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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Letitia H. Verdin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TOMMY LEE WISEMAN,

APPELLANT

APPELLATE CASE NO 2016-000278

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....	i
TRIAL TRANSCRIPT (dated February 3, 2016)	1
PRE-TRIAL MOTIONS	5
TESTIMONY	
DALE ARTERBURN (IN-CAMERA)	8
SARAH DAVIS (IN-CAMERA).....	16
MINOR 1 (IN-CAMERA)	24
MINOR 2 (IN-CAMERA)	28
JURY QUALIFICATION.....	34
JURY SELECTION	45
OPENING BY THE COURT	55
OPENING STATEMENT BY MS. BENTLEY	64
OPENING STATEMENT BY MS. WICKER.....	68
TESTIMONY	
JENNIFER LYNN FLORES.....	69
JESSICA NICOLE SELGADO	83
MINOR 2	92
MINOR 1	106
DALE ARTERBURN	121
SARA DAVIS.....	134
QUESTIONING OF THE DEFENDANT	150
TRIAL TRANSCRIPT (dated February 4, 2016).....	158

TESTIMONY	
KRISTINA WHITTED	162
KATHY PEREZ	179
STATE RESTS.....	195
MOTION FOR A DIRECTED VERDICT BY MS. WICKER.....	195
RULING BY THE COURT.....	196
DEFENDANT’S RIGHTS BY THE COURT	196
CLOSING ARGUMENT BY MS. BENTLEY.....	200
CLOSING ARGUMENT BY MS. WICKER.....	211
JURY CHARGE.....	217
JURY QUESTION	236
RESPONSE BY THE COURT	237
ALLEN CHARGE	238
VERDICT	243
STATEMENT BY MS. BENTLEY	245
STATEMENT BY MS. WICKER.....	245
SENTENCING	246
INDICTMENT	249
CERTIFICATE OF COUNSEL.....	251

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE’S EXHIBIT NO. 4 (DVD OF FORENSIC INTERVIEW)
STATE’S EXHIBIT NO. 5 (DVD OF FORENSIC INTERVIEW)

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE	)	2013-GS-23-07701
	)	2013-GS-23-07702
	)	
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
TOMMY LEE WISEMAN,	)	
DEFENDANT.	)	
_____	)	

February 3, 2016
Greenville, South Carolina

B E F O R E:

THE HONORABLE LETITIA H. VERDIN, JUDGE.

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

LISA A. BENTLEY, ESQ.
Assistant Solicitor

AMANDA L. WICKER, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness
 (DW) - Denotes Defense Witness
 (IC) - Denotes In Camera

Page No.

Pre-Trial Motions.....	5
<u>(SW) DALE ARTERBURN (IC):</u>	
Direct Examination by Ms. Bentley.....	9
<u>(SW) SARAH DAVIS (IC):</u>	
Direct Examination by Ms. Bentley.....	17
<u>(SW) Minor 1 (IC):</u>	
Direct Examination by Ms. Bentley.....	25
<u>(SW) Minor 2 (IC):</u>	
Direct Examination by Ms. Bentley.....	28
Jury Qualification.....	34
Jury Selection.....	45
Introductory Remarks by the Court.....	55
Opening Statement by Ms. Bentley.....	64
Opening Statement by Ms. Wicker.....	68
<u>(SW) JENNIFER LYNN FLORES:</u>	
Direct Examination by Ms. Bentley.....	69
Cross-Examination by Ms. Wicker.....	81
<u>(SW) JESSICA NICOLE SELGADO:</u>	
Direct Examination by Ms. Bentley.....	83
Cross-Examination by Ms. Wicker.....	91
<u>(SW) Minor 2 :</u>	
Direct Examination by Ms. Bentley.....	92
Cross-Examination by Ms. Wicker.....	102
<u>(SW) Minor 1 :</u>	
Direct Examination by Ms. Bentley.....	106
Cross-Examination by Ms. Wicker.....	119

INDEX (CONTINUED)(SW) DALE ARTERBURN:

