 accommodation. The victim has to continue on with the
14 business of life, going to school, making friends, going to
15 girl scouts, going to church, soccer, whatever, doing
16 chores, being a person. And then accommodating or putting
17 up with it is the aspect that he or she feels can't be
18 changed. So that tends to be the projectory from six to
19 ten. Of course into adolescent years we sometimes see with
20 the maturity of adolescents we sometimes see more
21 rebelliousness because again we've got children who are
22 going to begin to age out and may start to see more options
23 for how to escape or avoid or get away. I will finish what
24 I was saying by pointing out that only one third of child
25 abuse victims ever disclose in childhood. We know from

1 thirty years of research that two thirds of bonafide child
2 sex abuse victims never disclose in childhood they only
3 disclose in adulthood.

4 Q. And does the research also lend itself to an
5 explanation as to why that's true? Why do they wait until
6 adulthood to disclose what may have been happening to them
7 for years.

8 A. Yes. It is - it is theorized and this comes from the
9 retrospective descriptions of the victims, the examination
10 of the dynamics, that they did in fact feel powerless, they
11 did in fact feel afraid, they felt trapped - the entrapment
12 component. They are just a tremendous number of anxieties
13 that come with being vulnerable from having a lower status,
14 from being powerless. And when those dynamics are
15 engrained from a very young age going forward - you know
16 just because one turns eighteen or twenty-one or even
17 thirty-seven there is a maturation that has to occur where
18 the victim can get to the place potentially where they
19 realize that they are no longer powerless and that they
20 don't have to function like they did at four or sixteen and
21 so on. So that - that is something that varies across
22 humans and can come at some later age. But there is a
23 tremendous amount of fear and anxiety for children.

24 Q. But you used terms in your - not the last answer but
25 the answer before that - I want to give a little bit more

1 definition. You used the term grooming. What does that
2 mean? What is that impact in your field?

3 A. Grooming is the term that is used to describe the -
4 the way in which a child - a sex offender or one who is
5 going to commit acts against a child establishes trust and
6 rapport in relationship with that child. Because obviously
7 it is a high risk behavior and the adult knows that so the
8 adult has to invest time in establishing a relationship
9 with the child and insuring that that child is motivated to
10 protect the offender, feels affection or gratitude for the
11 offender. Also feels intimidation and fear of the
12 offender. And in this kind of complex way they develop
13 this - so grooming - the idea of grooming is that you
14 slowly shape up or groom the relationship into one where
15 the offender feels that he's got power and control over the
16 emotional dynamics of the victim to where the victim won't
17 tell. And that's a precondition to being - excuse me for
18 the term but successful in sex offending because success
19 means being able to have the victim cooperate with the
20 offense and then not tell.

21 Q. You also used the term accommodation. Is there such a
22 thing as an accommodation syndrome or how accommodation
23 interrelates to child abuse?

24 A. Yes. There is also thirty years of publishing of the
25 concept of the child sexual abuse accommodation syndrome. I

1 want to be clear that this is not a syndrome that allows us
2 to diagnose sex abuse but it describes the dynamics that we
3 come to understand that chronic sex abuse victims have
4 experienced. It helps us understand what otherwise might
5 seem illogical and it has five components to it. Do you
6 want me to - -

7 Q. Sure. Just briefly.

8 A. Okay. So the first component is secrecy and that's
9 setting the stage of secrecy, the path of secrecy between
10 offender and child or offender and victim. This stage of
11 secrecy then sets the stage for the dynamic of helplessness
12 for the child victim. Which meaning that they feel like
13 they've somehow entered into this arrangement that they
14 don't know how to get out so they are helpless. That leads
15 to a feeling of entrapment okay. So they are trapped, they
16 are cornered, they're stuck, don't know how to get out of
17 it but yet have to get on with the business of living as
18 I've testified to already.

19 Then next is what we call the stage of accommodation.
20 The stage of accommodation can go on for weeks, months, or
21 years. And what that is is the putting up with, the
22 accommodating. We all accommodate lots of things and move
23 on with the business of life and so it's no different than
24 that. An adult example you know that I think sometimes
25 helps people think about it is when there is a battered

1 spouse, for example a battered woman, the idea that an
2 adult may accommodate, may put up with things that she
3 feels powerless to change. So it's no wonder that children
4 also will accommodate. Now after the period of
5 accommodation in the syndrome we know that some victims
6 will eventually disclose and so that's the disclosure stage
7 and that can be prompted from a range of things. They can
8 - a victim can suddenly be angry enough to tell; a victim
9 can become fearful enough about some worse consequence if
10 they don't tell and that can motivate them to tell. A
11 victim may suddenly have a new support system and that
12 allows them to tell or a new escape hatch and that allows
13 them to tell. So they some how see that convictions have
14 suddenly changed to where they are released to tell.
15 During that disclosure phase it still is a big deal to tell
16 so there are stages to disclosure. They may just be ready
17 to tell it all or they may test the waters and give what we
18 call tentative disclosures, sort of checking to see if they
19 tell what will happen. Depending on how disclosure goes
20 another stage of the syndrome is recantation; that
21 depending on how things go with the tentative or full
22 disclosure if the reaction is negative, if the threat feels
23 too great the victim may recant because recanting they can
24 try to kind of just put everything back to how it used to
25 be and they will infer from that that well even though I

1 don't like what's going on the alternative is worse, I'm
2 not going - I'm not going to get any help.

3 Q. And do you recall Tabitha testifying about any
4 possible tentative disclosures or any disclosures early on
5 in her sexual abuse?

6 A. I did. I heard - -

7 MR. BOYD: Your Honor, I'm going to object to this.
8 This is beyond the scope - -

9 THE COURT: Counsel, approach just a minute.

10 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
11 THE JURY.)

12 BY MS. HERVEY:

13 Q. Let me ask you a little bit further about tentative
14 disclosure. If a child makes tentative disclosure is it
15 always this is everything that's going on in my life today
16 or do they ever piece mill it out?

17 A. The very definition of tentative disclosure means that
18 it's halting, it's not the full disclosure, it's testing
19 the waters so tentative disclosure happens when a child
20 hints around, drops some clues, maybe brings out
21 information about a single event and then they are wanting
22 to see. For example if a child should have an opportunity
23 that they think well maybe I should tell my mom and they
24 come out and tell some piece to see how mom might react.
25 And depending on what they learn from that experience

1 either the mom reacts supportively and protectively or
2 doesn't. If the mother disbelieves the child; if the
3 mother makes the child go tell it to the one she accused
4 and there is a punishment. I mean there's all kind of
5 scenarios that do occur and that sends a real clear message
6 to the child as to whether or not it is or is not safe to
7 tell. And whether or not her mother can or cannot handle
8 it.

9 Q. And if there is a situation where there is this kind
10 of disclosure and then a negative response whatever that
11 negative response may be how does that impact that child in
12 terms of further abuse or their own personal development?

13 A. It increases the sense of helplessness. You know it's
14 like saying - the child who thinks that she has an avenue
15 or he has an avenue to get help and instead of being
16 rescued, basically gets told either behaviorally or
17 verbally gets told you know that you have - I cannot help
18 you or I will not help you. That really increases the
19 sense of helplessness, the sense of being overwhelmed and
20 powerless, it increases depression and surrender. I mean
21 so the abuse will clearly continue and the likelihood that
22 there would be a future disclosure would be decreased. It
23 would be very expected that any additional disclosure would
24 be a long time coming.

25 Q. All right. You talked a little bit about

1 accommodation and grooming and I'm not sure if those terms
2 of yours interrelate but if you could just discuss the kind
3 of dynamic relationship that a child victim from sexual
4 abuse has with their father in terms of what kind of mixed
5 feelings they may have or the conflict being displaced in
6 emotion one might see?

7 A. Certainly. As I started my testimony this morning I
8 did want to make clear these are complex relationships so
9 you know I think as in all relationships even those people
10 we love very much doesn't mean we are always happy with
11 everything they do and in a more extreme way this is no
12 different. So relationships are complex; parent child
13 relationships are complex; uncle niece or uncle nephew
14 relationships. So when there is a long term family
15 relationship of importance that includes something bad
16 whether that's being an alcoholic parent; being a
17 physically abusive parent; a sexually abusive parent that
18 does not mean in any way that we expect those children to
19 hate or be alienated from that provider. To the contrary
20 with sex offending and particularly which is known to be a
21 chronic piece of relationship when there is an incest
22 relationship or a sexual abuse relationship the perpetrator
23 is investing in keeping that relationship fairly positive
24 because its with the positivity that - the positive
25 attributes of the relationship that really keeps a victim

1 reluctant to tell, ambivalent, because they do feel - and
2 we are biologically wired of course when we talking about
3 biological parents. We are enablely biologically wired to
4 bond with to attach to and to love our fathers and our
5 mothers. So there are a tremendous number of forces that
6 will support the victim loving the offender. But also not
7 loving and in fact being repulsed by certain pieces of the
8 relationship. And so just like it is for adults who can be
9 very conflicted about what they will and will not accept in
10 a relationship is the same for a child you know. Plus they
11 are much more powerless to just declare and say I'm not
12 going to be a part of this relationship any more. They
13 don't have that ability as minor children.

14 Q. I'm going to take you back to the kind of a natural
15 progression that I was working on and I admittedly got
16 distracted. But you talked about a child at preschool age
17 or a child of elementary school age. Could you talk just
18 briefly about what a child victim of abuse who does start
19 school experience puberty in the middle school years how
20 that impacts the dynamics of child sexual abuse?

21 A. Certainly. It's a riskier time in some respects for
22 the offender meaning that the youth is getting closer to
23 adulthood and the world is becoming a bigger place. And
24 the youth is developing more of a sense of self; more of a
25 sense of a future; more of a sense of kind of where might I

1 go with my life. And dating becomes a part of the picture
2 so there is a whole lot of things that become a part of the
3 picture that I think does make the relationship different;
4 a little bit more anxious; more anxiety for both parties.
5 So that's one aspect. We will see adolescents function in
6 this time frame in a range of different ways. They -
7 adolescents' especially middle schoolers are the most self
8 conscious people because they care so much about how other
9 people view them. So we know that the concept of shame
10 becomes really profound for adolescent victims that - and
11 to define that a little bit would be to say they worry
12 tremendously about you know would you like me if you knew?
13 If you knew what was really happening in my family; if you
14 really knew what I put up with or what I was involved in.
15 You know meaning like that if you knew that I was involved
16 in sexual abuse that I didn't tell would you think that I
17 was disgusting? So adolescents are really preoccupied with
18 thoughts of having this terrible secret about themselves
19 and they feel shame and the fear of others rejecting them
20 if they know. So this is a dynamic that does maintain the
21 secrecy and it's something that they grabble with. So we
22 will see adolescents go a couple of different ways in terms
23 of their functioning. In order to hide that component and
24 in order to sort of be seen as the person they want to be
25 seen as you will see the over achievers, the ones who

1 really make sure those grades are good; make sure they get
2 the teachers praise; make sure that nobody knows that they
3 have a problem so that's one way. We see kind of an over
4 compensating which is pretty adaptive, a good way to go.
5 On the other hand we will see those adolescents who are
6 more of an emotional mass and start to act out. They might
7 substance abuse, they might have body image issues and get
8 into eating disorder kind of things; they might be
9 depressed. They might go ahead and try run away behavior
10 or things like that or become promiscuous so really we can
11 see quite the gamut of adolescent functioning.

12 Q. And once it changes into high school or pre-adulthood
13 is there anything else that differs in that stage versus
14 children who are significantly younger?

15 A. Well this is the launching stage as we say in
16 psychology so their task is to leave the family; to launch
17 and become their own people. So this is the first time
18 that the young adult may feel that they can economically
19 and environmentally define a space where they are
20 independent from the abuser or from what I call the crime
21 scene. If they are living in a home and being sexually
22 abused in that home they are living in a crime scene. So
23 this can be the first opportunity they have to legitimately
24 move out of that crime scene without it having to be a big
25 - a big reveal of what was going on. They can just

1 naturally and easily get out. And then they can start to
2 mature and get some insight and maybe build a support
3 system that is separate from the family that might - might
4 in fact allow them to make the disclosure of abuse that
5 they couldn't make in childhood.

6 Q. You talked initially in terms of a threat such that it
7 may be a ploy in getting a child to go along with this.
8 Are there any other tactics that we know that children
9 succumb to in terms of coercing them to physically,
10 emotionally or otherwise in order to get them to
11 accommodate this abuse?

12 A. Most definitely. Threats is actually probably in many
13 ways the least adequate piece of the abuse grooming because
14 if somebody is simply mean and threatening you know at some
15 point it's just aversive and kind of clear that you get rid
16 of a mean and threatening person by telling on them. So
17 the grooming has a lot more to do with investments and love
18 and investment in affection and ambivalence; giving the
19 child things that perhaps the child can't otherwise get.
20 For example you know this can sound to you a word that
21 adults often use when talking about children it can sound
22 manipulative however children figure out which parent is
23 more lenient; children figure out ways to - you know if mom
24 says no but if there is a way to get dad to say yes to a
25 privilege well children in their eager centric way they are

1 driven to get what they want to get. So this works in
2 terms of the child abuse dynamics because just like you
3 know I might say to my son well if you want a new song off
4 of your I Tunes then you have to take out the trash well
5 the offender can say well if you want the privilege of
6 going somewhere you know you have to do this sexual act for
7 me. So it's the same kind of tit for tat relationships
8 that adults and children have across a range of behaviors.
9 But certainly so privileges, gifts, you know hush money and
10 that sense of you know what I gave you for this so then
11 that's quite guilt inducing because it does suggest to the
12 victim mentally well I agreed to this; I did this to
13 receive a gift, to receive a privilege so I am culpable.
14 And that's the other piece. Elementary school in
15 particular they are very into fairness and the way we you
16 know teach our children to think about misbehavior and
17 consequences is ha if you are involved in it in any way
18 shape or form and you knew it was wrong then you are to
19 blame just as much as the instigator. That's the way we
20 punish and keep elementary kids and all kids in line. And
21 I'm not suggesting there's anything wrong with that but if
22 you think about the moral message that it sends to the
23 victim ha the victim can perceive I was involved in this, I
24 didn't say no, I took the gift, I knew he would give me the
25 gift therefore I participated; I'm culpable. So then you

1 know for the child to tell on the offender is the same as
2 for the child to tell on herself so it's very much a part
3 of the entrapment.

4 Q. And you said that when you enter into elementary
5 school that the dynamic of that type of bribery and
6 manipulation does that increase or decrease once the child
7 is older and more toward the high school age and more
8 developed?

9 A. Bribery is going to increase. To put it sort of
10 bluntly you know the price of the things that the teenage
11 wants goes up because they are teenagers so movies, cars,
12 and clothes, may cost more than you know a little gift at
13 the Dollar Tree sort of thing. Privileges get larger
14 because the stakes are higher and the way you retain that
15 relationship with the adolescent does require that.

16 Q. How does - you talked about a childhood being culpable
17 in elementary school if they accepted a bribe. What does
18 the teenager how does she incorporate that into her reality
19 if she accepted the bribe? Is it any different than that
20 younger child?

21 A. It's just - yes it is just I think simply more
22 profound. As we grow into adolescence we are becoming our
23 adult like selves. You are you know getting the deeper
24 understanding in adolescence of our own responsibilities;
25 the complexities of relationships and so adolescence in my

1 experience and in my studies of child development and
2 things I teach on it is a really profound stage and they
3 put a lot of actually responsibility on themselves, take a
4 lot of responsibility. So while that feeling is self at
5 one level in elementary age I think it is more profoundly
6 felt in adolescence. That's why the term shame becomes so
7 much more salient in adolescence. I mean little or younger
8 children are sort of protected by the fact that they are
9 younger and still less sophisticated and they don't feel
10 things quite as for all their complexities. Adolescents
11 really start to get it at the adult like level and so they
12 can feel terribly ashamed and guilt ridden and responsible.
13 And it feels to older victims like it's their problem and
14 that they should have been able to fix it and it's their
15 problem to fix so they take a tremendous burden on.

16 Q. Associated with that do they develop any new fears?
17 You said early on in tentative disclosures that they fear
18 perhaps getting the perpetrator in trouble. Once they move
19 on to teenage years do they fear any retribution against
20 themselves?

21 A. Oh definitely. Retribution - they can also fear
22 retribution against other family members. There can be the
23 sense of well if I leave what's going to happen to those
24 who are left behind? Will you know problems be taken out
25 on my mother for example or on a sibling if there is a

1 sibling involved so there is that. But there can also be
2 the fear you know we are economically typically dependent
3 on our caregivers into young adulthood so for example for
4 college or for a down payment on a first apartment or
5 whatever it might be there is going to be an economic
6 investment and this may be the last opportunity for the
7 victim to reap a benefit, a financial benefit from a care
8 giver even if that care giver has been abusive. And so the
9 stakes can be very high at that point for the young adult
10 who comes forward and to cut that relationship off might
11 mean to cut the exit out or to cut the college tuition out
12 or the deposit on the first apartment or whatever help it
13 is that that child needs to launch to make that adult
14 transition.

15 Q. You talked a little bit about the bribery and the
16 manipulation that goes on and the threats and those kinds
17 of things. Is there any kind of inherent emotional
18 coercion or physical coercion that we see typically in
19 victims of child abuse and their perpetrators?

20 A. Emotional coercion?

21 Q. Right.

22 A. Will you ask - I'm sorry, will you ask me the question
23 one more time?

24 Q. You talked about more obvious or external things that
25 we see in terms of bribery and the verbal threats and the

1 verbal promises that kind of thing. Is there anything more
2 inherent and more enabled in terms of emotional and
3 physical coercion that might be pertinent in a child parent
4 dynamic of sexual abuse?

5 A. Definitely. Just - and I would just say that it's
6 inherent in all parent child you know transactions. I mean
7 you know my - I can just sort of look at my daughter and my
8 daughter can sort of know well mommies telling me such and
9 such or she would be disappointed if I didn't go brush my
10 hair an hour or whatever it is. I think we just have to
11 remember that a lot of the parent child dynamics are
12 subtle. That again we are biologically you know from
13 infancy we are wired to bond; we are dependant upon our
14 primary caregivers and that there is so much that happens
15 that defines what is love, what is safety, what is
16 dependence, what is affection and so there is so much that
17 can be very subtle. It can be a look - it can be a look,
18 it can be an insinuation, it can be you know a touch, it
19 can be something that just sends a message that is
20 understood between this person and that person and it
21 doesn't have to be explicit. And certainly we have
22 ceremonies in life; birthdays, Christmas, Thanksgiving,
23 Halloween, vacations. There are so many things where
24 families come together and it is both explicit and
25 implicitly conveyed that there is love that this is

1 together; that this is how we function. All of that
2 plays into a very subtle implicit picture of you know this
3 is how life is and it would be really difficult to change
4 it.

5 Q. And just going by I think - and I'm sorry you talked a
6 little bit about how they would still feel love for the
7 perpetrator and they would have these conflicting emotions.
8 Do victims of child abuse still give presents to the
9 perpetrator, do they still give cards or do they still
10 exchange this kind of physical signs of love not just the
11 you know the more personal and intimate one?

12 A. Absolutely. Because it's expected, because the
13 motivation is there. Yes it's - it is for so many reasons.
14 First of all it is just what's done. Parents say I love
15 you to their children the children say I love you too, we
16 exchange gifts. And certainly when children are not
17 motivated to reveal that anything is wrong. The child is
18 not going to not give daddy a Christmas gift when everybody
19 exchanges gifts at Christmas time or what have you. So
20 it's a matter of appearing normal; it's also a matter of
21 feeling normal in many ways because again this is just one
22 element - the sex abuse I mean - or it can be many things.
23 It can be that I love my daddy I just wish he wasn't an
24 alcoholic or I love my daddy I just wish he didn't have sex
25 with me or I love my daddy I just wish he didn't hit my

1 mom. So there is a lot of things that have to accommodated
2 in problematic families and it doesn't mean that gifts
3 aren't given. And in fact the victim can even be motivated
4 to be extra loving because maybe their love can change
5 things. SO they can have wishes that somehow loving could
6 make the bad things go away.

7 Q. Have you ever seen a child that's being - a child
8 favor the perpetrator between the mother and the father if
9 they are a victim of that abuse nonetheless? Is that
10 contradiction and is that common or uncommon?

11 A. It is definitely common. It is not a contradiction.
12 Again this is why - you know we can all rationally think
13 well something - if its an adult does something bad to a
14 child that that child should some how be able to
15 consistently wall herself off from that person and just
16 declare it as wrong and seek help that's a very rational
17 logical way of looking at the problem and unfortunately
18 it's just not the way children function and it's not the
19 way families generally function. So the truth is is that
20 the victim is dealing with the hand that she was dealt and
21 it may be that while the sex abuse is the bad part of the
22 hand well the good part of the hand might be when I'm with
23 him I get to watch more TV; go see my friends; spend more
24 time on the computer; whatever it is. So no it is not
25 unexpected for - and we have to remember there is a whole

1 host of dynamics. If we are talking about within the
2 family sex abuse say father daughter sex abuse it's not as
3 if that means that mother daughter relationship is somehow
4 better or perfect. It's going to have its own host of
5 positives and negatives. So the victims got that
6 relationship and that relationship and makes decisions on
7 the bases of what she thinks is in her best interest at the
8 moment.

9 Q. Do you ever see - is there evidence in the research
10 especially in terms of daughters and fathers involved you
11 know child abuse situations involving that dynamic feel
12 betrayal or that kind of responsibility toward their mother
13 for having this different relationship with their father?

14 A. I think I understood your question. There is a lot in
15 the literature about the roll of what we call the non-
16 offending caregiver which is typically the mother so we
17 call that roll the non offending caregiver. In other words
18 it's the one who's in the family that's not the sex
19 offender but plays a role obviously in the family dynamics
20 and what is happening. I think I missed a part of your
21 question if you could ask me again.

22 Q. Is there any - you talked about - let's go from there
23 and perhaps you can follow my chain more more logically.
24 Is there anything special in terms of a child sex abuse
25 scenario where it is a father and a daughter versus a

1 father and an uncle or a father and a family friend? What
2 is specific about that dynamics in terms of child sexual
3 abuse and what we see child go through?

4 A. Right. When it is father daughter we look at the
5 relationship between offender and victim on a continuum
6 from a more external to a more internal relationship. The
7 father daughter or parent child sex abuse relationship is
8 one of the most internalized relationships. To speak in
9 terms of what the way a family boundary is supposed to be
10 versus the way it is in that kind of relationship the way a
11 family boundary is supposed to be so that you have you know
12 mother and father here they are a dyad and there is a semi-
13 permeable barrier here and then you have children down
14 here. And the semi-permeable barrier means that you know
15 this dyad functions and has certain rules and
16 responsibilities including sex that is for them and them
17 alone and there is a boundary. But its semi permeable
18 because there are of course ways in which parents and
19 children do cross that boundary for appropriate activities
20 together sex not being one of them. When that boundary is
21 violated by taking a child and placing the child up there
22 in the maternal role okay and removing the mother or moving
23 her over so that you have a child moving up into past a
24 boundary that she should not have to pass and taking on
25 roles that are adult spousal roles. We call this the

1 parentified child. It puts the child in the role of the
2 spouse to take care of the emotional and sexual needs of
3 the man - the father. It doesn't have to be the father but
4 statistically most often it would be. So yes it causes the
5 child to sudden feel and function as if she is responsible
6 for reading the cues knowing what he needs and when he
7 needs it and taking care of the needs like a wife should of
8 the man. So that is - there is a lot written about the
9 impact of those dynamics of making the - it's like turning
10 the child into the mother and the mother into the child.

11 Q. And again that goes direct to my confusion question
12 earlier. You talked about it impacts that child's father
13 relationship. How does that dynamic then affect that
14 child's relationship with its mother with that going in the
15 background?

16 A. Right. Well as the child matures the natural question
17 for the victim is essentially why am I filling this role
18 and not my mother and where is my mother in this? Adult
19 victims retrospectively often talk about how they have a
20 really hard time believing that they - accepting that their
21 mother or the non-offending care giver really didn't know
22 you know really couldn't see the signs. Of course we all
23 know hind sights twenty twenty and the truth is is that a
24 lot of times they really didn't see it for whatever reason.
25 But the child who is living in the house and experiencing

1 these things and have to deal with the fact that nobody
2 else seems to be able to get it that this is happening and
3 so that can certainly - does certainly impact the
4 relationship between the mother and the daughter. It sends
5 the message to the daughter that you know either you are
6 incapable of help - either you know and you are incapable
7 of helping me or you don't know and why don't you know? So
8 it's going to definitely going to put a strain and a
9 negative component into the mother daughter relationship.

10 Q. Nonetheless go back a little bit back toward your roll
11 in terms of doing forensic interviews and forensic
12 assessments of children who have been sexually abused what
13 is that function? Why are we so interested and why is it
14 so careful and necessary that we use proper interviewing or
15 proper assessment of children of sexual abuse? What do you
16 look for?

17 A. It's very important for a range of reasons including
18 the fact that child sex abuse is something that tends to
19 happen in private, in secret as I think it has been clearly
20 testified to me - by me today. So these are not crimes
21 where we expect eye witnesses. These are not crimes where
22 we - these are crimes that have delayed disclosure so we
23 don't expect you know smoking guns, we don't expect a lot
24 of the evidence that a lot of crimes might be examined on
25 the basis of sort of fresh crime scenes. That is not the

1 nature of child sex abuse investigations therefore much
2 emphasis is put on the core evidence being the victim and
3 what the victim's statement is in collaborating or
4 confirming elements of it. If the victim says you know
5 that there is some - something about a room or something
6 about where something is in a room and that's confirmed,
7 you know, little nuances and pieces of information that are
8 confirmed. That's a big piece of what we do in these
9 investigations. So we want to be very careful in our
10 interviews to collect accurate information from the victim.
11 And we understand that the victim may be reluctant to tell
12 certain things; we understand the victim may be anxious; we
13 understand it can be re-traumatizing. We want to interview
14 in a way that is not suggestive, it doesn't mislead or
15 contaminate the child's memory but also it doesn't
16 intimidate the child and cause the child to recant or pull
17 back. So for a range of reasons we have to be very careful
18 to cultivate rapport and a respectful scenario. We
19 interview victims without the parents present. Not just
20 the suspect but with - we really want to interview them by
21 themselves even when they are very little. I don't know if
22 I've answered your question but that's just some of the
23 things that go into why we interview the way we do.
24 Q. All right. And going along on that same line in
25 during that interview are you assessing the child in terms

1 of looking for consistencies or inconsistencies or non-
2 verbal clues that might correlate to what your training and
3 experience has taught you?

4 A. Yes. We are trained to look at communication on three
5 levels. Language, behavior and emotion; language being
6 really the least informative in many ways; looking at
7 behavior, emotions and the congregates of those things.
8 And looking at motivations examining you know - I want to
9 make it clear that every child who comes to the ARC is not
10 proved to be a child abuse victim so the contrary is the
11 minority of cases that will go forward like this. So it's
12 not as if every kid that comes in for a child sex abuse
13 investigation it's not as if it's just assumed that that's
14 the case. It's assumed that that's a hypothesis that needs
15 to be explored and then we're looking at alternative
16 hypothesis. So we are looking at you know kind of what
17 were the conditions under which the disclosure occurred;
18 what is the nature of the relationship between the suspect
19 and the victim; how does the statement hang together, is it
20 plausible, is it - excuse me, when it's told over time are
21 there core consistencies; are there idiosyncratic details
22 or details that are personal and unique that are in some
23 way confirmed. So we're looking to see if the disclosure
24 matches the expected dynamics and if it stays consistent
25 and if it's robust and compelling and then of course what

1 elements of it might be confirmed or corroborated.

2 Q. If you could just talk - you talked about language and
3 emotion and behavior. When you talked a little bit about
4 what emotion and what behaviors you are looking for that is
5 consistent with the child sexual abuse versus that which
6 you know to be typically inconsistent or possibly raising
7 those concerns.

8 A. Uh-huh. We don't expect - first of all I will say
9 this. When I first started working at the ARC I thought
10 that children would come in to see me and would cry. I
11 thought that I would see lots of tears and I was mistaken.
12 You know I guess that was my naive thought that you know if
13 we are going to talk about something so sad that the child
14 would feel this sadness when they told it but the truth is
15 that by the time a child comes forward for a forensic
16 interview or certainly to give testimony if they have those
17 feelings of distress it's very difficult to tell - to
18 answer all of my questions about the facts and also feel
19 all those feelings at the same time. So in fact what we
20 know about trauma victims is that they try to split off;
21 they try to wall off a lot of their emotions in order to
22 accommodate but also in order to communicate about this
23 history. So they have to talk about something bad that
24 happened but essentially they can't feel it too much while
25 they're talking about it. So one of the things that we are

1 not surprised by is children that tell us about all kinds
2 of awful things that happened to them and they do it
3 sometimes with some nervousness; sometimes the younger ones
4 might you know want to change the subject or play or ask if
5 they can go to the bathroom but not with tears. Older kids
6 may be anxious; they may vacillate between being able to
7 answer questions and then becoming less capable; they may
8 have memory problems; they may say something that suddenly
9 makes them flush and cry but then they can be very composed
10 on the other hand and provide information. So that's -
11 that is the more typical. They are not in crisis when they
12 come to you know - the crisis might be for the mother who
13 has to come to terms with this disclosure but if you think
14 about it the victim's been dealing with it all along and
15 the telling doesn't necessarily put them into this tearful
16 crisis. So - but what we do expect to see is sort of
17 fluidity about how they tell and recognition memory; kind
18 of sparking; sometimes new information can come out on a
19 certain element and we don't expect the story to be
20 exactly the same over and over again. For anything that
21 you haven't talked about that you suddenly start talking
22 about they are going to remember a certain amount and then
23 because you talked about it it's going to jog your memory
24 so the next time you talk about it you may correct certain
25 you know peripheral details or you may have some new

1 additional information to provide and those are elements of
2 what we consider to be a compelling reconstruction of
3 memory.

4 Q. Do you expect in terms and do you train people to
5 expect a child to be able to recall details in terms of how
6 many times this happened or when this happened exactly
7 within a certain time period especially given a scenario of
8 chronic abuse over years?

9 A. No we do not. In fact - in fact you know if somebody
10 was - unless it's a really rare circumstance where it only
11 happened you know at - in very kind of ritualized specific
12 times, a very small number of times, like it always
13 happened when we went to the mountains in June you know and
14 that was it or something it would be most unusual for a
15 child to be able to tell you the number of times or exactly
16 what happened and in what environment and when we are
17 talking about something that was chronic and repeated and
18 something that happened at different ages. Because what
19 the four year old can hang onto and remember and make sense
20 of and recall later in life is of course very different and
21 very limited compared to what the eight year old can encode
22 and retain and understand versus what the seventeen year
23 old can and so on. So there are developmental issues;
24 there is the issue also of you know - I eat a lot of pizza
25 but if you ask me to tell you every single time I ate pizza

1 or to describe the number of times and under what
2 conditions that you know if it's something that I do
3 repeatedly there is what we call script memory. I know
4 which pizza I usually order; I know how I usually eat it so
5 that's script memory. Victims can provide script memory.
6 This is how it usually goes. He would usually come into my
7 room or this would be the act that he would usually do; he
8 would usually say these things. That's script memory.
9 That's a very efficient way for our brains to organize
10 events that are repeated over time. Episodic memory is
11 that discreet memory where you remember a specific
12 restaurant where you ate and what you specifically ordered
13 on that specific night and so on. We all have episodic
14 memory too. But if it's something that has happened lots
15 and lots of times in more or less the same way with the
16 same people you will be inclined to have good script memory
17 but be weak on episodic memory where you are able to say I
18 know for a fact that this conversation or this event
19 happened on this date, this is this episode and that that's
20 distinct from another episode. Humans are much weaker on
21 that.

22 Q. You stated in doing these forensic interviews and
23 forensic assessment of children who are believed to be the
24 victims of sexual abuse you talked about those nonverbal
25 language and those kinds of things that you looked to see

1 consistency wise. Do you also look for things in terms of
2 motive for fabrication, belingering, and those type things
3 in terms of assessing a child as well?

4 A. Yes. Keeping in mind that we are a multidisciplinary
5 team so we will have our evaluation and then also look at
6 in terms of what the investigation of you know the
7 investigator, DSS case worker, whomever, what are the facts
8 we are able to look at in relation to what the victim says.
9 What we are looking for there is we look at motivations for
10 secondary gain is what we call it. Reasons you know for
11 somebody to avenge another person by making up a lie
12 against them. Can children lie about abuse? Of course
13 they can just like they can lie about anything and so can
14 adults. So we are not - we don't evaluate these cases and
15 not examine the possibility of a lie for some what we call
16 secondary gain. In other words this is a means to an end.
17 We also look at motivations to deny or to minimize which is
18 actually the more common problem is that victims may be
19 willing to tell a substantial amount of information but may
20 minimize - maybe they will talk about certain sex acts but
21 they are too ashamed to admit other sex acts. So we look
22 at motivations for denial and minimization and we look at
23 motivations for fabrications or for motivations for
24 secondary gain.

25 Q. And in terms of that secondary gain what kind of

1 things do you typically see? What is a common fact finder
2 in children who are belingering in sexual abuse to gain X Y
3 or Z?

4 A. The most predominate feature which needs to be
5 recognized from the literature and this is one of the areas
6 that I do teach on nationally is that the motivations for
7 secondary gain by large do not originate from the child so
8 that's number one. They originate from an adult because if
9 you think about it again children aren't that savvy about
10 talking about sex abuse as a means to an end. I mean how
11 can they imagine what good that - what good can come of
12 that. So it tends to be for example in divorce custody
13 cases there is a higher rate of false report of suspected
14 sex abuse and the motivation there can be custody. The
15 motivation there can be revenge. It can also be good faith
16 just misplaced because there is such a problem with trust
17 and so care givers can just misunderstand something that is
18 going on and make a false report not really malicious but
19 just misunderstood. So motivations often come - or money.
20 For example you know when a parent may collude with a child
21 to have a false statement of sex abuse made against a
22 wealthy person and the goal is civil suit and money. So -
23 or it can be just revenge. Percentage wise it's less than
24 one percent of all fabricated allegations originate from
25 the child. When they do originate from the child it tends

1 to be adolescents because they are the more savvy kids and
2 it tends to be motivated out of revenge. Out of you just
3 sort of you know I'm angry at you and I'm going to get you.
4 It's typically not very well thought out because
5 adolescents are reactive as opposed to reflective so they
6 haven't necessarily thought through all of the - all of the
7 what ifs and yes buts. But they may have this sense of I
8 can get you by smearing you or by claiming this about you
9 and it can be an act of revenge.

10 Q. When you talked about such a small percentage
11 originates from the child, did that in any way contributed
12 to, even if there is this reward of a monetary gain are
13 there any negative to this leverage that they may - if I am
14 a ----- of sexual abuse to give this money to award do they
15 also fear some type of negative thing that would impact
16 their desire to go down that path?

17 A. They fear all kinds of negative things. This is why
18 most false allegations involving children are - it really
19 involves coaching and collusion where the child is still
20 school aged or younger and it's the parent because -
21 adolescence again with the self identity issues and all the
22 rest and just the feeling of responsibility. I mean they
23 are going to feel like this is terribly embarrassing and
24 shameful on them. I have interviewed adolescents who have
25 made false allegations let me make that clear. In my

1 experience over the twelve years of evaluating such cases
2 these have tended to be adolescents with pretty disturbed
3 mental functioning. Antisocial meaning that they are
4 somewhat alienated from the law and the rules and more
5 delinquent. They have fractured family ties; have been in
6 foster care and group homes and sadly I think have learned
7 that inflammatory statements can be a means to an end.
8 They tend to be more manipulative and troubled in a way
9 that is not in the normal spectrum. Because you - I mean -
10 again we are wired to have an emotional bond to our parents
11 even if they are not perfect; even if they are abusive. So
12 you don't just throw that away for some money without it
13 taking a terrible psychological toll on the normal child.

14 Q. Can we approach, your Honor.

15 THE COURT: Okay.

16 (BENCH CONFERENCE OFF THE RECORD OUTSIDE THE HEARING
17 OF THE JURY.)

18 Q. Just a few more questions, Doctor DeFelice. We talked
19 a lot about children in adolescence and those type of
20 things. It's obvious its part of the focus but in it you
21 say that two thirds of children don't discuss in adulthood.
22 What I would like to talk to you in finishing up is the
23 dynamics of adults who disclose about child sexual abuse.
24 How is that different from children disclosing in those
25 younger years? What happens once you get married; move on;

1 go to college, those kind of things, how does that impact
2 your willingness to disclose and then the manner in which
3 you did?

4 A. Certainly. As Ms. Hervey pointed out that I had
5 testified previously it is a well replicated - in other
6 words there is a lot of research that supports the notion
7 that when we look at bonafide in other words very well
8 proven, well accepted histories of sex abuse in people in
9 America in modern times that two thirds of those victims
10 did not disclose until they were at least eighteen years of
11 age. So they had to leave child hood - excuse me, they had
12 to leave childhood before they could speak about what had
13 happened and then those are - that research is based on
14 well established, founded, substantiated cases, proved
15 cases. So why is it that two thirds can't tell in
16 childhood well I think we covered that. So for those two
17 thirds who do tell in adulthood they may tell a spouse.
18 The birth of children can be a significant motivating
19 factor because they begin to think about how they are going
20 to negotiate having children; they may still have you know
21 this relationship with the say for example the father which
22 is statistically the most common sex offender so they've
23 got to think about exposure of the next generation to this
24 offender so that can be a motivating factor. Sexual issues
25 within the marriage. I mean this is a victim who grows up

1 and becomes involved in their own domestic partnership and
2 there may be intimacy issues or other symptoms that are
3 interfering with his or her ability to move forward with
4 their own adult relationship and so part of the business of
5 taking care of the past is telling. Telling, facing it,
6 and seeking support; support from a boyfriend or husband; a
7 therapist; roommates at college; counselors, so - teachers,
8 faculty members; job managers. So they have a new set of
9 resources and may explore those issues as an adult in
10 therapy because they've got to define how they are going to
11 go forward and make their own families and make their own
12 adult choices and handle the baggage that's left in the
13 past.

14 Q. When do adult victims of sexual abuse disclose? Is it
15 common or uncommon for them to disclose initially within
16 the family or is it more common for them to disclose to law
17 enforcement or the authorities or that type of group I
18 guess is the word?

19 A. Not necessarily to the authorities but it is more
20 common for the adult to disclose to someone outside the
21 family. So it could be again like a psychologist, a
22 friend, somebody who basically gives them that reality
23 check outside of the family who says yes you do have a
24 right to tell this and you do have a right to think about
25 what you want to do with this information. So it's kind of

1 getting that adult validation from outside the family and
2 then deciding what to do with it from there.

3 Q. And you talked initially about children and attentive
4 disclosure but do you see in adult victims of child sexual
5 abuse attentive disclosure to perhaps maybe not perpetrator
6 in the immediately family but the surrounding family is
7 that do they tentatively test how they are going to react,
8 that group of people in their life?

9 A. Yes. Tentative disclosure is not just for children;
10 it's for adults as well because again testing the waters
11 you know its basically an assessment. What am I going to
12 loose? Who can handle this? Can anybody handle this? So
13 the same questions are there it's just that you now have a
14 victim who has an adult brain and has a little bit more
15 independence and so she's got more options to go out and
16 test. You know well maybe there's a cousin that I care
17 very much about that I never thought of telling as a child
18 but maybe I'll go talk to that cousin. Is that cousin
19 going to accept me in testing the waters so that's a very
20 common pattern and it can take - you know it's a real
21 thought process to get to where the victim is going to make
22 the ultimate decision. Do I make a complaint to the police
23 and so on?