Direct Examination by Ms. Bentley.....121

(SW) SARA DAVIS:

Direct Examination by Ms. Bentley.....134

Questioning of the Defendant.....149

INDEX (CONTINUED)E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	(State's Exhibits)		
S-1	Waiver of Rights.....	8.....	132
S-2	Photographic Lineup.....	8.....	145
S-3	Photographic Lineup.....	8.....	145
S-4	DVD-Forensic Interview of Minor 1		
	Minor 1	8.....	140
S-5	DVD-Forensic Interview of Minor 2		
	Minor 2	8.....	141
S-6	Diagram.....	143.....	143
S-7	Diagram.....	143.....	143
S-8	Photograph.....	105	
	(Court's Exhibits)		
C-1	Forensic Evaluation.....	156.....	156

All Exhibits were retained by the Clerk of Court for Greenville County.

P R O C E E D I N G S

1
2 THE COURT: All right. So it looks like we've got
3 two counts of criminal sexual conduct with a minor third
4 degree. We've viewed the videos. Is there -- I have the
5 jury coming in at 10:00. And I think that's still when
6 they were coming in.

7 If there are any matters we need to take up now, I
8 just figured it would be a good time to do that.

9 MS. BENTLEY: Yes, Your Honor.

10 The State -- we do want to have a brief hearing about
11 the admissibility of those two videos prior to trial. And
12 then we, also, have a brief Neil v. Biggers. There was a
13 photo lineup done at the Julie Valentine Center, as you
14 can see in the videos, and a brief Jackson v. Denno
15 hearing.

16 (Pause.)

17 THE COURT: I'm sorry. Go ahead.

18 MS. BENTLEY: Oh, just the quick Neil v. Biggers,
19 Jackson v. Denno, and then the admissibility of those two
20 forensic interviews.

21 THE COURT: Okay. We'll see how far we get before
22 the jury gets here. And then I may just let them go --
23 you know, go for an earlier lunch, or something like that.
24 And then if we need to -- depending on how long you think
25 those hearings are going to take.

1 MS. BENTLEY: And, Your Honor, I believe -- I've
2 spoke with Ms. Wicker. And I believe that they should be
3 very brief.

4 THE COURT: Oh, okay. Well, good. Well, maybe we
5 can go ahead and get those done.

6 Anything from the Defense we need to take up?

7 MS. WICKER: Just briefly, Your Honor.

8 Because the victim and one of the witnesses are both
9 minors, I would just ask under Rule 601 that the Court
10 determine whether they're competent.

11 And I had spoken to Ms. Bentley about she may call an
12 expert witness. I don't know that she necessarily intends
13 to. But if she does, I would just ask for the opportunity
14 to voir dire that expert outside the presence of the jury.

15 THE COURT: Certainly. Absolutely.

16 MS. WICKER: And then, lastly, Your Honor, the only
17 other thing I would ask is that Mr. Wiseman be allowed to
18 remain on bond throughout the duration of the trial. He's
19 always appeared for court. This is the third or fourth
20 time this has been on the docket. And he's always shown
21 up, Your Honor.

22 THE COURT: What's the State's position on that?

23 MS. BENTLEY: I guess I would prefer to see how far
24 we get today in the trial. But since the trial would have
25 begun, his bond would have been --

1 THE COURT: Yes. He doesn't have a bond anymore.

2 MS. BENTLEY: He doesn't have a bond anymore at this
3 point. So I respectfully request that that be denied.

4 THE COURT: Yes. I'll think about that. I'll think
5 that over. We may -- I -- yes. I may have to put in
6 place some sort of, you know, PR bond or something for a
7 trial bond, but in any event.

8 Okay. How long do y'all anticipate this trial to
9 take?

10 MS. BENTLEY: Your Honor, if we go ahead and get
11 through the pre-trial items before the jury is sworn, we
12 might finish -- the State could finish today.

13 THE COURT: Okay.

14 MS. WICKER: Your Honor, we don't have any witnesses
15 to put up. And I would imagine my cross is pretty brief
16 for each of the State's witnesses.

17 THE COURT: Okay. So maybe we've got a possibility
18 of arguing and charging maybe sometime tomorrow morning?

19 MS. WICKER: Yes, ma'am, I think so.

20 THE COURT: Okay. Perfect.

21 Do you want to --

22 MS. WICKER: Your Honor, there's --

23 THE COURT: Yes.

24 MS. WICKER: -- just one more matter, if we could
25 just briefly approach.

1 THE COURT: Sure.

2 (WHEREUPON, a bench conference was held.)

3 MS. BENTLEY: Your Honor, do you have the original
4 videos that --

5 THE COURT: We do, yes.

6 MS. BENTLEY: If I could have those back.

7 Thank you.

8 (WHEREUPON, State's Exhibit Nos. 1, 2, 3, 4, and 5 were
9 marked for identification only.)

10 MS. BENTLEY: Your Honor, if we could go ahead and
11 start with the Jackson v. Denno.

12 THE COURT: Yes, please, do.

13 MS. BENTLEY: All right. Your Honor, may it please
14 the Court.

15 The State calls Dale Arterburn to the stand.

16 WHEREUPON,

17 DALE ARTERBURN,

18 after first having been duly sworn, testified as follows:

19 THE CLERK: Please have a seat.

20 THE WITNESS: Sure.

21 THE COURT: Will you state your full name for the
22 record?

23 THE WITNESS: Yes, ma'am.

24 Dale Arterburn.

25 THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. BENTLEY:

Q Detective Arterburn, where are you employed, and in what capacity?

A The City of Greer Police Department as a detective there.

Q And as a detective with the City of Greer, did you begin an investigation into the Defendant, Tommy Wiseman?

A Yes, ma'am, I did.

Q Can you, please, tell me when that investigation began?

A I believe it was May the 13th, 2013.

Q All right. And, as part of that investigation, did you compose a photo lineup?

A I did.

Q And why did you do that?

A We were -- information had been given to us through disclosures of the children -- or the child victim in this case of a Tommy Lee, who later was identified as Tommy Lee Wiseman. His photograph was then entered into a six-person lineup.

And, at that point, it was presented along with an affidavit of photographic lineup to the -- to both the victim and to a witness, I believe.

Q All right. And were all the people in that lineup

1 similar in age and physical description to the Defendant?

2 A That's correct. The characteristics were, generally,
3 with age, hair color, skin color.

4 Q Were they color photographs?

5 A They were.

6 Q Did you personally show the photographs to the victim
7 and the witness in this case?

8 A No, ma'am. I did not.

9 Q And why was that?

10 A I was not present for the forensic interview that day
11 where these lineups were presented. But I was -- they
12 were provided to another detective in my office and given
13 the same information to have these entered in during the
14 forensic interview when it came to a point where they'd be
15 provided.

16 Q And was there a reason that you had that done during
17 the forensic interview, as opposed to calling in the
18 victim and the witness yourself?

19 A Correct. The information that had been earlier
20 provided during the report and the investigation -- I had
21 had no contact with either the child or the sibling
22 brother. And, at which point, I thought it would be safe
23 to just go ahead and provide these during that interview,
24 which was a neutral location by the forensic interviewer.

25 Q Did you have a chance to observe Sarah Davis, the

1 forensic interviewer, administer these photo lineups to --

2 A I have watched -- yes. I have watched the forensic
3 interviews after the fact.

4 Q And, as a police officer, would you have done
5 anything differently than Ms. Davis during that photo
6 lineup?

7 A No, ma'am.

8 Q And did you have a chance to observe both the victim
9 and witness as they made their identification?

10 A I did through the DVD video, yes.

11 Q And do they appear -- how certain did they appear
12 when selecting a photo?

13 A Very adamant that was the person they were talking
14 about.

15 Q All right. I'm going to show you what's marked as
16 State's Exhibit Nos. 2 and 3. Do you recognize these
17 exhibits?