24 Q. And you talked initially that if that tentative
25 disclosure isn't positively received, if it's negatively

1 received, that that may impact the adult victim in some
2 way; if an adult victim confronts a perpetrator or
3 discloses within the family and there is some type of non-
4 supportive negative response how does that impact that
5 adult child?

6 MR. BOYD: I'm going to object. That's a very lengthy
7 question and - -

8 THE COURT: Counsel, I sustain the objection. I think
9 it is a leading question. If - you can rephrase it if you
10 wish.

11 MS. HERVEY: I'll rephrase it.

12 Q. You talked about tentative disclosure in terms of
13 adult victims of child sexual abuse how do the response to
14 that tentative disclosure negative versus positive going to
15 impact how the adult victim proceeds from there?

16 A. It's going to impact it in very much the same way as
17 it would for the adolescent or the child. In other words
18 if they test the waters and they receive positive -
19 tentative disclosure again means telling a little bit;
20 putting yourself out there but not all the way. And then
21 if that is positively received - the person receives the
22 information of you know I love you I will stand by you I
23 want to understand what happened, we can handle this, we
24 can get through this, there is nothing you can say that is
25 going to drive me away. Those are the messages that will

1 allow a victim then to move from what we call tentative
2 disclosure to active disclosure. They move from denial to
3 tentative to active. Sometimes they recant and then
4 sometimes they reaffirm. These are stages of disclosure
5 okay. So from tentative to active the big predictive
6 factor of whether the victim will move from tentative to
7 active disclosure is that response. Do the people who hear
8 the tentative disclosure respond favorably or not? If they
9 respond negatively and negatively is everything from I
10 can't believe you are telling me this now; why couldn't you
11 tell me when I could have done something about it and very
12 punitive. Or I can't believe you're telling me this;
13 you're just angry, or you are just acting out, or you've
14 always wanted to destroy this family, or if it's true then
15 you come over here and tell it to your father and let's see
16 what he has to say about it, or this is so awful we must
17 never let anybody else know about this, we will never talk
18 of this again, you know, this is so shameful that it will
19 never be spoken of. Any of those reactions essentially
20 send the message explicitly and implicitly to the victim
21 that what you've got to say cannot be handled and what
22 you've got to say is either not going to be believed or
23 it's so awful that it's going to be buried and don't ever
24 bring it up again. When those dynamics occur the victim is
25 really in a pickle because it tells - and the adult victim

1 is because it basically tells the adult victim you either
2 go underground and continue to accommodate to preserve the
3 family or you know that in going forward you are in fact
4 risking losing your family. So that puts the young adult
5 in a terrific bind because after all they are newly
6 independent or on the road to independence but they are not
7 really you know that launched. So that's very tough. And
8 so a lot of times that will just extend the accommodation
9 for many many more years. I mean as a therapist who's
10 treated adults I - I've addressed some of these issues with
11 women you know in their forties who are still battling to
12 negotiate between knowing that sex abuse happens but yet
13 still wanting to maintain relationships with their family
14 and that their family can't accept it. So it is a - if the
15 tentative disclosure is not met with support and acceptance
16 it is very damaging to the adult victim and it takes a real
17 act of courage and some other support for that adult to
18 then go forward and tell anybody else.

19 Q. I have nothing further.

20 DOCTOR ALLISON DEFELICE BY MR. BODD:

21 Q. I believe you testified going back to your work at ARC
22 and interviewing children that are potential victims of
23 abuse and you interview children that are not potential
24 victims of sexual abuse but other kind of abuse also?

25 A. Yes I do.

1 Q. Okay. I believe you testified that there is not one
2 general profile of an abused child, is that correct?

3 A. That is correct.

4 Q. Okay. And you mentioned accommodation syndrome and
5 you said that is not a technique or used to diagnose child
6 abuse, is that correct?

7 A. Yes. Yes.

8 Q. Basically that is a clinical observation you make of
9 children that have been abused, is that correct?

10 A. I would like to - yes but I would like to explain
11 that, may I?

12 Q. Well I'm just asking you now you can explain it later
13 if you want but - -

14 MS. HERVEY: Your Honor, I'm going to object.

15 THE COURT: She can explain it now, counsel.

16 You may explain your answer.

17 A. Thank you, sir. There are two kind of syndromes in
18 medical and clinical work. One is what's called diagnostic
19 for example in child abuse physical abuse the battered
20 child syndrome that's one where medical doctors can look at
21 a constellation of particular fractures and things like
22 that and symptoms and they can say well if you've got this
23 you know these five criteria are met they can say this is
24 diagnosed as the battered child syndrome. So it's like
25 saying there is a set of symptoms and from those symptoms

1 you can diagnose a syndrome called battered child syndrome.
2 Child sexual abuse accommodation syndrome does not diagnose
3 sexual abuse. It describes a pattern of behavior that is
4 known to occur in a subset of true child sex abuse cases.

5 But it's not as if you can say well if I see this range of
6 behaviors I can say ah ha that child was sexually abused.

7 Q. Okay. That's what I was trying to get at. When you
8 say you can't take a pattern of behavior and say because
9 there is this pattern of behavior abuse exist.

10 A. That is correct?

11 A. And for instance I believe you testified - well let me
12 just go back. You testified basically a lot of the issues
13 you talk about occur basically in every family taking away
14 the abuse, is that correct - the inner dynamics?

15 A. Right, exactly.

16 Q. For instance you talked about one parent being more
17 lenient than another parent. That's typical in families is
18 that not correct?

19 A. Yes.

20 Q. I mean almost every family - there is very few
21 families that both parents are just four square on how
22 lenient or how hard to be or that type of thing, is that
23 correct?

24 A. Yes.

25 Q. Okay. And you have children and it's probably even a

1 difference in your family about that, is that correct?

2 A. Most definitely yes.

3 Q. Okay. And so it's typical for any child to lean
4 toward the parent who is most lenient or try to get what
5 they want from the parent that's most lenient regardless of
6 the - -

7 A. It is normal childhood dynamics to try to figure out
8 which parent might be the one to say yes to a particular
9 privilege.

10 Q. So because a child is closer to one parent or tends to
11 go to one parent to get things for lack of a better word
12 it's certainly not a sign that that parent is abusing the
13 child?

14 A. That is correct.

15 Q. When - you mentioned also the difference in - about
16 some children over compensate, do real well, some children
17 become what I think you described as an emotional mess,
18 depressed and et cetera. That is also things that can
19 happen and not in abusive relationships, is that correct?

20 A. Yes that is correct. There are a multitude of reasons
21 why children can have various mental health problems sex
22 abuse being just one of many.

23 Q. Okay. And the fact that a child is an overachiever is
24 certainly not a sign that they are being abused in any way
25 is there?

1 A. Correct.

2 Q. When you - you mentioned about forensic interviews and
3 what you do in a forensic interviews. Do you try to among
4 other things ask questions in a manner that is non-
5 suggestive, is that correct?

6 A. Yes.

7 Q. Basically you are trying to pull out details and let
8 the child express in their own words what has happened, is
9 that correct?

10 A. Yes.

11 Q. And you're trying to certainly avoid anything that may
12 suggest an answer to what the child or for instance suggest
13 an answer to a question or suggest that abuse may have
14 occurred with a child?

15 A. Yes that's correct.

16 Q. Okay. And I believe you testified in that you look
17 for little bits of information that can be confirmed, is
18 that correct?

19 A. I will take your word for it that I said little bit
20 but I don't know but yes you look for information that can
21 be confirmed in the consideration that it's a crime that
22 typically happens without eye witnesses and without a fresh
23 crime scene.

24 Q. Okay. So I mean you take information and see what
25 information can be confirmed elsewhere other than the

1 child's statement?

2 A. Yes.

3 Q. Okay. For instance if a child describes a perpetrator
4 as having a star on their genital area and that can be
5 confirmed to something that confirms what the child is
6 saying?

7 A. That's right.

8 Q. Okay. On the other hand if it's something that is
9 confirmed as impossible that may be an indication that the
10 abuse did not occur?

11 A. Yes. It could - that's exactly right. It would open
12 up the issue of alternative hypotheses either - you would
13 have to try to understand how a misunderstanding could have
14 occurred; how the victim could perceive something that
15 wasn't accurate or why that distortion might exist; it's
16 implausible; it could just be a false statement.

17 Q. Okay. For instance you mentioned a thing - I think
18 this was on another issue but memory of somebody's abuse
19 occurred when we went to the mountains you know ritually
20 happened every year when we took a trip to the mountains.
21 If a child said that it could be confirmed that trips were
22 never made to the mountains that would be something that
23 would tend to show that the child was not telling the
24 truth.

25 A. It would definitely suggest that there is a big

1 problem and so hypotheses would be that it's a false
2 statement. And then of course there could be alternative
3 hypotheses. But again that's exactly right you look for
4 corroboration. If the child says they went to such and
5 such location receipts or some sort of indication that that
6 actually occurred in real life; it wasn't just made up.
7 But again I would just say we are always establishing a
8 range of hypotheses and then looking for what - you would
9 have to find either a plausible explanation for the
10 misunderstanding or you would have to conclude that - that
11 the best conclusion is that it was a false statement.

12 Q. Okay. And the - just an item where you say you had
13 but you didn't conduct a forensic interview of Tabitha
14 Efird did you?

15 A. No I did not.

16 Q. Okay. And you have done no psychological testing on
17 her?

18 A. That's correct.

19 Q. Or anyone else involved in this case, is that correct?

20 A. That's correct.

21 Q. Okay. Now once you testified to concerning your
22 rather lengthy testimony concerning the dynamics of child
23 abuse. This is not something you've come up with is it? I
24 mean this is something that's been published, it's been
25 studies, is that correct?

1 A. That's correct.

2 Q. All right. And this has been developed over a number
3 of years, is that correct?

4 A. Yes.

5 Q. Okay. The last - mainly the last thirty years or so
6 or a little longer maybe?

7 A. Yes, sir. I mean there are some tremendous shifts in
8 our field so the line share of the research and the science
9 that is relied upon is really from the 1990's. The 1980's
10 was a very rich time of research and examination of issues
11 of child sex abuse investigations because that was the
12 first era in our society where it really became
13 criminalized that the large part lots of prosecutions
14 happening and child victim witnesses showing up in
15 courtrooms. Going back before the 70's there is really not
16 - there is a lot of information on child development and
17 linguistics and so on but not as much nearly on child sex
18 abuse and certainly not forensic interviewing of children.

19 Q. Okay. On the dynamics of child abuse such as
20 accommodation syndrome or those types of things that's an
21 area that's been published in pretty heavily is that
22 correct?

23 A. Yes going back to I think 1978 or 1981 right around
24 there when Doctor Rolland Summit published his first paper
25 on it.

1 Q. Right. And the - in fact Doctor Summit has basically
2 said that that is not a diagnostic tool, is that correct?

3 A. Yes that's correct.

4 Q. He has criticized some of the application - - -

5 A. That's right.

6 Q. - - - of that syndrome to a courtroom setting - - -

7 A. Yes absolutely.

8 Q. - - - is that correct?

9 A. Yes absolutely - excuse me I do not mean to interrupt
10 you but that's why I wanted to make it clear when I brought
11 it up in testimony the difference between diagnostic and
12 descriptive should not be looked at as a diagnostic
13 syndrome.

14 Q. Okay. And again diagnostic would say because of this
15 it means abuse occurred - - -

16 A. Right exactly.

17 Q. - - - as opposed to looking at abuse occurred and this
18 is the reason these are some of the syndromes and problems.

19 A. Yes.

20 Q. Okay. And the - I would expect even with your vast
21 knowledge of this area there is probably some things you
22 haven't even read about this subject that has been
23 published would that be correct?

24 A. That's correct.

25 Q. Okay. And basically an individual can go to a college

1 library and read up and find a great deal on this subject,
2 is that correct?

3 A. I would surmise so. I'm just struggling with college
4 library but yes I think - I think there is a fair amount
5 that's pretty readily available in good libraries about the
6 nature of child sex abuse and child sex abuse
7 investigation.

8 Q. Okay. I think you could find quite a bit about it on
9 the internet can't you?

10 A. Well yes you can find quite a bit of a lot of things
11 on the internet but whether or not it's a credible of
12 scientific utility would be entirely a different question.

13 Q. Okay. I mean there - there is web sites like MedLine
14 or - -

15 A. Oh yes there are data and sure there are search
16 engines and ways that people can research topics on line
17 absolutely.

18 Q. That's all the questions I have.

19 MS. HERVEY: Just a few brief follow ups, your Honor.

20 DOCTOR ALLISON DEFELICE BY MS. HERVEY:

21 Q. Do you typically conduct forensic interviews on
22 children who have been previously interviewed by other
23 agencies?

24 A. Yes.

25 Q. And is there any reason why you would not interview a

1 child who had been interviewed before?
2 A. Oh definitely yes. What I mean - what I should
3 clarify there is it's very typical - as much as we want to
4 reduce the number of interviews of children there is
5 usually like a responding officer who has maybe taken a
6 brief statement; maybe DSS has taken a brief statement and
7 they are referring it to the ARC for example. But
8 particularly with adolescents and definitely with young
9 adults a lot of the concerns about how a forensic interview
10 is conducting or altered the older a victim is they can -
11 this is very non leading and non suggestive - they can
12 basically just be asked to please provide a written
13 statement; write down what it is that happened and then
14 follow up questions can be asked. So sometimes the ARC is
15 contacted by law enforcement for example after they have
16 already obtained a multi-page written statement from an
17 older adolescent. Maybe the investigator suddenly thinks
18 well gosh maybe I should have had an expert do this
19 interview. But we will just look at the content and say
20 well seems to us you know that you've gotten everything
21 that we would get and we don't want to just unnecessarily
22 re-interview a person that's not - that's not beneficial to
23 anybody.

24 Q. So if conducting a forensic interview on Tabitha
25 subsequent to the investigation that you reviewed would

1 that have been productive or necessary in any way?

2 A. No.

3 Q. And Mr. Boyd asked you in terms of you look for these

4 - eliciting these details in children if you can

5 corroborate or not corroborate. How does the delayed

6 disclosure impact your ability to go back and corroborate

7 details about colors of a room or you know a piece of

8 furniture in a room or those kind of things?

9 A. Obviously - that's why I made the point about the
10 fresh crime scene it - delaying the disclosure is the norm
11 so the crime scene is no longer fresh; suspects can suspect
12 that a disclosure has been made and can have a opportunity
13 to clean up evidence or the environment simply has been
14 changed for no reason other than just time passed and
15 things changed. Furniture can be bought or sold or
16 bedspreads can be changed. So that's why sometimes kids -
17 victims will make statements about how an environment
18 looked and the environment may or may not still look
19 exactly like that. That doesn't mean that there was a per
20 se a lie; it just means that there needs to be an
21 alternative hypothesis. Maybe there was a lie; maybe there
22 has been a change in the environment because of the time.
23 So we expect that we hope to find corroborating evidence
24 but you know the more time that's passed between the
25 presence of evidence and the disclosure that there was a

1 crime and there was evidence obviously there is more and
2 more room for that evidence to have been lost.

3 Q. Do the detail that children give in any way enhance or
4 decrease their credibility?

5 A. Yes. Details is obviously - I use the word
6 idiosyncratic detail earlier in my testimony - we look for
7 information that seems to have that uniqueness to it that
8 it seems to be in particular to that child to that
9 relationship to that home whatever. It may be a detail
10 that is kind of you know just peripheral but it gives it
11 what we might - well I won't use that expression here. It
12 just might be compelling to us. So we look for unique
13 details and those can include sounds, smells, particular
14 sex acts, particular statements, use of objects, written
15 documents, patterns of behavior.

16 Q. Do you see that specificity in children who are
17 fabricating or malingering a story of child sexual abuse?

18 A. This is - this goes to the heart of you know again why
19 not every child who comes in for a forensic interview is
20 assumed to be a victim the answer is no we don't see those
21 - we don't see the fluidity; if we ask questions from
22 different points of view or over time there is a lack of
23 what we call internal coherence and when we don't have that
24 internal coherence when we get kind of evasive answers that
25 don't appear to be based out of anxiety or abuse dynamics

1 and facts are not hanging together these are the things
2 that we look for in terms of examining false statements.
3 Q. And, Doctor, Mr. Boyd asked you some individual - to
4 kind of take some of these symptoms in a vacuum, children
5 who are over achievers are not necessarily sexually abused;
6 children who do this are not you know other things could
7 contribute to that. If you could just briefly explain the
8 significance of the congruent of these things versus
9 evaluating them in a vacuum.

10 A. Certainly. There is no laundry list of symptoms that
11 somebody can draw a check list and say you know check check
12 check these symptoms should be there or shouldn't be there.
13 The point is that it is a question of the individual case
14 before you or before me when I'm at the ARC and I am
15 evaluating a case and so I am looking at the individual
16 child; the individual circumstances; and the way a certain
17 set of symptoms and behaviors either do or do not have
18 congruent - they either are or are not coherent for that
19 individual situation. This is why you know it has to be
20 evaluated for its individual merits. You cannot look at
21 some list on the internet and decide that the set of
22 symptoms you know either mean something or doesn't mean
23 something.

24 Q. Nothing further.

25 MR. BOYD: Nothing further.

1 THE COURT: Thank you, ma'am, you may step down.

2 DOCTOR DEFELICE: Thank you, sir.

3 MS. HERVEY: May she be excused, your Honor.

4 THE COURT: Any objection, Mr. Boyd.

5 MR. BOYD: None.

6 THE COURT: Thank you for coming in, you may be
7 excused at this time.

8 (WITNESS LEAVING THE COURTROOM.)

9 THE COURT: We will take a break.

10 MS. HERVEY: Yes, sir.

11 THE COURT: Mr. Foreman, ladies and gentlemen of the
12 jury, we are going to take a recess at this time. You may
13 refresh yourselves during the break. Are there any smokers
14 on the panel, raise your hand? Anybody smoke? No.
15 Sometimes I get a request to smoke and I was going to allow
16 you to do that during this break because we've been here a
17 while. You may refresh yourselves during the break and we
18 will take about ten or fifteen minutes. Thank you.

19 (JURY PANEL LEAVING THE COURTROOM AT 11:15 A. M.)

20 THE COURT: All right, we will take about a ten or
21 fifteen minute.

22 (SHORT RECESS AT 11:16 A. M.)

23 (BACK ON THE RECORD AT 11:44 A. M.)

24 MS. HERVEY: Just in terms of scheduling, your Honor,
25 the state has two more short witnesses. We expect to call.

1 Carson Neely who was the secondary investigator to explain
2 in the absence of Amanda Carter and kind of just
3 corroborate the search warrant and the contract and those
4 kind of things and provide that in detail. To criminal
5 trial we would like to call these members of law
6 enforcement. And we have a grandmother who adopted Kathy
7 the other sister she will be our last witness. I have
8 advised her that I want to put it on the record that while
9 she will acknowledge that she is the mother of Christine
10 and the grandmother of Tabitha and that she adopting Kathy
11 at eight just so they understand her role in the dynamic
12 she is not to go into any reason why she adopted Kathy. I
13 told her to stay away from those specifically I advised her
14 of the court's ruling that that door has not been opened
15 yet and we are not going there. So just so the court is
16 aware when I ask that question and he doesn't think I'm
17 going the road I should you know the only intention of
18 calling her is she will testify that she witnessed some
19 inappropriate contact between Tabitha and her father just a
20 lot of touching and choking and sitting in laps that she
21 thought was inappropriate for a girl of that age; as a
22 result of that she confronted Christine, shortly thereafter
23 that they moved here to Fort Mill. That would be our
24 testimony. I've also advised her that in confronting
25 Christine she is not to reference that when she confronted

1 Christine she is not to reference that when she confronted
2 she said you know look at what he did to Kathy you know
3 he's doing it to her too. But it's that confrontation that
4 is to be limited to what she observed going on between
5 Tabitha and her father.

6 THE COURT: All right. And as an explanation for that
7 the - and not allowed to go into any other alleged child
8 sex abuse in this case, that's not allowed under the rules
9 and therefore we can't go there and it will cause a big
10 problem in the case if we go there so we need to stay away
11 from anything about that. All right, anything else?

12 MS. HERVEY: Your Honor, I just wanted to make the
13 court aware of that so we weren't jumping up in the middle
14 of her testimony and that kind of thing and to address
15 objections that we may or may not have at this particular
16 time before we bring the jury out or for avoiding that.

17 THE COURT: I understand.

18 MS. HERVEY: That's all.

19 THE COURT: Please bring the jury in please, ma'am.

20 (JURY PANEL ENTERING THE COURTROOM AT 11:48 A. M.)

21 THE COURT: Counsel ready to proceed?

22 MS. HERVEY: Start calls Carson Neely.

23 MADAME CLERK: Please raise your right hand.

24 (CARSON NEELY, BEING FIRST
25 CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

1 MADAME CLERK: Thank you, you may have a seat.

2 CARSON NEELY BY MS. HERVEY:

3 Q. You are Detective Carson Neely, is that correct?

4 A. Yes, ma'am, that's correct.

5 Q. That is your role with the York County Sheriff's
6 Department?

7 A. Correct.

8 Q. And how long have you been a detective or a law
9 enforcement officer here in York County?

10 A. Law enforcement officer in York County since August of
11 '98 and assigned to detective division since December of
12 2005.

13 Q. And just briefly what type of specialized training and
14 education have you received in terms of becoming a law
15 enforcement officer at the York County Sheriff's
16 Department?

17 A. I have a Bachelor's Degree; also each law enforcement
18 officer goes through the same set of standards and
19 trainings prior to becoming a law enforcement officer.
20 Since my CID or detective division went through several
21 interview and interrogation classes; Finding Words class
22 that was previously mentioned and other related topics of
23 such.

24 Q. So you actually attended a class that Doctor DeFelice
25 taught at in Columbia?

1 A. Yes, ma'am.

2 Q. And within NCIC is there a special unit or division to
3 which you are assigned or is it a kind of general mix that
4 you cover cases?

5 A. It is brought about in different areas. The area
6 division I'm assigned to is the Juvenile and Sex Crimes
7 Division.

8 Q. And just generally what does Juvenile and Sex Crimes
9 do? That's somewhat obvious but if you could just explain
10 it to the jury?

11 A. Mostly we follow up on initial reports that are
12 provided by officers. Most of the cases I deal with are
13 sexual in nature not always juvenile; sometimes juvenile,
14 sometimes adults. That's pretty much the extent.

15 Q. And who is Amanda Carter?

16 A. She is the associate I work with. A detective also
17 who has been in the unit several more years than I have.
18 As a matter of fact she came in the detective division in
19 '98 at the Sheriff's Office if I am correct. Whenever I
20 came in December of 2005 I worked primarily with her for
21 several months as a partner so to speak on cases and she
22 kind of - on the job training mostly is where I got my
23 learning's from.

24 Q. So you were more or less trained under Amanda would
25 that be fair to say?

1 A. Yes, ma'am, that would be fair to say.

2 Q. And is Amanda currently employed with the York County
3 Sheriff's? Is she currently working for you all actively?

4 A. Yes, ma'am, she is.

5 Q. Is she on any type of leave or is she experiencing
6 some kind of difficulty where she is not here on a day to
7 day basis?

8 A. Yes, ma'am, unfortunately she's been out for the past
9 month or almost two months now for an illness.

10 Q. And did you have the occasion to participate in the
11 investigation of Darrell Efird?

12 A. Yes, ma'am.

13 Q. And as a result of that did you have the occasion to
14 participate in the execution of a search warrant?

15 A. Yes, ma'am, we did.

16 Q. If I could I show you State's Exhibit Number One and
17 ask you if this is an item that you retrieved in the search
18 warrant? If you can recall it I can show you the evidence
19 envelop if that helps?

20 A. Yes, ma'am, this is the item I believe we located out
21 of a - I believe it was a safe - a fire proof box if you
22 want to call it or inside of a closet in a bedroom.

23 Q. And how were you able to go into that safe?

24 A. We had a search warrant for items and contents inside
25 the house which may contain - some specific items we were

1 looking for and in general letters and notes and things of
2 that nature.

3 Q. So let me make it more clear. Did you break into the
4 safe or did somebody let you in? Was it opened, do you
5 recall?

6 A. There were some keys if I recall correctly. I believe
7 there were some keys on one of the dressers or what not and
8 used the key to open it.

9 Q. And inside you found that contract?

10 A. Yes, ma'am.

11 Q. Were you looking for any other specific items - not
12 the letters and the cards - in the search warrant?

13 A. Yes, ma'am.

14 Q. What were you looking for then?

15 A. Things of sexual - basically used in a sexual nature,
16 dildo's, vibrators, and things of that nature that I don't
17 recall finding.

18 Q. And how would you just describe the house generally?
19 Was it neat and organized or kind of a typical American
20 home or a little in between?

21 A. I better recall specifically very cluttered; things
22 scattered throughout. Just cluttered I would call it.

23 Q. And you stated that - do you recall approximately the
24 date that you executed the search warrant or about what
25 month?

1 A. March 2006 I believe. Was that correct? I believe
2 that's correct.

3 Q. The court's indulgence, one moment, your Honor.

4 A. March 20 something 2006.

5 Q. Let me just show you a copy of this document and ask
6 you if you recognize that? That would refresh your
7 recollection more and specifically to the date.

8 A. Yes, ma'am, that's what we call the return. That's
9 part of the search warrant packet. March the 21st 2006 is
10 the date of execution.

11 Q. If I could just mark this for State's for ID only to
12 show for the record. Thank you.

13 A. March 22, I'm sorry. The 21st it was signed; the 22nd
14 it would be executed.

15 (WHEREUPON: STATE'S EXHIBIT NUMBER TWO MARKED FOR
16 IDENTIFICATION.)

17 Q. And other than executing that search warrant did you
18 have the occasion to take statements from any witnesses in
19 this case if you recall?

20 A. Witness at one of the statements that were taken yes,
21 ma'am.

22 Q. And would that have been the statement of the mother
23 Christine Efird?

24 A. Yes, ma'am.

25 Q. Is that the only statement you know that was taken of

1 Christine Efird or where there others?

2 A. That's the only one I'm aware of that I participated
3 in.

4 A. The court's indulgence one moment. That's all we have
5 on this witness.

6 CARSON NEELY BY MR. BOYD:

7 Q. Detective Neely, you mentioned there were other items
8 that were - well let me go back. In a search warrant - on
9 a search warrant you put down a description of property of
10 what you are looking for, is that correct?

11 A. Yes, sir.

12 Q. Okay. And in particular in this particular search
13 warrant you were looking for a large blue dildo; a pink
14 smooth dildo; a glow in the dark dildo with ripples and any
15 vibrators, is that correct?

16 A. Yes, sir, that's correct.

17 Q. Okay. And you did not find any of those items, is
18 that correct?

19 A. That's correct, sir.

20 Q. And you filed a return to the search warrant and in
21 that return you listed finding this contract, is that
22 correct?

23 A. Correct.

24 Q. And you did not list finding any other items except
25 that contract, is that correct?

CARSON NEELY: CROSS EXAMINATION BY MR. BOYD
REDIRECT EXAMINATION BY MS. HERVEY

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1 A. That's correct, that's all we found.

2 Q. Thank you, that's all.

3 MS. HERVEY: Just one brief follow up.

4 CARSON NEELY BY MS. HERVEY:

5 Q. When you were looking for the contract was that also
6 an item listed in addition to the sex toy or was that
7 something you chanced to find?

8 A. No that was listed in the search warrant too to look
9 for.

10 Q. That's all.

11 THE COURT: Thank you, sir, you may stand down.

12 MR. NEELY: Thank you, sir.

13 (WITNESS LEAVING THE WITNESS STAND.)

14 MS. HERVEY: Any reason not to excuse Detective Neely?

15 MR. BOYD: No.

16 THE COURT: Thank you for coming; you may be excused
17 at this time.

18 MS. HERVEY: The state calls Francis Smith to the
19 stand please.

20 Ms. Smith, if you go up there and place your hand on
21 the bible to be sworn.

22 MADAME CLERK: Please raise your right hand.

23 (WHEREUPON: FRANCIS SMITH,

24 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

25 MADAME CLERK: Thank you, you may have a seat.

1 FRANCIS SMITH BY MS. HERVEY:

2 Q. Good morning, Ms. Smith. I'm going to stand back here
3 so that I know if I can hear you these last jurors can hear
4 you all right.

5 A. Okay.

6 Q. If you could there is a microphone there if you could
7 try to just turn in that direction it picks up everything
8 you hear. If you could just state your name and spell your
9 last name for the record.

10 A. Mary Francis Smith S-m-i-t-h.

11 Q. And Ms. Smith, who is Christine Efird to you?

12 A. She's my - well my daughter.

13 Q. Okay. She is - -

14 A. She was the youngest until we adopted one.

15 Q. Of your natural daughters - -

16 A. Uh-huh.

17 Q. - - - how many daughters naturally did you have?

18 A. Yes. I have two daughters and one son.

19 Q. Two sets. So three children all together that you
20 actually gave birth to?

21 A. Yes, ma'am.

22 Q. And approximately how old are they? Are they in their
23 thirties or their forties or that kind of thing?

24 A. They're in the forties now.

25 Q. Okay. And you said that you have another daughter

1 that you adopted, correct?

2 A. Yes.

3 Q. And what is her name?

4 A. Kathy Smith.

5 Q. And is she somebody that came to you per an adoption
6 agency or does she have some other familiar relation to
7 you?

8 A. She was my granddaughter.

9 Q. She is your granddaughter. Is she Christine's
10 daughter?

11 A. Yes.

12 Q. So not one of your other daughters, you adopted
13 Christine's other daughter Kathy?

14 A. Yes.

15 Q. So just so everybody understands the family dynamics
16 Kathy and Tabitha Efird, one of your other granddaughters,
17 would be step sisters?

18 A. Well Tabitha and Kathy has always kept you know
19 they've always been real close. They talk all the time and
20 everything and Kathy thinks of her as her sister. Not as
21 an aunt but a sister.

22 Q. And about what age did you adopt Kathy if you recall?

23 A. Kathy came to stay with us when she was in the second
24 grade.

25 Q. Okay. So sometime around seven or eight?

1 A. She came to stay with us full time when she was in the
2 second grade. We legally adopted her when she was sixteen
3 years old. The reason we done this we wanted her to make
4 sure that she wanted to break all ties with Christine
5 before she - we adopted her. And I sat down and I
6 explained to her you know that once we adopted you can't go
7 back.

8 Q. And but for the most part from the second grade to
9 adulthood would it be fair to say that you raised Kathy?

10 A. Yes she's always been with us.

11 Q. And did it ever come to a period of time where Tabitha
12 ever came to live with you on a lengthy basis or would she
13 mainly come to visit?

14 A. She would only come to visit. She would come and
15 spend a night with Kathy every once in a while but other
16 than that no she didn't stay.

17 Q. And originally while the girls are younger and in
18 elementary school and middle school you are not - where are
19 you living? Where do you live now?

20 A. I live in Wallace, South Carolina.

21 Q. And is that in Cheraw County?

22 A. It's in Marlboro County and Cheraw is in Chesterfield
23 County.

24 Q. And how long have you lived there?

25 A. Fifty some years.

1 Q. And do you still work, Ms. Smith? Do you still work?

2 A. Yea I still work.

3 Q. And where do you work?

4 A. I work at Highland in Cheraw.

5 Q. And how long have you worked there?

6 A. All together about thirty-eight years.

7 Q. And when Tabitha would come to visit would she come by
8 herself or would she come with her mom and dad?

9 A. She would come with her mom and dad.

10 Q. And during these visits did you - how did she appear
11 to react - interrelate with her father?

12 A. Well we would always have family get-togethers on
13 every holiday you know and stuff like that. It differed -
14 well back then a lot of them was at my house and they would
15 come in and sit down. I don't - like every family when
16 you're family grows you some how loose seating capacity.
17 And we would always pull out all the chairs that we had and
18 everything but nine times out of ten the children would be
19 gathered in the bedroom or either outside. But somehow
20 Tabitha always ended up sitting either under Darrell or on
21 Darrell's lap from the time that she was seven or eight up
22 until thirteen to fourteen.

23 Q. Did you see any other unusual physical contact between
24 Tabitha and Darrell over the years?

25 A. Well other than sitting on his lap all the time and I

1 don't know whether he you know it was his demand or whether
2 she wanted to or what but you know we would always say it
3 don't - it don't look right. I told Christine it didn't
4 look right.

5 Q. So you actually confronted your daughter - - -

6 A. Yes.

7 Q. - - - about what you saw?

8 A. Yes.

9 Q. And do you recall approximately when that was;
10 approximately what age Tabitha was?

11 A. She was about eleven to twelve.

12 Q. And at the time were they still living in Marlboro
13 County or near around you?

14 A. Yes they were living in Marlboro County at that time.

15 Q. And subsequent to that do they move here to Fort Mill?

16 A. They moved here when Tabitha was in high school. Well
17 she must have been about sixteen. I think it was - it
18 wasn't her senior year, it was the year before and - I
19 always asked you know why such a sudden move when really
20 and truly it was no profit to them or anything. Like
21 everything else parents only ask they don't get sensible
22 questions you know.

23 Q. You don't always get sensible questions from your
24 children that's what you life experience has taught you?

25 A. Well you can't make your children do anything.

1 Q. Okay. And once they moved here to Fort Mill did there
2 ever come a time that Tabitha didn't attend these family
3 functions?

4 A. She would attend some of them and then some of them
5 that you know I would ask where's Tabitha? She decided to
6 stay home. Or either where's Tabitha? She decided to stay
7 over at Paige's and play with the boys. You know she was
8 up there sixteen, seventeen years old then.

9 Q. All right. Other than time you recall around Tabitha
10 being eleven do you have any other occasions that you ever
11 confront Christine about what you said didn't look right?

12 A. I kept telling her - I tell her all the time that it
13 didn't look right for Tabitha to be sitting on Darrell's
14 lap all the time you know but like all parents you know you
15 can't jump in there and say you're going out in the yard
16 and play or either you are going back yonder to the bedroom
17 and play video games because Christine was always touchy
18 anyway. You would make her mad at the drop of hat. I bet
19 you anything to the one her blood pressure is well up there
20 today because I'm up here testifying.

21 MR. BOYD: Your Honor, I'm going to object to her
22 statement.

23 THE COURT: I sustain the objection. Let's stay on
24 track please.

25 MS. HERVEY: Yes, sir, your Honor.

1 Ms. Smith, try to focus on the questions I ask you. I
2 know that you lived with it and you've had a lot of
3 experience with it but the court has focused our attention
4 on certain things and I just want to reiterate that you had
5 confronted Christine. Did you do that just once or have you
6 done that on more than one occasion?

7 A. On more than one occasion, yes.

8 Q. And have you ever present - were other family present
9 when this discussion occurred or was this something that
10 you would deal with Christine privately?

11 A. No. Other family members was present.

12 Q. And would that include people like her sister and
13 things like that?

14 A. That would include people like her sister, her sister
15 in law, you know, family members that was there.

16 Q. And do you recall around the time these allegations
17 came to life do you recall Tabitha coming to you to Cheraw
18 County that she made any visits there around that time?

19 A. Would you repeat the question?

20 Q. Back in March when these charges came out do you
21 recall if Tabitha came and stayed with either you or one of
22 your daughters?

23 A. She stayed with Barbara I believe. She came to see me
24 and to talk to me about it.

25 Q. But she - -

1 A. Because she - like the rest of them they didn't want
2 to tell grandma. But she - she was she had to tell me.

3 THE COURT: Excuse me, counsel. Counsel approach.

4 (BENCH CONFERENCE OUT OF THE HEARING OF THE JURY AND
5 OFF THE RECORD.)

6 BY MS. HERVEY:

7 Q. Just one last question, Ms. Smith, so we understand.
8 In March of that year you recall Tabitha coming to stay
9 with your other daughter Barbara and she would have made
10 visits or come by to see you?

11 A. Uh-huh.

12 Q. Nothing further, your Honor.

13 FRANCIS SMITH BY MR. BOYD:

14 Q. Let me ask you, you said when Tabitha was sitting on
15 Darrell's lap this was when they would come to see you, is
16 that correct?

17 A. It's at family gatherings yes.

18 Q. Family gatherings and things. So what you are saying
19 - so they would be - I guess there is a room in your house
20 where everybody would be sitting around a living room or a
21 den or something?

22 A. The living room and the kitchen.

23 Q. Okay. So there would be a crowd of people in there
24 right?

25 A. There would be a crowd yes.

1 Q. Okay. And so when she was sitting on his lap this was
2 in front of a lot of other people, is that correct?

3 A. Well yes.

4 Q. I mean you, Christine was there, other relatives were
5 there?

6 A. Yes.

7 Q. I mean this was out in the open and everybody looking,
8 is that correct?

9 A. Yes.

10 Q. All right.

11 A. But there were other children there.

12 Q. No further questions.

13 MS. HERVEY: Nothing further, your Honor.

14 THE COURT: Thank you, ma'am, you may stand down.

15 (WITNESS LEAVING THE WITNESS STAND.)

16 MS. HERVEY: The state rest, your Honor.

17 THE COURT: All right, Mr. Foreman, ladies and
18 gentlemen of the jury, the state has rested. There are
19 matters that I am going to need to take up out of your
20 presence. So what we are going to do is go ahead and it's
21 probably a good time to go ahead and recess for lunch. I
22 am going to ask you to be back in the jury room ready to go
23 about one thirty and give everybody plenty of time to get
24 lunch and us take care of our other business. Be back at
25 one thirty and ready to go. Please enjoy your lunch.

1 (JURY PANEL LEAVING COURTROOM AT 12:11 P.M.)

2 THE COURT: All right I will be glad to hear from you
3 with regard to any motion you might want to make at this
4 time.

5 MR. BOYD: Yes, sir, your Honor. Your Honor, at this
6 time I would move for a directed verdict. I have one
7 general motion applying to all indictments and then I have
8 some that are specified to various indictments. First I
9 just make a general motion that there is insufficient
10 matter to - that the cases in the indictment haven't been
11 proved and I ask for a directed on those grounds.

12 THE COURT: All right. Generally I would say that I
13 find there is substantial evidence looking at the evidence
14 in the light most favorable to the party against whom the
15 motion is made that in this case being the state. I find
16 there is substantial evidence from which the jury could
17 infer that the state had proven elements of offenses beyond
18 a reasonable doubt. The weight of the evidence is a matter
19 for the jury to determine the credibility of the witnesses
20 and the weight so I find there is substantial evidence for
21 the case to go to the jury.

22 MR. BOYD: Your Honor, this motion is for directed
23 verdicts as granted and in particular to Indictment 1995
24 which is an indictment for attempt to commit criminal
25 sexual conduct in the first degree. Basically, your Honor,

1 the - this alleged - and the statute requires the use of
2 aggravated force. This is an incident that allegedly
3 occurred in 2005 around Christmas time. The testimony of
4 Tabitha Efird was that her father basically grabbed her,
5 wanted to have sex with her. I believe she testified that
6 they were standing at some point and that he was also
7 trying to persuade her to have sex with her by offering to
8 buy her an IPOD. Your Honor, I do not - at that point she
9 is nineteen years old, I submit, Your Honor, that that does
10 not come under the definition of aggravated force as in 16-
11 3-651 which means factor uses physical force or physical
12 violence of a high and aggravated nature to over come the
13 victim or includes the threat of using a deadly weapon. At
14 the most what is proven here and I don't even think it even
15 goes that far is aggravated coercion which is an act of
16 threatening to use force or violence of a high and
17 aggravated nature. There is certainly no testimony that
18 force of a high and aggravated nature was used. There may
19 be an argument that it was threatened but I don't think
20 there was even any testimony as to that. The indictment
21 also listed extortion which I submit there is no evidence
22 of that. An offer to buy something from somebody in return
23 for something is not extortion. Extortion is threatening
24 to do something to someone if they do not submit to an act.
25 So I would move for a directed verdict on that indictment

1 on the grounds that aggravated force has not been shown
2 that there is no evidence of it.