18 A Yes.

19 Q And how do you recognize them?

20 A These are the photographic six-person lineups that I
21 had sent over to the Julie Valentine Center to be
22 presented to the victim and the witness in this case.

23 Q And are they identical photo lineups?

24 A They are, other than signatures and the dates are
25 written in different spots, and it's a different

1 signature, yes.

2 Q So have there been additions or deletions made to the
3 actual lineups that you created?

4 A No.

5 Q Has something else been added to that?

6 A Correct.

7 Q And what has been added to that?

8 A On this lineup here, there's -- it's been circled
9 number five. And it looks like it says Minor2 , and
10 then there are his initial, SAD, 6/4/2013, which I believe
11 is going to be Sarah Davis, who is the forensic
12 interviewer that presented this lineup.

13 And on this other lineup, it's circled number five.
14 And it says Minor1 -- once again, I've got
15 initials underneath, SAD, 6/4/2013.

16 Q All right.

17 A Or SA -- I believe it's SED -- SAD.

18 Q Some initials?

19 A Some initials, yes. I believe that's going to be
20 Sarah Davis as well. It's in the same handwriting.

21 Q All right. Detective Arterburn, as part of your
22 investigation, did you try to speak to the Defendant after
23 his arrest?

24 A I did.

25 Q And do you recall what date that was on?

1 A I believe it was on the 20th of June, 2013, if I'm
2 not mistaken.

3 Q Prior to speaking with him, did you advise him of his
4 rights?

5 A He was [sic].

6 Q I'm going to show you what's been marked as State's
7 Exhibit No. 1. Do you recognize this exhibit?

8 A Yes.

9 Q And how do you recognize it?

10 A This is a standard form of Miranda rights by --
11 rights form we use through the Greer Police Department, as
12 it's noted on the top.

13 Q Did you read each and every one of those rights to
14 Mr. Wiseman?

15 A I did.

16 Q And how do you know that?

17 A Because I do this as a standard procedure. Every
18 time I bring someone in to interview them upon a case
19 where the Miranda rights needs to be written, I go over
20 each right. At which point, I, also, take some notes in
21 the top hand corner of who I'm talking to, which, in this
22 case, I said, Tommy Lee Wiseman.

23 I've, also, asked several questions, which I find to
24 be common. Greater education, he's completed -- the
25 highest grade of education he has completed, which I have

1 eleventh grade notated there.

2 I've, also, notated that he can read a little, which
3 would be his statement to me, and he can write a little.
4 I've asked him if he's under any medications, or under the
5 influence of alcohol or drugs. And I've notated sober.

6 Q Okay. Did you have to explain -- or did you explain
7 anything on that form to him?

8 A I did. We're -- under the waiver of rights, I have
9 circled the word "coercion," and my initials are there.
10 And I make it a practice to ask each person who I advise
11 of these rights if they understand what the word coercion
12 means.

13 Q All right. And did you explain it to him to a way
14 that you were satisfied he understood?

15 A I did. I advised him that it meant that we weren't
16 trying to persuade him into doing anything voluntary -- or
17 against his will.

18 Q Okay. And, Detective Arterburn, where were you when
19 you spoke to the Defendant in this case?

20 A We were at the police department in Greer.

21 Q And was he under arrest at that time?

22 A He was.

23 Q Was he free to leave?

24 A I'm sorry.

25 Q Was he free to leave?

1 A No, ma'am.

2 Q Was he in handcuffs when you spoke to him?

3 A No, ma'am.

4 Q And did you coerce him, promise him anything in order
5 to get him to speak to you?

6 A No, ma'am.

7 Q Did you deprive him of any food, water?

8 A No, ma'am. It would have been offered. I, normally,
9 offer water, or something to drink, you know, before
10 speaking to somebody.