3 THE COURT: Solicitor.

4 MS. HERVEY: Just briefly, your Honor. In State -v-
5 Lindsey which is 583 Southeast Second 740 the court
6 reviewed whether or not aggravated or - indicates beyond
7 that in that they decided that evidence of aggravated
8 force, your Honor, includes holding someone down and
9 grabbing them, taking them off into the woods, trying to
10 take their clothes off, those kind of things. It doesn't
11 have to rise to this serious level of force except force is
12 aggravated because it's not just a grabbing and shoving
13 match it's a grabbing and a shoving match designed to
14 effectuate the criminal sexual conduct. That is reiterated
15 in State -v- Elliott which is 552 South East Second 727
16 again where in that case they did charge a lesser included
17 offense of ABHAN but they said that it's not even what you
18 would do to find ABHAN, that aggravated force although they
19 use a lot of the same terms in aggravated battery and
20 assault and battery. As that it doesn't even have to rise
21 to the level of force required to convict somebody for
22 assault and battery of a high and aggravated nature. We
23 just reiterate it again in State -v- Brown which is the
24 most recent case of 602 South East Second 392 wherein again
25 it talks about - in that case was a minor reaching the age

1 of eleven but then going on to adulthood and the rapes that
2 occurred there. So for that reason the state feels that
3 aggravated force has been proven and in this case it is you
4 know it is interesting but I think you have to look at the
5 pattern of evidence designed to get her to - she is getting
6 bigger, she is getting older, she is more physically
7 resisting his efforts to have sex with her. She decided to
8 do that on that case. She awoke from a - she had fallen
9 asleep and again she awoke to him physically trying to have
10 sex with her and it's an attempt to commit that act. It's
11 not even the commission of that act but he is indicted for
12 the attempt to commit that act; that he took that
13 substantial step. So I think the court needs to look at it
14 is not so much aggravated force being used but is that
15 attempt going there had the friend and the mom not come
16 home would the violence have escalated; would the struggle
17 have increased; would he have succeeded on his path to have
18 sex with her. So while I think Mr. Boyd's comments may be
19 more probative if he was charged with the actual act I
20 think here an attempt - the aggravated force - is going
21 towards that line. And if the court would like to look at
22 those cases - -

23 THE COURT: If you will hand those cases up I will
24 look at it. I'm going to take this motion under advisement
25 and I will rule on it. I will hope to have some time

1 during the lunch break to read these and decide. I would
2 say though as I recall the facts - facts - the testimony is
3 that Tabitha Nicole Efird the facts as I recall it are that
4 her testimony was that her father the defendant was trying
5 to force her to have sex and he came to her to have sex and
6 she would not have sex with him she resisted that she got
7 up and went away from him and he grabbed her by the arms or
8 the hands or whatever by the arm and was still trying to
9 force her to have sex with him and that what stopped it
10 was a car driving up in the drive way and her mother and
11 another person - the name escapes me at this moment - but
12 it was her mother and a friend who drove up at that time
13 and that would have been Heidi Capitt I believe that was
14 a friend but they drove up at that time in the drive way
15 and when he heard them drive up then he released her and
16 she went into her room and locked the door. And so based
17 on that you know this may be an issue that has to go to the
18 jury but I will look at the cases to be sure but I don't
19 think you have to hold somebody down or beat them or
20 threaten them or anything like that to accomplish an
21 attempt to commit criminal sexual conduct. If a person was
22 thwarted by other circumstances or other reasons from
23 following through with forced sex then that may be
24 sufficient. In any event I will look at it but those are
25 the facts as I recall them and I will rule on that

1 hopefully when we come - I'll be ready to do that as soon
2 as we get back from lunch.

3 MR. BOYD: Your Honor, the next motion I have a motion
4 for directed verdict and this goes to indictment 1994 which
5 is an indictment for criminal sexual conduct in the second
6 degree. Your Honor, that indictment alleges between 2002
7 and 2005 that the - and it alleges both the usual language
8 and by use of aggravated coercion against the will and
9 consent of the victim. Aggravated coercion under 16-3-651
10 B says the act of threats to use force or violence of a
11 high and aggravated nature to overcome the victim. The
12 testimony of Tabitha in this case of that time period was
13 basically that she had been raped by her father when she
14 was eight years old then this is outside that time period
15 when she's become a teenager. And the testimony and I
16 believe she didn't talk about really any one or two
17 definite instances but said generally what would happen was
18 basically he was having sex with her and he would promise
19 her things or do things to get her do things that type of
20 thing. I don't believe there is any testimony on that time
21 period that he committed - that any aggravated coercion was
22 committed; that he threatened force or violence of a high
23 and aggravated nature at any - during that time period.
24 Basically according to her it's a pattern of things that
25 had been going on at that time. But I don't think the

1 state showed any evidence or any testimony of any threats
2 to use force or violence of a high and aggravated nature
3 during that time period.

4 THE COURT: What age was - -

5 MR. BOYD: There's separate - -

6 THE COURT: - - - Tabitha Efird at that time?

7 MR. BOYD: Yes, sir, there's separate indictments on
8 the age. They're not going on the age in that indictment.

9 THE COURT: Well it says between 2000 and 2005.

10 MS. HERVEY: She's reaching the age where she is no
11 longer a minor. It's in those indictment, your Honor, so
12 it is the adult rape accompanied by circumstances of
13 aggravated coercion and the state's position on that in
14 Tabitha testifying that once she got older he did proceed
15 and not only in this bribery scheme to get her to go along
16 with it so that she doesn't recall that he threatened to
17 hurt her and then go after her sister and that he did
18 threaten her on numerous occasions. That threat to hurt
19 her and then go after her sister it is aggravated coercion;
20 it's a threat to do bodily and another a threat with a
21 deadly weapon; threats to kidnapping and extortion and
22 those kind of things. So when she gets older and he
23 doesn't have these things to hold in his grab bag to coerce
24 her to do it he he moves to these more serious ones to - of
25 threatening her and it was based on that period that the

1 state proceeded with criminal sexual conduct in the second
2 degree. It's also a lesser included offense of that
3 incident and encompasses the time period of the incident
4 and not in question with the Christmas incident where he
5 threatens to rape her then. So his method to double up
6 during this period to realize he is - the transition in
7 their relationship.

8 THE COURT: Mr. Boyd, I think Ms. Christine Efird did
9 - excuse me, not Christine. Tabitha Efird did testify that
10 at some point when she got a little older maybe in her
11 teenage years that she tried to resist and the sexual
12 contact and that he then made threats against her and her
13 sister to harm her and her sister if she didn't go forward
14 and some other threats like that. I believe that was her
15 testimony. I think that - and of course he was in a
16 position of parentis loci with her. As I recall it her
17 testimony was that there was some threats made to her to
18 make her go along with sexual contact when she got a little
19 older and was resisting and did not want to go through
20 that. I believe that was her testimony the threats made
21 against not only her but also her sister if she didn't go
22 along with that what he was trying to do. I can't recall
23 if she testified about any particular time but I think her
24 testimony was as she got a little older and - I can't
25 remember if she said she was in high school then or a

1 teenage then I can't recall. But I think that she did
2 testify to that that she at some point in time as she got a
3 little older got into that age that she tried to resist any
4 sexual contact and at that time he made threats against her
5 so that would constitute an aggravated coercion if that's
6 true, if the jury believes it. So again I'm going to deny
7 your motion for directed verdict on that charge. I believe
8 there is substantial evidence of - from Tabitha Nicole
9 Efird on that particular point. Again credibility and the
10 weight of the evidence is a matter for the jury to
11 determine not the court. The court only determines whether
12 there is any substantial evidence and I find there is
13 substantial evidence on that issue. Anything else?

14 MR. BOYD: Yes, sir. Your Honor, this motion for a
15 directed verdict goes to Indictment 1991 which is criminal
16 sexual conduct with a minor second degree alleges that
17 between 2000 and 2001 Mr. Efird committed criminal sexual
18 conduct in the second degree this is under the age statute.
19 The words between 2000 and 2001 I call the court's
20 attention particularly to the wording in the indictment
21 between. My interpretation of the word between means it
22 would start 2000 and end the start of 2001 because it
23 doesn't allege during 2000 and 2001. It says between 2000
24 and 2001 and between two points the - ends at the start of
25 the next point. In reading that it would only apply to

1 anything occurring in 2000 and not anything that occurred
2 in 2001. The testimony was that the parties - everybody
3 moved to York County in 2001 so anything that happened in
4 the year of 2000 did not happen in York County therefore I
5 would move for directed verdict on those grounds.

6 THE COURT: Let me make sure I understand. You are
7 saying they moved to York County in 2000 - -

8 MR. BOYD: 2001.

9 THE COURT: 2001.

10 MR. BOYD: Yes, sir.

11 THE COURT: So you're saying anything that happened
12 before 2001 would not have been - would not have happened
13 in York County?

14 MR. BOYD: That's correct.

15 THE COURT: It wouldn't be jurisdiction in York County
16 on that issue, right?

17 MS. HERVEY: The state's response is that he is
18 inserting January 1 and January 1st into that interpretation
19 and they do encompass years and a span of time and
20 unfortunately we do have to be more ambiguous because we
21 don't have specific dates to go back to and reference and
22 children don't remember that things occur on my birthday of
23 this year and I was definitively that. So in order to buy
24 that interpretation I think you would have to insert
25 January 1st to January. And otherwise it would include the

1 year time span and represent the over lapping acts. The
2 years, I apologize.

3 THE COURT: Well you allege it happened between 2000
4 and 2001 which would be like January 1 to December 31st
5 basically or through December 31st of 2000 and he's saying
6 they weren't in York County during that period of time.

7 MS. HERVEY: Right. I think if that were the case
8 then I would say during the year - it would be during the
9 2000 this incurred. We intentionally incorporated this
10 other year to represent the transition into the following
11 year and really in order to track school years than
12 anything else. And the testimony was sometime in the
13 summer of 2001 they moved and in that time that transition
14 into Fort Mill. If that happened then you take out 2001
15 from that indictment. And I understand there has to be
16 some degree of specificity and I wish in these cases we
17 could be more exact but unfortunately I think that is an
18 interpretation on how we design these indictments.

19 THE COURT: Well I don't think you've answered my
20 question, Solicitor, that I had.

21 MS. HERVEY: I apologize.

22 THE COURT: He is - they are saying that the
23 indictment alleges in this - when I say indictment this is
24 in 2007-GS-46-1991 they are saying the allegations are that
25 they were inappropriate sexual contact between 2000 and

1 2001 which means the entire year 2000. That's the range
2 you've got you've set up in the language of the indictment.
3 And they are saying - the defense is saying that anything
4 that they didn't actually move to York County - wait a
5 minute. When did they move to York County?

6 MS. HERVEY: Everybody agrees 2001.

7 THE COURT: Okay. So they are saying anything that
8 happened prior to 2001 did not happen in York County
9 therefore attacking the jurisdiction of any indictment
10 rendered in York County with regard to what happened in
11 York County prior 2001. Now the indictment says between
12 2000 and 2001. There is no way can - the literal reading
13 of that is you don't stretch that into the end of 2001. It
14 says between 2000 - it doesn't say sometime during the
15 years of 2000 and 2001. It says between 2000 and 2001
16 which is essentially a twelve month window we're talking
17 about and that's what they are arguing that if they didn't
18 live in York County during that time the incident - there
19 were no incidents that could have occurred that time in
20 York County therefore attacking the jurisdiction in York
21 County.

22 MS. HERVEY: If that's the court's interpretation of
23 how those dates read and I'm not disputing - obviously our
24 intention was different when we moved forward with the
25 indictment but I understand the court's reading of if it

1 and I understand and I'm not taking exception. If that's
2 the court's reading then we have no response to that. Our
3 response is solely to believe that we read the dates
4 differently but I'm not going to prolong the argument with
5 the court. If you read that to be that then certainly I
6 understand the court's ruling accordingly and will move
7 forward on the other indictment.

8 THE COURT: Well you know the problem I have is that I
9 am not sure - I'm not so sure they can wait and attack the
10 indictment after the jury is drawn. I'm not so sure under
11 Gentry and this Projuny that they didn't have to attack it
12 before the jury was sworn in this case if you were going to
13 attach the indictment including jurisdiction.

14 MR. BOYD: I'm not attacking the indictment. I'm
15 basically saying the state's under the facts alleged under
16 the indictment hasn't met that proof including the proof of
17 jurisdiction. I mean there is no way - it's an evidentiary
18 matter, evidence that was - on the face of it's a good
19 indictment. I mean I don't dispute that but under the
20 facts that have been testified to the state has not shown
21 it's jurisdiction for this indictment.

22 THE COURT: Mr. Boyd, your position is that they
23 didn't live in York County until 2001.

24 MR. BOYD: That's correct.

25 THE COURT: And the allegations in the indictment are

1 2000 and 2001 is facedly defective on the jurisdictional
2 issue. So you're not saying it doesn't. If you look that
3 was just as true before we started the case as it is now
4 correct?

5 MR. BOYD: It is true but that has to be some evidence
6 presented in the record that they were not in York County
7 at that time and the time for that evidence to be presented
8 is in trial. I guess we could make that a factual motion
9 pretrial somehow but that didn't go to a legal argument
10 before trial. It went to facts that are brought out during
11 the trial.

12 THE COURT: I understand your position.

13 Solicitor, I think I am going to grant his motion on
14 that and dismiss that particular indictment because
15 factually you haven't established factually or through any
16 testimony or evidence that there was any jurisdiction in
17 York County during that alleged time set forth in the
18 indictment. If you meant to say 2000 and 2001 then it
19 should have said 2000 and 2001 instead of between 2000 and
20 2001. It still gives you twelve months and I understand
21 your reason for not setting forth a specific date. I have
22 no problems with that but I do have a problem with setting
23 your inclusive dates and then your testimony and proof goes
24 to a time outside that date which would have put it in
25 another county. I don't think it - in the over all scheme

1 of things I don't think it makes a lot of difference
2 frankly because you've got other indictments to go forward
3 on.

4 MS. HERVEY: I understand and just realizing it wasn't
5 any malicious part on the part of state.

6 THE COURT: Of course.

7 MS. HERVEY: It's truly you know when children and how
8 they remember dates and how they remember ages and truly so
9 maybe we have to prepare for it and go forward for it
10 understanding that.

11 THE COURT: And I understand and I understand all the
12 complications of that and I don't have any problem with
13 that and that's what you've done generally with all of the
14 indictments. I don't have a problem with that because I
15 think that's the way you have to approach it and the law
16 allows that as long as they are put on reasonable notice as
17 to what the time periods are. But in this particular case
18 again I don't think you've established jurisdiction in York
19 County based on the factual evidence. Not on the facial on
20 the indictment itself but on proof that comes in during the
21 testifying so I am going to direct a verdict as to that
22 particular charge. All right, anything else?

23 MR. BOYD: One more, your Honor. This goes to
24 indictment for incest which is Indictment 1996 and
25 basically under the statute incest is defined as carnal

1 intercourse with each other and I am somewhat - the words
2 with each other. I couldn't really find any interpretation
3 of that but I would just maintain the word with each other
4 implies some kind of consensual relationship and not - the
5 incest statute is not meant to apply to rape type
6 situations or forcible situations because it seems to imply
7 fault on both parties because it uses the words with each
8 other and therefore I don't think the incest or to maintain
9 the incest statute doesn't apply to forcible type
10 situations and we would move for a directed verdict on that
11 one.

12 THE COURT: You got any case law?

13 MR. BOYD: No, sir, I couldn't find any. It's
14 something I came out of my head.

15 THE COURT: Thank you.

16 Solicitor, do you wish to be heard on that?

17 MS. HERVEY: I don't think it necessarily requires
18 consent. I think it begs the question of can a daughter
19 under the age of eighteen I mean obviously she's reached
20 the age of consent but you get into a lot of legal age of
21 consent versus really is she consenting given the I think
22 coupled with the evidence of testimony that it's not
23 consensual sex. Certainly there may be consensual in
24 sexual relationships but I don't think that's an element
25 it's not defined. It doesn't say with the consent of each

1 other. I think he is trying to insert the word. They are
2 trying to describe that they had carnal intercourse with
3 another member of their family and I don't know how other
4 to say that without saying it and I don't think that begs
5 the question of consent so the state's position is that
6 it's not a consensual relationship. It doesn't have to be
7 and it can still be a crime.

8 THE COURT: I'll see if I can find something on that.
9 My inclination though is that incest would be broad enough
10 to include a situation where a - for instance a teenager
11 participates but has participated over a period of time and
12 so if there are sexual relations with each other and it was
13 not a forced rape situation then I would agree with you
14 that it's not incest. If one party physically forces the
15 other to participate that is a forcible rape. I would
16 agree with you that and if it also happens to be a member
17 of the family that that wouldn't be incest. But if you've
18 got another family member who is of the age of consent who
19 really is participating but do not choose to but they don't
20 choose not to either, there's not any kind of force used in
21 the sexual contact that it would probably - that the incest
22 statute was probably broad enough to include that. So I
23 think you could - your point being that if you have a
24 forcible rape with a family member that that's not having
25 sex with each other as set forth in the incest statute then

1 I would agree with that. But if you have two people having
2 sex with each other, sexual intercourse with each other,
3 carnal intercourse with each other who happen to also be in
4 the family and even though one is not - well and part of
5 this time are the allegations were after the age of consent
6 and so whether there was a parent child relationship or not
7 if there was - the sexual intercourse is not a forced -
8 physically forced sexual - in other words it wasn't a rape
9 or some kind of physical force used by one against the
10 other but yet the other one did not resist it physically
11 and participated in it whether it was through parent child
12 relationship and submitting based on that or not I think
13 perhaps incest is broad enough to include that. But I will
14 take a look and see what I can find. I suspect we won't
15 find anything. You may have to go to the general stuff.
16 Did you look at any general law on that issue?

17 MR. BOYD: I did not, your Honor. I didn't see
18 anything on that.

19 THE COURT: We'll take a look at it. I'll make some
20 final decision before we submit it to the jury.

21 MS. HERVEY: And just - are they presenting evidence
22 or am I writing closing argument over lunch?

23 MR. BOYD: Whatever is - -

24 THE COURT: Is the defendant going to testify?

25 MR. BOYD: Yes, sir.

1 THE COURT: Bring him up and let me go ahead and
2 question him.

3 MADAME CLERK: Sir, please raise your right hand,
4 place your left on the bible.

5 (WHEREUPON: DARRELL EFIRD,
6 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

7 MADAME CLERK: Thank you.

8 THE COURT: Sir, for the record you are Darrell Efird,
9 is that correct?

10 A. Yes, sir

11 THE COURT: Mr. Efird, we have reached the stage of
12 your trial where you may present your defense. You have a
13 right to testify in your own behalf however no one can make
14 you testify. In the event you have a record of any
15 conviction involving dishonesty or false statement or for a
16 crime punishable by imprisonment for more than one year and
17 this court determines that the probative value of admitting
18 this evidence outweighs it's prejudicial effect to you the
19 solicitor will be able to introduce this record for
20 impeachment purposes to attach your credibility. If you
21 elect not to take the stand I will charge the jury that
22 they are not to give the fact that you did not testify any
23 consideration whatsoever and there is to be absolutely no
24 prejudice to you because you did not testify. It is left
25 entirely up to you whether or not you testify. You may

1 talk with your attorney or family, friends, or anyone else
2 but the ultimate decision is left entirely up to you. Do
3 you understand it is your decision whether you will or will
4 not testify in your case?

5 MR. EFIRD: Yes, sir.

6 THE COURT: Have you discussed with your attorney the
7 advantages and disadvantages of testifying?

8 MR. EFIRD: Yes, sir.

9 THE COURT: And do you wish to testify, sir?

10 MR. EFIRD: Yes, sir.

11 THE COURT: Is that your decision?

12 MR. EFIRD: Yes, sir.

13 THE COURT: Thank you. All right then we will go
14 ahead and break for lunch. One thing, how long do you
15 anticipate that we would go this afternoon, Mr. Boyd?

16 MR. BOYD: Your Honor, we are going to probably - I
17 would say finish my case close to four o'clock or something
18 in that neighborhood. That's a guesstimate.

19 THE COURT: If we get to four o'clock or later I will
20 not do arguments and the charge until in the morning and we
21 will try to work with that. I was just trying to get some
22 idea. I do what to run through the charge with you but I
23 don't have much time to do that at this point. It took a
24 little longer than I thought on the motions. All right
25 let's do this. I want to run through the charges with you.

1 MS. HERVEY: If he's done at four we can do it at four
2 and argue and charge in the morning.

3 THE COURT: Yea if we are going to go that far. Well
4 let's kind of plan in that direction. We will do that but
5 by the courtroom clock it's already about a quarter till
6 one. I told the jury to be back I think at one thirty.
7 Let's just go ahead and let's plan on being ready to go at
8 one forty-five. They can wait a few minutes in the jury
9 room until we can get started. So let's just plan to start
10 at one forty-five. I had one request to charge from the
11 solicitor. Do either of you have any other request to
12 charge?

13 MS. HERVEY: Not at this point. I will look at it
14 again and maybe I will look at it at ten. I don't know
15 what your normal definition of attempt is just to make
16 sure.

17 THE COURT: I am going to run through that briefly
18 with you before we get to that.

19 MR. BOYD: Your Honor, I tried some of these in front
20 of you before and your general charge is generally what I
21 would want. I don't know of any additions.

22 THE COURT: What I am going to do is at some point in
23 time though before I charge the jury even if we - I don't
24 think we will wind up going forward this afternoon but why
25 don't we just go through the elements of these offenses

1 with you and my charge on each of these charges and be
2 sure. I think you are familiar with my general charges but
3 I want to go through the specific language of these charges
4 and make sure we are all on board on those. Thank you. We
5 will resume at one - let's try to get started promptly at
6 one forty-five. Thank you.

7 (COURT RECESSED FOR LUNCH AT 12:45 P.M.)

8 (BACK ON THE RECORD AT 1:45 P.M.)

9 THE COURT: All right, counsel, we are back on the
10 record and I am going to deny the motion to directed
11 verdict on these other indictments on attempted CSC 1st for
12 now. I believe there is evidence from the alleged victim
13 one that the defendant was trying to force her to have
14 sexual relations with her and that she tried to get away
15 from him and go back to her room or whatever and he grabbed
16 her hands and was still trying to force her to do that and
17 that a car - an automobile drove up with her mother and her
18 friend and that based on that he turned her loose and she
19 ran into her room and locked the door so based on that I
20 won't let it go forward. I certainly invite defense if
21 you wish to renew the motion again tomorrow then I will
22 study it further and see if we can find any other law. I
23 haven't had much opportunity to do that at this point but
24 based on the cases handed up by the state I find that these
25 cases indicate that threats to do harm to the alleged

1 victim or to someone else could constitute aggravated
2 coercion in so far as CSC 1st and his concern that that
3 would be sufficient. In so far as the incest charge is
4 concerned again I deny your motion for directed verdict at
5 this time. The alleged victim in the case was of age to
6 consent at times covered by the indictment and so if she
7 did not - essentially was a willing participant even though
8 to the extent that there was no physical force used and she
9 didn't try to resist or report that then essentially to
10 that extent it is somewhat two parties having sex together.
11 I think that falls within the definition of incest if she
12 was a willing participant in it even though you know
13 because of the relationship and she didn't resist it in any
14 way would fall within that definition. Again I invite you
15 to renew that motion at the end of the defense case and
16 hopefully have some more opportunity to look at it and see
17 if I can find anything else. Thank you. Is there anything
18 else we need to address before we bring the jury back in
19 from either side?

20 MS. HERVEY: No, sir.

21 THE COURT: Defense?

22 MR. BOYD: No, sir.

23 THE COURT: Please bring the jury in now.

24 (JURY PANEL ENTERING THE COURTROOM AT 1:55 P.M.)

25 THE COURT: Good afternoon Mr. Foreman, ladies and

1 gentlemen of the jury, I hope you enjoyed your lunch. We
2 are ready now to resume with the trial.

3 Counsel ready to proceed?

4 MR. BOYD: Yes, sir. Your Honor, at this time I would
5 publish a stipulation between the parties.

6 THE COURT: We don't need to make an exhibit I don't
7 believe. I think if you wish to publish it to the jury and
8 you are in agreement you can do that.

9 MR. BOYD: Yes, sir. I was just going to mark it as a
10 ID so it will be in the record.

11 THE COURT: All right that's fine. I think when you
12 put it on the record if you are going to do that you can do
13 that. You can mark it with the ID.

14 MR. BOYD: Okay.

15 (WHEREUPON: DEFENDANT'S EXHIBIT NUMBER THREE MARKED
16 FOR IDENTIFICATION.)

17 MR. BOYD: It is stipulated between the parties that
18 if Doctor Agnes Shultz were present she would testify as
19 follows. I am a board certified pediatrician in the State
20 of South Carolina. I am a sole practitioner at Cheraw
21 Pediatrics in Cheraw, South Carolina. Tabitha Efird was a
22 patient of mine from August 15th, 1996 until May 29th, 2001.
23 During my treatment of Tabitha I conducted a routine
24 physical examination of Tabitha Efird. Tabitha was mainly
25 treated for normal childhood illnesses consistent with her

1 age including allergies. Allergies testing confirmed that
2 she is allergic to latex among other common allergies.
3 During the course of normal routine physicals on August
4 15th, 1996; January 7th, 2000; March 22nd, 2000; and March
5 the 5th, 2001 I noted her genitals to be a traumatic with no
6 lesions. This means I noted no external signs of rash,
7 inflammation, or injury to this area. I did not conduct an
8 internal examination of any kind to her genitals, vagina,
9 or any other exam which would otherwise detect sexual abuse
10 nor have I been trained to do so so I cannot offer any
11 opinion as to whether the sexual abuse occurred. The
12 defense would call Heidi Captit.

13 If you would come forward and be sworn please.

14 MADAME CLERK: Please raise your right hand and place
15 your left on the bible.

16 (WHEREUPON: HEIDI CAPITIT
17 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

18 MADAME CLERK: Thank you, you may be seated.

19 HEIDI CAPITIT BY MR. BOYD:

20 Q. State your name please.

21 A. It's Heidi Captit.

22 Q. Okay. And where do you live?

23 A. I live in Fort Mill, South Carolina.

24 Q. All right. Are you employed?

25 A. I am employed with Union County the school system.

1 Q. Okay. And is that Union in South Carolina or North
2 Carolina?

3 A. It's Union County, North Carolina.

4 Q. Okay. What do you do for the school system?

5 A. I teach art.

6 Q. And what age group do you teach art to?

7 A. Middle school.

8 Q. How long have you been a teacher?

9 A. 1999. The fall of 1999.

10 Q. And prior to working in the Union County school system
11 did you work in any other school system?

12 A. I did. I worked at Charlotte, Mecklenburg and I also
13 worked in Marlboro County.

14 Q. All right. And do you know Darrell and Christine
15 Efird and their daughter Tabitha?

16 A. Yes I do.

17 Q. Okay. When did you first - approximately how long
18 have you known them?

19 A. I believe that I met Christine probably when I moved
20 down to the south to teach at Marlboro County. I taught at
21 Wallace Elementary Middle School and that was in September
22 of '99.

23 Q. And how did you meet Christine?

24 A. She worked in the school system. She was an aide in
25 the school system that I worked for.

1 Q. Okay. And when - did you become friends with the
2 Efird family?

3 A. I did. Over a period of time I became friends with
4 first Christine and then the rest of the family.

5 Q. And so how long would you say you have known Tabitha?

6 A. I am going to say that I didn't know her right away.
7 I knew of who she was when I first moved down here and I
8 moved to the school system because she was very outgoing
9 and very active in the school. In Wallace Elementary
10 Middle School she was involved in the show choir and
11 singing and dancing. So I knew who she was but I didn't
12 know who she was right away because I didn't actually teach
13 her.

14 Q. Okay. And as you became to know the Efird family did
15 you become to know her better?

16 A. Yes I did.

17 Q. Okay. And would - how would you see her outside the
18 school system; on what occasions would you see her; what
19 type of things would you do?

20 A. We - sometimes Christine and Tabitha and I would go
21 shopping. They would come over and go to the pool with me.
22 We would get together and maybe play cards in the evening
23 with the family; that sort of activity.

24 Q. Okay. And how long - how long have you lived in the
25 Fort Mill area?

1 A. I moved to - well actually I moved to the Charlotte
2 area when I got married in 2002. About a year and a half
3 later we built a house in the Fort Mill area and moved into
4 our house so about a year and a half later.

5 Q. Okay. All right. And did the Efird's move to Fort
6 Mill before you did or - -

7 A. They moved - they did. They moved probably a year
8 prior to me moving to Fort Mill.

9 Q. All right. Now while you were in the - out in the
10 Marlboro County area did you ever see Tabitha and her
11 father together?

12 A. I didn't spend a lot of time in the house during that
13 time. I might have seen them you know when I ran into the
14 house and ran out. I didn't see a lot of interaction at
15 that time not when I was in Marlboro County.

16 Q. Okay. How about after you came to Fort Mill and they
17 came to Fort Mill did you see more interaction at that
18 time?

19 A. I did see more interaction once they moved to Fort
20 Mill.

21 Q. Okay. And what kind of times or events would you see
22 them?

23 A. We would get together more on weekends because we
24 lived in North Charlotte so we might get together and go
25 see a movie or you know play some Uno or something. You

1 know family activities or maybe Christine and Tabitha and I
2 might go shopping.

3 Q. Did Tabitha ever come to see you alone?

4 A. I had - yea I've gone out with Tabitha by myself.

5 Q. Okay. And did - did you ever see any occasions - well
6 let me - in observing the interaction between Tabitha and
7 her father did she ever appear to try to avoid him?

8 MS. HERVERY: I'm going to object to him leading her
9 in this manner.

10 THE COURT: Please avoid leading, counsel.

11 MR. BOYD: All right.

12 Did you ever notice anything unusual between Tabitha
13 and her father?

14 A. Not that I can recall. I don't recall anything that's
15 - you know that stands out in my memory.

16 Q. What kind of relationship did Tabitha have with her
17 mother?

18 A. There was a lot of fighting; a lot of bickering; very
19 - sometimes volatile at times. They just didn't get along.

20 Q. Was there an occasion in which Christine and Tabitha
21 went to Maine with you?

22 A. There was.

23 Q. Okay. And do you recall approximately when that was?

24 A. That was the summer of 2001.

25 Q. And is that a trip you make on a regular basis?

1 A. I do. I travel to Maine every year. That's where my
2 family is. That's where I'm from so everybody that I'm
3 associated with with my family is in Maine or in the New
4 England area.

5 Q. All right. And did - when you were on that trip who
6 went with you at that time?

7 A. In 2001? Christine and Tabitha did.

8 Q. Okay. And how long was the trip? How long did you
9 all stay up there?

10 A. Usually when I travel to Maine I travel for two to
11 three weeks so I am going to say in-between two or three
12 weeks.

13 Q. Okay. And was there any situation on that trip that
14 developed with Tabitha?

15 A. There was a time I - Tabitha must have been home sick
16 and she wanted to go home but it wasn't quite time when we
17 were going to go home and she insisted that we go home and
18 I just wanted to hold off for a few more days because I
19 needed to see my family in the southern part of the state
20 and spend some more time with them and she - she wanted to
21 go home.

22 Q. Okay. Was Darrell up there in Maine?

23 A. No. Darrell did not go with us.

24 Q. And what was she wanting - how was she planning on
25 getting home?

1 A. She was either one I'm going to call her father to
2 come get her or she was going to hitch hike home and we
3 talked her out of doing either one. Just to wait because
4 we would be leaving in a few days.

5 Q. Now let me ask you do you recall seeing the Efird
6 family during the Christmas period of 2005?

7 A. Yes.

8 Q. Okay. At that time did you have occasion to go
9 anywhere with Christine?

10 A. I did. I did.

11 Q. And did - during that period of time how many times
12 did you go anywhere with Christine?

13 A. During the Christmas season of 2005?

14 Q. Yes.

15 A. We - my husband and I were preparing to go back to
16 Maine because there had been a death in the family prior
17 that year so we were really busy. And I think I asked
18 Christine if she would go shopping with me to help prepare
19 some photos for Christmas gifts. I had to enlarge them and
20 do some other things to them.

21 Q. Okay. And did you all go anywhere?

22 A. We did. We went to Sam's Club that morning late -
23 later that - one morning during my break.

24 Q. Okay. And did you go anywhere else later?

25 A. Later in the day?

1 Q. Yes.

2 A. Well what happened was I picked her up sometime it was
3 probably late morning because that's usually when I get out
4 of the house when I'm on break - it's usually later in the
5 morning - and picked her up; went to Sam's Club to work on
6 some photos. While we were at Sam's Club we got a call
7 from Tabitha saying that Barbie had come to visit and bring
8 Christmas gifts if we could please come back home. So we
9 did. We left you know the photos at Sam's Club and we were
10 going to come back. So we went home and later returned
11 back to Sam's Club to finish what - the photo's that I had
12 started.

13 Q. Okay. And then after you left Sam's Club the second
14 time where did you go?

15 A. We went to my house. I wanted to do a little bit of
16 baking before we left for break to hand it out to various
17 people. So we went home and we made whoopee pies and in
18 the course of being there Tabitha called and said that - -

19 MS. HERVEY: Your Honor, I object to anything that
20 Tabitha said as being hearsay.

21 THE COURT: Sustain.

22 BY MR. BOYD:

23 Q. As a result of the conversation with Tabitha what did
24 you do?

25 A. We finished up what we were doing and we went back to

1 the house.

2 Q. Okay. And when you went back to the house what
3 happened at that time?

4 A. At the - -

5 Q. When you say the house what are you referring to?

6 A. Talking about Christine's house.

7 Q. Okay.

8 A. When we drove into the yard Tabitha came running out
9 of the house carrying the phone because there was a message
10 that she wanted her mother to hear on the telephone that
11 was from one of her really good friends that wasn't so
12 nice. So she was really upset about this message that was
13 on the phone that she wanted us to hear so she came running
14 outside to greet us at the car.

15 Q. And so did you go in the house?

16 A. We did go in the house.

17 Q. Okay. And where was Tabitha after that?

18 A. She was around us because she wanted us to hear this
19 message on the phone.

20 Q. Okay. And did - other than her - the message on the
21 phone did she appear to be - what was her mental state
22 appear to be?

23 MS. HERVEY: Your Honor, I object to asking her
24 opinion. She can obviously to what she observed but I
25 don't think she's qualified to go into a mental state.

1 THE COURT: Yea you can rephrase it, counsel.

2 BY MR. BOYD:

3 Q. What did her demeanor appear to be besides the phone
4 call?

5 A. I just - I - the only thing I recall is that her
6 coming running out with the phone and that she was just
7 upset about the message because this person usually didn't
8 talk that way or speak that way and it just - it wasn't a
9 nice message.

10 Q. And after that date did you go back to the Efird home
11 anymore during that Christmas break?

12 A. Not while - not during that time period because we
13 were flying to Maine so we had flights that we needed to
14 catch. We may have gone back after we got back from Maine.
15 I don't recall because it was such a busy - it was such a
16 busy schedule.

17 Q. Thank you. That's all the questions I have.

18 MS. HERVEY: Just briefly, your Honor.

19 HEIDI CAPITIT BY MS. HERVEY:

20 Q. Ms. Captit, we've never met before. You are just a
21 friend of Christine's, is that why you're here?

22 A. Yes.

23 Q. Okay. And would it be fair to say that of the Efird
24 family Christine is really your friend, your friend of her
25 family beyond that but that's the crux of your relationship

1 with that Efird family, is that correct?

2 A. Pretty much Christine was the start of the friendship
3 of us.

4 Q. You're two women about the same age; you both are
5 teachers; you have a lot in common correct?

6 A. Yes I would say so.

7 Q. And you say that at least on one occasion that you
8 went somewhere with Tabitha alone. That was a rare
9 occasion was it not?

10 A. Not so much. Sometimes I - I mean I would call her up
11 when she would come home from break and there was one day I
12 took her out to have a dessert or a luncheon just so that
13 we could talk and you know catch up because she had been
14 away at school.

15 Q. So that's obviously when she even went away to
16 college, correct?

17 A. I'm sorry.

18 Q. That's obviously then once she went away to college?

19 A. When she went away to college. I don't recall if she
20 was in college or high school when you know. There was a
21 time when she came over to the pool. I just don't recall
22 all you know all the little dates.

23 Q. But you are seeing Christine obviously are on a much
24 more frequent basis?

25 A. Yes.

1 Q. That would be fair to say?

2 A. Yes.

3 Q. And you are talking to Christine on a much more
4 frequent basis?

5 A. Yes.

6 Q. Talk to each other on the phone do you not?

7 A. Yes.

8 Q. Fair to say at least once a week if not more than
9 that?

10 A. At least once a week.

11 Q. Is it fair to say that you talk daily or every other
12 day?

13 A. No. Definitely not during the school year.

14 Q. This trip to Maine that you stated that you took with
15 Christine and Tabitha, do you recall when during the summer
16 break that you would have made that trip? Is it later in
17 the summer or earlier?

18 A. Yes. It was around the Fourth of July.

19 Q. And when was that in relation to the Efird's move to
20 Fort Mill?

21 A. I think that they had just moved up there. I don't
22 know the dates of their move. I know I helped them move
23 but I don't know the specific dates but I know that they
24 were in Fort Mill.

25 Q. And do you recall Darrell traveling back to Cheraw or

1 back to Marlboro County to finish working before the
2 transfer came through?

3 A. Yes.

4 Q. You were aware of that?

5 A. Yes.

6 Q. All right. And in addition to that - were you stating
7 that, when Tabitha called and she was home sick she's a
8 teenager in the middle of high school that just survived a
9 move is that correct to say?

10 A. Yes.

11 Q. So that event in and of itself did that appear to
12 upset or destabilize Tabitha in any way?

13 A. I guess that whenever you move - I'm not sure; I can't
14 speak for her emotions and her feelings about that but if I
15 were to put myself in that situation I would say that you
16 know that may upset me a little bit if I had to move and I
17 had to adjust to a new environment.

18 Q. Well you remember her being upset about some phone
19 calls in 2005 but you don't have any recollection whether
20 or not this move upset her in any way in the summer of 2001
21 is that fair to say?

22 A. That's fair.

23 Q. And you stated that she wanted to go home. Was she
24 expressing a desire just to see her father or did she want
25 go back to her friends and her family and that kind of

1 thing?

2 A. No.

3 Q. Was she that specific?

4 A. She wasn't that specific. She just wanted to go home.

5 Q. And why is it that you remember this particular trip
6 to Sam's Club versus any other day that you had a visit
7 with the Efird's the Christmas of 2005?

8 A. Well there had been a death in our family so that year
9 sticks out. There was an immediate death and there was a
10 lot going on and the friend that had called Christine was
11 also a very good friend of mine which I had never heard
12 talk that way.

13 Q. So it's really more that phone call that you remember
14 than anything else about that event?

15 A. Well not - not really because I thought it was odd
16 that Tabitha come running out of the house with the phone
17 that she couldn't wait for Christine to get in the house to
18 listen to the message.

19 Q. And do you know what date that was?

20 A. I do not know the date.

21 Q. Do you know if it was before after Christmas? Were
22 you in Maine for the actual Christmas holiday?

23 A. I don't know. I just know that I was on break from
24 school. I'm assuming that we were going to Maine for the
25 holiday to spend the holiday with our families but I can't

1 tell you specifically because Christmas break is two weeks.

2 Q. Okay. But do you remember being with your mom or your
3 brother on Christmas morning or anything of that year?

4 A. Well between my husband's and my family there's - we
5 have to be in two different places so traveling back and
6 forth in the State of Maine four hours in one way and four
7 hours in the other direction so you know we're trying to
8 juggle families and it's very hectic once I get up there.

9 Q. Was it a white Christmas that year because I suppose
10 in Maine every Christmas is white?

11 A. No. Every Christmas is not white and most of the time
12 the Christmas doesn't - there is not a lot of snow on the
13 ground. It's very rare that there's a ton of snow at
14 Christmas time. Usually it comes a little later in the
15 year.