11 Q Did you offer to let him use the bathroom, or deprive
12 him of any basic human necessity rights?

13 A I did not deprive him of any rights, no.

14 Q Did the Defendant agree to speak with you in this
15 case?

16 A He did.

17 Q At any point, did he state that he wished to cease
18 the interview?

19 A He did at one point. Towards the tail end of our
20 meeting, he said he no longer wanted to talk to me.

21 Q And what did you do at that point?

22 A Ended the interview.

23 Q All right. Did you ask him anything further after
24 that?

25 A No, ma'am.

1 MS. BENTLEY: I have no further questions for this
2 witness as to the Neil v. Biggers hearing. And he is the
3 only witness for the Jackson v. Denno hearing.

4 I'd request that the statement be allowed in.

5 THE COURT: All right. Yes, ma'am.

6 MS. WICKER: We don't -- I don't have any questions.
7 And I don't have any motions.

8 THE COURT: All right then. Well, I do find, based
9 on the totality of the circumstances, the statement was
10 voluntarily made. And I find that by the preponderance of
11 the evidence. I, also, find that the taking of the
12 statement is in full compliance with Miranda.

13 All right. Thank you, sir.

14 THE WITNESS: Thank you.

15 THE COURT: And, therefore, I'll let the jury
16 determine whether or not it's voluntary, but I'll let them
17 hear it.

18 MS. BENTLEY: And, Your Honor, my next witness, Sarah
19 Davis, would be for the forensic interview motion, as well
20 as the Neil v. Biggers hearing.

21 THE COURT: Very good.

22 MS. BENTLEY: The State calls Sarah Davis.

23 WHEREUPON,

24 SARAH DAVIS,

25 after first having been duly sworn, testified as follows:

1 THE CLERK: Please have a seat.

2 Will you state your full name for the record?

3 THE WITNESS: Sarah Davis.

4 DIRECT EXAMINATION

5 BY MS. BENTLEY:

6 Q Ms. Davis, where are you employed, and in what
7 capacity?

8 A I am employed at the Julie Valentine Center. And I
9 am the clinical coordinator.

10 Q All right. And what are your duties as a clinical
11 coordinator?

12 A I conduct forensic interviews. And I, also, do
13 individual and group therapy for children and adolescents.
14 And I, also, oversee the forensic interview department.

15 Q All right. And how much experience do you have
16 conducting forensic interviews with children?

17 A About four and a half years.

18 Q Okay. And can you tell me a little bit about your
19 educational background and experiences?

20 A Sure. I have a Bachelors in Psychology from Clemson
21 University, and a Masters in Social Work from the
22 University of South Carolina.

23 Q And in your four and a half years that you've been
24 employed as a forensic interviewer, how many forensic
25 interviews have you conducted? Do you know?

1 A 704.

2 Q And what types of questions are you trained to use in
3 forensic interviews?

4 A In forensic interviews, we use a continuum of
5 non-leading questions.

6 Q Okay. And can you briefly explain what that means?

7 A Sure. So we want to utilize non-leading questions so
8 that any information that we get from the child in the
9 interview is coming from the child, and not information
10 that we introduced or, you know -- introduced to the child
11 to say.

12 So by the continuum, what that means is that we can
13 use non-leading questions where we're not introducing
14 information to the child. But they can range from being
15 very open ended like tell me about, or tell me more, to
16 more direct, or yes-no questions that are still not
17 introducing information. So they're not leading, but
18 they're more direct.

19 Q All right. And, as a forensic interviewer at the
20 Julie Valentine Center, did you have a chance to meet
21 Minor 1 ?

22 A I did.

23 Q And do you recall what date you met Minor 1 ?

24 A June 4th, 2013.

25 Q Did you, also, have a chance to meet Minor 2 ?

1 A I did.

2 Q On what date did you meet Minor2 ?

3 A June 4th, 2013.

4 Q How old were Minor1 and Minor2 when you met them?

5 A Minor1 was six, and Minor2 was eight.

6 Q And did you have a chance to interview both Minor1
7 and Minor2 on June 4th?

8 A I did.

9 Q And were they interviewed together or separately?

10 A Separately.

11 Q Can you tell me about the forensic interview rooms
12 you used for Minor1 ?

13 A Sure. So, in the rooms, we just have two chairs, an
14 easel with some -- a large easel pad on it, and some
15 markers, and some tape. And that's it.