16 Q. And you stated I believe that you don't recall if you
17 visited them at all after Christmas or after you got back.

18 A. I don't because there is nothing for me to mark it. I
19 don't have anything that stands out in my mind.

20 Q. So the day of Christmas itself doesn't stand out
21 whether you visited them later or after Christmas doesn't
22 stand out but you do happen to specifically remember this
23 day?

24 A. I do very specifically yes.

25 Q. You have no knowledge whatsoever whether that day is

HEIDI CAPITIT: REDIRECT EXAMINATION BY MR. BOYD
PAIGE EFIRD: DIRECT EXAMINATION BY MR. BOYD

1 the day that Tabitha said her father tried to rape her?

2 A. I don't know.

3 Q. Okay. Nothing further.

4 HEIDI CAPITIT BY MR. BOYD:

5 Q. Let me ask you during that Christmas break time was
6 there any other time during that Christmas break that you
7 and Christine went somewhere and came back to Christine's
8 house?

9 A. Not that I can recall no.

10 Q. Thank you. That's all the questions I have.

11 MS. HERVEY: Nothing further.

12 THE COURT: Thank you, ma'am, you may stand down now,
13 ma'am.

14 (WITNESS LEAVING THE WITNESS STAND.)

15 MR. BOYD: We call Paige Efird.

16 MADAME CLERK: Please raise your right hand.

17 (WHEREUPON: PAIGE EFIRD,
18 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

19 MADAME CLERK: Thank you.

20 PAIGE EFIRD BY MR. BOYD:

21 Q. State your name please.

22 A. Paige Efird.

23 Q. Okay. And where do you live?

24 A. Cheraw, South Carolina.

25 Q. All right. And who are you married to?

1 A. Wade Efird.

2 Q. And who is Wade Efird?

3 A. Darrell's brother.

4 Q. And how long have you been married to Wade
5 approximately?

6 A. Let's see we've been married about ten years but we
7 been together about fifteen.

8 Q. Okay. And since you and Wade have been together have
9 you known Tabitha ever since that time?

10 A. Yes.

11 Q. You need to give a verbal answer.

12 A. Yes.

13 Q. Okay. Where do you live at this time again?

14 A. In Cheraw.

15 Q. Cheraw, okay. And how long have you lived in the
16 Cheraw area?

17 A. All my life.

18 Q. All right. And how long have you known Darrell and
19 Christine?

20 A. The time me and Wade's been together fifteen years.

21 Q. Okay. And how long have you known Tabitha?

22 A. The same amount of time.

23 Q. The same amount. And Tabitha had - what kind of
24 relationship did you have with Tabitha?

25 A. We had a pretty close relationship. I mean she would

1 come over to the house and you know we talked a good bit.
2 She would tell me a lot of things as far as when her and
3 her mom would have fights and stuff like that. You know we
4 had a pretty close relationship.

5 Q. Did she - how far away when you were in Cheraw would
6 you live from them?

7 A. About twenty minutes away give or take.

8 Q. And when Tabitha would come to your house was she
9 always with someone or was she - did somebody bring her or
10 was she alone - -

11 A. Most of the time I would go get her and sometimes her
12 parents would bring her or you know something like that.

13 Q. Okay. What kind of relationship did Tabitha appear to
14 have with her mother?

15 A. They fought all the time.

16 Q. And did you ever observe any of the fights?

17 A. Yea.

18 Q. What kind of relationship did Tabitha appear to have
19 with her father?

20 A. To me they seemed to get along pretty good. I mean
21 they had their fusses and fights too but most of the time
22 their fights were you know between the mom and her.

23 Q. All right. When Tabitha would be with you alone how
24 would she get home?

25 A. Most of the time I would take her back and forth but

1 sometimes her mom and dad would come and get her.

2 Q. Okay. And did she ever call anybody to pick her up?

3 A. Sometimes yea.

4 Q. And who would she call to pick her up?

5 A. She would call her mom and dad's house you know.

6 Sometimes her dad would come pick her up but most of the

7 time it was both of them or either you know it varied.

8 Most of the time both of them would come and get her.

9 Q. Okay. When she was a teenager what kind of
10 relationship - did you notice what kind of relationship
11 Darrell and Christine had?

12 A. They fought all the time.

13 Q. And did - not what specifically was said at this point
14 but did Tabitha ever discuss that with you?

15 A. Yes.

16 Q. Okay. Did you ever discuss with her concerning what
17 would happen if her parents split up?

18 A. Yea. One time when her parents were fussing a good
19 bit and she had told me that if they split up - -

20 MS. HERVEY: Your Honor, I object to anything that
21 Tabitha said.

22 MR. BOYD: Your Honor, I think this was asked of a
23 witness on direct - I mean on cross examination. It does
24 go to - -

25 THE COURT: Approach please.

1 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
2 THE JURY.)

3 BY MR. BOYD:

4 Q. What did Tabitha tell you about that situation?

5 A. She had told me that if her parents split up that she
6 wanted to go with her dad. That you know if they split up
7 that she felt that she would you know get better care or
8 whatever with her dad because her mom and her had you know
9 fussed and fought all the time.

10 Q. And did you - did you ever have a discussion with
11 Tabitha or did you all ever talk about her virginity?

12 A. Yes.

13 Q. What did she tell you concerning that?

14 A. We were all time discussing like boys and stuff like
15 that and she told me - I would always joke with her about
16 you know she needed to be good and not have sex and stuff
17 like that and she would tell me that she would want to save
18 her virginity until she got married or until she got older
19 and all; that she wanted to save that for the right person.

20 Q. Okay. Did you have after Darrell was arrested and
21 these charges came forth that you had any conversations
22 with Tabitha since that time?

23 A. Yea Tabitha had called me and told me that she wanted
24 to let me know herself that you know her mom and dad.

25 MS. HERVEY: I'm going to object. This is going

1 beyond the scope of what was brought out in direct.

2 THE COURT: All right, counsel, approach just a minute
3 and let me see where you're going.

4 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
5 THE JURY.)

6 BY MR. BOYD:

7 Q. I believe you testified that Tabitha called you after
8 these charges were brought, is that correct?

9 A. Right. Tabitha - -

10 Q. And she was letting you know that charges had been
11 brought, is that correct?

12 A. Right. She was calling to let me know that she had
13 had her mom and dad arrested and she told me that what had
14 gone on and everything. I was flabbergasted you know.

15 Q. Now don't go into any more of that at this point. Now
16 did you talk to her again?

17 A. Yea. If I remember correctly I think I called her the
18 next day to check on her and make sure she was okay you
19 know and see if she needed anything.

20 Q. And let me ask you did she make any statement to you
21 about suing her father for money?

22 A. She said something to the effect that if she couldn't
23 get him for the charges or whatever that she might could
24 get monetary out of him or something to that effect.

25 Q. Thank you. That's all the questions I have.

1 MS. HERVEY: Just briefly, your Honor.

2 PAIGE EFIRD BY MS. HERVEY:

3 Q. Now, Ms. Efird, you and I have never met and we have
4 never spoken before that day, is that correct?

5 A. Right.

6 Q. And you are married to I believe you said Wade Efird?

7 A. Yes, ma'am.

8 Q. And would that be the defendant's brother? Are they
9 full brothers or step brothers?

10 A. Full brothers.

11 Q. And are there any other siblings?

12 A. Yes. A sister Cindy in Pennsylvania.

13 Q. So those three children and that's it?

14 A. Right. The other ones are deceased.

15 Q. The other ones are deceased. So we add other siblings
16 but they have since passed?

17 A. Right.

18 Q. Are your parents still alive or are the Efird parents
19 still alive?

20 A. Yes, ma'am.

21 Q. And do they live in Cheraw County; do you all kind of
22 live in the same community?

23 A. Their dad lives in Cheraw; the mother lives in Rock
24 Hill.

25 Q. Here in Rock Hill?

1 A. Right.

2 Q. And you stated that once you came to - to become
3 married to Wade or dating Wade you became to know Tabitha
4 and that kind of thing?

5 A. Yes.

6 Q. Do you have any children of your own, Ms. Efird?

7 A. I have two.

8 Q. You have two children. Are they Tabitha's age or are
9 they older or are they younger?

10 A. Younger.

11 Q. Would she ever play with them or baby sit them - - -

12 A. Oh yes.

13 Q. - - - or was she allowed to do that?

14 A. Oh yes.

15 Q. So she would baby sit with them or which one?

16 A. Right, both.

17 Q. Both. Okay. And what is the age difference between
18 your siblings?

19 A. My oldest is thirteen; my youngest is ten.

20 Q. Currently right now so there is how many years between
21 them and then Tabitha? Would that be about six or seven?

22 A. Tabitha is what twenty now?

23 Q. There is a pretty substantial break between the two of
24 them?

25 A. Yes.

1 Q. All right. Is Wade the younger sister - younger
2 brother, I'm sorry, or Darrell?

3 A. Wade's the oldest.

4 Q. Wade's the oldest. And you stated that you recall at
5 least on some occasion Tabitha expressing her desire to you
6 to save her virginity for marriage?

7 A. Right. Or the right person. The right person or a
8 marriage.

9 Q. The right person or marriage. And in that discussion
10 you are generally talking about starting to date boys and
11 teenage love and all that kind of thing is the context of
12 this conversation is it not?

13 A. I guess.

14 Q. Did you ever ask her if she was a virgin or did she
15 just tell you that she wanted to save herself for marriage?

16 A. Yes I specifically asked her several times.

17 Q. And did you ask her believing that she had lost her
18 virginity to her father at eight or were you just curious?

19 A. We were just talking in general stuff.

20 Q. And you stated that at some point Tabitha told you
21 that if she wasn't able to convict her father of these
22 charges that she may sue him?

23 A. Right.

24 Q. Is that your recollection?

25 A. For monetary yea.

1 Q. Is Darrell and Christine do they own their own home?

2 A. No.

3 Q. Do they - how many cars do they have?

4 A. Two I think.

5 Q. And are they new cars or fancy cars or what?

6 A. That's why it kind of shocked me. I was like what
7 kind of money because they don't have any.

8 Q. So if she's suing there is really nothing there to get
9 would be fair to say correct?

10 A. Right. Except for maybe a 401 or something. I don't
11 know.

12 Q. But you stated her first concern was to convict him
13 and then if that wasn't successful then she would sue?

14 A. Right.

15 Q. Nothing further.

16 MR. BOYD: Thank you. That's all I have.

17 THE COURT: You may step down, ma'am. Thank you.

18 MR. BOYD: I call Darrell Efird.

19 MADAME CLERK: Please raise your right hand; place
20 your left on the bible.

21 (WHEREUPON: DARRELL EFIRD,
22 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

23 MADAME CLERK: Thank you, you may have a seat.

24 DARRELL EFIRD: Thank you.

25 DARRELL EFIRD BY MR. BOYD:

1 Q. State your name please.

2 A. My name is Darrell Efird.

3 Q. Okay. And where do you live?

4 A. I live in Fort Mill, South Carolina.

5 Q. And do you work?

6 A. Yes, sir. I am employed right now at the Arvin-
7 Meritor here in York.

8 Q. Okay. And the - and you are married to Christine, is
9 that correct?

10 A. Yes, sir, I'm married to Christine Efird.

11 Q. And Tabitha is the daughter of you - your and
12 Christine's daughter, is that correct?

13 A. Yes, sir, that is correct.

14 Q. The - how long have you lived here in York County?

15 A. Since 2001.

16 Q. Okay. And where did you live before that?

17 A. Wallace, South Carolina in Marlboro County.

18 Q. And where did you grow up?

19 A. I grew up in North Carolina a place called

20 Cottonville, North Carolina in Stanly County.

21 Q. And how old were you when you ended up in Wallace?

22 A. I was in my early twenties. I started working for INA
23 in '83 but I had lived in Marlboro County before that and
24 worked for My Palmetto Manufacturing in '81 and '82 and
25 then I moved back and stayed with my father a short period

1 of time and got a job at INA, USA and then got my own place
2 in Cheraw.

3 Q. How old are you now?

4 A. I'm forty-eight.

5 Q. You're forty-eight years old?

6 A. Yes, sir.

7 Q. And how old were you when you started working at INA?

8 A. Well it was in 1983. I'm forty-eight now I guess I
9 was in my early twenties.

10 Q. Okay. And how long did you work for INA?

11 A. Twenty-three years.

12 Q. And when did your employment from INA terminate?

13 A. That was - when they incarcerated me I had the
14 opportunity to call and talk to my boss from here at the
15 detention center and talked to her about you know I needed
16 to take some vacation days. I had eleven vacation days and
17 I could also take a personal leave but - and she said I
18 wouldn't have a problem getting that you know for the
19 vacation days that I had. Then she didn't see any problem
20 with me getting my personal days if I needed them which
21 would you know could be up to a year. If I'm not mistaken
22 that's in the handbook. It's according to what the
23 personal leave is.

24 Q. Now when you talked about leave that was when you were
25 arrested on these charges - - -

1 A. Yes, sir.

2 Q. - - - is that correct?

3 A. That is correct.

4 Q. And you got out on bond, is that correct?

5 A. Yes, sir.

6 Q. Okay. And were you terminated from INA after that?

7 A. Yes, sir. I was terminated before. I didn't know it
8 until my wife come and picked me up and my father was with
9 her and she told me then.

10 Q. All right. Let me ask you when Tabitha was a child
11 what kind of relationship did you and she have?

12 A. Well I would call it hopefully a normal family father
13 and daughter relationship. I know that I probably was more
14 lenient than her mother wanted to be because of the way I
15 was brought up and the way her mother grew up. You know I
16 guess I was you know - I knew how I was when I was a kid.
17 I know how kids are going to be; they are going to be a
18 little rowdy. They are going to do things that you know we
19 don't approve of but I thought that she was mature enough
20 for her age to do some of the things she wanted to do. I
21 didn't let her do everything. And of course her mother and
22 I talked about everything that most of the time that she
23 wanted to do that we allowed her to do.

24 Q. Okay. And what kind of relationship did Tabitha and
25 her mother have?

1 A. It was kind of rocky. As Tabitha got older even when
2 she was a kid her and her mother didn't get along real
3 good. I mean a mother and daughters I guess relationship.
4 As she got older she argued a lot with her mother about
5 just different things. More so than - as she got older
6 more so than she did with me about stuff.

7 Q. Okay. And what kind of relationship had you and
8 Christine had during the course of your marriage?

9 A. Every marriage is different. I think we had a fairly
10 good marriage. There has been times that we've argued a
11 lot about money. Until 2004 we realized that Christine was
12 bi-polar which caused a lot of her going out and spending
13 money that she really couldn't help. I mean she did it
14 because it was just a compulsion to do it but until 2004 we
15 didn't know that's what was causing it. And in 2004 she
16 started taking medication which helped her a lot. I mean
17 she was still getting her medication regulated on like
18 every month when she sees her doctor. If it needs to be
19 increased she is increasing it which helps her to control
20 the compulsions that she has.

21 Q. Okay.

22 A. Other than that you know I thought our relationship
23 was pretty good.

24 Q. All right. And did you all have some heated arguments
25 about money?

1 A. No we had many a - that's mostly all the arguments we
2 had all during our marriage basically was just about how
3 money was spent; how she wanted to spend the money; and
4 what she spent the money on.

5 Q. Now what kind of student was Tabitha?

6 A. Tabitha was always a good student. I mean in
7 kindergarten, elementary, everybody that's had Tabitha even
8 in high school has always complimented us about how good
9 our kid - how good Tabitha was; how well behaved; how she
10 performed in the class room; she participated; she made
11 real good grades; she went beyond you know I guess - I
12 guess they would say a normal student. I mean she really
13 you know they said that she was just a - you know a real
14 good person to have in their class and they enjoyed having
15 her there.

16 Q. Was she involved in extra curricular activities?

17 A. Yea she was involved in like in middle school band,
18 show choir. I know she did mock trial. In high school up
19 here I think she just participated in chorus I believe.

20 Q. Okay. And she went - started high school where?

21 A. Well she started in Marlboro County and she didn't
22 like it. She didn't think it was challenging enough. She
23 thought the school was not as good as it could be.

24 Q. All right. And after she came and became a student at
25 Fort Mill High what kind of grades did she make?

1 A. She made all A's and B's. She really liked it - the
2 teachers. She really liked the school. I never heard her
3 not getting along with anybody in any of her classes. She
4 seemed to enjoy being here in Fort Mill.

5 Q. And as far as when she was in high school did she have
6 friends?

7 A. Yes. She had one real close friend, a friend that she
8 went over to her house a lot and stayed, went places with,
9 shopping. She had other friends too. Most of the other
10 friends we didn't know as good as this one friend that she
11 had.

12 Q. Did she date?

13 A. Yea she dated. She dated like the neighborhood boys
14 that - the neighbor that we had when we lived on Holbrook
15 she dated those two. The two brothers she dated one and
16 then the other but she had other dates also.

17 Q. Now when she graduated from high school did - was it
18 discussed where she would go to college?

19 A. She has always wanted to go to Charleston and be in
20 the medical field. We have always watched ER together
21 every Thursday and she loved the ER and she loved to be
22 working - that's what she always said she dreamed of being
23 a ER doctor. That's what she's always told us that she
24 wanted to do so when she decided to go to the - she wanted
25 to go to the College of Charleston but her mother and her

1 sat down and looked at what we could afford; what college
2 she could get into with her grades. She was accepted at
3 the College of Charleston and USC and she chose the College
4 of Charleston.

5 Q. Okay. And did you approve of that decision?

6 A. Yes, sir, I did because I knew that's what she wanted.

7 Q. All right. Did she enter into the College of
8 Charleston?

9 A. Yes, sir, she did.

10 Q. How was her college education being financed?

11 A. Well she got a life scholarship which you know was
12 great.

13 Q. What is a life scholarship for those who may not know?

14 A. Well if she gets a life scholarship was paid like -
15 I'm not sure of the total amount, twenty-five hundred
16 dollars or something like that - she received because of
17 her grade point average when she graduated and I was told
18 that not all the people get those life scholarships. But
19 she received hers when she graduated.

20 Q. Okay. And how was the remainder of her education
21 being financed?

22 A. Well we talked about it and I was going to take parent
23 student loans and pay - help pay for her college and once
24 she got out she was going to help and pay us back. At the
25 time that we first took the first loan we didn't realize

1 that we had to pay the interest starting before she got out
2 of school. Nobody told us that. I mean we didn't even
3 know it until later on when we got our notice in the mail
4 saying that the interest was due on the first loan and I
5 think at that time we had already taken out the second loan
6 - parent student loan. I even called and talked to the
7 people in the government loan department so I mean it's on
8 record and I asked them to have it deferred and I deferred
9 the payments about - I think I deferred a year on the
10 interest payments.

11 Q. Did you notice any change in Tabitha after she went to
12 college?

13 A. To start off with no until the later of the semester
14 it seemed like she was complaining about having problems in
15 her dorm with her dorm mates and especially the one that
16 was dorming with her. Then we started seeing a notice of
17 her grades really failing I mean falling. She told us that
18 she had met a person that she was - -

19 MS. HERVEY: Your Honor, I object as to what she may
20 have told her father.

21 Q. Actually she introduced us.

22 THE COURT: Hold on.

23 Q. I'm sorry.

24 THE COURT: There's an objection. Please don't
25 testify when somebody objects. I sustain the objection as

1 to any hearsay, counsel.

2 MS. HERVEY: Your Honor, may we approach just briefly?

3 THE COURT: Yes, ma'am.

4 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
5 THE JURY.)

6 BY MR. BOYD:

7 Q. Let me ask you did she introduce you to anybody?

8 A. Yes, sir, she introduced us to a lady that worked in a
9 coffee shop. She later on told me that she was helping
10 this lady - -

11 MS. HERVEY: Again objection to what she said and I'm
12 still not really sure were we're getting to the relevance
13 of the coffee shop?

14 MR. BOYD: Your Honor, this is not going to what's -
15 it's a question to what she was - affect it had on him and
16 what he did.

17 THE COURT: All right. I'll allow you a little leeway
18 there. Just make sure it's relevant to the case. Proceed
19 all right.

20 BY MR. BOYD:

21 Q. She had met and introduced you to a lady that worked
22 at a coffee shop?

23 A. Yes, sir, and she said that she had started helping
24 the lady catering parties and that they got to join into
25 the parties after the catering. And I asked her was

1 alcohol involved and she said yes so they got to drink
2 also. And when all of this started going on we noticed
3 that her grades started really to fall; she had almost
4 failed. She failed a couple of grades I mean a couple of
5 classes in that semester.

6 Q. All right. So would that be the fall of - I'm sorry,
7 the spring of 2000 - I'm sorry, the spring of 2005 that she
8 - -

9 A. I believe so. I'm not sure about the way the school
10 classes - semester fall.

11 Q. And did she come home for the summer after her first
12 year?

13 A. I believe she did.

14 Q. Okay. And did she work anywhere during that summer?

15 A. Yes, sir. She worked at INA, USA. I helped her get
16 her job that first summer.

17 Q. And then did anything happen in August of that year of
18 that summer?

19 A. Well she had had - I think that's the time when she
20 had her car accident.

21 Q. Yes.

22 A. She had had a car accident. She was going to go see a
23 friend late that night and a drunk driver pulled in front
24 of her. The car - it's amazing she didn't get hurt bad but
25 we had the ambulance take her on to the hospital and they

1 checked her out and they didn't say anything. They didn't
2 see anything that was wrong with her.

3 Q. And did - after that accident did you notice any
4 change in her behavior?

5 A. I noticed a little bit of change but it varied.
6 Christine had told me that it looked like there was a big
7 change in her. I guess you know I saw a lot of change too
8 and I just couldn't understand why. I mean she just - her
9 attitude, how she talked to everybody; how she talked to
10 me. Just she seemed like a different person.

11 Q. Now the - did she go back to the College of Charleston
12 the fall of 2005?

13 A. I believe so, sir, yes, sir.

14 Q. And did - did - how did her grades do then?

15 A. They weren't too bad. They were still bad. I mean
16 she had some - I think she had some D's and C's and she
17 still hadn't brought her grades up.

18 Q. All right. Did she come home during Thanksgiving of -

19 - -

20 A. No, sir.

21 Q. - - - of 2005?

22 A. She did not.

23 Q. And did she tell you why?

24 A. Yes, sir. I called and - no actually I think she
25 called me and she talked to me on the phone. She told me

1 she was wanting to stay with her boyfriend that was there,
2 a RA in her dorm that she was living in. I think there was
3 some discussion about you know she needed to come home for
4 Thanksgiving but she really wanted to stay so. I'm not
5 sure I probably - Christine and I probably talked about it
6 and decided to let her stay.

7 Q. All right. And after Thanksgiving did she come home
8 for Christmas break?

9 A. Yes, sir, she did.

10 Q. All right. And how did she get home for Christmas
11 break?

12 A. My wife and I went down and picked her up.

13 Q. Okay. And was that what you would normally do?

14 A. Yes, sir. Normally both of us would go and pick her
15 up.

16 Q. Did you have a discussion or talk to her on the way
17 home during the Christmas break?

18 A. Yes, sir, we did.

19 Q. Okay.

20 A. But I think previously before we left Christine and I
21 had talked and I told Christine different things that had
22 gone on that Thanksgiving and other things that had gone on
23 with this lady that she was catering with and I felt that
24 we needed to do something and I talked to Chris about what
25 we should do. It was a mutual decision that we would talk

1 to Christine and tell her that there were certain things
2 that were going to take place if she didn't bring her
3 grades up and have a better attitude - school you know how
4 she was doing at school. So when we picked her up we told
5 her these things -

6 Q. All right. What things did you tell her?

7 A. We told her that if she didn't pick up - we were not
8 going to finance the next semester or the next year. She
9 would have to find her own funding. I also told her that
10 she would not get a car and unless she had graduated. If
11 she didn't graduate she wasn't going to get a car so she
12 was going to have to start putting forth effort to bring
13 her grades up so she wouldn't get kicked out of the College
14 of Charleston because her grades were so low.

15 Q. Okay. As far as - was she still on the life
16 scholarship at that point?

17 A. No, sir. She had done lost I think the - either the
18 first - end of the first or second semester I think that
19 year they took it away from her.

20 Q. So she came home at Christmas, is that correct?

21 A. Yes, sir.

22 Q. Okay. Now you were in the courtroom when she
23 testified, is that correct?

24 A. Yes, sir.

25 Q. Okay. She testified concerning a time when she said

1 that you assaulted her and tried to have sex with her
2 during Christmas. Did that incident happen?

3 A. Well are you asking - -

4 Q. I'm asking you she testified concerning - -

5 MS. HERVEY: Your Honor, I'm going to object to the
6 form of the question. I believe he's pitting one witness
7 against the other. He can ask her about the incident
8 without putting it into just the position of Tabitha's
9 testimony.

10 MR. BOYD: I'm pointing to a reference in time.

11 Let me - did you attempt to have sex with Tabitha
12 during that Christmas break?

13 A. No, sir.

14 Q. Okay. Do you recall any period of time when - in
15 which Christine and Heidi came back to the house? Do you
16 remember that at all?

17 A. Just vaguely. I mean it was just - I know I was
18 watching TV because Tabitha - I think she went outside to
19 talk to her mom and stuff. I didn't find out later what
20 was going on until they all came back in.

21 Q. And did - during the Christmas did you and Christine
22 have any arguments?

23 A. Yes, sir, we did.

24 Q. And what was that argument about?

25 A. That night we were discussing how we were going to

1 spend our tax money. Christine was wanting to spend it on
2 some personal things and just things that I felt like
3 wasn't really necessary. I mean we had some bills that we
4 needed to get paid and I was wanting to try to get those
5 paid. We discussed it for a while and it just led to a
6 heated argument and it got really heated - - -

7 Q. Let me - -

8 A. - - - and we got really loud. I'm sorry.

9 Q. Who was working in the family at that time?

10 A. At that time I was the only one working.

11 Q. Okay. What was Christine doing?

12 A. She was in school full time.

13 Q. Okay. And how was her school being paid for?

14 A. She had taken out student loans. She wanted to be
15 independent; she wanted to take those loans out in her name
16 so you know it helped boost her confidence that these are
17 my loans, this is for my school loan.

18 Q. All right. She was not working at that time?

19 A. No, sir.

20 Q. Okay. And you said the argument got heated?

21 A. Yes, sir, it did.

22 Q. All right. And were voices raised?

23 A. Yes, sir, very loud. We usually got very loud.

24 Q. Were you doing anything as a result of that argument?

25 A. Yes, sir. At one point I just told her I had had

1 enough. I had walked out went to the bedroom. I told her
2 I was going to take the digital boxes that we had - we had
3 had which I knew that I was responsible for all the bills
4 so I was going to take those boxes apart and I was going to
5 take those and box them up and take them back and I was
6 going to pack a bag and I told her I was just going to find
7 me a place to stay tonight and that I was just going to
8 leave. That I had just had enough of this arguing about
9 money and fighting about money; I was tired of fighting
10 about money and I was just going to leave.

11 Q. All right. And at that point did Tabitha come into
12 the picture?

13 A. Well I was in there in the living room. I had just
14 put the one box on the table and walked into the living
15 room where the TV was and the TV console system and I was
16 pulling out the second box. We were still fighting and
17 arguing. Christine was at that time had starting asking me
18 not to leave and I told her it didn't matter what she said
19 I was tired of fighting and tired of arguing about money.
20 At that time Tabitha stepped into the room and told her
21 mother that I had - I was leaving because I was - had been
22 molesting her all along since she was a child. And that
23 just - it just shocked me and I couldn't find nothing to
24 say. I just stood there for a little bit and then I looked
25 at her mother. I looked in her eyes and I said do you

1 believe this? She didn't say anything to me and she turned
2 around and talked to Tabitha and said I would have to go
3 pack a bag we are going to go somewhere's and talk about
4 this. You know I did nothing in the way to stop them. I
5 kept on taking the box apart and I was going to pack my bag
6 and they left out. I did nothing to hindrance them leaving
7 or anything else or say anything else to them. Once I got
8 the other box apart and put it on the table I got to
9 thinking well Chris is going to take her right to the
10 police and there's no sense in me packing a bag. So I went
11 and pulled out all of my - I went and got dressed because I
12 was in afternoon clothes. You know just a T-shirt and
13 pajamas or slacks. I mean just regular pants, just kind of
14 a lounge pants is what they call it. So I went and got
15 dressed; I got my billfold and I got everything out of it
16 but my ID and I sat there and I waited. I said well the
17 police will be here shortly. I mean I knew no matter what
18 I said you know there is nothing I can do to prove my
19 innocence when they come and took me in because in an
20 accusation you have no proof to show anybody what the truth
21 is.

22 Q. Did - what happened after that?

23 A. Christine called me on the phone and said that Tabitha
24 wanted to talk and she wanted to talk to me also. They
25 wanted to meet at Denny's. They wanted me to go

1 somewhere's that there were plenty of people around so that
2 nothing could be said either way out of the way to each
3 other. I sat there and I thought about it and I said well
4 what have I got to loose. I mean if she wanted to go to
5 the police that's where she should have went. I knew you
6 know I didn't have much options so I said okay well I'll go
7 meet you all at Denny's and we'll talk about this.

8 Q. All right. Did you go to Denny's?

9 A. Yes, sir, I did.

10 Q. And who did you meet with there?

11 A. Christine and Tabitha were already there sitting at a
12 table. I went over to the table and sat down.

13 Q. What was discussed at that time?

14 A. Christine started saying Tabitha wanted some promises,
15 some things put in writing. Tabby kept saying different
16 things and then at one point Tabby got real hot and she
17 started shouting and we got real loud. And I asked her - I
18 know I asked her to not to be hollering at me if she was
19 going to be holler at me I was going to get up and leave
20 and they could just go - they could go straight on to the
21 police I didn't care. I wasn't going to be hollered at.

22 Q. And so Tabitha was hollering at you or at Christine?

23 A. No at me.

24 Q. Okay.

25 A. She calmed down we talked. There was a decision to

1 write - to put something in writing that I would have to
2 agree to. So Christine asked me to go on home. I went on
3 to the house and she asked me to go into the house and go
4 into our bedroom and lock the door so I did. When I went
5 in there and I sat down I thought about well what choices
6 do I have? I mean even if she - if they would have went to
7 the police I mean what at that time so I couldn't
8 understand what the reason was. It kind of confused me.
9 And I knew that if she had gone to the police I mean my
10 life is ruined. In that position like that destroys you
11 and people they don't want to work with you. You know I
12 figured I was going to loose my job and there was no way I
13 could keep it. They always can find a reason to fire you.
14 I know how people - even I react to hearing about things
15 like that. People is going to - you are going to be
16 labeled regardless once you've been accused and I knew
17 that.

18 Q. Okay. So you stayed in the room?

19 A. Yes, sir.

20 Q. Did anybody come in the room later?

21 A. Later on I heard them come in. I mean I could hear
22 them. They came in and I heard her go to her bedroom and
23 then later on Christine came in there and said this is what
24 we - Tabitha has told me she wanted. This is what she
25 dictated to me to write down. She wanted me to write it

1 for her because she said she couldn't write it; her
2 handwriting I wouldn't be able to read it. So I took it
3 and I read it - well actually I think I just glanced
4 through it. I don't think I even read it. I just went
5 ahead and signed it and gave it back to her and said well
6 if that's what she wants then.

7 Q. Okay. Let me show you - I believe this is State's
8 Exhibit Number One it's two pages and did you sign both of
9 those pages?

10 A. Yes, sir, that is my handwriting. I signed both of
11 those pages.

12 Q. Okay. Were you present or in the room when that was
13 drawn up?

14 A. No, sir.

15 Q. Okay. Did you have any contact with Christine or
16 Tabitha after you left Denny's until Christine brought that
17 paper to you?

18 A. No, sir, I stayed in the room.

19 Q. Okay. Again why did you sign that?

20 A. Well I didn't have much of a choice. I mean I knew my
21 life was ruined if she said anything to the police like
22 that, that she was supposed to go on to the police and
23 accused me of something. I figured well she must want
24 something. There must be a reason. Is it to keep me and
25 Christine together to keep us from separating or is there

1 more motive to it? Those are the only things I could think
2 of at the time so I went ahead and signed it.

3 Q. All right. After signing that agreement what happened
4 after that?

5 A. It seemed like things went - I mean it just -
6 everything just kind of cooled off and it was just like a
7 normal or any other day. Nothing was said to anybody about
8 anything else. There was no more arguments or fights so at
9 that time.

10 Q. All right. Did you - did Tabitha go back to school?

11 A. Yes, sir.

12 Q. Okay. And did she - where did she stay until she went
13 back to school?

14 A. She stayed in her - stayed with us.

15 Q. Did - how did she get back to school?

16 A. Her mother and I took her back.

17 Q. Okay. And after that did you have any conversations
18 or contact with Tabitha after she went back to school?

19 A. I called her on one occasion only because she had left
20 a message on my voice mail. Her mother had checked on a
21 bill at the hospital and she was mad at her mother about
22 doing it. But even she - even though she had given
23 Christine the right to go you know check on anything for
24 her. That was the only time that I had a conversation with
25 Tabitha. I asked her not to get mad at her mother; her

1 mother was only doing what she asked her to do.

2 Q. Okay. When were you arrested on these charges?

3 A. On March something. March the 20 something.

4 Q. In 2005?

5 A. Yea 2005.

6 Q. All right. And was there any plan prior to that to
7 give Tabitha a car?

8 A. Well I had told Chris - I mean I couldn't figure out
9 any other way to prove my innocence than just talk to Chris
10 and tell her to test different things about what Tabitha
11 had said. One of those things came up and I told Christine
12 as well is if she wanted a car why don't she just go ahead
13 and offer her a car you know she is going to need something
14 this summer to get around. So I told her to just go ahead
15 and offer her the Taurus and just say well if she wants it
16 now she would have to pay the housing and the insurance -
17 the car is paid for so it wouldn't cost her anything else -
18 which I think Christine did.

19 Q. But she would have to pay what?

20 A. She would have to pay the housing and the car
21 insurance on it.

22 Q. Did - you were charged in March, is that correct?

23 A. Yes, sir.

24 Q. These charges have been pending against you since that
25 time?

1 A. Yes, sir, they have.

2 Q. I believe you testified you lost your job with INA, is
3 that correct?

4 A. Yes I did.

5 Q. Okay. And did you get another job after that?

6 A. Yes, sir, I am working at Arvin-Meritor here in York.

7 Q. All right. Let me ask you have you ever had any
8 contact of a sexual nature with Tabitha?

9 A. No, sir.

10 Q. Okay. Particularly when she was four years old did
11 you do what's called fingering her?

12 A. No, sir.

13 Q. Did you have sex with Tabitha when she was eight years
14 old?

15 A. No, sir.

16 Q. Have you ever had sex with Tabitha?

17 A. No, sir.

18 Q. Have you ever had any sexual contact with Tabitha by
19 any means whatsoever?

20 A. No, sir.

21 Q. The - when Tabitha - when you all were in Marlboro
22 County did Tabitha have regular checkups with a doctor?

23 A. Yes, sir. Actually I took her to most of the
24 checkups.

25 Q. All right. To Doctor Shultz?

1 A. Yes, sir.

2 Q. Okay. And was she there on a regular basis because of
3 allergies and that type of thing?

4 A. Well basically yea she had - she went more often
5 because she had to get allergy shots.

6 Q. Did - I ask you and you understand and you have looked
7 at the various indictments of the charges against you, is
8 that correct?

9 A. Yes, sir, I have.

10 Q. Okay. I ask you are you guilty of any of those
11 charges?

12 A. No, sir, I am not.

13 Q. Thank you. That's all the questions I have.

14 MS. HERVEY: Just briefly, your Honor.

15 DARRELL EFIRD BY MS. HERVEY:

16 Q. Mr. Efird, let me show you State's Exhibit Number One
17 and ask you if you recognize that document?

18 A. Yes, sir. Yes, ma'am, I'm sorry. That has been shown
19 to me in my lawyer's office where I read it more
20 extensively. You know I just glanced over it that day that
21 my wife had given it to me.

22 Q. Stating you just glanced over it why don't you take
23 the time to read it now so we're all on the same page as we
24 begin this examination?

25 A. I read it on several occasions in my lawyer's office.

1 Q. So you are familiar with it at this point?

2 A. Probably much so. I wouldn't say - - -

3 Q. And how - -

4 A. - - - could - I wouldn't say I could memorize
5 everything.

6 Q. How old are you Mr. Efird?

7 A. I am forty-eight.

8 Q. And you stated that you worked most of your adult
9 life.

10 A. Yes.

11 Q. You're still working?

12 A. Yes, ma'am.

13 Q. And you've actually had I believe one year of
14 technical college or some type of specialized vocational
15 training is that correct?

16 A. Yes, ma'am. One year of engineering graphics.

17 Q. So you can read and write?

18 A. Yes, ma'am.

19 Q. And the work that you do what type of work that you
20 do?

21 A. I do quality control work.

22 Q. Quality control work. On what? Are you inspecting
23 bleach bottles as they go by or what do you do?

24 A. No, ma'am, I work in a quality lab. I do inspections
25 on materials that are - receive and inspect materials that

1 come in and they are for automotive engines. What I was
2 doing here in Fort Mill I was running a CNM other
3 computerized equipment that did measurements on - -

4 Q. So computer - -

5 A. - - - that did measurements on parts.

6 Q. So this is sophisticated work?

7 A. Yes, ma'am.

8 Q. And have you ever had a mortgage on your house?

9 A. We had a mortgage on our house in Marlboro County.

10 Q. And you signed all the documents on that mortgage?

11 A. Yes, ma'am.

12 Q. Correct? That wasn't in your wife's name or anything
13 like that was it?

14 A. They were joint.

15 Q. A marital debt that would be fair to say?

16 A. Yes, ma'am.

17 Q. And you understood the terms of that contract that if
18 you borrowed from the house for that amount you would have
19 to make payments in X amount?

20 A. Yes, ma'am.

21 Q. And you signed other contracts in your adult life
22 true?

23 A. Yes, ma'am.

24 Q. And you understand the significance of signing a
25 contract?

1 A. Yes, ma'am, I do.

2 Q. And you understand the significance of reading a
3 contract before you sign it?

4 A. Yes, ma'am, I do.

5 Q. Especially a contract in which you are reportedly
6 buying the silence of your daughter and you wife as to
7 sexual abuse. That's a pretty important contract is it
8 not, Mr. Efird?

9 A. I would say it is a very important contract.

10 Q. Have you ever signed a more important contract in your
11 life than this one?

12 A. Probably not.

13 Q. And your testimony is that you just glanced at it?

14 A. Yes, ma'am, I did.

15 Q. Is there a reason why you didn't feel compelled to
16 make sure you knew what you were signing on this important

17 - - -

18 A. I didn't say I had an option on to sign it or not.

19 Q. You didn't have an option to sign it?

20 A. No, ma'am.

21 Q. So it wasn't important that you read it. You really
22 didn't care what it said?

23 A. No I cared what it said but I knew there wasn't any
24 options for me to except to sign it because they didn't
25 give me any other choice but to sign it.

1 Q. If nothing else, Mr. Efird, aren't you curious?
2 Weren't you at the time curious what that contract said
3 even if you had no choice but to sign it. Aren't you
4 curious to know?

5 A. Well I mean I glanced through it. I mean I didn't
6 read everything of it. I knew that given the circumstances
7 that I didn't have much of a choice. I mean I knew that if
8 I didn't sign this my life was ruined, my reputation was
9 ruined, I would probably loose my job, I would have to -
10 definitely they were going to come and put me in jail, that
11 I would have to wait to come to court to try to prove my
12 innocence.

13 Q. Well I understand your explanation as to why you
14 signed it. The question comes to you is you are signing a
15 contract where you are reportedly buying or bargaining for
16 your daughter and wife's silence. Are you not curious
17 enough as to what is in it that you read it before you sign
18 it?