16 Q And what about with Minor2 ?

17 A The same thing.

18 Q All right. Were these interviews recorded or
19 preserved in any way?

20 A Yes. I made an audio and video recording.

21 Q I'm going to show you what's been marked as State's
22 Exhibit No. 4 in this case. Can you tell me by looking at
23 it what State's Exhibit -- or do you recognize State's
24 Exhibit No. 4?

25 A I do.

1 Q And how do you recognize it?

2 A This is the forensic interview of Minor 1 , a
3 copy of it. I recognize it because of -- there's JVC
4 initials on there, and the things that are written.

5 Q All right. And has anything been -- or does that
6 interview on that disk fairly contain -- I'm sorry -- a
7 fair and accurate presentation of Minor 1 's interview?

8 A It does.

9 Q And have any changes been made to the video of
10 Minor 1 ?

11 A No.

12 Q All right. And I'm going to show you what's now
13 marked as State's Exhibit No. 5. Do you recognize that?

14 A I do.

15 Q And how do you recognize that?

16 A My initials are on the copy.

17 Q All right. And have you had a chance to view that
18 copy?

19 A I have.

20 Q And what is that a copy of?

21 A Minor 2 ' forensic interview.

22 Q And have any changes, additions, deletions been made
23 to Minor 2 ' interview?

24 A I believe something was taken out of it.

25 Q Okay. And aside from what has been taken out of the

1 video, have any other changes been made to that video?

2 A No.

3 Q All right. And, as part of this forensic interview,
4 did you, also, conduct a photo lineup with Minor1 and
5 Minor2 ?

6 A Yes.

7 Q Is that a typical procedure at the Julie Valentine
8 Center?

9 A We don't necessarily do it often, but it is something
10 that we can do in forensic interviews when requested by
11 law enforcement.

12 Q All right. I'm going to show you State's Exhibit
13 Nos. 2 and 3. And can you tell me if you recognize
14 State's Exhibit Nos. 2 and 3?

15 A Yes.

16 Q And how do you recognize those?

17 A My initials are on there and the date.

18 Q Okay. And what are these, State's Exhibit Nos. 2 and
19 3?

20 A This one is the photo lineup that I showed to Minor1 ,
21 because her name was written on there. And then this one
22 is the photo lineup that I showed to Minor2 , because his
23 name is on there.

24 Q And was the process of showing each of the children
25 the interview, also, recorded?

1 A Yes.

2 Q All right. Did you lead either of the children to
3 select one of the photos?

4 A No.

5 Q And do you -- did the children have any difficulty
6 selecting a photo from the lineup?

7 A No.

8 Q Did you exert any influence on either child to select
9 a photo?

10 A No.

11 MS. BENTLEY: And I have no further questions for you
12 in regard to either of those matters.

13 Please answer any questions Ms. Wicker may have.

14 THE COURT: Yes, ma'am.

15 MS. WICKER: I don't have any questions for this
16 witness, Your Honor.

17 THE COURT: All right. You can step down.

18 MS. BENTLEY: And, Your Honor, that concludes the
19 State's motions for the admissibility of the forensic
20 interviews pursuant to 17-23-175, and the admissibility of
21 the photo lineups.

22 THE COURT: All right. Anything from the Defense?

23 MS. WICKER: No, Your Honor.

24 THE COURT: All right. I do find that the interviews
25 contain the particularized guarantees of trustworthiness.

1 Specifically, throughout the videos, the interviewer used
2 non-leading questions. She's, certainly, well trained in
3 investigative interviews of children. The statement was
4 detailed, you know, as correlated with the child's age.
5 And there was an internal coherence to the -- to both
6 statements. Therefore, I will allow -- I'll allow those
7 videos to be introduced at trial.

8 I, also, find so far as the photo lineup was
9 concerned that they are, also, admissible. They -- there
10 was no unnecessarily or unduly suggestive procedure
11 employed in that. And I think that the identification was
12 reliable. And I do not believe that there was a
13 substantial likelihood of misidentification in this
14 particular case. So I will allow those as well.