19 A. Can you ask that question in a different way?

20 A. Were you not curious as to what was in that contract?
21 Choice or not were you not curious what you were signing?

22 A. No. Not that curious not to read it completely.

23 Q. Now let's go through the contract shall we because you
24 said you had read it since then with your attorney.

25 A. Yes, ma'am.

1 Q. Okay. So the top of it says that Tabitha and
2 Christine can revise it at any time, correct?

3 A. Yes.

4 Q. And that is in your wife's handwriting?

5 A. Yes it is.

6 Q. And why was it in your wife's handwriting?

7 A. She told me that Tabitha had told her that she
8 couldn't write because it would un-legible for me to read
9 it.

10 Q. Why would - can you not read your daughter's
11 handwriting, sir?

12 A. I can read some of it. It's about like mine it's not
13 very good.

14 Q. Let me show you what's been previously marked as
15 State's Exhibit Number Two and ask you if you recognize
16 this document and ask you if it bears your daughter's
17 signature?

18 A. It does not have her signature.

19 Q. All right. Is it her handwriting? Can you recognize
20 it as her father and say you know what that's Tabitha's
21 handwriting I recognize it.

22 A. It looks pretty much like her handwriting.

23 Q. Is that not a document that you provided your defense
24 attorney?

25 A. My wife and I brought it.

1 Q. So that's something you got out of Tabitha's room?

2 A. No, ma'am, that's something my wife got out of
3 Tabitha's room.

4 Q. And then you and her then provided to your attorney?

5 A. Yes, ma'am.

6 Q. SO you did that believing that to be Tabitha's
7 handwriting?

8 A. It was in her room.

9 Q. Is that legible?

10 A. Looks pretty legible to me.

11 Q. You can read that can you not?

12 A. Yes, ma'am.

13 Q. Okay. Let's go back to the contract then. The first
14 one is these are the conditions to which Tabitha is
15 entitled from Darrell Ray Efird her dad. Is that what it
16 says?

17 A. Her father.

18 Q. Right. Now did you get that when you glanced over it
19 or did you not see that?

20 A. Uh - I wouldn't be able to tell you exactly whether I
21 read it at that time. I said I had just glanced over it so
22 I wouldn't be able to tell you word for word what I read at
23 that time.

24 Q. Okay. Fifty dollars a week during the spring semester
25 of 2006. That's the first thing she gets, correct?

1 A. That's on here yes, ma'am.

2 Q. Not fifty dollars a week for the rest of her college

3 career or fifty dollars a week for the rest of her life.

4 For the next six months she gets fifty dollars a week.

5 A. Yes, ma'am, I guess that's what that says.

6 Q. Your daughter is in college, correct, at the time?

7 A. Yes, ma'am, she is.

8 Q. She's been in college for about a year and a half

9 correct?

10 A. Yes, ma'am.

11 Q. And as a father are you providing her with any kind of

12 spending money during her time there?

13 A. Yes, ma'am. When ever she needed money after she had

14 went through some of the loan money we would each send her

15 money.

16 Q. You would send her money?

17 A. Or we would send her stuff that she needed if that's

18 what she said she needed. If she needed money to buy some

19 stuff we would box that stuff up and send it to her.

20 Q. So that was something you were actually more or less

21 already providing to Tabitha?

22 A. Yes, ma'am.

23 Q. All right. The next one is the agreement to pay back

24 all the loans for her bachelor degree, correct?

25 A. Yes, ma'am.

1 Q. And you stated that previously that was the agreement
2 between you and Tabitha that you would take out these loans
3 and that once she graduated the two of you or the three of
4 you would jointly pay them back?

5 A. That's what we had talked about. And we didn't know
6 until later on that we had to pay the interest ahead of
7 time.

8 Q. Is that another contract you just kind of glanced at
9 and you didn't understand?

10 A. No, ma'am. We talked to the financial aide people.
11 We didn't - Christine and I both never saw that in the
12 contract and none of the financial aide people ever told us
13 anything about it.

14 Q. How much were the interest payments?

15 A. The first one was eighty dollars.

16 Q. Eighty dollars a month?

17 A. Yes, ma'am.

18 Q. And you said it was the first one. Are you taking out
19 loans every semester or every year?

20 A. Every year.

21 Q. So in the spring semester or 2006, correct, you got
22 the loan for that the 2005, 2006 school year you got that
23 before she started that school year?

24 A. I apologize. Now I got to thinking about what you
25 said about the loan - that first loan. The first loan I

1 had the loan reduced eighty dollars. It was originally a
2 hundred and sixty.

3 Q. Okay.

4 A. I got it reduced down to eighty so I could pay it.

5 Q. Okay. And then you're getting those for the whole
6 school year? You're not getting loans per semester; you're
7 getting them for a school year was your testimony?

8 A. I - Christine took care of all the financial stuff on
9 line so I left that up to her.

10 Q. Your wife that has such good judgment about spending
11 you're letting her make all those decisions about what kind
12 of loans you sign.

13 A. Well she did it all on the internet; I don't mess with
14 the internet.

15 Q. You didn't ask to read and find out what you were
16 indebting yourself to?

17 A. No, ma'am, I trusted her on that respect.

18 Q. Okay. But your testimony is previous that you did
19 that for the full year not - you weren't signing up on a by
20 semester basis?

21 A. I don't believe so. I was thinking that I was told it
22 was a yearly basis.

23 Q. Okay. So this - from 2005, 2006 school year,
24 Tabitha's sophomore year, those loans were got by the two
25 of you - a family of you at the beginning of the fall

1 semester?

2 A. I believe that's right.

3 Q. So you didn't have to go back over Christmas break
4 2005 and get new loans for Tabitha for the following
5 semester?

6 A. I think they did it on the internet.

7 Q. Did you have to do that?

8 A. On the internet?

9 Q. On anywhere?

10 A. I guess. I don't know. You would have to ask my
11 wife.

12 Q. So you agreed to pay back all of her loans for her
13 bachelor degree, right?

14 A. That's on this agreement.

15 Q. How much money do you make, Mr. Efird? How much money
16 were you making at the time the contract was signed?

17 A. I was making like twenty dollars an hour.

18 Q. How much was your yearly income? What was on your tax
19 return?

20 A. Forty something. I mean I don't know exactly. I
21 couldn't tell you.

22 Q. So you earned forty thousand dollars?

23 A. Yes, ma'am.

24 Q. Can't remember specifically about taking out taxes and
25 that kind of thing but you were in that kind of income

1 bracket?

2 A. Yes, ma'am.

3 Q. Your wife is not working at the time?

4 A. No, ma'am.

5 Q. Your wife has been in school herself?

6 A. Yes, ma'am.

7 Q. How long had your wife been in school at that point?

8 A. Well she graduated in '07 which was about four and a
9 half years at that time so I would say over three years.

10 Q. And is your wife working during school or is she just
11 going to school?

12 A. Not at that time. Not at this time. Not at that time
13 in '06.

14 Q. So you are the sole bread winner?

15 A. Yes, ma'am.

16 Q. All right. And your income - your career is this
17 something where you get bonuses every year or is this
18 pretty much you're steadily increasing over time as you
19 kind of get promoted and that kind of thing?

20 A. I was at the stage I got a yearly increase on one.

21 Q. Okay. How much total loans do you owe on Tabitha's
22 schooling?

23 A. About twenty - over twenty thousand, twenty-two or
24 twenty-three thousand, something like that.

25 Q. And is that for one and a half years or is that for

1 two years?

2 A. I believe that's for two years.

3 Q. So Tabitha had completed her college career you would
4 have been approximately eighty thousand dollars in debt?

5 A. I guess. I think some years was higher than others.

6 Q. The next one is for her to receive a car within two
7 years of this date, correct? Number Three.

8 A. Yes, ma'am.

9 Q. And was that based on some usual discussion that she
10 didn't need a car until she graduated?

11 A. When she started school we talked about she didn't
12 need a car down there because the College of Charleston
13 where it's located she could to everything she needed to
14 get to by walking. The streets were kind of narrow so we
15 thought it would be best that she didn't have a car down
16 there. Also we couldn't afford the housing because it was
17 very expensive down there.

18 Q. Okay. But could you afford to give her a car right
19 then? Right then and there she demanded a car could you
20 have afforded to give her one?

21 A. If she would have paid the housing and the car
22 insurance probably.

23 Q. Did she ever demand a car over the Christmas break of
24 2005?

25 A. Not to my knowledge. I'm not sure.

1 Q. While you were sitting at Denny's did she ever say I
2 want a car before I go back to school?

3 A. I don't remember what all was said at Denny's.

4 Q. The next one is for her cell phone to be paid each
5 month and it stays on during the next two and a half years,
6 is that correct? Number Four.

7 A. I'm reading, yes, ma'am, I'm reading it.

8 Q. All right. Was she already - were you already
9 providing her with a cell phone?

10 A. Yes, ma'am.

11 Q. So that was something that she was already getting?

12 A. Yes, ma'am.

13 Q. That wasn't something new above and beyond?

14 A. No, ma'am.

15 Q. Well you're her father and you want to provide for
16 your daughter to use a cell phone in college?

17 A. That way she could get in touch with us anytime she
18 needed to.

19 Q. Number Five the agreement of no unusual contact.

20 A. Yes, ma'am.

21 Q. When you glanced at the contract did you see that
22 phrase?

23 A. Ma'am, I don't remember exactly what I had looked at
24 that day and read.

25 Q. Had you read that phrase would you still have signed

1 the contract?

2 A. At that time probably so.

3 Q. The next one is no threats of any kind of any nature.

4 A. Yes, ma'am.

5 Q. Did you read that when you glanced at the contract?

6 A. Ma'am, I'll tell you again I'm not sure exactly what
7 all I read that day.

8 Q. When they talk about no unusual contact and not
9 threats do you have any idea why those phrases were
10 inserted in this contract?

11 A. I would expect my wife to believe my daughter.

12 Q. Number Seven: Agreement of the parties will not be
13 alone together. Is that what that says?

14 A. Yes, ma'am.

15 Q. And by parties do we all agree that that means you and
16 your daughter?

17 A. Yes, ma'am, I would say so.

18 Q. Did you read the contract and did you agree never to
19 be alone with your daughter?

20 A. Like I said - like I said - -

21 Q. When you signed this contract is that what you agreed
22 to?

23 A. I don't remember exactly what I read that day.

24 Q. Number Eight is discussion with psychiatrist only,
25 correct?

1 A. That's what it says.

2 Q. All right. Was your daughter in counseling at the
3 time that you were aware of?

4 A. Yes. We had been told. She had told us that she was
5 in counseling because of the incidents that had happened in
6 the dorm.

7 Q. Number Nine: Will tell mom if anything happens.

8 A. Yes, ma'am, that's on there.

9 Q. And Number Ten all information pertaining to this
10 matter stays between the three of us as long as these rules
11 are followed.

12 A. Yes, ma'am, that is on there.

13 Q. And Number Eleven is from this day forward this matter
14 will not be discussed again or argued about between the
15 three of us.

16 A. Yes, ma'am, that's on there.

17 Q. Okay. So of this contract the things that were
18 promised to Tabitha all right, what did she get that she
19 wasn't already getting or agreed to be getting prior to
20 Christmas of 2005?

21 A. As you say again monetary gain. Are you asking me
22 that, monetary stuff? I guess nothing if that's what you
23 are asking me.

24 Q. Turn to the next page. Christine and Tabitha can
25 revise at any time, correct?

1 A. Yes, ma'am, that's on there.

2 Q. Next line says what?

3 A. For Christine.

4 Q. Were you aware when you signed the contract that you
5 had promised things to your wife as well?

6 A. I probably looked at the - since it was a certain
7 different page I probably looked at that and looked at the
8 top and probably glanced at it and it did say for
9 Christine.

10 Q. Did you ever ask your wife why you needed to promise
11 her anything?

12 A. Not that I can remember.

13 Q. Okay. The next line after for Christine could you
14 read that please?

15 A. These are the conditions for which Christine is
16 entitled to from Darrell Ray Efird her husband.

17 Q. And the first line.

18 A. Funding for a place of residency.

19 Q. And by that what do you think that means?

20 A. I would assume that that would mean a place of
21 residence for her to live wherever that might be.

22 Q. Does that mean that you just continue paying the rent
23 where you are living now or is that mean that you will get
24 someplace new together?

25 A. I guess that would mean wherever she decided.

1 Q. Number Two.

2 A. Nothing for the remainder of her schooling.

3 Q. And were the loans not in her name?

4 A. They were.

5 Q. So here you have agreed to pay back those loans on her
6 behalf.

7 A. According to this yes.

8 Q. Number Three.

9 A. The Ford Fiesta van to be paid for by Darrell.

10 Q. And did all own a van at the time?

11 A. Yes, ma'am, we were making payments on it.

12 Q. So you were to continue to make those payments?

13 A. Yes.

14 Q. Was that the only car at the time or did you have
15 another car?

16 A. We had had - at that time we had got the Taurus.

17 Q. Number Four.

18 A. No unwanted physical contact.

19 Q. And what do you take that to mean, Mr. Efird?

20 A. I guess in a marriage you would have physical contact
21 so I guess it would be up to her if it was to be continued
22 physical contact.

23 Q. And you were told that the terms of this contract had
24 been dictated to your wife by your daughter is that your
25 testimony?

1 A. Yes, ma'am.

2 Q. And do you have any reason to believe why Tabitha
3 would insert no unwanted physical contact into this
4 contract?

5 A. I have no way of telling what was on her mind at that
6 time that she told her mother to write this stuff.

7 Q. Does that in any way benefit you?

8 A. Are you asking me - -

9 Q. Or her?

10 A. Are you asking me on this one?

11 Q. Yes.

12 A. The one - -

13 Q. On that one line does that in any way benefit you or
14 your wife?

15 A. How do you mean by benefit?

16 A. What's the purpose of inserting a clause like that
17 into a contract? What would you take that to mean? That
18 that would restrict you in some way or benefit you in some
19 way or restrict your wife in some way or benefit her in
20 some way?

21 A. I don't know how it would matter as you say as in
22 benefit.

23 Q. The next one is no threats of any kind or any nature.

24 A. Yes, ma'am, it is.

25 Q. The next one is your cell phone - what is Number Six,

1 I'm sorry?

2 A. My cell phone is to remain on and paid for by Darrell.

3 Q. And Number Seven.

4 A. My internet is to remain on and paid for by Darrell.

5 Q. And the cable that you said you were packing up and
6 taking with you when you were leaving the home that night
7 did you have internet cable access or dial up access?

8 A. We had cable internet access. The digital cable was
9 the TV.

10 Q. So when you were taking the box with you that day she
11 was going to loose the internet access when you left with
12 it?

13 A. No, ma'am. That's digital cable. Digital cable is
14 TV. Cable internet is internet computer service.

15 Q. So you pay two different bills for that?

16 A. No, ma'am. Comporium has it all on one bill.

17 Q. So you weren't taking the internet access but you were
18 taking the cable box? Is that your testimony?

19 A. I was taking the digital cable box. Everything else
20 could be cut off at the home office.

21 Q. Number Eight.

22 A. Agreement that it will up to me about our marriage.

23 Q. Number Nine.

24 A. All information pertaining to the - to this matter
25 stays between the three of us as long as these rules are

1 followed.

2 Q. And Number Ten.

3 A. On this day forward this matter will not be discussed
4 or argued about between the three of us.

5 Q. And the final line.

6 A. If any of these rules are broken then there will be
7 legal consequences against him for any and all actions.

8 Q. And that's your signature again at the bottom of that
9 page?

10 A. Yes, ma'am, it is.

11 Q. So in exchange this contract as you interpret states
12 that in exchange for Christine and your wife's silence your
13 daughter gets a cell phone, fifty dollars a week and her
14 bachelor degree and your wife gets internet access and a
15 mini van, correct?

16 A. According to that contract I would say so.

17 Q. Where was that contract kept after you signed it?

18 A. Christine had put it in a locked box that we had. We
19 have several locked boxes our boxes in our possession.

20 Q. So Christine put it in one of them?

21 A. I put it in one of the smaller locked boxes which at
22 that time she had put away.

23 Q. A couple of days later after you are thinking about
24 this do you go well yea I probably need to read that
25 contract I'm going to look at it.

1 Q. I must have thought that but I don't think I asked
2 Christine to let me see the contract. I talked to her
3 about the contract and what that meant for me as a father.
4 How was I you know - I went ahead and signed this contract
5 because I knew that there are certain things that would
6 happen to my reputation; my job and stuff, if I didn't go
7 along with it. And neither was there no way I could prove
8 my innocence unless given some time to talk to my wife
9 about the accusations that I had against me because one we
10 were at that day we were fighting and arguing about money.
11 She is bi-polar and I knew once she gets mad it takes a
12 long time for her to cool off and to really think about
13 what has been said and what we were arguing about. So
14 later on I'm not sure how much time has passed we started
15 discussing these things.

16 Q. Did she ever move out of the house?

17 A. No, ma'am.

18 Q. Did she ever move out of your bed?

19 A. I think I slept on the futon for a while which is in
20 our living room.

21 Q. But you two subsequent to this accusation never part
22 living together for any time?

23 A. No.

24 Q. You stated that your wife is bi-polar; you made that
25 statement various times. You stated that she's on

1 medication for it. Has she ever had any counseling for it?

2 A. Yes, ma'am, she goes to counseling once a month.

3 Q. And you encouraged that; you supported that
4 counseling?

5 A. Yes, ma'am, I have.

6 Q. And do you encourage and support your daughter's
7 counseling?

8 A. Yes I did. I mean I didn't have no influence of that.
9 I think that was demanded by the school.

10 Q. So counseling is not a foreign concept to you? It's
11 not something you are opposed to in any way?

12 A. No.

13 Q. After your daughter accuses you of molesting her since
14 the age of five and you sign a contract reporting to buy
15 her silence do you ever say you know maybe we need to go to
16 counseling, there is something wrong with our daughter?

17 A. I think Christine discussed different things at that
18 time but I'm not sure if the counseling was discussed. She
19 was seeing a counselor at that time.

20 Q. Right. But you are the father in this family,
21 correct?

22 A. Yes, ma'am.

23 Q. You love your daughter?

24 A. Yes I do.

25 Q. And she has accused you of molesting her since four a

1 claim you assert to be false. You believe that she has now
2 blackmailed you into her silence and you never said you
3 know what maybe we need to get her some better counseling
4 or maybe we even need to check her in somewhere. Does that
5 thought ever cross your mind. You mind the father, not
6 Christine, your mind. Do you ever take any affirmative
7 action in that regard?

8 A. Are you asking me did we talk to her about counseling
9 or seek counseling for her?

10 Q. Yes.

11 A. No, ma'am, I did not. Can I go a little bit further
12 with that?

13 Q. Sure.

14 A. At that time is what you are talking about my biggest
15 goal was to talk to my wife and to help her see that these
16 accusations couldn't be true.

17 Q. Your daughter accused you of molesting her since four
18 and your biggest concern is not your daughter's mental
19 health and well being. Your concern is how to save your
20 marriage?

21 A. Save my marriage as in - -

22 Q. Well that's why you wanted to convince her they're not
23 true, correct?

24 A. No. I wanted to talk to her about that these things
25 were not true and let her see for herself. Give her time

1 to see these things for herself. At that time we could
2 have went further on and discussed counseling another time
3 but I wasn't given the time. When Christine started really
4 seeing that these things could not be true she had offered
5 her the car and then later on Tabitha had called and had
6 the charges pending against me.

7 Q. Now you say that you signed this contract you've got
8 no choice whatsoever. If you don't sign it and you don't
9 agree to those terms by God your life will be ruined,
10 correct?

11 A. That's what I stated yes, ma'am.

12 Q. But you are not going to pay the four hundred dollars
13 for the insurance on the car for your daughter. You're
14 drawing the line there. She wants the car she's got to pay
15 for that.

16 A. I told my wife that the only way that she could see if
17 this was an actual thing that she was saying - accusing me
18 of was true or if there was more to it than just the
19 accusation of - the accusation of molestation that it was
20 monetary gain that she wanted then there was ways that she
21 could see by offering her a car at that time - - -

22 Q. Okay.

23 A. - - - but telling her that well okay you can a car but
24 you are going to have to pay the insurance; you are going
25 to have to pay the housing fee. I thought that was

1 something that I guess at that time I was thinking how else
2 - I mean what courses did I have. I mean I don't have any
3 courses to prove my innocence.

4 Q. Right. But Tabitha didn't demand a car in the
5 contract did she? She didn't say you got to give me one
6 right now?

7 A. No.

8 Q. Tick tock I'm going to the cops; you got ninety days
9 to get me a car she said that.

10 A. No. I did not say that.

11 Q. so you are offering her this car. She's not calling
12 you up and demanding it.

13 A. I think she had talked to her mother about it before
14 hand and - -

15 Q. Do you recall her ever demanding to you this contract
16 - this car? Did she ever call you up and go Daddy - - -

17 A. No, ma'am.

18 Q. - - - I want a car and if you don't give me a car I am
19 going to the police and I'm telling them you been molesting
20 me since four.

21 A. No, ma'am, she did not call me and tell me that.

22 Q. She goes through your wife for that is your testimony?

23 A. Yes, ma'am.

24 Q. And you said that's why you got to sign this contract.
25 You can't read it but you know what I'm drawing the line.

1 We'll pay back her student loans; I'll give her fifty
2 dollars a week; I'll pay her cell phone; I'll pay my wife's
3 student loans; I'll get her a cell phone but you know what
4 parking and insurance I can't do. That's your testimony
5 here today?

6 A. Yes, ma'am.

7 Q. All right. Let's go back to the night in question
8 when you say that while you were arguing with your wife
9 Christine came out and made this allegation, correct?

10 A. You said Christine.

11 Q. I'm sorry. Tabitha came out and made this accusation,
12 correct?

13 A. Yes.

14 Q. And correct me if I am wrong because I thought I heard
15 this. Your testimony was that Tabitha came out and said
16 that you had been having a relationship with her. Was that
17 your testimony?

18 A. I'm not exactly sure what I said about that earlier.

19 Q. What do you recall her words being?

20 A. I'm not sure exactly what her words - at that time I
21 think she told her mother that I had been molesting her is
22 what I thought I said.

23 Q. Well do you deny that earlier you stated that Tabitha
24 stated you had been having a relationship with her?

25 A. You would just have to go back and look at the records

1 and see if that's what I said. If that's what I said I
2 might have told her.

3 Q. If that's what you said then that's what you said?

4 A. I'm not sure if that's what I said. I thought I had
5 said molestation.

6 Q. Your Honor, I want to find out what he said back then.
7 I think it's important in his testimony whether its
8 consistent or not and I think that would show a significant
9 and if he stated that back then I think we do need hear
10 that to go forward and I would ask the court reporter to
11 find that.

12 THE COURT: Madame Court Reporter, could you back up
13 to that point?

14 MADAME COURT REPORTER: Yes. It will take a few
15 minutes.

16 THE COURT: Why don't we take a short recess while we
17 do that? Mr. Foreman, ladies and gentlemen of the jury, we
18 will take about a ten minute recess in there to refresh
19 yourselves. Thank you.

20 (JURY PANEL LEAVING THE COURTROOM AT 3:44 P.M.)

21 THE COURT: All right we will take a few minutes.

22 Sir, you may stand down during this short break. You
23 may not discuss the case with your attorney or anyone else
24 during the break. Stand down.

25 (SHORT RECESS AT 3:45 P.M.)

1 (BACK ON THE RECORD AT 4:00 P.M.)

2 THE COURT: Counsel, my understanding is that this was
3 played for you and you are satisfied with what she played
4 back?

5 MS. HERVEY: Yes, your Honor.

6 THE COURT: All right, how do you want to handle that
7 with the jury? Do you want to just state that or do you
8 want me tell them?

9 MR. BOYD: It doesn't matter how it's told but I think
10 the jury needs to be told it was molested and not
11 relationships.

12 THE COURT: I'll be glad to tell them that if you want
13 me to do that or do you want us to play it? We can play it
14 either way.

15 MR. BOYD: I think that you can tell them that would
16 be fine.

17 MS. HERVEY: That's fine, your Honor.

18 THE COURT: All right. Please bring the jury back.

19 (JURY PANEL ENTERING COURTROOM AT 4:05 P.M.)

20 THE COURT: All right, Mr. Foreman, ladies and
21 gentlemen of the jury, after listening to the tape the
22 attorneys have agreed that what Mr. Efird, Darrell Efird
23 testified to was that Tabitha Nicole Efird stating that he
24 had molested her and not that they had a relationship.
25 With that please proceed.

1 MS. HERVEY: Yes, sir. That's why we have court
2 reporters here is to make sure it's not your recollection
3 and it's not mine but that is what was recorded.

4 I want to take you back to that point where Tabitha
5 does come into the room. You stated that you were having
6 an argument with your wife and that you were leaving her at
7 that time, correct?

8 A. Yes, ma'am, I told her that I was going to leave.

9 Q. And had you packed some things or packed a cable box?

10 A. I'm sorry.

11 Q. Had you packed some things or just a cable box?

12 A. I just started on the second cable box. I hadn't
13 packed any clothes.

14 Q. And you stated the significance or the reason why you
15 are packing the cable box in particular is that the cable
16 bill is in your name?

17 A. All the bills are in my name.

18 Q. All the bills are in your name. So why are you taking
19 a cable with you? I'm confused about that.

20 A. It was just something that was very expensive to
21 maintain so I was going to take those back also when I left
22 to the - I guess the next morning I was planning on taking
23 those back to Comporium and I guess cutting out the bill.

24 I mean I had to - I don't remember exactly what my thoughts
25 were at that time.

1 Q. Did you pack any clothes or anything like that or did
2 you even have a chance to do that?

3 A. No, ma'am. I hadn't packed any clothes at that time.
4 When I was taking the second box out that's when Tabitha
5 came into the room.

6 Q. And you stated I believe that Tabitha stated that you
7 had been molesting her since she was four, correct?

8 A. I don't think I give a age.

9 Q. Since she was a child?

10 A. I think that's what I said.

11 Q. And what did you say in response to that?

12 A. I didn't say anything right at the start. I mean it
13 was a shocking - it just shocked me so much I just kind of
14 stood there for a little bit then I turned and I looked at
15 Christine and I looked her in the eyes and asked her did
16 she believe these charges - did she believe this.

17 Q. Did you ever deny it to her?

18 A. Did I ever - no, she didn't never ask me so I don't
19 think I actually at that moment said that I didn't do these
20 things.

21 Q. The court's indulgence one moment. So your daughter
22 comes in and she accuses you of molesting her and you turn
23 to your wife and question her whether or not she believes
24 what your daughter is saying?

25 A. I believe that's what I had stated earlier. I'm not

1 exactly sure what all was said that night. I might have
2 said something to her about you know I didn't do these
3 things. I'm not sure. I know later on I talked to her
4 about the accusations that was charged - that Tabitha had
5 charged me with or said that I had done. I know I talked
6 to her later about it.

7 Q. And later that night or a couple of days later, a
8 couple of weeks later after Tabitha goes back to school?

9 A. It could have been later that night. It could have
10 been a couple of days later. I probably wanted to give her
11 a couple of days to cool off or maybe a day to cool off.

12 Q. So your focus at that point is more on your wife is
13 that fair to say?

14 A. As in focus as in?

15 Q. You're directing your comments towards your wife at
16 that point.

17 A. Tabitha had spoken to Chris so I guess you would - yea
18 I guess when you said that I turned to Chris and asked her
19 did she believe it I guess my focus was there on my wife.

20 Q. Did you ever deny it to Tabitha no I didn't do that
21 honey what are you saying where are you coming up with
22 that?

23 A. Right after the - when I said that Christine looked at
24 Tabitha and said go pack a bag we are going to leave and go
25 somewhere's and talk so I never was given an opportunity at

1 that time to say anything. I don't remember anything - I
2 mean I don't recollect anything was said to her then there
3 or at Denny's or when we you know later on that day after
4 the contract was signed.

5 Q. You never speak to your daughter after she makes these
6 accusations?

7 A. I didn't say that.

8 Q. You never deny it to her? You never say you know
9 you're lying tell it to your mother you're lying I don't
10 know what's wrong with you, how can I help you; what is
11 going on that you would do this?

12 A. As far as I can relate I don't remember ever speaking
13 to her about it at that time.

14 Q. So they leave, they pack a bag, correct?

15 A. I guess. I mean I didn't pay any attention to what
16 they were doing.

17 Q. Well what were you paying attention to at that time?

18 A. I was taking the cable box out of the chassis - part
19 of the TV set.

20 Q. Because you are still leaving at that point?

21 A. I was taking it apart I was going to finish it.

22 Q. And your daughter and your wife leave?

23 A. Yes.

24 Q. Do you have any idea where they're going?

25 A. I have no idea.

1 Q. All right. And you stated that you continued with the
2 box for a little while but then you decided you might need
3 to wait because maybe the police would show up. Is that
4 your statement?

5 A. I think I said I finished taking the box and set it
6 down and went then you know I got to thinking about it and
7 went and got dressed because I knew that Christine would
8 probably take Tabitha straight on to the police office and
9 let her tell the police what she told her. I mean that's
10 what I was expecting so I went and got dressed. I think I
11 got my billfold and took everything out but my ID and I
12 think that was all I had at that time.

13 Q. And you just wait around for a while?

14 A. I just sat there and waited in a chair in the living
15 room.

16 Q. And at some point you get a call from Christine or
17 Tabitha?

18 A. Christine.

19 Q. And the discussion is made to go to Denny's?

20 A. Yes.

21 Q. Whose decision is it to go to Denny's?

22 A. I didn't ask.

23 Q. Not your decision?

24 A. No.

25 Q. Did you think it was inappropriate to go to Denny's

1 and discuss your child's accusations of child molestation?

2 A. Could you repeat that question?

3 Q. Did you think that was a good decision?

4 A. Uh - it was their decision so I just went along with
5 it.

6 Q. Right. But do you ever you know what I got a better
7 idea. Why don't we do this, why don't we go get a witness
8 so everybody knows what is said?

9 A. I didn't think I had an option to say.

10 Q. Did you ever ask your wife you know what maybe we
11 ought to get somebody involved in this?

12 A. I don't remember ever asking my wife.

13 Q. So you end up and Denny's. Do you guys eat something
14 while you're discussing this or . . .

15 A. I know I didn't eat anything but I think they had
16 ordered something. I don't remember.

17 Q. And while you are at Denny's is your contract
18 discussed?

19 A. Uh - as a contract form I don't think so. I think it
20 was just discussed some things.

21 Q. And you stated that at one point your daughter began
22 yelling at you and what did you do?

23 A. I asked her to calm down. I told her that if she was
24 going to be that way to me I was going to get up and leave
25 and they could go on to the police and. She calmed down

1 and so I sat back down.

2 Q. So you willing to sign this contract without even
3 reading it because you're afraid that she's going to go to
4 the police because no matter what you're ruined but you're
5 not going to tolerate her yelling at you in Denny's. She
6 does that she can go to the police.

7 A. I don't know what you mean by tolerate but I mean
8 there was no sense in - I hadn't done anything; there was
9 no sense in her hollering at me at that point. I didn't
10 think that you know I just sat there and take being
11 hollered at.

12 Q. But you can sign a contract reporting to buy their
13 silence because of this accusation.

14 A. Uh - -

15 Q. You have a choice in whether she yells at you but you
16 don't have a choice in whether to sign a contract buying
17 their silence. Is that your testimony?

18 A. Uh - now you're saying that - at the time at Denny's I
19 mean I was willing to just go ahead and let them go to the
20 police.

21 Q. And what - -

22 A. I sat back down and they started discussing different
23 things and I knew I had a choice I could either go along
24 with it and later on talk to my wife about these things. I
25 knew I couldn't talk to her at that time. You know we had

1 done been arguing.

2 Q. Right. I'm just concerned why you think you had a
3 choice at Denny's to put up with her yelling or not but you
4 don't have a choice once you get home to sign the contract
5 because you stated you get up and leave she's free to go to
6 the police.

7 A. Yea absolutely she was.

8 Q. So at that point you did have a choice. I don't
9 understand where we cross into the no choice land.

10 A. Uh- I'm not sure what you are asking me. I sat there
11 and listened to what they were saying and then I agreed to
12 go ahead and go back home and see - to listen to what kind
13 of terms they wanted out of me at that time. I guess I
14 figured there was no - if I was going to have a chance at
15 ever convincing my wife that these things were not true or
16 even finding a way to convince anybody that these
17 accusations are not true I would have to have some time in
18 doing that.

19 Q. Okay. And so what is discussed at Denny's? What did
20 you have to talk about?

21 A. I'm not exactly sure what all was discussed at that
22 time. I know she said there were certain things that
23 Tabitha wanted; certain things that I would have to do.
24 I'm not sure exactly what everything was discussed.

25 Q. So when you get that contract while you may not have

1 seen the contract before certainly you have been in
2 negotiations since Denny's.

3 A. I'm sorry.

4 Q. Certainly they've been saying this is what we want so
5 we don't go to the police since Denny's, correct? I mean
6 the things Tabitha is demanding, the things she is wanting,
7 why is she thinking she is going to get those?

8 MR. BOYD: Your Honor, I will object to any
9 speculation to what Tabitha is thinking.

10 MS. HERVEY: I'll rephrase, your Honor.

11 What did you understand you were promising Tabitha
12 these things for?

13 A. Well she had me in the position where I had to sign
14 the contract and make promises or she could go to the
15 police and say the things that she was saying and there was
16 no way I could prove otherwise.

17 Q. All right. So when you get the contract you pretty
18 much knew that was coming at some point. You knew you had
19 made these promises, you agreed to these terms at Denny's.

20 A. I'm not sure all the terms that you are talking about
21 that's in the contract. No I'm not sure.

22 Q. What terms do you recall discussing?

23 A. I'm not sure exactly what terms was discussed that I
24 can remember.

25 Q. This is a pretty significant conversation in your life

1 was it not?

2 A. I was pretty upset.

3 Q. True. But this is a pretty significant conversation,
4 correct?

5 A. I would say so.

6 Q. Your wife you claim if she went to the police was
7 going to substantially take a turn for the worse, correct?

8 A. That's correct.

9 Q. Your worse fear, correct?

10 A. I would say so. Anybody's worse fear.

11 Q. You're concern was that you were never going to be
12 able to prove your innocence, correct?

13 A. Yes, ma'am.

14 Q. But you didn't think it important to pay attention to
15 what was being said at Denny's?

16 A. I - like I said I'm not sure exactly what all was
17 said.

18 Q. And for the same reason you didn't really think it was
19 important to read the contract you just needed to glance
20 over it when you were presented with it?

21 A. I feel I didn't have much of a choice.

22 Q. And I'm curious - you and your wife are arguing at the
23 point that Tabitha comes in and makes this accusation. And
24 you stated that it was your testimony that you were
25 leaving, correct?

1 A. At that time.

2 Q. Right. So Tabitha comes out and makes this allegation
3 about you while you were still there?

4 A. Yes.

5 Q. She doesn't wait for you to leave and then tell her
6 mother dad's been molesting me?

7 A. That's correct.

8 Q. And you stated a lot of things to Mr. Boyd and
9 obviously my recollection is not the same as may be true
10 did you ever make a statement to something about an effort
11 to keep the two of you together?

12 A. There's a lot of things that ran through my mind at
13 that time. One of those things might have been she was
14 trying to keep us together by making this thing up.

15 Q. By making you what?

16 A. By making that statement.

17 Q. How can the statement that you had been molesting her
18 since she was a child keep your marriage together?

19 A. I guess she could make demands; that's all I know.
20 You're asking me in what context?

21 A. She can make demands; that's what you're thinking?

22 A. That was - yea I said several thoughts went through my
23 head and I'm not sure what all thoughts went through my
24 head at that time.

25 Q. And just referring back to the contract the things

1 that - so it's your testimony she demanded was residency
2 for her mother outside the home?

3 A. I don't think it said outside the home. I think it
4 said residency.

5 Q. Residency okay. But no one wanted physical contact.

6 A. I believe that's what it says.

7 Q. Okay. And an agreement that it is up to your wife to
8 decide about the marriage?

9 A. I believe that's correct.

10 Q. So did she ever demand that the two of you stay
11 together?

12 A. I'm sorry.

13 Q. In the contract there is no requirements that the two
14 of you stay together?

15 A. I don't think there is anything in the contract.

16 Q. In fact is it not that the contract provides first for
17 your wife outside the marriage?

18 A. I would assume that's what it means.

19 Q. Because if she stays in the marriage she gets the mini
20 van and the internet access anyway, right?

21 A. Yes.

22 Q. I mean had this accusation ever been made and you
23 decided to stay with your wife or work it out or whatever
24 those things that are given to her in the contract that is
25 part and partial to what she is going to get anyway through

1 the course of the marriage?

2 A. I would assume so.

3 Q. And I want to go back to this thing that you stated
4 was the last contact you recall having with Tabitha. You
5 stated that you made a phone call to her because she had
6 talked to her mother the wrong way or something like that?

7 A. She was mad at her mother.

8 Q. She was mad at her mother?

9 A. Yes.

10 Q. And your conversation with her pretty much focuses on
11 you need to respect your mother; you need to be nice to
12 your mother and that kind of thing?

13 A. It might have been something like that.

14 Q. Did you ever call your daughter and say you know what
15 I didn't do these things and you need to tell your mother I
16 didn't do these things. You know I'll help you out; I'll
17 give you the help you need. Any of that?

18 A. No, ma'am, I don't recall ever saying that to her.

19 Q. Subsequent to this contract the only thing you say to
20 your daughter is you got to be nice to your mom?

21 A. That's true.

22 Q. The court's indulgence one moment, your Honor. The
23 state has nothing further for this witness

24 MR. BOYD: Just a few questions.

25 DARRELL EFIRD BY MR. BOYD:

1 Q. In that last conversation you had you testified early
(2 was that the result of a call she made to you?

3 A. Tabitha made a call to her mother.

4 Q. Okay.

5 A. And talked to her mother kind of hatefully about her
6 asking about a bill- a hospital bill at the hospital.

7 Q. You called her about the bill?

8 A. She called Christine and then I called about the way
9 she had spoke to her mother and that she had told her
10 mother she could while she was gone she give her mother the
11 permission to check on anything for her that you know came
12 in her name.

13 Q. The - now at the meeting at Denny's you described
14 Tabitha yelling at you. Was this yelling before or after
15 terms were discussed do you remember?

16 A. It's before - before I think - as I come in and
17 started to sit down - sitting down it might have been right
18 after I sat down and we started talking. I'm not exactly
19 sure.

20 Q. Okay. And there was a - you testified you were afraid
21 your life would be ruined, is that correct?

22 A. Yes, sir.

23 Q. Has it been ruined?

24 A. Pretty much so.

25 Q. Thank you. That's all the questions I have.

1 MS. HERVEY: Just one quick question.

2 DARRELL EFIRD BY MS. HERVEY:

3 Q. You are currently employed are you not?

4 A. Yes, ma'am.

5 Q. So you found another job?

6 A. Through a temp agency only which I have no benefits.

7 Q. But you are working again?

8 A. Yes, ma'am.

9 Q. And you are still with your wife?

10 A. Yes, ma'am.

11 Q. Nothing further.

12 THE COURT: Thank you, sir. You may stand down, sir.

13 MR. EFIRD: Thank you.

14 MR. BOYD: That's the defense case, your Honor.

15 THE COURT: Anything in reply, Solicitor?

16 MS. HERVEY: No.

17 THE COURT: Mr. Foreman, ladies and gentlemen of the
18 jury, that concludes all of the taking of testimony and
19 evidence in the case. We have yet remaining final
20 arguments from counsel and my instructions to you with
21 regard to the law that applies to the issues in the case.
22 We are not going to start that this late in the afternoon;
23 rather we will wait and start that in the morning. I am
24 going to ask you if you will to be in the jury room in the
25 morning at nine thirty. We will try to get started right

1 at nine thirty. I told you nine this morning but it will
2 be nine thirty in the morning so please try to be there and
3 on time. On the over night recess I will remind you again
4 please not to discuss the case with anyone. And if there
5 should be any media account of the trial I do not know of
6 any and there may not be any but if there should be please
7 do not read, listen to, watch any media account of the
8 trial until after the trial is over. Please have a
9 pleasant night tonight and we will see you in the morning.

10 (JURY PANEL LEAVING COURTROOM AT 4:25 P.M.)

11 THE COURT: All right, counsel, I will hear you with
12 regard to any motion you wish to make at this time.

13 MR. BOYD: Your Honor, at this time I would renew the
14 motions I made previously on the grounds for directed
15 verdict on the same grounds that I made at this time - at
16 that time rather. I just renew those same arguments.

17 THE COURT: All right. I think - what I am going to
18 do is I am going to take a couple of them under advisement.
19 I'm pretty sure how I am going to rule but out of the
20 abundance of caution I want to read some cases tonight and
21 see what I can find. On the incest I am going to rule
22 against you on that. I think - I rule against the direct
23 verdict, I deny your motion for directed verdict. I think
24 there is testimony that once the alleged victim Tabitha
25 Efird became of age to consent there was still some sex

1 going on between her and her father. According to her
2 testimony that's what I have to do. I have to look at the
3 testimony most favorable to the party against whom the
4 motion is made and that of course being the state. Her
5 testimony was that there were sexual intercourse and also
6 fellacio going on after she was age of consent. And so
7 obviously for whatever reason if she did not resist that or
8 then certainly could be sex between two persons or sexual
9 intercourse between two people in the same family as
10 described in the statute so I am going to let that issue go
11 to the jury unless I see something different. I can change
12 my mind if you come with something different I have until
13 the morning to deal with that on the record if you come up
14 with some other case or something I haven't seen that would
15 be helpful I will be glad to take another look at it but
16 that's my inclination at this point. In so far as the CSC
17 2nd charge after Tabitha Nicole Efird became - after she was
18 fourteen or the CSC 2nd once she would not fall into the
19 category of CSC with a minor as to that there were threats
20 made as I understand it according to her testimony - that's
21 what I'm going by - her testimony was that there were
22 threats made to her and to her sister if she didn't go
23 along with the sexual conduct and so that's the reason I
24 over rule your motion for directed on that and let that go.
25 The CSC 1st, attempted CSC 1st, I do want to take another

1 look at that one. I want to look at these cases and my
2 inclination is there was some indication of force used
3 according to the testimony of Tabitha Efird because as I
4 recall her testimony her testimony was that the defendant
5 was trying to have sex with her and she didn't want to do
6 it, she was trying to get away from him and he grabbed her
7 arms - hands or arms - and prevented her from getting away
8 and at that point someone drove up and he let her go and
9 she went to her room. So whether that qualifies as an
10 attempted physical coercion or not I want to look and see
11 whether that would constitute coercion or not or some
12 forcible conduct but I will look at that and see what the
13 cases and what guidance I can get and I will reserve
14 judgment on that until in the morning. I will have one
15 other opportunity to put that on the record before I decide
16 what I am going to submit to the jury and we will do that.
17 What I will ask you to do if you want to take a few minutes
18 and then come back with me and meet me in chambers for a
19 few minutes and let's run through the charge so you will
20 know what I am going to charge in your arguments. I will
21 have a better idea if you do not agree with something I
22 plan to charge we can iron that out and work it out. All
23 right. Thank you.

24 (COURT RECESSES AT 4:30 P.M.)

25

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STATE OF SOUTH CAROLINA)

IN THE GENERAL SESSIONS
COURT OF YORK

COUNTY OF YORK)

CASE NO.: 2007-GS-46-1992-
1996

STATE OF SOUTH CAROLINA)

PLAINTIFF,)

TRANSCRIPT OF RECORD
VOLUME III

DARRELL EFIRD)

DEFENDANT.)

JULY 12, 2007
YORK, SOUTH CAROLINA

B E F O R E:

HONORABLE LEE ALFORD, and a jury.

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

MS. MINDY HERVEY
ASSISTANT SOLICITOR
YORK, SOUTH CAROLINA
FOR THE PLAINTIFFMR. JAMES BOYD
ATTORNEY AT LAW
ROCK HILL, SOUTH CAROLINA
FOR THE DEFENDANTWANDA NELSON
OFFICIAL COURT REPORTER
SIXTEEN JUDICIAL CIRCUIT
AT-LARGE**ORIGINAL**

1 (TIME IS 9:40 A. M. .)

2 THE COURT: Counsel, approach just a minute.

3 (BENCH CONFERENCE AT 9:40 A. M.; OFF THE RECORD.)

4 THE COURT: All right, sir, please bring the jury in.

5 (JURY ENTERING THE COURTROOM AT 9:41 A. M. .)

6 THE COURT: Good morning, Mr. Foreman, ladies and
7 gentlemen of the jury, I hope you had a good rest last
8 night. We are now ready to resume with the trial and we
9 are to that part of the trial where counsel will make their
10 final arguments to you. I ask that you listen tentatively
11 now as counsel will address you in final argument.

12 Counsel ready to proceed?

13 MS. HERVEY: May it please the court.

14 THE COURT: Solicitor.

15 MS. HERVEY: Good morning, ladies and gentlemen of the
16 jury. As you can well surmise we are now at that crucial
17 stage in the trial for you. For the most part our work is
18 done. You have the evidence, you listen to the witnesses,
19 you've seen their testimony, you've observed it here in the
20 courtroom and really now your role does begin in earnest.
21 You took an oath at the beginning of this trial to apply
22 the law to the facts as you see them here in court and the
23 laws as it's given to you by the judge. This is my
24 opportunity to what the law refers to as culpable on the
25 law so I'm just going to talk to you just briefly about the

1 law. You have a lot of charges; you have a lot of
2 different charges and I just want to preference as we go
3 into this stage to kind of reeducate you. In a sense you
4 all have had quite a baptism by fire on child abuse and the
5 law on child abuse and psychology on child abuse. It's our
6 goal here to persuade you but it's our goal to educate you.
7 Realizing however I'm just an attorney as Mr. Boyd and he
8 is the man with the big black robe. So if for any reason
9 what Mr. Boyd and I say does not conform with the law the
10 judge charges you he is the ultimate decision on the law
11 and he is here to educate you and you must take his word
12 over ours. The same as Mr. Boyd and I are not witnesses we
13 were not on that house in Fort Mill back then when this
14 happened so while we will argue the facts to you we are not
15 testifying. We are simply advocates of our various
16 positions. You the jury are the tryer of the fact. You
17 are the one who must decide. I'm going to open on the law
18 and talk about the law just briefly with you as we go to it
19 and then Mr. Boyd is going to give his closing argument.
20 I'm going to come back at the end and give truly what is my
21 closing argument but I wanted to go over the law a little
22 bit with you just so we are all on the same page as we go
23 through this.

24 I appreciate your time and attention. I know this has
25 been a difficult case. I know you did not want to spend

1 the last two or three days thinking about this subject.
2 matter. And you all have been diligent and attentive and
3 we do truly appreciate it. And I think now more than ever
4 perhaps more so in the beginning you realize how important
5 your role is, how crucial you are. These two people truly
6 disagree about what happened back then. And it is up to
7 you to resolve that. To adjudicate is he guilty, did he do
8 this? Or has the state failed to prove beyond the burden
9 of proof. I told you in the beginning that the state we
10 must prove the defendant guilty of each and every charge,
11 of each and every element of the charge beyond a reasonable
12 doubt. The judge is going to charge you that beyond a
13 reasonable doubt is a doubt to which you can give reason.
14 It is that you are firmly convinced of the defendant's
15 guilt. It's not beyond all doubt. There's nothing that I
16 can prove to you but beyond all doubt. It's not beyond any
17 shadow of a doubt. It is beyond a reasonable doubt and I
18 am going to ask that you focus on that word more reasonable
19 because I think it's going to become important to you.
20 Reasonable, sensible, logical, consistent, credible, those
21 are the words that you will use to ascertain whether or not
22 the defendant is guilty of these charges. When you listen
23 to our argument make sure that all the pieces fit together
24 the same way because a lot of times we can take one piece
25 of the puzzle - you can listen to what one person says and

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1 form an opinion but until you put that up against what
2 other people tell you only then do you realize where in
3 lies the truth.

4 The judge is going to further charge you that in the
5 State of South Carolina the testimony of the victim alone
6 is sufficient to convict the defendant. You must
7 nonetheless find it credible. You must nonetheless apply
8 the same standards you apply to all the other witnesses.
9 But I think it is important because if think in the day of
10 CSI and Cold Case we anticipate that we can get DNA off of
11 everything and there ought to be more than that. But the
12 truth is due to the nature of these cases, delayed
13 disclosure, destruction of evidence, lapse of time, we
14 don't usually have more but the law says that is enough.
15 He is charged with a multitude of crimes and I want to go
16 through those just briefly so that you understand why the
17 state even picked all these charges. Are we here to just
18 confuse you? Could we not have kept it simpler some how
19 but the reality is it's based on how long the crime went on
20 and how it mutated from one thing to the next. We really
21 had to incorporate all these things to address the number
22 of crimes that were committed.

23 The first crime is attempt. The first ground is
24 attempt; attempt to commit criminal sexual conduct in the
25 first degree. Realize what is attempt. It doesn't mean

1 that he completed the act. It doesn't mean that he got her
2 panties off or he got something in her. It is a try and
3 the law doesn't say that there's some gray line you got to
4 cross to be guilty of it but before that you're good. So
5 it is an attempt. In order to evaluate what he was
6 attempting to do you look at his conduct. You look at his
7 actions and you look at his intent. Is he attempting to
8 have sex with her? Her testimony is first he tried to
9 bribe her and that didn't work he tried more. So attempt
10 is that what the argument is about? Attempt to commit
11 criminal sexual conduct first degree. Attorneys use - we
12 all have our acronyms and I don't know them sometimes and I
13 talk to my mother and she thinks I learned a foreign
14 language in law school instead of learning the law but we
15 call it criminal sexual conduct first degree - CSC first
16 degree. And the important thing about first degree -
17 aggravated force. Aggravated force - to find him guilty of
18 attempt to commit criminal sexual conduct. Did he intend
19 to have sex with her? Some sexual battery? Some sexual
20 act? And was he attempting to use aggravated force?
21 Grabbing her, holding her, pending her down to accomplish
22 that act. You will be given the option of a lesser
23 included charge. Was it maybe not all of that but
24 something less which will be CSC second degree? Aggravated
25 force and aggravated coercion, threats. I'm not actually

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1 laying my hands on you, I'm not holding you, I'm not
2 pinning you down but I'm threatening that. I'm threatening
3 harm if you don't have sex with me. You will be given
4 that option. We've got a new one. You will be given a
5 option of a lesser included offense. You're the jury you
6 must decide what evidence fits which crime. The law
7 requires that you be given every option. It's not all or
8 nothing here. It's not trying to rape her with force or
9 nothing at all. You are given options. The law demands
10 that. ABHAN. Suddenly you've got a new set of initials.
11 And I know you think I'm trying to confuse you and I'm
12 really not. This stands for assault and battery of a high
13 and aggravated nature. Aggravated assault. And the thing
14 to think of is all of these involve sex. Use force
15 designed to get threats. That's designed to get sex.
16 ABHAN no sex. Not an if. ABHAN is a bar fight somebody
17 gets hurt. Then he and his daughter just get into a
18 physical altercation and sex had nothing to do with it. So
19 what that gives you the option of saying is was there a
20 physical altercation but no sex involved. Those are your
21 options for that night in Christmas of 2005. But then you
22 would be asked to look back in time to the other events
23 that occurred. It is very natural progression to the
24 state's theory about it. It is at around age four Tabitha
25 was being groomed; that the molestation started and as he

1 braver the molestation got worse. And around age eight it
2 transcended into sex that mutated into that ultimate act
3 and from then it continued on up until the time that she's
4 about fourteen. When they moved to Fort Mill the sex
5 continues. CSC Second with a minor. There is a thing
6 about it with a minor which is CSC Second here we don't
7 care if he threatens the child. If you are a minor age
8 fourteen or sixteen and you are in a familiar relationship
9 with your father I don't care if he threatened you or not
10 the law doesn't require that. If you the jury find that he
11 engaged in some sex act with his daughter while she was
12 fourteen to sixteen here in York County then he is guilty
13 of criminal sexual conduct with a minor. No threat, no
14 coercion, there is no nothing. She has not reached the age
15 of consent and the law doesn't go there so CSC second with
16 a minor focuses on that time in which she is not yet old
17 enough. The threats come later. She gets older; she gets
18 bigger she starts resisting more. She starts realizing
19 there is more out there. She starts dating he has to use
20 more toys and trips to the mall don't get it any more.
21 He's got to threaten her; he's got to threaten her sister.
22 It's that natural evolution in this chronic pattern of
23 crime.

24 Incest. Tabitha testified that even when she reached
25 the age of sixteen once she became an adult in the eyes of

1 the law in terms of sex that she continued to have sex with
2 her father. That at times there were threats and at times
3 there were bribes. A car - you got to have sex with me
4 once a week. It's not a threat but it's still against the
5 law. You're still guilty of a crime. You're still having
6 incest with your daughter. That's all that is. Sex
7 between families members. Father and daughter having sex.
8 These are the options that you will be given as you decide
9 this case and we give you these options because you are the
10 jury and you must find the evidence and apply it to the
11 law. But I wanted to go over with you what you are dealing
12 with. Everyone but ABHAN involves sex. A sexual battery,
13 a sexual touching, a penetration of some kind of some
14 orifice with some object. Tongue, finger, dildo, penis, it
15 doesn't matter. Mouth, vagina, anus, it doesn't matter.
16 Was he trying to have some act with her? Was he trying to
17 perform oral sex on her? Was he trying to get her to
18 perform oral sex on him? Was he trying to have out right
19 sex with her? That is what you will be asked to find.
20 That is where your focus should be. I ask you to listen to
21 Mr. Boyd and give me a chance to respond to the things that
22 he has to say. It is a complicated case. I am sure that
23 we are both going to be zealous advocates for our position.
24 And in the end you the jury will be asked to go back into
25 the jury room and to deliberate and to listen to one

1 another. Some of you may have been looking out the windows
2 when something was said. Some of you may have been looking
3 at the defendant but some of you may remember certain
4 things and others not. But you will be asked to render a
5 unanimous verdict on all of these charges. We thank you
6 for your patience; we thank you for your effort. We know
7 that the real hard work begins when you go back to that
8 room. But this part is our effort to bring everything
9 together to pull all the pieces of the puzzle together and
10 the state submits. Thank you.

11 MR. BOYD: May it please the court.

12 THE COURT: Counsel.

13 MR. BOYD: I'm not going to talk about the different
14 degrees of criminal sexual conduct or whether you believe
15 Tabitha Efird or whether or not what happened is first
16 degree or second degree or assault and battery of a high
17 and aggravated nature because it is our position that it
18 didn't happen at all so I am not going to go into any of
19 that. We know several things from listening to the
20 testimony in this case and gathering everything together.
21 The family started out in Marlboro County. They moved into
22 2001 to Fort Mill. The allegations you have before you are
23 all matters that are alleged to have happened here in York
24 County while they lived in Fort Mill. Now we know in
25 growing up Tabitha was a good student and she appeared to

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1 be basically a good child; made excellent grades in school.
2 She participated in extra curricular activities in school.
3 I think they said she was in the chorus. She did some
4 other things. She engaged in mock trial competition where
5 the students have a trial, that type of thing. She had
6 friends, normal friends with a sea of relatives. She dated
7 in high school, seemed like a normal child. We know that
8 basically that Darrell Efird was the bread winner for the
9 family. I think its testified Christine worked some. She
10 was a teacher's aide in school down there. Later the
11 decision was made that Christine would go to school and get
12 a degree and at that point Darrell was the sole bread
13 winner for the family. I also know that there were
14 financial issues in this family and that there was a lot of
15 arguments between Christine and Darrell over money. The
16 arguments were basically about Christine's spending and
17 Christine herself has described how she is bi-polar and
18 because of that she had a tendency to spend a lot of money
19 on things that were not needed. She testified to that and
20 that's basically confirmed by everybody who testified. In
21 the family that there were a lot of arguments very heated
22 arguments about money. The situation basically the family
23 continued on. Tabitha graduated high school making
24 basically look like straight A's. During her senior of
25 high school all of her grades were in the nineties. She

1 was able to obtain a life scholarship and go to the College
2 of Charleston and at the college her family also supported
3 the decision - she wanted to be a doctor at that time. The
4 family - everybody supported that decision. At that point
5 Christine is going to school, Tabitha is going to school,
6 Darrell is the sole supporter of the family. Tabitha gets
7 a life scholarship because she made such good grades. They
8 also get parent student loans in which Darrell has
9 basically taken out loans for her to pay for her college
10 education. When she got into college something changed.
11 She did okay her first semester, second semester. The fall
12 - I'm sorry, the spring of 2005 her grades just went south.
13 That semester she failed two courses. She made two F's.
14 She made a D in another course. Whatever she was doing at
15 that point she apparently wasn't applying herself to her
16 studies. She testified about having roommate problems.
17 Roommate problems to the extent she started going to
18 counseling about it so there was some issues going on at
19 that point. She came back for the summer worked that
20 summer and then that fall she went back to the College of
21 Charleston having completed a year. Her grades continued
22 not to be too good. She made - coming home on Christmas
23 break of that year of 2005 Darrell talked to her and
24 basically told her to the extent - these are not his exact
25 words, I'm paraphrasing it, but if you are going to make

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1 these kind of grades, if you are not going to apply
2 yourself you are not going to take out loans for your
3 education. Basically I am not going to finance your
4 education. You are going to have to do it yourself. She's
5 lost her life scholarship and basically like a lot of
6 parents would do if a child is not going to apply
7 themselves in college; if the child is not going to make
8 decent grades they're not going to finance a child to be in
9 college and do whatever they are going to do about applying
10 themselves. So that's what happened at that point.

11 Now during that Christmas break - also remember again
12 that Darrell is the sole supporter of the family. A
13 argument after Christmas happens. I think the date given
14 was December the 28th of 2005. Darrell and Christine are in
15 a knock down drag out argument over money again, an
16 argument that has happened numerous times during their
17 relationship. And an argument that when it becomes very
18 heated, becomes heated to the extent that Darrell says that
19 he is going to leave; that he is not going to put up with
20 her spending habits any more; he starts taking an expensive
21 cable box down; he's ready to leave the house at that
22 point. At that point in the middle of that heated argument
23 interjects herself into there and makes an accusation that
24 Darrell has been molesting her for years. Now that's when
25 the allegation of this comes to light. It's an interesting

1 place for the allegation to first be made in an argument
2 between he and Christine about money. You heard Doctor
3 DeFelice - I believe I'm pronouncing her name right -
4 testify and she talked about adult disclosure and she
5 talked about basically the usual course of adult disclosure
6 is there is a disclosure to somebody outside the family and
7 they seek to see how that's going to react or there is a
8 tentative disclosure. That's not what happened in this
9 case. There was nothing tentative about this. She goes
10 right into the middle of an argument and makes an accusation
11 right in the middle of it. Now another thing about this is
12 she's testified well at that point she was trying to avoid
13 her father. I think she even testified she was scared to
14 some extent of her father. And why would she go into the
15 middle of a heated argument in which he's already mad and
16 say something like this. Why if she's scared of him why
17 does she not wait until he's left and tell mom I'm glad
18 he's gone. He's been molesting me all these years. Or why
19 not if he's not leaving tell her mother in private or why
20 not tell somebody else? Tell her sister; go to the police.
21 I mean there are numerous things she could do but for some
22 reason she chooses this to pick the middle of a heated
23 argument to make this disclosure. I submit she makes that
24 disclosure at that moment because there is an argument
25 going on about money that her mother is mad and her father

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1 and this is an opportune time for her to take advantage of
2 the situation. So what happens? Tabitha and her mother
3 leave. They go sit in the drive way of Tabitha's sister's
4 home and they talk. And you have from the testimony of
5 Tabitha and Christine what happened and what they talked
6 about at that point. There are certain differences between
7 what they say. Tabitha says well her mother came up with
8 the idea getting this down in writing and all of that.
9 Christine says Tabitha came up with the idea of doing all
10 of this. We do know that regardless of who said what and
11 whose idea it was Darrell was called and told by them to
12 meet them at Denny's which he did. And when he met them at
13 Denny's basically he was presented with we are going to put
14 something in writing and this is the way it's going to be
15 or the police are going to be called and you are going to
16 be arrested for this. You think about a contract. A
17 contract was drawn up at the home. There may be some
18 discrepancy between Christine and Darrell about whose idea
19 it was to draw up the contract. Why Christine wrote it up.
20 Christine said because Tabitha's handwriting was bad.
21 Tabitha says that's not the reason. Frankly in a letter
22 from Tabitha in evidence her handwriting doesn't seem to be
23 bad and I submit to you that at that point Christine
24 whether she believed Tabitha or not she was mad at Darrell.
25 She saw a point well Darrell is walking out. He's my only

1 support. Whether she believes Tabitha or not she is
2 certainly willing to take advantage of the situation and
3 get what she wants from Darrell too. So at that point both
4 Tabitha and Christine have something they want from
5 Darrell. Christine wants to be supported and basically to
6 be supported and you will see that document and what she
7 gets from it. Tabitha wants to have her education paid for
8 and get her BS degree which she's been told was going to be
9 cut out. So they want something from Darrell and basically
10 they present this to him and he's told this is it take it
11 or leave it. This is not a normal contract in which people
12 sit down and negotiate over and one party says well I'll
13 give you this if you will give me that and you go back and
14 forth and you reach an agreement. This is basically a
15 piece of paper that is presented to him and said sign it
16 our charges will be brought against you.

17 Now in retrospect in hindsight he would be better off
18 if he had not signed that. But under the circumstances he
19 was in at that time his daughter had made this allegation;
20 his wife is mad at him; she is apparently on the daughter's
21 side. He knows if he goes to the police innocent or not
22 he's going to be arrested. Innocent or not he's probably
23 going to loose his job. Innocent or not everybody is going
24 to look at him as a molester because these allegations have
25 been made and he signs it. But he basically signs it you

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1 take it or leave it. There is a dispute between Christine
2 and Tabitha about how the agreement was drawn up but both
3 Christine and Tabitha get something from this agreement.
4 Both of them get something. They decide together what is
5 going to be in this agreement and they both get the benefit
6 of it. Darrell signs it he agrees to it. The rest of the
7 Christmas is uneventful. Tabitha goes back to the College
8 of Charleston; Darrell continues working; Christine
9 continues apparently going to school. The one thing that
10 is not disputed about the contract is whoever's idea it was
11 it was not Darrell's idea because Darrell wasn't in the
12 room when it was drawn up. It's no dispute it was taken to
13 him - sign this. He didn't have the input; none of the
14 terms of the contract were his idea. Either Christine or
15 Tabitha's idea. Frankly probably a combination of both of
16 their ideas. Then when Tabitha goes back to school well
17 March comes and at that point Darrell gets charged. Why
18 didn't Tabitha charge him at that time? You say well why
19 would she do that? She's got this contract that says he
20 has to pay for this, this, this, and this. Why would she
21 do that if he didn't do it at that point? But I think
22 there's two important things to remember about. One of
23 them there was apparently some dispute about a car and her
24 getting a car and they were willing to give her a car but
25 she was going to have to pay for it. And then in and by

1 this point Christine apparently she and Darrell are getting
2 along she's not as much on Tabitha's side at that point or
3 not on her side at all. And the other thing is - and this
4 is more important I submit - is what Tabitha said on cross
5 examination when asked about how she was financing her
6 college now she said as soon as she got down there she got
7 loads of things in her own name. Financial aide, that type
8 of thing. She was able to arrange it and I asked her were
9 you able to get this because you are the victim of abuse
10 and the answer was yes. By being a victim of abuse; by
11 making these allegations she's able to get the financial
12 aide to continue on into college. The financial aide that
13 her father told her was going to be cut off because of her
14 grades so that way she doesn't have to depend on her father
15 for financial support. She doesn't have to depend on this
16 contract that was written up. She can basically do it on
17 her own but the way she is able to do it on her is because
18 she is a victim of abuse. So she has every interest in the
19 world at that point in pursuing the charges.

20 Now you look at the facts surrounding this case one of
21 the things that everybody said is true in a case like this
22 there are not going to be whether it happened or not a lot
23 of witnesses to it. So in looking at the case of course if
24 it happened it's not going to happen where anybody can see
25 it happen. On the other hand if it is a false accusation

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1 there is no way a person can prove it didn't happen either.
2 So it's a situation on both sides in which there is not
3 going to be any way to either confirm it or deny it except
4 but looking at some of the smaller things. One of the
5 things I think Doctor DeFelice says when she is
6 interviewing children and this is really not a child case
7 because it's not a child that has come forward and made the
8 allegation. It's an adult that has come forward and made
9 allegations that this happened to her when she was a child
10 and when she was an older teenager. But what Doctor
11 DeFelice said is you look at the child and you see that
12 there are things that can be confirmed with what the child
13 said. Small things about places and things like that. Now
14 there are several things that Tabitha has said that can be
15 either confirmed by witnesses or not. One of the things
16 she said she said she did when she was six years old tell
17 her mother that she was being molested by her father.
18 Christine on the witness stand denied that said that wasn't
19 the case. She testified a dildo and vibrators were
20 described then were used on them. Well I ask Christine
21 about that and Christine said she had never seen any of
22 that. Never knew anything about any vibrators, dildo's or
23 anything of that nature and when the search warrant was
24 served on the Efird house and those items were listed in
25 the search warrant looked for and see if they were found

1 none of that was found. Now I am sure the state can say
2 well he got rid of those to hide evidence and that type of
3 thing and that's a possibility but I submit to you that
4 they found the contract. So if you are going to get rid of
5 everything why wasn't the contract got rid of too? That
6 may be a small thing but if you are looking at things that
7 confirm their testimony that's absent. It didn't happen.
8 She testified about being afraid, sometimes to be around
9 her father and I know what Doctor DeFelice says there.
10 Doctor DeFelice says there is a dynamic - molestation is
11 not occurring during isolated - it's occurring during a
12 family dynamic. But do you remember the testimony of Heidi
13 Capittit that Christine and Tabitha and her went with her to
14 Maine for summer vacation where she stayed several weeks in
15 the summer. And at this point Darrell is back in South
16 Carolina still in South Carolina. So Tabitha if she is
17 being abused is getting a break from abuse. She is getting
18 a break from being raped as she says at least once a week.
19 Yet what does she want to do? She wants to come back from
20 Maine to South Carolina. She's so hot and heated about it
21 she wants to either call her father to come get her and
22 bring her back where presumably according to her testimony
23 he's going to continue rape her. Or she is to the extent
24 that if he's not willing to come and get her start hitch
25 hiking home. It just doesn't make sense that she would

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1 want to come back when she's there with her mother in Maine
2 and having a break from this person who is doing all of
3 these horrible things to her. You heard the testimony I
4 believe from Paige Efird that there was a lot of argument
5 between Christine and Darrell. And that when Christine and
6 Darrell - she talked to Paige - Tabitha talked to Paige.
7 She said well you know if mom and daddy break up I want to
8 go live with my father. Now that doesn't make a whole lot
9 of sense that she would want to live with her father who is
10 molesting her. No matter what else good he's doing for her
11 if the mother and the father break up if she could live
12 with her mother in that event and not be molested.

13 You've read into the record or I read into the record
14 a stipulation of what a Doctor Agnes Shultz would testify
15 to and basically what a stipulation is instead of bringing
16 the witness to court and getting Doctor Shultz to come up
17 here from Cheraw the parties agree that if she was here
18 this is what she would say. That's what it basically said
19 that Doctor Shultz was Tabitha's pediatrician. She
20 examined Tabitha that first time of August the 15th of 1996.
21 At that time Tabitha was ten years old according to
22 Tabitha. At that point then she - the actual rape
23 penetration had started at eight years old. At that point
24 Doctor Shultz on that occasion and several occasions after
25 that examined Tabitha's genitals and she did not do a full

1 scale exam to try to determine sexual abuse. She had no
2 reason to do that. But on looking at her genitals, the
3 external part of her genitals, she saw no evidence of
4 inflammation, no evidence of rash, no evidence of any
5 injury to that area and this is on a girl who supposedly is
6 being raped at least once a week by her father. Now it
7 doesn't exclude the possibility of it happening but I
8 submit to you it does cast a doubt that here is a doctor
9 looking at her in this area and she finds nothing unusual.
10 Also if Darrell is actually doing this he is going to be
11 trying to cover it up and hide it. So it doesn't make a
12 whole lot of sense that he would be taking the child to the
13 doctor and having this area looked at by the doctor on a
14 number of occasions. Somebody that was doing that type of
15 thing who would certainly won't hesitate about letting a
16 doctor look at any where near that area. The important
17 point of the consistencies or inconsistencies of about what
18 Tabitha testified to was the incident she testified to in
19 the Christmas of 2005. You remember she testified she was
20 asleep on the sofa or the couch, her father came in - I'm
21 not sure, I think she testified he had been at work but he
22 came in and at that point he tried to rape her at that
23 time. He tried to persuade her she said and then he tried
24 to force her to have sex with her. She testified that her
25 mother and Heidi Capittit drove up and that Tabitha went

1 into her room. At that point went into her room; she
2 stayed in her room scared at that time. Now that is
3 something that can be confirmed by an independent witness
4 that it happened - Heidi Capitt. She can be called and
5 say yea well I remember going into the house you know
6 Tabitha was back in her room and didn't come out. I also
7 Tabitha after that and she appeared scared or whatever.
8 That's not what she testified to. We called Heidi Capitt
9 as a witness and if you remember Heidi Capitt is a friend
10 of the family. She has known the Efird's for some number
11 of years. She's a school teacher; has taught school a
12 number of years. At this point she teaches in the Union
13 County, North Carolina schools. She testified yes they
14 came home and Tabitha came running out of the house about a
15 phone message and said look at what this person said on the
16 phone. And she was asked a lot of questions about how she
17 remembered that time and all of that. She talked about a
18 relative had died and they were going to Maine and
19 basically this was the only time that she came back to the
20 house with Christine. That testimony from a credible
21 witness directly contradicts what Tabitha said about that
22 incident. And I submit to you that that is a very
23 important point because that is one of the rare points in
24 which her testimony can either be confirmed or denied by
25 someone outside of the family. And her testimony is

1 completely contradicted by what Tabitha had said. When you
2 look back at the family and what is going on in the family
3 there is nothing to indicate abuse was going on. Now
4 Christine's mother came into court and testified well
5 Tabitha sat on her father's lap a lot. I think she was in
6 her early teens, pre teens or early teens and she didn't
7 think that was appropriate. I submit to you that if we
8 come to the point where someone should be suspected of
9 abuse because a daughter sets on their fathers lap then
10 we've gone too far. In fact I would submit to you that the
11 fact that she's sitting on his lap probably shows that
12 abuse is not occurring because where is this happening.
13 This is happening at family functions. Members - family
14 members all around at that point. Now Darrell is in fact
15 molesting her again he's going to be trying to hide that.
16 He's going to be trying to keep anybody from knowing so
17 he's probably not going to be touching his daughter or
18 being any where with any kind of physical contact in front
19 of other people. So I submit to you the openness of the
20 relationship tends to show in fact there's not molestation
21 going on because one Tabitha is choosing to sit with him
22 instead of playing with other kids for whatever reason I
23 don't know. The testimony was she had plenty of other
24 friends and went to see them and got along with them fine.
25 But at that point he is actually - she is sitting in his

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1 lap, she's doing that voluntarily and he's letting her do
2 it which would seem to indicate that he is certainly not
3 trying to hide something that is going on else where. I
4 think Doctor Shultz testified or stipulation she said that
5 Tabitha was allergic to latex and Tabitha said he was using
6 condoms on me and went into that well Tabitha knows she's
7 allergic to latex. It's very easy for her to say this was
8 causing a problem. Tabitha had numerous allergies. She
9 seemed to be allergic to about everything including latex.
10 I submit to you again that if he is using condoms on her
11 and the condoms are causing a reaction where is the
12 reaction going to occur? Probably in her genital area and
13 Doctor Shultz checked that area and didn't see any signs of
14 inflammation or rash or anything in that area. I submit to
15 you - I think it's actually been marked now as State's
16 Exhibit Number Two - there is a poem of what Tabitha
17 described as a poem she wrote. It's probably not that
18 important of a document but it does show you some of the
19 inter-workings of what her mind was going through as a
20 child and her feeling she was having. Her complaint is
21 seems to be her parents hate each other apparently
22 referring to the arguments they were having. And that no
23 matter how hard I try I will never be good enough. Not
24 anything about she's being molested or either of her
25 parents are mean to her or anything like that. She's more

1 upset about the relationship that's going on there. Again
2 the situation is it's no way any of us can know for certain
3 what happened. It's no way we can take a video camera and
4 look back as to what happened. As the judge will tell you
5 and the solicitor has made reference to it is up to you who
6 to believe. You can take Tabitha's testimony there is
7 nothing in the law that requires that you can't take her
8 testimony and believe her and decide and vote for guilty.
9 Her testimony or the testimony of no witness has to be
10 corroborated. The corroboration I think is some of things
11 you may look for to see if somebody's story is true or not
12 true. I mean a lot was brought up about things that
13 Darrell did about the contract. Why he signed the
14 contract, why he didn't confront Tabitha about it and say
15 why are you saying these things about me. You know one of
16 the things about that is look at what's in the contract and
17 that they would not be anywhere alone together. So they
18 talked to her alone or gets together with her alone he's
19 violates what she said. And it's got down here legal
20 consequences against him for any of all actions. She can
21 go to the police if he does that. You know hindsight is
22 twenty twenty. There may be other things he should of or
23 could have done but in looking at retrospect you have to
24 understand his perspective. Also if you look at it and
25 look at what he was actually - and he is actually a child

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1 molester who is trying to get out of this - one of the
2 things you would what to look at is well he's going to try
3 to make up anything he can to get out of it so he can
4 easily get on the witness stand and say yes I talked to her
5 and she said she was making this up or she said ha ha I got
6 you now you got to pay me or I'll tell this stuff on you.
7 He could have said she said that and made that up but he
8 didn't say that. He could have said a lot of things easily
9 that nobody could have really proven otherwise to try to
10 get himself out of this but he didn't try to do that. So I
11 submit to you that's an indication in and of itself that
12 he's telling the truth.

13 As you look at that case as I told you in my opening
14 statement applies that a person is presumed to be innocent
15 and the burden is upon the state to prove that these
16 allegations are true. It is not Darrell Efird's job or my
17 job to come into this courtroom and prove to you that what
18 he is saying or what Tabitha is saying is not true. It is
19 up to the state to prove that what she is saying is true
20 and the state is given the burden to do that and that's
21 called proof beyond a reasonable doubt. That's the kind of
22 doubt that makes a person hesitate to act. In other words
23 especially in this type of case in which there is no way to
24 know one way or the other in many respects because things
25 like this either happen or did not happen where no one can

1 confirm that. It is important to remember that burden that
2 it is upon the state to prove the case beyond a reasonable
3 doubt and what that means is I told you about different
4 levels of proof in my opening statement but it's not a
5 matter of going back in the jury room and saying well I
6 believe Tabitha but I believe what she is saying is true
7 and I think that by a greater weight of evidence balancing
8 it I think it's more likely than not she's telling the
9 truth. That's not enough. If you find out that is not
10 enough to convict because you must find beyond a reasonable
11 doubt. The law has another type of proof called clear and
12 convincing evidence. You can go back into the jury room
13 and find by clear and convincing evidence that Tabitha is
14 telling the truth. It's still not enough to convict. You
15 can only convict if you find beyond a reasonable doubt,
16 beyond any reasonable possibility guilt. Again that
17 doesn't exclude all doubt. You can have a fanciful doubt
18 about anything. You can have a doubt as to whether or not
19 it's snowing outside right now but we know that's not the
20 case. But a reasonable doubt and I submit there is plenty
21 of doubt in this case. There is plenty of reasonable doubt
22 in this case. What happens in this case matters greatly to
23 everybody but especially it matters to Darrell Efird. My
24 client is innocent. He has done everything he can do. We
25 have presented the case, he's testified, there is nothing

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1 more that he can do. His fear when he signed that contact
2 is with his words I can't prove my innocence and that is
3 why we have the standard of proof that we have. A case
4 it's not up to him to prove him he's innocent. It's up to
5 the state to prove that beyond a reasonable doubt. I
6 submit that the state has not done that in this case.
7 Darrell's life is changed forever by these allegations.
8 He's lost a job over it. He's been arrested because of it.
9 He's had to hire a lawyer because of it. And no matter the
10 outcome of this case there is always going to be people
11 that look to him well that's the guy that was charged with
12 molested his daughter I don't want him around me. He was
13 found not guilty but you know it could have been true so I
14 don't want him around me or my family. So it affects him
15 for the rest of his life no matter what. But that's not
16 for you to concern yourself with. You are concerned with
17 whether the state has proven their case beyond a reasonable
18 doubt. And I speak to you they have not so I ask you to
19 return a verdict of not guilty on each and every one of
20 these charges. Thank you.

21 MS. HERVEY: May it please the court, your Honor.

22 THE COURT: Solicitor.

23 MS. HERVEY: There's nothing in my magic box but
24 yesterday when I was over there at that podium I was
25 dancing with it. I feel like a politician or a preacher

1 whenever I get behind one of them. It's spread out a
2 little more so I prefer this in a closing argument. Again
3 we do what to thank you. Mr. Boyd and I obviously
4 appreciate what a difficult role this is for you and this
5 is my opportunity to sum up the evidence in telling you
6 exactly why I think he is guilty and why I ask you to hold
7 him accountable. It is a difficult case; it is a difficult
8 subject matter. It is a difficult case because the truth
9 is in the very subtle details. There is no smoking gun or
10 DNA or a blood splatter on the wall. It's about do they
11 look you in the eye when they tell you this story. Did it
12 have the emotion that you would have saying the same thing?
13 Do they agree, are they consistent. We've got a lot of
14 little pieces to this puzzle. Not a big piece in any of it
15 other than that contract. But everything else is just
16 little pieces. When I was little my mama used to tell me
17 now Mindy don't tell a lie. You tell one lie you are going
18 to have to tell five lies to cover it. Eventually I am
19 going to catch you in one. And I submit to you that's what
20 you've had for the past three days from the defense. Lies
21 to cover the lies to cover the lies. And we will go
22 through that and I will show why I think that is true. But
23 it is important that you realize you are not here on behalf
24 of Tabitha and you are not here to prevent Darrell Efird
25 with penning a scarlet A on his chest. You were picked for

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1 this jury because you don't know either of them. You have
2 no friends to avoid and no enemies to punish. You are not
3 here about punishment; you are not here about mercy and you
4 are not here about forgiveness. You are here about guilt
5 and you are here about innocence and that's it. There's
6 two versions of events that have been advanced here for the
7 past three days and ultimately it comes down to who you
8 believe because either one's true or the other. A lot of
9 these cases I've tried the truth was somewhere in the
10 middle but in this case it's one or the other. Either
11 Tabitha Efird is a chronic victim of sexual abuse that
12 started when she was four that turned when she was eight to
13 sex, that she had lived with it all her life, that she has
14 never known anything else. That her one relationship with
15 her father would mutate into something so evil that no one
16 could even fathom how that will mark her for the rest of
17 her life. That she put up with it as long as she could;
18 that she turn on herself trading herself for toys and cars;
19 that she finally got away in college and finally realized
20 you know what there is more in this big bad world than
21 Darrell Ray Efird. And that when she couldn't take it
22 anymore; when he wasn't just going to just use threats and
23 bribes; when it was actually going to turn into a physical
24 fight that she had enough and she finally was brave enough
25 to tell. And that she did and that Darrell Efird guilty

1 of that abuse, worry now the only person he can get is his
2 wife, tries to buy their silence and gets caught. Because
3 while Tabitha eventually capitulates to that and agrees
4 that once again she can be bought. When she goes back to
5 school she gets even braver and says no. Or, or Tabitha
6 Efird is a good student; everybody agrees with that. She
7 goes through life as a model kid, no behavior problems, no
8 nothing. She fusses with her mom now and then; she's not
9 getting kicked out of school; she's not in juvenile
10 delinquent hall; she's a good kid; gets good grades, gets a
11 scholarship, goes to college. And then one Christmas
12 becomes the evil doer of the century because you've got to
13 imagine what evilness must lie in her heart because if this
14 is a plan of extortion and blackmail the defense would like
15 to you to believe; if that's true then she is so evil. How
16 dare you put your father through that? How dare you put
17 your mother through that? And this isn't something that
18 you come up with on a whim. This isn't some barb you throw
19 out over Christmas. I hate you mom I hate you dad or blah,
20 blah, blah. They want you to believe that this is a
21 premeditated, calculated, learned, researched, plan of
22 blackmail that she somehow got her mama to go along with
23 for a little bit. That's what you've got to believe to
24 find him not guilty because if you buy the blackmail story
25 you got to swallow it whole and it only comes one way.