15 All right. Well, y'all are quick, to say the very
16 least.

17 All right. Any other matters we need to take up
18 before we bring the jury up?

19 MS. BENTLEY: Competency of the children.

20 THE COURT: Oh, yes. Okay. And you would anticipate
21 them being your first witnesses?

22 MS. BENTLEY: Your Honor, they will, actually, be my
23 witnesses number three and four. But my first two
24 witnesses are fairly brief.

25 THE COURT: I'm just wondering. I need to break at

1 like 12:15 today. So I'm sort of thinking -- wondering
2 about --

3 MS. BENTLEY: And I can call my other witnesses out
4 of order if you want to --

5 THE COURT: No. I don't want you to have to do that.
6 I don't want anybody to have to do that.

7 Why don't we go ahead and just bring --

8 Do you think your competency hearing with them can --
9 will be quick? They normally are, but...

10 MS. BENTLEY: Yes, Your Honor.

11 THE COURT: Okay.

12 MS. BENTLEY: Do you want me to bring them in?

13 THE COURT: Yes.

14 (Pause.)

15 MS. BENTLEY: I'll call Minor 1 .

16 Minor 1 , would you go up to that chair right there?

17 THE COURT: Minor 1 , will you raise your right hand
18 for me? Do you know which one is your right hand.

19 Minor 1 : This one.

20 THE COURT: Right.

21 WHEREUPON,

22 Minor 1 ,

23 after first having been duly sworn, testified as follows:

24 THE COURT: All right. Thank you.

25 You can put your hand down.

DIRECT EXAMINATION

BY MS. BENTLEY:

Q Minor 1 , can you tell us your whole name, please?

A Minor 1

Q And how old are you?

A Eight.

Q Eight?

A Fixing to turn nine.

Q When is your birthday?

A

Q Do you know what year you were born?

A No.

Q Okay. Do you go to school?

A Yeah.

Q Where do you go to school?

A Lyman Elementary.

Q What grade are you in?

A Third.

Q What is your teacher's name?

A Ms. Howell.

Q Do you have -- what is your mom's name?

A Kristina.

Q Do you know her last name?

A Whitted.

Q Okay. Do you have brothers and sisters?

1 A Yes.

2 Q What are your brothers and sisters names?

3 A I don't have no sisters, but I have only brothers.

4 Q Okay. And what are your brothers names?

5 A Minor2 , M. , and C. .

6 Q Okay. And how old is Minor2 ?

7 A 11.

8 Q Do you know how old C. is?

9 A Four.

10 Q Do you know how old -- who was your last brother?

11 A M. .

12 Q M. . How old is M. ?

13 A Five, I think.

14 Q Okay. And does Minor2 go to school?

15 A Yeah.

16 Q Where does he go to school?

17 A Lyman Elementary.

18 Q Okay. Are y'all in the same grade?

19 A No. He's in fourth.

20 Q Okay. Minor1 , do you know how to read?

21 A Yeah.

22 Q Do you know how to write?

23 A Yeah.

24 Q Do you have any sort of books that are your favorite

25 books to read?

1 A. Uh-huh.

2 Q What are those?

3 A The Weird School Days.

4 Q Weird School Days.

5 A And The Magic School Bus.

6 Q The Magic School Bus. Minor 1 , do you know what --
7 can you tell me what a lie is? Do you know what a lie is?

8 A It's when you tell -- make up stories and don't tell
9 the truth.

10 MS. BENTLEY: Okay. I don't have any other questions
11 for Minor 1 .

12 Whatever questions you have.

13 MS. WICKER: I don't have any questions.

14 THE COURT: Let me just ask you one question.

15 Do you know -- if you were to tell a lie to your
16 mommy and she found out, what would happen?

17 THE WITNESS: We would get in trouble.

18 THE COURT: Okay. And so what's better to tell, the
19 truth or a lie?

20 THE WITNESS: The truth.

21 THE COURT: Okay. Thank you.

22 Anything else?

23 MS. WICKER: Nothing from the Defense, Your Honor.

24 THE COURT: You can step down.

25 MS. BENTLEY: The State would call Minor 2 to

1 the stand.