1 That's what you have to believe for the extortion to work.
2 All of that. And those are the two things that you are
3 presented. And that's the decision you are going to make.
4 That's the lie from the stand. Is she a victim of child
5 abuse or is she an evil liar? She's a victim of child
6 abuse and to sit here and suggest that she some how tried
7 to blackmail her father over it is adding insult to the
8 injury that he has done to her since she was four years
9 old. Because imagine if it is the truth, imagine if you
10 did molest your daughter all those years and you are
11 finally caught, you get on that stand and you not only deny
12 it but you try and twist and turn the truth against her
13 because that takes a whole other level of evil. Most
14 people don't want to think about child abuse. Most people
15 don't want to believe that it happens in our community.
16 And most people say you know what I can't look at a child
17 and be sexually aroused. I don't know how anybody can do
18 that; I don't understand it. It's just not something I
19 even want to think about. But the reality is is that child
20 abuse happens in our community and it happens a lot more
21 than people are willing to believe. It used to be a dark
22 little corner and only a few people came out of there but
23 the reality is that it is growing and that child abuse does
24 happen and that we must confront it. And that it takes
25 jurors willing to believe children testifying against

1 adults and parents to hold these people accountable.

2 Child abuse is perhaps the most cowardly of crime
3 committed in York County. It is the most cowardly, it's
4 not a riot; it's not two men having at it; it's not two
5 women getting into a fight over a man. Because remember
6 when this started he's the father; he's the adult and he
7 has preyed and exploited his own four year old daughter.
8 That's what this entails. It is a cowardly evil thing and
9 that is what goes on and that's why child abusers are so
10 successful because they don't pick on adults. They don't
11 pick on women of their own size. They don't go out in
12 parking lots with their video cameras. They keep it at
13 home where no body is a witness. And they use things like
14 oh daddy loves you, this is just a game daddy plays, we're
15 having fun, don't tell anyone, great girl, good girl. I
16 fingered you, good girl, thank you for taking it, thank you
17 for not telling anybody, I love you, this is how you get
18 daddy's love. That's what this is about. That's what this
19 is. That's the meat of it.

20 Everyone agrees a lot of what occurred. Mr. Boyd is
21 right. Everybody believes that Tabitha is a good girl.
22 Everybody believes that she gets good grades; she's in the
23 choir; she's in mock trail; she gets a scholarship; she
24 goes to MUSC. She did to college and her grades drop off
25 and then she came home. That much we all agree. And we

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1 all agree everybody signed the contract so a lot of your
2 work is coming down to who you believe in terms of the meat
3 of it but it does come down to the nuances. When you
4 evaluate the witness and you evaluate their credibility and
5 you evaluate their believability you have to ask yourself
6 who's got anything to gain. Who gets anything by coming
7 forward and telling you blah, blah, blah. Who advanced by
8 it? Who advances by that? Who by denying certain things
9 saves face? That's how you evaluate who is telling you the
10 truth in this case and who is not. What did Tabitha gain
11 by getting up here and telling you this story? What did
12 she gain? At best she put herself twenty thousand dollars
13 a year in debt on her own. Mr. Boyd oh you know she got
14 those loans because she was a victim of sexual abuse. It's
15 a loan. It's not a scholarship program. It's not a beauty
16 contest. It's a loan. She's twenty and she's almost forty
17 grand in debt. Yoo hoo I got a lot. That was worth getting
18 on that standing and admitting that my dad molested me
19 since I was four and that was worth that and it took about
20 ten or twenty minutes. I got a lot. It's a loan that she
21 got put in her own name. A financial obligation she is
22 going to have to pay back. That's her net gain in all of
23 this. But what does it cost her? Whose side of the
24 courtroom is mom on? Whose side has mom been on through
25 all of this? She not only lost dad she lost mom, half her

1 family; his side of the family. She hasn't got anywhere to
2 go home to Christmas time now. There is nobody sending
3 Tabitha care packages to college with popcorn and
4 highlighters and notebooks. She's parentless for the rest
5 of her life and forty grand in debt. That's what she got.
6 That's what she got. And she got up here and talked about
7 having sex with her father. Just imagine for a minute that
8 for whatever reason and its illogical and it'll never
9 happen to you but imagine that I called you up and I said
10 you know Mr. Juror, Mr. So and So, I want you to get on the
11 stand and tell me about the last time you had sex with your
12 wife or your husband. First of all you would tell me I was
13 whacked out of my head. But for whatever reason you were
14 compelled to do that think about how difficult it would be
15 to get on that stand and testify you know what my wife and
16 I last Thursday night this is how it happened. You would
17 be mortified. And that was a consensual, loving, hopefully
18 fun encounter for you. That wasn't a dark dastardly deed
19 that you weren't even consenting to. Think about what that
20 takes. Put yourself in her shoes.

21 They've given you basically three reasons to question
22 the testimony of Tabitha. Heidi, Paige and the
23 stipulation. And they have no burden of proof it's not on
24 them to bring forward as many witnesses they possibly can.
25 You're right. But you still look at what they did put

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1 forward and you really evaluate whether it questions Heidi
2 or Tabithas' testimony. Heidi remembers that at some point
3 over Christmas break 2005 she came home and Tabitha came
4 running out of the house with the phone. She acknowledges
5 she has no idea whether that's the night that Tabitha talks
6 about in terms of the rape. She finally acknowledges that
7 some how while she can remember this day and whoopee pies
8 and Sam's Club and Photo Mart she can't remember a single
9 other day of Christmas. Nothing. What did you make for
10 Christmas? I don't recall. Did you ever go there again?
11 I don't recall. Who were you with? I don't recall. What
12 did you get them? I don't recall. She doesn't recall
13 anything but that date. And she wants to tell you that the
14 reason she believes that date is there was a death in the
15 family. I remember the year my father died. I remember
16 that Christmas. I remember how important it was to be with
17 family. I remember exactly how bad it was and how unhappy
18 it was. I couldn't tell you if I went to Sam's or I went
19 to my friends how though. She's not credible and even if
20 you believe her she can't tell you that it was that day.
21 It could have been some other day. She freely acknowledges
22 there were other days she might have gone over there but
23 she can't remember. It's not a reason to believe it.
24 Paige the sister-in-law. Not Wade, not his brother,
25 not his sister. Some sister-in-law comes in here and tells

1 you three things. One she told me that if there was a
2 divorce she would live with her father. Okay. You don't
3 remember really when that was. She's talking to her
4 father's brother's sister so is she going to admit to them
5 that she likes mom more? Is that going to make dad's
6 family like her? Is that going to get her anything? Is
7 she really sitting there making the ultimate decision?
8 She's not in a divorce court testifying in front of a
9 judge. She's telling Aunt Pam you know if my parents get a
10 divorce and I really don't know where I'm going to end up.
11 Maybe I would like to live with my dad. I'm really not
12 sure what that is. And the other thing she tells you is
13 even more illogical. She told me that she wanted to save
14 her virginity for marriage. Obviously this didn't happen.
15 She was a virgin back then. Do you really think you are
16 telling Aunt Paige you lost your virginity at eight to your
17 dad? Does anybody really going to surmise that that really
18 happened. Is anybody really believing she's telling Aunt
19 Paige she lost it to her daddy or even to her boyfriend?
20 And then Aunt Paige goes and then she told me after this
21 happened she was going to sue her dad. She's just out for
22 money. Gold digger. His car is going to be repossessed.
23 He rents a trailer, you have a temp job. You can't get
24 blood out of a turnip. What are you going to sue him for?
25 Are you just so angry and you are so worried that nobody is

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1 going to believe you? Mama doesn't believe you but you
2 know so what I have to get back at him. So she did say it
3 if she's just angry or did she not say it because it's so
4 illogical you don't even know what to do with it.

5 The stipulation. I conducted routine physical
6 examination. She's not a gynecologist. She had childhood
7 allergies; she had a latex allergy and on five occasions
8 spanning six years I looked at her genitals and there was
9 not rash. There is no testimony whatsoever in front of you
10 that sexual abuse will result in any signs of trauma that a
11 doctor during the normal routine physical would detect. In
12 fact the last part of her statement is I did not conduct a
13 sexual abuse exam and I can offer no opinion. If she was
14 going to help them that much she would have got on that
15 stand and told you. But both he and I knew she really
16 wasn't a piece of the puzzle. And he says well you know
17 the dad took her then obviously he's not trying to hide
18 anything. Some of you have kids. Some of you have taken
19 your kids for a physical. Some of you know that nobody is
20 probing anything or you know getting out a OBGYN sexual
21 assault kit. They're pressing on her stomach to see if her
22 ovaries are there and making sure everything is okay. Some
23 physical exams probably don't even involve that. Certainly
24 none that I endured as a child didn't even examine that
25 area. What you have to ask yourself is why is daddy so

1 concerned? Why does daddy even want to check? Because he
2 says he takes her. Why? Why would a father worry about
3 that area, why would he want to make sure that the only
4 rash down there came from the latex and there is not
5 something else going on? What father even takes his
6 puberty age daughter to get that exam? Because when I was
7 twelve my daddy wasn't going anywhere near that area. And
8 we weren't even talking about when the tampons first came
9 out and I got embarrassed. Why? Why was it done? What
10 are they looking for and what are they hiding?

11 Another reason they don't want you to believe Tabitha
12 is because she loves her daddy. She sent him cards, thank
13 you notes, Valentine's Day. She loved him. She got on
14 that stand and told him that she loved him despite what he
15 had done because that's her only daddy and that's the only
16 relationship she's ever had. Doctor DeFelice explained to
17 you that they don't get to do this to kids by being mean to
18 them. They have to ingratiate themselves. They have to
19 get the kid on their side. It's all part and partial of
20 the package. If he was the evil daddy she ain't going
21 anywhere near him. But it's because this is their
22 relationship and she doesn't question that. And even when
23 she does begin to question it it's her fault. Think of how
24 many kids blame themselves for their own divorce. There
25 are kids out there who blame themselves for the fact that

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1 their mom or their dog gets cancer. You are fourteen years
2 old and you suddenly realize the birds and the bees and you
3 been having sex with dad six eight how are you not going to
4 think I ask for it, I liked it, I got a toy. People are
5 going to be mad at me, I'm going to get in trouble, I'm
6 going to jail, daddy's going to jail. Think of the more
7 trouble that puts you into; puts that child into. Love-
8 the evidence of love. That just proves it was going on
9 because it proves that it was there to exploit. Well she
10 went to Maine and she wanted to go home. She's a freshman
11 in high school. A freshman in high school, summer of her
12 first year. Sophomore year we're going to a whole new high
13 school and we are leaving everything we've ever known. We
14 are leaving the small town we grew up in and do I get to
15 spend the last few weeks with my friends that I really want
16 to. No I got to go to Maine with mommy and her friend
17 Heidi. There is no reason for them to loose that summer.
18 Dad's transfer hasn't gone through. They just wanted her
19 to start school. There is no evidence that she called up
20 dad and said you know I'm really miss the sex I want to
21 come home. She was homesick and she missed her friends.
22 It's nothing more and nothing less. Doctor DeFelice is
23 nationally renowned in her field. She teaches, she
24 educates, and she publishes and why did we call her because
25 she didn't examine Tabitha and she didn't do a forensic

1 examination. Because her testimony is so important in
2 educating people about what child abuse goes on. When you
3 talk about these things to other people you always sit
4 there and wonder why would she put up with it? Why would
5 she go through that for so long? And I think Doctor
6 DeFelice is so persuasive in explaining to you what choice
7 does a four year old have, what choice does an eight year
8 old have, what is their world, what is their alternative,
9 do they really think they will be safe, do they really
10 think they will be protected and do they really know that
11 it will be better and do they even know what is going on?
12 And once they do know and once they learn that appreciation
13 now they are a conspirator, they are a criminal themselves
14 and oh my God I am so guilty and I am so ashamed and you
15 know puberty is hard to admit anything and now I am going
16 to admit I been having sex with my dad. Why was this
17 driven deeper and deeper under ground when it happened?
18 That's why kids don't tell. That's why kids don't tell.
19 They want you to believe that she has fabricated this
20 story of abuse and molestation. Okay let's assume she is.
21 Why say it goes back to four? Why say that the sex started
22 at eight? Do you really need more than once? Do you need
23 ten or twelve years? Do you got to go all the way back
24 there? Well you know sex once would get me a car but I
25 really needed to go to at least twelve to get some loans

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1 paid back. Another year for a cell phone and huh maybe a
2 four more for a car when I graduate. If it's made up why
3 is there so much detail to it? Why does it go back so far?
4 Why does she get on that stand and not only admit to you
5 that he threatened her and he hurt her and he grabbed her
6 because then she's easily the victim? Why does she admit
7 to you that she agreed to give him a blow job once a week
8 for a car, that she took toys in exchange for sex because
9 that's humiliating. That's even beyond what she needs.
10 Why push it that far? Why put yourself in that box unless
11 it's true because you don't need it to blackmail him. Why
12 unless it's true. You know the dildo's weren't there.
13 Think about the dildo's and I know that's a odd sentence
14 for me even to say. Think about dildo's but they are
15 important in this case. And Mr. Boyd would like you to
16 believe they weren't there so she must be lying. Why add
17 the dildo's to it? There's not a new crime having sex with
18 a child with a sex toy. You know he doesn't get any more
19 time for that. She doesn't get a pony in the contract for
20 that. What does a sex toy get her? She not only tells you
21 about them one is pink, one is blue, one glows in the dark,
22 one vibrates, one with ripples. You know there's more
23 detail than anybody would believe. If she is making the
24 story up why tell you that unless she thinks they might
25 still be there. Because if she's making the story up I'm

1 not going to tell you about dildo's never existing. I
2 don't think that happened. That detail, that idiosyncratic
3 detail I was allergic to latex he had to use this. He used
4 spermicidal inserts, he used dildo's, this is where mom
5 was, this is what I remember. Doctor DeFelice tells you
6 kids who lie, kids who fabricate, they lack that
7 idiosyncratic detail. He had at least three months to get
8 rid of them. The contract in December she doesn't go to
9 the police until March. Well they didn't get rid of the
10 contract. You know what according to him mom had it and he
11 didn't know where it was. He never even ask to see it.
12 Maybe she actually did put it away somewhere safe in case
13 something did happen again she could help her daughter.
14 Maybe she can actually protect her daughter one day in her
15 life. Tabitha's disclosure consistent with other children.
16 Two thirds of all kids don't tell until they are eighteen.
17 All of it starts when they are young and they get groomed.
18 There is a combination syndrome. Tabitha testifies that
19 she is accommodating her father and that they are going
20 through this but that how their relationship is developing
21 she doesn't disclose until she is reaches eighteen. She
22 doesn't disclose it until she has a support system. Mr.
23 Boyd you know its not a check list, it's not a diagnostic
24 tool. No no it's not but you know what if she's lying she
25 just got an A in how to fabricate child sexual abuse

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1 because ding ding ding she hit just about everyone you look
2 for. I mean she studied hard. She's a good student. If
3 this is all a lie whow whow. But she gets an F in how to
4 not love your parents because she did a pretty lousy job at
5 that. And you know what's interesting is Mr. Boyd told you
6 that the mother initially believes her and that they became
7 combatants with a plan to blackmail daddy. Do you remember
8 that? That's funny because not one word of that came out
9 of Christine's mouth on the stand. She never told she
10 believed her daughter. She never told you that she
11 blackmailed her father and she never told you that she put
12 these things in there so her side could be blocked too.
13 She never said it. She is taking dictation the whole time.
14 I was just taking dictation. Tabitha was telling me and I
15 was writing it down. I didn't put anything on there. I
16 don't know why she didn't have access to the cell phone or
17 physical contact I don't know, I don't know why any of that
18 was in there. Come on. Why would Tabitha give her mother
19 any of these? What does she care about her mother? She's
20 not in it for herself it's a blackmail scheme why give mon
21 anything it's all about her. And what kind of mother are
22 you. Dictation. You are not a secretary. You are a
23 mother a mother. No honey I don't want anything. No we
24 shouldn't do this. No. You say he's molesting you we're
25 going to the police and you are telling your story. They

1 are going to do an investigation and we are going to find
2 out what's wrong. Dictation? I don't know. I don't know.
3 I don't know. She's like the ostrich in the family. She
4 sticks her head in the sand and she doesn't care what's
5 going on. You don't get to abstain from this vote. I
6 don't know if he molested her or not. I was just writing
7 everything she said. No you are the mom. Your husband's
8 been cheating on you and you know not with just the lady
9 next door your daughter. It either happened or it didn't
10 and you better take sides. Why hasn't she told you that?
11 It helps him out. We were just blackmailing her. Why
12 doesn't the mother get on the stand and say I initially
13 believed her, I was concerned about it, this was her plan,
14 I went along with it, it was a stupid mistake but I thought
15 it could protect her, I was worried if she went to the
16 police. Why doesn't she tell you any of that because it
17 helps him? It's his story. Because then she has to admit
18 that for that moment in time when she signs this she is
19 whoreing her daughter out for a mini van, an internet
20 access, and a cell phone because that's it. If she
21 believes her at that moment her silence about what had
22 happened to her daughter since four was bought with a mini
23 van, cell phone, internet access. That's why she can't
24 tell you that. It's bad enough that's she's been exploited
25 by her father. It's bad enough that she's been abused

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1 since four. It's bad enough that the one person charged in
2 this world with protecting their daughter and dancing with
3 her at their wedding and instead has sex with her since
4 eight. Bad enough. But how do you feel when mom buys and
5 sells you too? What does that do to you? And mom she
6 didn't know but grandma told her. Tabitha told her. This
7 is the woman who had her head in the sand since day one.
8 It is a sad sad story. Think about - to just suggest you
9 were able to observe Tabitha. Was she emotional when you
10 would expect her to be. Was she angry when you would
11 expect her to be? The mother who is caught between this
12 the daughter is telling lies, dad's on trial. Who is
13 appropriate for the circumstance because the mother could
14 have been telling you about her last class at Winthrop.
15 She just sits there. Dull eyes and just blank. The dad
16 Darrell Efird you not only observed him on the stand you
17 got to look at him while she was telling that story. Think
18 about it. Think about if your child got on the stand in an
19 open courtroom and said that he came into my bed at night
20 and he fingered her and he had sex with her and he made her
21 perform oral sex on him and he performed oral sex on her.
22 Even if it's a lie the pain that you must feel, the
23 betrayal that you must feel. If I would have said that to
24 my daddy every word out my mouth would have been a slap
25 across the face. Or did he sit there like he already knew

1 the story? Like it really wasn't a revelation and like he
2 really could have responded. Does he get up on that stand
3 does he show the awe and confusion and fear that he claims
4 that is in his heart? Or does he sit there stoic, denial,
5 lying, and blank like his wife? Is that what you expected
6 from him when he said those things? Who's consistent,
7 who's nonverbal, who's behavior, who's got the guilt, who's
8 got the shame, who's got the fear? It's all from Tabitha
9 and it's nothing on them. His one question when Tabitha
10 told her story is to look at his wife and go do you believe
11 her? Not your crazy; you're out of your head; where are
12 you coming up with this? What is that coming out of your
13 mouth, stop lying, shut up, go to your room, we are
14 checking you in somewhere. Good god you just fabricated
15 child abuse. Do you believe her honey? Do you? Huh? Is
16 that how an innocent man acts in the face of the
17 accusation? Is it? He tells you oh I didn't even read the
18 contract I just glanced at it. If you signed this contract
19 would you look at it unless you knew what was in it?
20 Unless you would do anything to buy their silence you won't
21 care what you have to do because it's a lie. I'm thinking
22 out of sheer curiosity alone skim it and you find out what
23 you got to pay. You find out what they are accusing you
24 of. For all he knows he could have confessed to it. He
25 could have confessed to murder. He just glanced at it. Is

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1 that what a man in that situation being blackmailed does?
2 Oh I have no choice, I have no choice, I had no choice, I
3 had no choice. My life was ruined I had no choice. I had
4 no choice. But he did have a choice. Hum? Do you
5 remember the choice? Remember Denny's? I told her she was
6 not going to holler at me and if she did I would get up and
7 leave and she could go to the police. Is that a trapped
8 man? Is that a trapped man? I'll sign a contract where
9 you extort money away from me I don't have but by God you
10 are not going to yell at me in Denny's. Honey we are in
11 public - - -

12 (SOLICITOR CLAPS HANDS THREE TIMES.)

13 - - - you are going to respect me more than that. At
14 what point did he go from choices you are not going to yell
15 at me to no choices and I'm just getting a glance at it.
16 When did he cross that threshold? Is there some magic
17 street on the way home from Denny's? He had choices; he
18 had every choice in the book. Sure there was a fear that
19 somebody wasn't going to believe him that maybe initially
20 there would be this concern. But do you think the contract
21 made it any better for you? Ask him? Do you remember what
22 was said at Denny's? No. You know they were talking. Of
23 course I was there and they were talking and I didn't have
24 anything to do with it other than they came up with the
25 contract. I didn't have anything to do with it. What?

1 They're blackmailing you. You're reading the menu; you
2 want to know what's in Noodles of Miami. They're
3 blackmailing you. They're accusing you of child
4 molestation she and your wife and you tune it out like they
5 been going over what mall they're going to go to this
6 weekend. I would pay attention.

7 (SOLICITOR CLAPS HANDS THREE TIME.)

8 I would know exactly what was said. She said this,
9 she said that, they agreed to this, they agreed to this
10 blackmail and I had nothing to do and I was trying to get
11 somebody overhear them but they couldn't. He says he goes
12 home and he waits in the bedroom and they come up with the
13 contract. It's all in mom's handwriting because you know
14 daughter - chicken scratch. Remember what I said at the
15 beginning? You tell one lie you got to tell some more.
16 You got to tell some more. You can't just tell one.
17 Because if it's blackmail why is mom writing it? The card
18 - pretty legible. Oops sorry. Well mom wanted dictation.
19 She wanted dictation. Well why no unwanted physical
20 contact? Oh I didn't do that. Another lie. Lies upon
21 lies upon lies upon lies. So you don't look at the
22 simplest explanation at all; that he was guilty and it's a
23 contract for silence. Mom. Why didn't he tell her I don't
24 need anything from you honey I'll be quite. Why do you
25 need the free star and the mini van? You know she's very

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1 intimidating sometimes I just didn't know what to do. We
2 yell at each other every blooming day. You know what if
3 you are going to stand up to your daughter - - -

4 (SOLICITOR STRIKES DESK WITH HAND.)

5 - - - today's the day. You know that that's not true.
6 You know your husband, you know your daughter, you know
7 she's whacked out of her head.

8 (SOLICITOR STRIKES DESK WITH HAND.)

9 Today is the day I'm standing up to you. Today is not
10 the day that I am being intimidating and taking dictation.
11 This is all the daughter's idea all of it. Blackmailer,
12 come on. Who benefits from this contract? If you believe
13 this story daughter comes out and tells this story, they
14 leave, first he packs the cable box and then he goes oh the
15 police are arriving I'll put better clothes on. Is that
16 how an innocent man acts? Does he sign that contract?
17 Would you sign that contract if you weren't guilty? And
18 okay so she's making this abuse and she's going to the
19 police. Well honey oh you want to meet at Denny's great.
20 Let's go to Denny's. Oh my life is over I'm a child
21 molester, my life is ruined, I'll loose my job, I have no
22 choices. Oh a contract whow lucky day.

23 (SOLICITOR CLAPS HANDS THREE TIMES.)

24 Lucky day. They really don't want to go to the police
25 they just want money. Wow good for me. That's what

1 happened? Come on. What does she get in the contract?
2 I've got the only trump card. I've got the queen of spades
3 the ace of death. Child molestation. My student loans
4 will be paid for and get fifty dollars back and I might get
5 a card in two years and my cell phone is paid for. She
6 already had all of that. I would get a thousand dollars a
7 month, a pony, a mustang, and every blooming thing, a trip
8 to the Caribbean. No debt gained - none. Bad - - -

9 (SOLICITOR STRIKES ON JURY BOX RAIL THREE TIMES.)

10 - - - bad blackmailing because not only is she the worst
11 negotiator in the history of mankind she doesn't get a copy
12 of the contract. Now if you blackmail mommy and daddy and
13 you've got all these wonderful things and you accuse them
14 of child abuse don't you go to Kinko's the next day and
15 make a copy of it? Don't yah? So when they breach the
16 contract you can show everybody a copy because a b and c in
17 the contract. But you are not going to admit to anybody
18 that's your silence and your sex has been bought yet again.
19 Because if she is an extortionist and she is a blackmailer
20 I am taking that with me back to school. And not only does
21 she not really get anything for herself she gets some
22 pretty crazy things for mom. Not a new car, a new dress,
23 you know things like that. No unwanted physical contact.
24 Your daddy's been screwing you since four. I'm thinking I
25 never want him to touch my mom again. I want him to go

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1 away. No one wanted - you know mom if you want to have sex
2 with him you can because you know I did but if you don't
3 want to that's okay too. I'll put that in the contract for
4 you. I'm looking out for you mom. You read mom's terms
5 and conditions and you ask yourself if that's a wife's
6 silence being bought. Those are the terms that would be
7 used. And you would ask yourself is that Tabitha's only
8 twisted gift to her mother because I'm telling you those
9 words are a woman who knows the abuse has been going on all
10 along and she's going to get her silence bought. Tabitha's
11 dictation would not have resulted in that.

12 It's not, it is not blackmail and extortion. It's not
13 consistent, it's not reasonable and it's not sensible.
14 Tabitha is not a gambler who needs to go to Vegas because
15 let me tell you she gets all this and guess what she loses
16 everything. Mom, dad, home, love, support, family, all of
17 that on a hope that he gives her everything she had the day
18 before. Well you know what they want you to believe it
19 because sometime on the way home they tell her she wasn't
20 going back to school because she was a partier. Well first
21 of all there ain't a girl who goes to college who doesn't
22 fall into that trap and why didn't you have that
23 conversation six months ago when her grades first began to
24 fall. Why didn't you tell her you know what maybe you
25 shouldn't be in Charleston. You need to move closer to

1 home you're going to Winthrop. Maybe you can go to tech
2 for a few years and when you mature and you get your life
3 back together we're going back there. Because they have to
4 have some provoking of that that turns her into the evil
5 daughter. Right because there is no motive for her to do
6 it because she's getting everything she had before.
7 Something has to turn her against that and they want you to
8 believe and that is because they threatened to cut her off.
9 Now he initially testifies that you get the loans for the
10 full year. We're not signing papers every six months. We
11 get a full year of school paid for. Spring semester 2006
12 is paid for. The loans have been spent. College has got
13 its money why cut her off then. Why not give her six more
14 months to get her grades up? He says well I don't know if
15 it goes for a year or six months. My wife did all of that.
16 She's bi-polar and spending me out of house and home every
17 month and you get a letter that you're twenty grand in
18 debt? Come on. But he gets caught in that lie and he's
19 got to tell more lies and he's got to get out of that. Oh
20 I don't know if I got the loans maybe I didn't cut her off.
21 That don't make sense. I don't know about that one the
22 wife did it. But he's telling you two minutes ago that
23 she's bi-polar and she's spends the pay check and she
24 spends her money and she spends the tax returns and that's
25 why he's leaving her. Are you going to let her negotiate

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1 your student - your daughter's loans without any idea about
2 what's going on? Come on.

3 It really comes down to this. You ask yourself these
4 two questions. Would an innocent man sign that contract?
5 Yes. The threat of child molestation is a great one yes.
6 It would bring any person to their knees. But that's an
7 innocent man signing it. Or does a loving innocent father
8 go check his daughter in somewhere and get her some help
9 and try to find out what's going on and what caused this?
10 Does an innocent man do that? Does an innocent mother who
11 has been warned and has been warned by her mother the one
12 who adopted her other daughter that something is not right?
13 I can't just believe it's not this it's not that but at
14 fourteen you don't sit on somebody's lap and they are
15 holding each other and you know it's just not right. Mr.
16 Boyd says well they wouldn't have done that out in the open
17 if it was really going on. It's been going on for years.
18 This is natural to them. The normal thing that would make
19 you stop and go hon you shouldn't do this. Would have made
20 you stop going into her bedroom at night too wouldn't it?
21 Obviously he's missing that filter. The truth is the
22 consistent version of events is that Tabitha was molested
23 that she endured this true hell most of her life. That she
24 became an over achiever that she was going to get a
25 scholarship and she was going to do anything she could to

1 get out of that house. That when she finally got out and
2 she finally stood on her own two feet she couldn't take it
3 any more. She goes home and he tries to rape her yet
4 again. First he tries to buy her love because it's worked
5 before. And if that doesn't work he grabs her and tries to
6 hold her in the room and had mom and Heidi not driven up we
7 really don't know what would have happened in the house
8 that night.

9 He is guilty of attempt to commit criminal sexual
10 conduct in the first degree. It takes a lot to try and
11 bribe your daughter into sex. It takes a lot more to
12 threaten her. It takes a lot more to put your hand on her
13 and hold her there while you are trying to convince her.
14 It was about sex. It had been about sex since day one. He
15 is guilty of having sex with her when she turned sixteen.
16 He is guilty. He had sex with her, he used her, she was
17 his mistress, she was his avenue for sex, she always had
18 been. He is guilty of criminal sexual conduct second
19 degree. He is guilty because when the toys and the bribes
20 didn't work he turned to threats. He said you know if you
21 don't I'll hurt you and I'll hurt your sister and I'll hurt
22 your mom I don't care. He is desperate and he's sick. He
23 is guilty of criminal sexual conduct with a minor second
24 degree. He had sex with her when she was eight and nine
25 and ten, eleven, twelve, thirteen, fourteen, and when they

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1 move to Fort Mill again when she had her birthday sixteen
2 during that year in high school. He was guilty, guilty,
3 guilty. Their version is unreasonable and full of holes.
4 Her story is consistent, cohesive, and true. This one's
5 not. This document that's not blackmail. It's a contract
6 for silence. Silence that's all it is. It doesn't make
7 sense as blackmail but it makes every lick of sense as yet
8 another attempt on his part to buy their silence. Hold him
9 accountable. You remember what he could and couldn't
10 answer on the stand yesterday? Acknowledge what she was
11 willing to tell you. Who has everything to gain and who
12 has everything to loose. Tabitha has already lost it all
13 because no matter what Tabitha is convinced this doesn't
14 remove her life, this doesn't buy her a new dad, this
15 doesn't give her some avenue to sue him for something he
16 doesn't have. He molested her, he is guilty, and you tell
17 him that your silence can't be bought with lies. It can't
18 be bought with lies. Thank you.

19 THE COURT: All right, Mr. Foreman, ladies and
20 gentlemen of the jury, we been at it quite a while. I
21 think everybody probably can use a break. My charge is
22 rather lengthy so we will go ahead and take a short break
23 at this time. We will take about ten minutes. You may
24 refresh yourself during the break and then we will come
25 back in and get instructions from the court on the law.

1 Please retire to the jury room.

2 (JURY LEAVING THE COURTROOM AT 11:35 A. M.)

3 THE COURT: All right we will take about ten minutes.

4 MS. HERVEY: Thank you, your Honor.

5 (SHORT RECESS AT 11:36 A. M.)

6 (BACK ON THE RECORD AT 11:45 A. M.)

7 THE COURT: Be seated and thank you. All right, sir,
8 please bring them in.

9 (JURY ENTERING THE COURT ROOM AT 11:47 A. M.)

10 THE COURT: Mr. Foreman, ladies and gentlemen of the
11 jury, you have heard final arguments from counsel. It is
12 now time for me to charge you and that is to instruct you
13 with regard to the law that applies to the issues in this
14 case. First I would like to commend the attorneys who I
15 believe did an excellent job as trial attorneys in
16 preparing and presenting the case to you. It is now time
17 for me to instruct you on the law and following in which
18 you will be able to deliberate with regard to the charges
19 in this case.

20 Now the state charges Darrell Ray Efird with several
21 offenses. They charge him with attempt to commit criminal
22 sexual conduct in the first degree. They charge him with
23 incest. They charge him with criminal sexual conduct
24 second degree. They charge him with criminal sexual
25 conduct with a minor in the second degree two counts. Now

1 to these charges the defendant has pled not guilty which
2 then places upon the state the burden of proving the
3 defendant guilty. A person charged with committing a
4 criminal offense in South Carolina is never required to
5 prove himself innocent. I charge you that it is a vital
6 important rule of law that a defendant in a criminal trial
7 no matter how great or serious may be the offenses with
8 which he is charged must always be presumed innocent until
9 his guilt has been proved beyond a reasonable doubt.

10 This presumption of innocence remains with the
11 defendant at all times through out the trial. And it is
12 only removed when and if the state has proved his guilt
13 beyond a reasonable doubt for it is your solemn duty ladies
14 and gentlemen if not clearly convinced of guilt beyond
15 every reasonable doubt to the contrary to find the
16 defendant not guilty. What is a reasonable doubt? The
17 state has the burden of proving the defendant guilty beyond
18 a reasonable doubt. Now some of you may have served as
19 jurors in civil cases where you were told it is only
20 necessary to prove the fact is more likely true than not
21 such as the greater weight or preponderance of the
22 evidence. However in criminal cases the state's proof must
23 be more powerful than that it must be beyond a reasonable
24 doubt.

25 Now, ladies and gentlemen, proof beyond a reasonable

1 doubt is proof that leaves you firmly convinced of the
2 defendant's guilt. There are very few things in this world
3 that we know with absolute certainty and in criminal cases
4 the law does not require proof that over comes every
5 possible doubt. A reasonable doubt may also be described
6 as the kind of doubt that would cause a reasonable person
7 to hesitate to act. If you have such a doubt as to the
8 guilt of the defendant then he would be entitled to a
9 verdict of not guilty. Reasonable doubt may arise from
10 evidence which is in the case or from the absence or the
11 lack of evidence in the case. If based on your
12 consideration of the evidence you are firmly convinced that
13 the defendant is guilty of the crimes charged you must find
14 him guilty. If on the other hand you think there is a real
15 possibility that he is not guilty you must give him the
16 benefit of the doubt and find him not guilty. You alone
17 must make the determination of whether or not reasonable
18 doubt exist as to the guilt of the defendant.

19 Mr. Foreman, ladies and gentlemen of the jury, there
20 are two types of evidenc which are generally presented
21 during a trial, direct evidence and circumstantial
22 evidence. Direct evidence is the testimony of a person who
23 asserts or claims to have actual knowledge of a fact such
24 as an eye witness. Circumstantial evidence is proof of a
25 chain of facts and circumstances indicating the existence

1 of a fact. The law makes absolutely no distinction between
2 the weight or value to be given to either direct or
3 circumstantial evidence. Nor is a greater degree of
4 certainly required of circumstantial evidence than of
5 direct evidence. You should weigh all of the evidence in
6 the case. After weighing all the evidence if you are not
7 convinced of the guilt of the defendant beyond a reasonable
8 doubt you must find the defendant not guilty.

9 Now, Mr. Foreman, ladies and gentlemen of the jury,
10 under the constitution of South Carolina you are the
11 finders of facts in this case. I do not have the right to
12 pass upon the facts or even to express an opinion I might
13 have as to the facts. Nor may I suggest in any way what I
14 may think about the guilt or innocence of the defendant.
15 You should form no opinion in that regard from anything I
16 may have said or any ruling I made during the course of the
17 trial. Now you've heard the testimony of a witness who has
18 special knowledge, skill, experience, training, or
19 education in a particular field; who has given opinions as
20 to matters in which she is skilled. In determining the
21 weight to be given such opinions you should consider the
22 qualifications and credibility of the expert witness and
23 the reasons given for her opinion. You are not bound by
24 such opinions. Give them the weight if any to which you
25 deem them entitled.

1 Mr. Foreman, ladies and gentlemen of the jury, Section
2 16-3-657 of the South Carolina Code of the law of South
3 Carolina 1976 is amended to advise that the testimony of
4 the victim in a criminal sexual conduct case need not be
5 corroborated by other testimony or evidence. This however
6 does not change the fact that the state has the burden of
7 proof of the charges against the defendant as I previously
8 instructed to you. As members of the jury it is up to you
9 to judge the credibility or believability of each of the
10 witness who testify. You can believe one as against many
11 or many as against one. Whatever your good judgment and
12 common sense tells you is the most believable testimony is
13 the testimony you should accept and reject that testimony
14 which you find not to be credible or believable. As the
15 sole judges of the facts in this case you are also
16 necessarily the sole judges of the credibility or
17 believability of each of the witnesses that have testified
18 during the course of the trial. Now there are a number of
19 factors which you may consider in arriving at your
20 assessment as to a particular witness's credibility or
21 believability. Some factors I'm going to list for you and
22 should you think of other factors that you believe also
23 ought to be considered when you go back into your jury room
24 on the question of credibility then you should consider
25 those factors as well. But you may consider the demeanor

CHARGE TO THE JURY

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1 of the witness from the witness stand. What was that
2 witness's manner of appearance? Was the witness straight
3 forward in answering questions or hesitant in responding to
4 questions? Simply put do you believe the witness is
5 telling the truth or not telling the truth? Do you believe
6 the witness knew of what that witness testified or did not
7 know of what that witness testified? You may consider
8 whether or not the testimony of a witness is consistent or
9 inconsistent with that witness's own testimony or with
10 other testimony or evidence presented during the course of
11 the trial. You may also consider how the witness came to
12 know the facts to which he or she testified. You may
13 consider the opportunity that a witness had to observe or
14 hear, that is to perceive the existence of the fact by
15 means of their senses. You may also consider whether or
16 not a witness is bias or prejudiced. That simply means do
17 you find that a particular witness had some reason to come
18 into court and testify one way or another to help or hurt
19 one side or the other. You may also consider whether or
20 not the testimony of a witness was strengthened or weakened
21 by other testimony or other evidence presented during the
22 course of the trial. Now you as the finders of the facts
23 in this case and you as the judges of the credibility or
24 the believability of each of the witness's that have
25 testified may believe as much or as little of what a

1 witness testifies to as you deem appropriate. You may
2 believe all of what a witness says; you may believe none of
3 what a witness says or you may believe only part of what a
4 witness says. As I stated to you earlier you may believe
5 one witness against several or several against one.
6 Whatever your good judgment and common sense tells you is
7 the most believable testimony is the testimony you should
8 accept and reject that testimony which you find not to be
9 credible or believable.

10 Mr. Foreman, ladies and gentlemen of the jury,
11 The same constitution which makes you the finders of the
12 facts makes me the sole and only instructor in the law.
13 You must accept it's correct the law that I charge and
14 apply to the law the evidence as you find it and reach your
15 verdict. Put aside any conceptions you may have had as to
16 the law you had before coming here today and accept the law
17 as I instruct it to be. You for purposes of your duty as
18 jurors today should not be concerned about what the law
19 ought to be or what I charge you the law is now in this
20 state.

21 Mr. Foreman, ladies and gentlemen of the jury, I
22 charge you with regard to criminal intent. Criminal intent
23 is a necessary element of each crime that must be proved by
24 the state beyond a reasonable doubt. Criminal intent is
25 always a matter that must be determined by the jury from

1 the circumstances surrounding the situation. There is no
2 way to prove intent to a mathematical certainty. There is
3 no way medical science can dissect a person's brain and
4 determine what he had in mine so the law says that criminal
5 intent may be inferred from the circumstances shown to have
6 existed. This is how the jury makes the determination
7 whether or not the element requiring intent was present.
8 Criminal intent is a state of mind which operated jointly
9 with an act is the commission of a crime. Criminal intent
10 is a mental state, a conscious wrong doing, so it is up to
11 you the jury to determine what the defendant intended to do
12 based on the circumstance shown to have existed. I tell
13 you that the state must prove criminal intent beyond a
14 reasonable doubt just as the state must prove every element
15 beyond a reasonable doubt. It is not necessary to
16 establish intent by direct and positive evidence but intent
17 may be established by inference in the same way as any
18 other fact by taking into consideration the acts of the
19 parties and all of the facts and circumstances of the case.
20 While the state may prove motive it is unnecessary that the
21 state do so; however, the state must prove intent.

22 Now, Mr. Foreman, ladies and gentlemen of the jury, I
23 am going to charge you the law particularly to the charges
24 made in this case by the state. I would point out to you
25 you will not have these charges written down for you back

1 in the jury room so you have to call on your collective
2 memories as to what I instruct you the law is. However
3 once you begin deliberating if you are confused about any
4 part of it or all of it for that matter upon your request I
5 will be glad to bring you back out into the courtroom and
6 recharge you on any part of it or all of it as I say for
7 that matter. But I what I would ask you to do at this time
8 is to listen carefully as I go through the law regarding
9 each of the alleged offenses. First as to incest pursuant
10 to Section 16-15-20 of the South Carolina Code of Laws it
11 is unlawful for a man to have carnal intercourse with his
12 mother, grandmother, daughter, granddaughter, step mother,
13 sister, grandfather's wife, son's wife, grandson's wife,
14 wife's mother, wife's grandmother, wife's daughter, wife's
15 granddaughter, brother's daughter, sister's daughter,
16 father's sister, or mother's sister. In this case the
17 defendant is charged with incest with his daughter. The
18 state must prove beyond a reasonable doubt that the
19 defendant had sexual intercourse with his daughter.

20 I charge you now, Mr. Foreman, ladies and gentlemen of
21 the jury, with regard to criminal sexual conduct in the
22 second degree. Now it trying to keep this straight for you
23 I am going to be charging you with regard to attempted
24 criminal sexual conduct first degree and I am charging you
25 with criminal sexual conduct second degree and I am going

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1 to be charging you with regard to criminal sexual conduct
2 second degree with a minor which has two separate elements
3 in it. There is one element that is common to all four of
4 these charges and that is sexual battery. So in order to
5 find the defendant guilty of one or more of these criminal
6 sexual conduct charges you would have to find the first
7 element that you have to find him guilty of or he had
8 committed would be a sexual battery. Now what is a sexual
9 battery? Again the state must prove beyond a reasonable
10 doubt that the defendant engaged in a sexual battery with
11 the victim. Now sexual battery is sexual intercourse
12 cunnilingus, fellatio, anal intercourse, or any intrusion
13 however slight of any part of a person's body or of any
14 object into the genital or anal openings of another
15 person's body except when the intrusion is accomplished for
16 medically recognized treatment or diagnostic purposes. Mr.
17 Foreman, I charge you that fellatio is a sex act involving
18 the male sexual organ in the mouth. Cunnilingus is defined
19 as a sex act involving the mouth and the female sexual
20 organ. If you find that a sexual battery did occur of
21 course if you didn't find the sexual battery occurred then
22 you would find the defendant not guilty of each of these
23 criminal sexual conduct charges. But if you find that a
24 sexual battery did occur you must then decide whether the
25 state has proven beyond a reasonable doubt that the

1 defendant used aggravated coercion to accomplish the sexual
2 battery. Now this is as to criminal sexual conduct second
3 degree. If you find that a sexual battery did occur you
4 must then decide whether the state has proved beyond a
5 reasonable doubt that the defendant used aggravated
6 coercion to accomplish the sexual battery.

7 What is aggravated coercion? Aggravated coercion
8 means that the defendant threatened to use force or
9 violence of a high and aggravated nature to over come the
10 victim or another person if the victim reasonably believed
11 the victim had the present ability to carry out the threat.
12 Aggravated coercion may also exist if the defendant
13 threatened to retaliate in the future by the infliction of
14 physical harm or kidnapping or extortion or other
15 circumstances of aggravation against the victim or any
16 other person.

17 As to the charge for criminal sexual conduct with a
18 minor second degree in this case the state charges Darrell
19 Ray Efird with criminal sexual conduct with a minor second
20 degree. This case the state must prove two things. First
21 the state must prove beyond a reasonable doubt that the
22 defendant engaged in a sexual battery with the victim and
23 I've described for you or defined for you a sexual battery.
24 Now second the state must prove one of the two following.
25 First the state must prove beyond a reasonable doubt that

1 the victim was at least eleven years old but not more than
2 fourteen years old at the time of the sexual battery. Or
3 the victim was less than sixteen years old but at least
4 fourteen years old and that the defendant was either in a
5 position of famileo custodial or official authority.
6 Famileo means for example a parent or a person in locus
7 perintis with the child. A custodian of physical authority
8 to force the person to submit or the defendant was older
9 that the victim.

10 The defendant is also charged with attempted criminal
11 sexual conduct first degree. I am going to charge you
12 first with regard to what criminal sexual conduct first
13 degree is and the elements of that offense and then I will
14 charge you with regard to attempt. A person is guilty of
15 criminal sexual conduct in the first degree under Section
16 16-3-652 of the South Carolina Code if the act engages in
17 the sexual battery with the victim and certain other
18 circumstances are present. Now I've already explained to
19 you what sexual battery is and that is any type of sexual
20 intercourse, cunnilingus, fellatio, or any intrusion
21 however slight of any part of a person's body or with any
22 object into or on anther persons' body except that such an
23 intrusion is accomplished for a medically recognized
24 treatment or diagnostic purpose. In order to have a first
25 degree sexual conduct there must be a showing that the

1 sexual battery occurred with one of the following
2 circumstances. That the actor used aggravated force to
3 accomplish the sexual battery or the victim submits to
4 sexual battery by the act under the circumstances where the
5 victim is also the victim of forcible confinement,
6 kidnapping, robbery, extortion, burglary, house breaking,
7 or other similar offense or acts. Aggravated force is
8 defined as forced or physical violence of a high and
9 aggravated nature to over come the victim and may or not
10 include the threat of the use of a deadly weapon. You need
11 not find both of these elements. That is aggravated force
12 and a concurrence of the crime are present at the time this
13 sexual battery need only determine what element is present
14 in order to find the defendant guilty of criminal sexual
15 conduct in the first degree.

16 I am going to charge you with regard now with attempt.
17 He is not charged in this case with completing criminal
18 sexual conduct in the first two but attempting a criminal
19 sexual conduct in the first degree. An attempt is an
20 effort to accomplish a crime which does not succeed. An
21 attempt includes a specific attempt to do a particular
22 criminal act along with an act falling short of the act
23 intended. The state must show more than a mere preparation
24 in attempt. There must be some covert act committed in the
25 effort to commit the crime. Intent means intending to

1 result which the act occurs but not accidentally or
2 involuntary. Intent may be shown by acts and conduct of
3 the defendant and other circumstances from which you may
4 naturally and reasonably infer intent.

5 Now, Mr. Foreman, ladies and gentlemen of the jury,
6 under the theory that the greater offense also includes the
7 lesser offense I will charge you also with regard to an
8 assault and battery of a high and aggravated nature. This
9 is a lesser included offense of two of the charges. It's a
10 lesser included offense of criminal sexual conduct second
11 degree and also a criminal sexual conduct in the first
12 degree. I'll explain to you now what assault and battery
13 of a high and aggravated nature is. I am going to begin by
14 explaining to you what a simple assault is and we will go
15 from assault and battery up to aggravated circumstances.

16 First as to an assault. An assault is defined as an
17 attempt or an offer to do violence or bodily injury to the
18 person of another where there is the ability to complete
19 the attempt or the offer by battery. Assault is also
20 defined as an attempt to do violence to the person of
21 another in a rude, angry, or resentful manner. There may
22 be an assault without a battery or without any bodily
23 injury. I always give this as an example of an assault.
24 If I come up to a person and I draw back my fist in an
25 angry, rude manner and I threaten to hit that person with

1 my fist and I have the present ability to carry that out,
2 that is the person is standing close enough to me to
3 actually follow through and hit that person, that is an
4 assault without a battery. Now what is a battery? A
5 battery is the unlawful touching of the person of another
6 by the party committing the assault himself or by any
7 object put in motion by the party committing the assault.
8 A battery may further be defined as the carrying into
9 effect an assault by using or implying force to the person
10 of another however slight in a rude, angry, or resentful
11 manner. I gave you previously the example of drawing back
12 my fist and threatening to hit somebody. If I actually
13 followed through and actually hit that person even in a
14 slight manner and in a rude angry manner then that is a
15 battery so now you have assault and a battery. What is an
16 assault and battery of a high and aggravated nature?
17 Assault and battery of a high and aggravated nature is
18 defined as the unlawful and intentional infliction of a
19 violent injury on the person of another accompanied by
20 circumstances of aggravation. I am going to list some
21 examples of aggravated factors or aggravated circumstances.
22 This is not a complete list but it is some examples of
23 aggravated factors or circumstances. Some examples are the
24 use of a deadly weapon, the infliction of serious bodily
25 injury, the intent to commit a felony, a great disparaging

1 between the ages or the physical condition of the parties,
2 a difference of the sexes, the purposeful infliction of
3 shame and disgrace, resistance of lawful authority and
4 others. Those are just some examples. Assault and battery
5 of a high and aggravated nature may be with a dangerous
6 weapon or an instrument and it is committed in the spirit
7 of wantonness or reckless disregard for the rights and
8 safety of others. Neither serious bodily harm or the use
9 of a deadly weapon is an essential element of assault and
10 battery of a high and aggravated nature but they are
11 circumstances of aggravation.

12 Mr. Foreman, ladies and gentlemen of the jury, if you
13 are considering a particular charge and you have a
14 reasonable doubt as to whether the defendant is guilty of
15 the lesser offense or the greater offense it is your duty
16 to resolve that doubt in the defendant's favor and find him
17 guilty of the lesser offense. Of course you wouldn't find
18 him guilty of any offense unless you had found that the
19 state had proved the elements of that offense beyond a
20 reasonable doubt. Mr. Foreman, ladies and gentlemen of the
21 jury, the defendant is charged with several charges in this
22 case. The fact that he is charged with several different
23 offenses he is not to be prejudiced by that in any way. By
24 that I mean you should consider each charge separately and
25 consider the evidence, the testimony and evidence

1 separately for each offense therefore if the evidence
2 warrants it you may convict the defendant on all accounts
3 on one and not the other and so long or you can find the
4 defendant not guilty on all accounts. Excuse me, all
5 counts. You are to return a verdict of guilty or not
6 guilty for each charge alleged in the indictment and again
7 you will consider each of these charges separately to
8 determine whether the state has proved the elements of
9 those offenses beyond a reasonable doubt.

10 Mr. Foreman, ladies and gentlemen of the jury, nothing
11 that I may have said or done during the course of the trial
12 has been in any way intended to express or suggest a view
13 of the case or an opinion as to the facts the weight of the
14 evidence or the credibility of the witnesses. If any of my
15 actions or words have seem to so indicate you will
16 disregard such and form your own opinion as to these
17 matters. You have been selected as fair and impartial
18 jurors sworn to impartially try and determine the facts of
19 this case and when you comply with your oath to do so then
20 no one will have a right to criticize your verdict and you
21 would have fully discharged your duty as jurors. You are
22 to decide this case according to the testimony you have
23 heard from the lips of the sworn witnesses along with other
24 evidence introduced during the course of the trial. I
25 charge you that as jurors you must decide the issues in

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1 this proceeding without bias and without prejudice to any
2 party. You cannot allow yourself to be governed by
3 sympathy, by prejudice, by passion, by public opinion, or
4 any other arbitrary factor. Both the state and the
5 defendant have the right to expect that each of you will
6 carefully and impartially consider all of the evidence in
7 the case and that you will follow the law as I have
8 explained it to you.

9 Now, Mr. Foreman, ladies and gentlemen of the jury,
10 whatever your verdict in this case as to each of these
11 charges your verdict must be unanimous. All twelve jurors
12 must agree on the verdict which the foreperson will be
13 authorized to write on behalf of the jury.

14 Now Mr. Foreman, ladies and gentlemen of the jury, I
15 have prepared for your use in the jury room verdict form's
16 one for each of the charges in this case and I'm going to
17 go through each of them separately and explain them to you
18 now. The first verdict form that I am going over is as to
19 attempt to commit criminal sexual conduct in the first
20 degree. Now as to each of these charges I have put in
21 pencil as part of the heading the dates that the state
22 alleges during which these charges were alleged to have
23 occurred and so I put those up to make it easier for you to
24 know which charges we are talking about, what time period
25 we're talking about to make it easier for you to identify

1 those. Now on this verdict form there are four possible
2 verdicts you can reach in this case. The first possible
3 verdict as I have listed on the verdict form is we the jury
4 find the defendant Darrell Ray Efird guilty of attempt to
5 commit criminal sexual conduct in the first degree. The
6 second possible verdict that appears on the verdict form is
7 we the jury find the defendant Darrell Ray Efird guilty of
8 the lesser included offense of attempt to commit criminal
9 sexual conduct in the second degree. And I explained the
10 difference between first degree and second degree to you.
11 So if you did not find that the state had proven the charge
12 of attempt to commit criminal sexual conduct in the first
13 degree then you can consider a lesser included offense.
14 Then I've listed on here we the jury find the defendant
15 Darrell Ray Efird guilty of a lesser included offense of
16 attempt to commit criminal sexual conduct in the second
17 degree. The third possible verdict which appears on the
18 verdict form is another lesser included offense of criminal
19 sexual conduct first degree which is assault and battery of
20 a high and aggravated nature so that's the third possible
21 verdict - a lesser offense - we the jury and as it appears
22 on the verdict form we the jury find the defendant Darrell
23 Ray Efird guilty of the lesser included offense of assault
24 and battery of a high and aggravated nature. And the
25 fourth possible verdict that appears on the verdict form is

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1 we the jury find the defendant not guilty. Now as to the
2 charge on incest there are only two possible verdicts which
3 appear on the verdict form. The first is we the jury find
4 the defendant Darrell Ray Efird guilty of incest. The
5 possible second verdict we the jury find the defendant not
6 guilty. As to criminal sexual conduct in the second degree
7 there are three possible verdicts here. The first is we
8 the jury find the defendant Darrell Ray Efird guilty of a
9 criminal sexual conduct with a minor in the second degree
10 or we the jury find the defendant Darrell Ray Efird guilty.
11 I changed that to second. I made a change on here. That
12 was an error. As it reads now I scratched through a couple
13 of words here we the jury find the defendant Darrell Ray
14 Efird guilty of criminal sexual conduct in the second
15 degree. That's the first possible verdict as to this
16 charge. The second possible verdict that appears on the
17 form is we the jury find the defendant Darrell Ray Efird
18 guilty of the lesser included offense of assault and
19 battery of a high and aggravated nature. And the third
20 possible verdict which appears on the verdict form is we
21 the jury find the defendant not guilty. The next as to a
22 charge of criminal sexual conduct with a minor in the
23 second degree there are two possible verdicts on the
24 verdict form. The first is we the jury find the defendant
25 Darrell Ray Efird guilty of criminal sexual conduct with a

1 minor in the second degree or we the jury find the
2 defendant not guilty. Those verdict forms are exactly the
3 same as to the criminal sexual conduct with a minor second
4 degree there being two charges. The dates are written on
5 there as to the inclusive dates.

6 Now, Mr. Foreman, ladies and gentlemen of the jury, in
7 preparing the verdict forms I have to put the possible
8 verdicts on the form in some order. I do it the same way
9 every time but the order in which the possible verdicts
10 appear on the verdict form means absolutely nothing and you
11 should not infer nothing from it. What you should do Mr.
12 Foreman is the jury should deliberate and once the jury has
13 reached the unanimous verdict on the charge you will simply
14 go to the verdict form find the verdict which corresponds
15 to the unanimous verdict reached by the jury then you will
16 put a check mark in the blank beside that particular
17 verdict and sign your name on the line above the word
18 Foreperson's Signature and date it and once you've done
19 that as to each of these charges you simply knock on the
20 door and let the bailiff know that you've reached a verdict
21 and the bailiff will let me know and I will bring you back
22 out and receive those verdicts. Now I am going to ask you
23 if you will at this time to retire to the jury room but do
24 not yet begin your deliberations. I have to give counsel
25 an opportunity to request additional instruction on the

1 law. If additional instructions are requested and I deem
2 them necessary I will bring you back out and give you those
3 additional instructions. If no additional instructions are
4 necessary I will send to you by means of the bailiff the
5 verdict forms and any exhibits which have been admitted
6 into evidence and instructions to begin deliberating.
7 Please do not begin deliberating until you get that
8 instruction. Thank you.

9 (JURY LEAVING COURTROOM AT 12:00 P.M.)

10 THE COURT: Exceptions and additional request for
11 charge from the state?

12 MS. HERVEY: None from the state.

13 THE COURT: From the defense?

14 MR. BOYD: No additions, your Honor. As previously
15 noted I take exception to charging 16-3-657 the no
16 corroboration charge. I recognize that that charge was
17 approved in State versus Rayfield. However that was a two
18 to three decision therefore I am making that for the record
19 and reserving that on the record.

20 THE COURT: Let me say we discussed this in chambers.
21 The state specifically requested this charge. It is
22 pursuant to a statute of the law in South Carolina so I
23 think it's an appropriate charge. I think if there was any
24 problem in Rayfield, it may have been, maybe it wasn't
25 charged in the proper context, in any event Rayfield

1 approved the charge even though it was a two to three
2 decision but nevertheless based on the court's opinion
3 there might be some issue about particularly with the
4 descent whether that should have been charged in some kind
5 of proper context. So I drafted the charge in context with
6 the states and charged the jury that what the statute says
7 but followed by this however does not change the fact the
8 state has the burden of proving the charges against the
9 defendant as I previously instructed to you and I followed
10 that with as members of the jury it is up to you to judge
11 the credibility or believability of each of the witnesses
12 that have testified and you believe one against many or
13 many against one. Whatever your good judgment and common
14 sense tells you is the most believable testimony is the
15 testimony you should accept or reject that testimony that
16 you find not to be credible or believable. So I put that
17 completely in context with their responsibility about
18 believability and whether they believe one against many one
19 against many. The credibility in that and I followed that
20 with my usual charge on credibility of the witnesses. I
21 would note also, Mr. Boyd, as I write that you discussed
22 that in at least four different areas of your argument to
23 the jury about the fact there are no witnesses to these
24 kind of crimes which can be a disadvantage - could be a
25 disadvantage to the state in presenting their case. It's

1 also a disadvantage to your client in not being able to
2 present his case that usually these crimes are committed
3 without any witnesses aware that there is a witness to one
4 of these crimes which has handicapped your client as well
5 as the state in presenting their case. There are at least
6 four different parts of your argument when you address this
7 issue which encompasses the same. The reason why this
8 statute was passed by the legislature and that is because
9 often times it is simply a child's word and there are no
10 witnesses and the legislature wanted to make sure that the
11 judges according to the Rayfield case the judge and not
12 only the jury but also the judges use that a witnesses
13 testimony did not have to be corroborated would be
14 sufficient to get the case to the jury and the jury
15 consider it without any corroboration whatsoever. Other
16 than that that is the victim's testimony. That was the
17 purpose of the statute. If you take your argument to the
18 jury there are about four different parts of your argument
19 where you basically said the same thing. And so although
20 you are putting in the light most favorable most favorable
21 to your client that might disadvantage your client but you
22 argued all on the same things. So certainly I think that
23 any objection you might have with that charge would be
24 negated by your final argument in about four different
25 parts of your argument which accomplishes the exact same

1 reason for the statute being placed in the first place.
2 But in any event I have charged - I think the state
3 requested it and I think they are entitled to it. I tried
4 to draft a charge which put it into context with the fact
5 that even though it didn't have any corroboration they
6 still had to prove their case beyond any reasonable doubt.
7 The credibility of each witness is for the jury. I think
8 in that context certainly there should be no objection to
9 it. All right, anything else?

10 MR. BOYD: No, sir.

11 MS. HERVEY: No, sir.

12 THE COURT: Then please, sir, if you will come up and
13 let me show this verdict form before I send it back to the
14 jury.

15 (BENCH CONFERENCE AT 12:25 P.M.)

16 THE COURT: It's already twelve thirty I think we will
17 go ahead and see if the jury wants to order some lunch.

18 (SHORT RECESS AT 12:27 P.M.)

19 (BACK ON THE RECORD AT 4:30 P.M.)

20 THE COURT: All right, counsel, if you will approach.

21 (BENCH CONFERENCE OFF THE RECORD AT 4:30 P.M.)

22 (JURY PANEL ENTERING COURTROOM AT 4:35 P.M.)

23 (ON THE RECORD AT 4:36 P.M.)

24 THE COURT: Mr. Foreman, ladies and gentlemen of the
25 jury, I have your note indicating you've been able to reach

1 a verdict on some of the indictments but not the others. I
2 would like to give you this additional instruction. When
3 any matter that is in dispute it's not always easy for even
4 two persons therefore I understand that with twelve persons
5 it becomes much more difficult but it is important that
6 this case be ended if it can be ended without a single one
7 of you doing violence to your conscious. It is your duty
8 as jurors to consult with one another and do deliberate
9 with a view toward reaching a agreement and if you can do
10 so without violence to your individual judgment. Each of
11 you must decide the case for himself or herself but do so
12 only after an impartial consideration of the evidence in
13 the case with your fellow jurors. In the course of your
14 deliberation do not hesitate to reexamine your own views
15 and change your opinion if convinced that your opinion is
16 not correct. No juror is expected to give up his or her
17 opinion based on reasoning satisfactory to yourself merely
18 for the purpose of being in agreement and I want you to
19 understand that and do not surrender your honest
20 convictions as to the weight or effect of the evidence
21 solely because the opinion of your fellow juror is contrary
22 to your opinion about their purpose in returning a verdict.
23 But it has never been intended that the verdict of the jury
24 should be the verdict of any one person. On the other hand
25 the verdict of the jury is the collective reasoning of all

1 persons put together. The reason we have the jury is so
2 that we might have the benefit of collective thought and
3 collective reasoning of the jury. It may help to tell the
4 other jurors how you feel about the case and why you think
5 as you do and I am sure that you have been doing that. On
6 the other hand it would help if the other jurors exchange
7 views with you and I ask that you listen to each other and
8 give to the others thoughts such meanings as you think they
9 should have. A mistrial in the case is a very unfortunate
10 thing. If you as jurors do not agree on a verdict on some
11 of these charges it doesn't mean that those charges are
12 over. It just means that at some future time in another
13 term of court before me or some other judge that some other
14 jury will sit where you are in the trial of that case. The
15 same participants will come; the same lawyers will probably
16 come and they will basically ask the same questions and
17 presumably will probably get the same answers. We will
18 have to go through the entire process again. I have no
19 reason to believe that any other twelve jurors from York
20 County will represent more of a cross section of the county
21 or will be more intelligent or will be more capable in
22 deciding this matter than you are. Then one day these
23 cases will have to be decided. I am going to now ask that
24 you again return to the jury room for further deliberations
25 and see if you can reach a verdict in the case. And let me

1 close by reminding you again that while it is important
2 that the case be ended it should be ended in the form of a
3 verdict without any juror doing violence to his or her own
4 conscious. No juror is expected to give up an opinion
5 based on reasoning satisfactory to himself or herself
6 merely for the purpose of being in agreement.

7 Now, Mr. Foreman, ladies and gentlemen of the jury,
8 with these added instructions I am going to ask that you
9 please retire to the jury room and make another attempt to
10 see if you can get the cases resolved. Of course feel free
11 to advise me at any point. I would ask you to make one
12 more effort to see if you can reach a unanimous verdict on
13 all the charges. Thank you.

14 (JURY LEAVING COURTROOM TO CONTINUE DELIBERATING AT
15 4:40 P.M.)

16 THE COURT: Any exceptions to the charge I gave from
17 the state?

18 MS. HERVEY: None.

19 THE COURT: From the defense?

20 MR. BOYD: None, your Honor.

21 THE COURT: Okay. Let's see what happens.

22 (SHORT RECESS AT 4:41 P.M.)

23 (BACK ON THE RECORD AT 5:21 P.M.)

24 (WHEREUPON: COURT'S EXHIBIT NUMBER ONE, TWO, THREE,
25 AND FOUR IDENTIFIED AND MARKED, ENTERED INTO EVIDENCE.)

1 THE COURT: Please bring the jury in.

2 (JURY ENTERING COURTROOM AT 5:23 P.M.)

3 THE COURT: Mr. Foreman, have you and the jury reached
4 a unanimous verdict in these cases?

5 MR. FOREMAN: We have, your Honor.

6 THE COURT: Please hand the verdict forms up to the
7 bailiff.

8 (VERDICT FORMS HANDED UP TO THE COURT.)

9 THE COURT: The clerk will please publish the
10 verdicts.

11 MADAME CLERK: In the State of South Carolina versus
12 Darrell Ray Efird with Indictment Number 2007-GS-46-1992
13 for criminal sexual conduct with a minor in the second
14 degree we the jury find the jury find the defendant Darrell
15 Ray Efird guilty of criminal sexual conduct with a minor in
16 the second degree signed by the foreperson this date.

17 In Indictment 2007-GS-46-1993 criminal sexual conduct
18 with a minor in the second degree we the jury find the
19 defendant Darrell Ray Efird guilty of criminal sexual
20 conduct in the second degree with a minor signed by the
21 foreperson this date.

22 In Indictment Number 2007-GS-46-1994 criminal sexual
23 conduct second degree we the jury find the defendant
24 Darrell Ray Efird guilty of criminal sexual conduct in the
25 second degree signed by the foreperson on this date.

1 In 2007-GS-46-1995 attempt to commit criminal sexual
2 conduct in the first degree we the jury find the defendant
3 Darrell Ray Efird guilty of the lesser included offense of
4 assault and battery of a high and aggravated nature signed
5 by the foreperson on this date.

6 2007-GS-46-1996 for incest we the jury find the
7 defendant Darrell Ray Efird guilty of incest signed by the
8 foreperson this date. If these so be your verdicts so say
9 you all by raising your right hand.

10 Let the record show that all affirmed.

11 THE COURT: Any questions for the jury panel from the
12 state?

13 MS. HERVEY: None from the state, your Honor.

14 THE COURT: From the defense?

15 MR. BOYD: Request the jury be polled.

16 THE COURT: Madame Clerk, please poll the jury.

17 MADAME CLERK: Ladies and gentlemen of the jury, will
18 you all please stand. As I call your name once you've
19 spoken you can have a seat. Starting with the foreperson
20 Number Sixty-eight, Mr. Doda, what be your verdict?

21 MR. DODA: Guilty.

22 MADAME CLERK: Is this still your verdict?

23 MR. DODA: It is.

24 MADAME CLERK: You may have a seat.

25 Number Fifty-nine, Randy Crenshaw. If this be your

1 verdict?

2 MR. CRENSHAW: Yes.

3 MADAME CLERK: Is this still your verdict?

4 MR. CRENSHAW: Yes.

5 MADAME CLERK: You may have a seat.

6 Number Forty-six, William Chamberlain. Is this your

7 verdict?

8 MR. CHAMBERLAIN: Yes.

9 MADAME CLERK: Is this still your verdict?

10 MR. CHAMBERLAIN: Yes that's correct.

11 MADAME CLERK: You may have a seat.

12 Number One sixty-one - she's not here.

13 Number Two eighteen, Deborah Thompson. Is this your

14 verdict?

15 MS. THOMPSON: Yes.

16 MADAME CLERK: Is this still your verdict?

17 MS. THOMPSON: Yes.

18 MADAME CLERK: You may have a seat.

19 Number One, Kelly Adams. Is this your verdict?

20 MS. ADAMS: Yes.

21 MADAME CLERK: Is this still your verdict?

22 MS. ADAMS: Yes.

23 MADAME CLERK: You may have a seat.

24 Number Two forty-three, Robin Wilson. Is this your

25 verdict?

1 MS. WILSON: Yes.

2 MADAME CLERK: Is this still your verdict?

3 MS. WILSON: Yes.

4 MADAME CLERK: You may have a seat.

5 Number One sixty-four, Edward Nivens. Is this your
6 verdict?

7 MR. NIVENS: Yes.

8 MADAME CLERK: Is this still your verdict?

9 MR. NIVENS: Yes.

10 MADAME CLERK: You may have a seat.

11 Number One twenty-one, Henrietta Jones. Is this your
12 verdict?

13 MS. JONES: Yes.

14 MADAME CLERK: Is it still your verdict?

15 MS. JONES: Yes.

16 MADAME CLERK: You may have a seat.

17 Number One twenty, Maggie Johnson. Is this your
18 verdict?

19 MS. JOHNSON: Yes.

20 MADAME CLERK: Is this still your verdict?

21 MS. JOHNSON: Yes.

22 MADAME CLERK: You may have a seat.

23 Number One fifty-five, Sarah McCullough. Is this your
24 verdict?

25 MS. MCCULLOUGH: Yes.

1 MADAME CLERK: Is it still your verdict?

2 MS. MCCULLOUGH: Yes.

3 MADAME CLERK: You may have a seat.

4 Number 2-0-3, Kathy Smith. Is this your verdict?

5 MS. SMITH: Yes.

6 MADAME CLERK: Is this still your verdict?

7 MS. SMITH: Yes.

8 MADAME CLERK: You may have a seat.

9 Number Eighty-three, Michael Gleason. Is this your
10 verdict?

11 MR. GLEASON: Yes.

12 MADAME CLERK: Is this still your verdict?

13 MR. GLEASON: Yes.

14 MADAME CLERK: You may have a seat.

15 THE COURT: Any additional questions for the jury
16 panel?

17 MR. BOYD: None.

18 THE COURT: Mr. Foreman, ladies and gentlemen of the
19 jury, this will conclude your service on this case. It
20 will also conclude your service for the week. We will not
21 start another trial this week. We have plenty of work to
22 do to keep us busy. We've been working all afternoon ever
23 since you've been deliberating. We've been working very
24 hard in this court and in the other court for that matter
25 and it's been a very productive week. We've moved along

1 matters this week in both courts but we have plenty of work
2 to keep us busy also tomorrow and we will be working
3 tomorrow but this will conclude your service. I would like
4 to take this opportunity to thank you for your service this
5 week. The service on the jury is often times very
6 difficult. I think you understand now just how difficult
7 that can be. Juries are an important part of our justice
8 system. An extremely important part of our justice system
9 and we sincerely appreciate your service this week; the
10 sacrifices you've made this week to help our justice system
11 work. We do not take that service for granted. We realize
12 that you're being here requires you to be away from your
13 work, your family, and other things that you feel that are
14 important for you to do. But again you are an extremely
15 important part of our justice system and we appreciate your
16 being here.

17 We are going to free you up at this time. Again this
18 will conclude your services for the week. As you get ready
19 to leave the clerks have already made out the checks for
20 your services this week. They will give you your checks.
21 The bailiff has them and on your way out so if you will
22 leave your badge and take your check you are free to go.
23 with our thanks and please have a pleasant weekend.

24 MADAME CLERK: We've got to have him sign the
25 indictments.

1 (JURY DISMISSED AT 5:30 P.M.)

2 THE COURT: I will hear you with regard to any motion
3 that you wish to make at this time.

4 MR. BOYD: Yes, sir, your Honor. At this time I would
5 make a motion not withstanding the verdict all on the
6 grounds that I raised in my motion for directed verdict.
7 And also in my motion in my exception to the charge to the
8 jury and any other exceptions made during the trial.

9 THE COURT: Motion noted for the record and the motion
10 is denied. There is substantial evidence to support the
11 jury's verdict. The court certainly has no problem with
12 the jury's verdict. They had no problem anyway. The court
13 had no problem. I think there is substantial evidence to
14 support the jury's verdict and I will deny your motion for
15 a new trial a judgment not withstanding. Anything else?

16 MR. BOYD: No, sir, we are ready to proceed with
17 sentencing.

18 THE COURT: Just wait for the foreperson.

19 MS. HERVEY: Can I have a moment please. Can I have
20 the indictments just to make sure?

21 THE COURT: Wait. She's getting them signed.

22 (FOREPERSON SIGNING INDICTMENT FORMS.)

23 THE COURT: All right, counsel, when ever you are
24 ready. Let me hear from the state first. Does the victim
25 wish to speak before the sentencing?

1 MS. HERVEY: Yes, your Honor. Would you like to hear
2 from her?

3 THE COURT: Yes.

4 MS. HERVEY: Thank you.

5 TABITHA EFIRD: I am Tabitha Nicole Efird.

6 THE COURT: Yes, ma'am. Yes, ma'am.

7 TABITHA EFIRD: Your Honor, I want to ask that if you
8 do give him as much time as possible because I've had to go
9 through this for sixteen years. He took forever - he took
10 forever to come forward and I just don't want him to be
11 able to come around me and my family anymore. I am about
12 to start a new life and I don't want him around us ever
13 again. And I don't want him to touch me or anybody that
14 might come for me or anyone to come for him. I am hurt. I
15 just want to make sure that the safety of my children, my
16 children's children, and the people around me is taken care
17 of. You know I do love him. I do love him. That's why it
18 hurts so bad. He did this for years. I begged him to stop
19 and he never did. And that no matter what I still love him
20 but a part of me still hates him for what he did. I am so
21 torn right now because a part of me - hate is going back.
22 Part of me is there because I know that I will be safe once
23 that he is there. All I really want to say is you know I
24 want to make sure I'm safe and my kids are safe and I'll
25 never have to worry about this happening to them from him.

1 THE COURT: Thank you, ma'am.

2 MS. HERVEY: Just briefly, your Honor, as you
3 understand law enforcement and in this case Amanda Carter
4 has been absent from us for a long time but she has been
5 very diligent and very connected to us and talking to us on
6 the phone and e-mailing with us. This was concerted on the
7 part of the York County Sheriff's Department. What you
8 didn't hear from was a lot of investigation and cooperation
9 from the law enforcement in Charleston where she initially
10 went to. This is a very egregious case, this is a very
11 difficult case, but it is through their hard work that I
12 think we are successful and I think it merits the maximum
13 penalty in this case. I think that is necessary and
14 required under the facts that you heard and that the jury
15 found and that is what the state would ask for.

16 THE COURT: Thank you, ma'am.

17 Mr. Boyd.

18 MR. BOYD: Your Honor, Mr. Efird is forty-eight years
19 old. He to my knowledge has no prior criminal record at
20 all. And you heard his testimony but just to refresh he
21 worked at INA for over twenty years and lost that job as a
22 result after he was arrested for these charges. Your
23 Honor, I would ask the court the facts have been hashed out
24 in the courtroom over the past several days. I would ask
25 the court to take into consideration the no parole offense

SENTENCE OF THE COURT

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1 that eighty-five percent of whatever percent of the
2 sentence that you give will have to be served and take into
3 consideration and take into consideration his age when
4 passing sentence. Thank you.

5 THE COURT: Mr. Efird, anything you wish to say to the
6 court?

7 MR. EFIRD: Yes, your Honor. I still love my daughter
8 no matter what happens today in this sentencing. I would
9 like to say that whatever the court decides today, the
10 twelve jurors decided this, this is the way I wanted to go
11 with the trial. I lost the trial. Whatever the court
12 system gives me then I know it will be what they see to be
13 fair.

14 THE COURT: In Case Number 2007-GS-46-1994 Darrell
15 Efird having been found guilty by a jury of criminal sexual
16 conduct in the second degree the sentence of the court is
17 he be committed to the State Department of Corrections for
18 the internment term of twenty years and the defendant is
19 given credit for any jail time served.

20 In Case Number 2007-GS-46-1993 Darrell Efird having
21 been found guilty by a jury of criminal sexual conduct with
22 a minor a second degree sentence is he be committed to the
23 State Department of Corrections for an determinant term of
24 ten years. This sentence is consecutive to the sentence in
25 07-GS-46-1994 again he's given credit for time served. On

1 these two charges he's also required to be placed on the
2 central registry of child abuse and neglect.

3 In the Case Number 2007-GS-46-1992 Darrell Efird
4 having been found guilty by a jury of criminal sexual
5 conduct with a minor second degree the sentence of the
6 court is he be committed to the State Department of
7 Corrections for an internment term of twenty years provide
8 this sentence to run concurrent. He is given credit for
9 time served. Again he is required to register, his name to
10 be placed on the register.

11 Case Number 2007-GS-46-1995 Darrell Efird having been
12 found guilty by a jury of assault and battery of a high and
13 aggravated nature. The sentence of the court is he be
14 committed to the State Department of Corrections for an
15 internment term of ten years. This sentence to run
16 concurrent. He is given credit for time served.

17 In Case Number 2007-GS-46-1996 Darrell Efird having
18 been found guilt by a jury of incest sentence of the court
19 is he be committed to the State Department of Corrections
20 for an internment term of one year. That sentence to run
21 concurrent and he be given credit for time served.

22 Nine thirty in the morning?

23 MS. HERVEY: Nine thirty in the morning. We would
24 ask just to remove the victim first and that way the
25 families aren't all leaving together.

1 THE COURT: All right let's do that. Let's ask the victim
2 and her family if you will leave first and then everyone
3 else remain seated until they are out. We are going to
4 stand down and I would ask that everyone else remain seated
5 for five minutes and give the others a chance to depart and
6 then everybody else then is free to go. Thank you.

7 (COURT RECESSES AT 5:50 P.M.)

8 - END OF TRANSCRIPT -
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STATE OF SOUTH CAROLINA)

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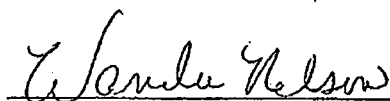
COUNTY OF CHEROKEE)

I, WANDA NELSON, OFFICIAL COURT REPORTER, CERTIFIED VERBATIM REPORTER AND NOTARY PUBLIC, DO HEREBY CERTIFY THE FOREGOING HEARING WAS TRANSCRIBED UNDER MY SUPERVISION AND THAT THE FOREGOING FOUR HUNDRED AND NINETY-EIGHT (498) PAGES CONSTITUTE A VERBATIM TRANSCRIPTION OF THE PROCEEDING HEREIN.

I DO FURTHER CERTIFY THAT THE PERSONS WERE PRESENT AS STATED.

I DO FURTHER CERTIFY THAT I AM NOT OF COUNSEL FOR OR IN THE EMPLOYMENT OF ANY OF THE PARTIES TO THIS ACTION, NOR DO I HAVE ANY INTEREST, FINANCIAL OR OTHERWISE, IN THE OUTCOME HEREOF.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME, THIS 16TH DAY OF DECEMBER, 2007.



WANDA NELSON,
OFFICIAL COURT REPORTER
CERTIFIED VERBATIM REPORTER
AND NOTARY PUBLIC IN AND FOR
THE STATE OF SOUTH CAROLINA.

MY COMMISSION EXPIRES:
12/06/2010