2 THE COURT: Okay.

3 THE CLERK: Minor 2 , will you raise your right hand --
4 I'll let the Judge do it.

5 THE COURT: Oh, no. That's fine.

6 WHEREUPON,

7 Minor 2 ,

8 after first having been duly sworn, testified as follows:

9 THE COURT: All right. You can put your hand down.

10 DIRECT EXAMINATION

11 BY MS. BENTLEY:

12 Q Can you tell us your whole name, Minor 2 ?

13 A Minor 2

14 Q And, Minor 2 , how old are you?

15 A I'm 11.

16 Q When is your birthday?

17 A

18 Q Do you know what year you were born?

19 A

20 Q And do you go to school?

21 A Yes, ma'am.

22 Q Where do you go to school?

23 A Lyman Elementary.

24 Q What grade are you in?

25 A Fourth grade. I failed first grade for reading.

1 Q Okay. Are you better at reading now?

2 A (Witness nodded.)

3 Q Are you glad that you had an extra year to learn how
4 to read?

5 A Yes, ma'am.

6 Q Are there books that you like to read now?

7 A Uh-huh.

8 Q What kind of books?

9 A I like to read Little House on the Prairie.

10 Q Okay. And do you have brothers and sisters, Minor 2 ?

11 A Uh-huh.

12 Q Who are your brothers and sisters?

13 A M. , C. , and Minor 1 .

14 Q Okay. And do you live with your brothers and
15 sisters?

16 A No, ma'am.

17 Q Who do you live with?

18 A I live with Jessica. And, sometimes, I live with my
19 grandma.

20 Q Okay.

21 A I go stay there sometimes.

22 Q All right. Minor 2 , do you know the difference
23 between a truth and a lie?

24 A Uh-huh.

25 Q What is a truth?

1 A A truth is whenever you're being honest and you --
2 like you don't tell a fib and you're just telling the
3 truth like...

4 Q What about a lie? What is a lie?

5 A A lie is like when you're -- you don't tell the real
6 truth. It's like whenever you're making up stuff that
7 never even happened.

8 Q Okay. And what is better, a truth or a lie?

9 A A truth.

10 Q And what happens if you tell a lie? Do you get in
11 trouble?

12 A Yes, ma'am.

13 Q Do you know what kind of trouble you would get in?

14 A Uh-huh.

15 Q What kind of trouble would you get in?

16 A I would go and -- in the corner --

17 MS. BENTLEY: Okay. I don't have any more
18 questions --

19 THE WITNESS: -- in the chair.

20 MS. BENTLEY: -- for -- oh, okay.

21 I don't have any more questions.

22 Would you answer any questions that Ms. Wicker might
23 have for you?

24 THE WITNESS: Uh-huh.

25 MS. WICKER: I don't have any questions.

1 THE COURT: All right. Thank you.

2 You can step back -- step down and go back to your
3 seat.

4 Thank you.

5 Well, I'll certainly -- well, I'll hear argument from
6 either of you, if you like.

7 MS. WICKER: No, Your Honor.

8 We just ask that the Court require based on Rule
9 601 --

10 THE COURT: All right.

11 MS. WICKER: -- that they are competent.

12 THE COURT: Well, I do find that they were rational
13 in their answers and responsive to the questions. And
14 both of them demonstrated that they were aware of the
15 moral need to tell the truth, and that they -- the
16 probability of punishment if they were not to tell the
17 truth. And I think they were very clear about that.

18 And, therefore, I do find that they are competent to
19 testify here at trial.

20 All right. Anything else?

21 MS. BENTLEY: Nothing from the State.

22 MS. WICKER: Nothing from the Defense.

23 THE COURT: And it's five and 10.

24 And since we're going through tomorrow, what do y'all
25 think, one alternate? Are y'all all right with one

1 alternate?

2 MS. BENTLEY: That's fine with the State, Your Honor.

3 MS. WICKER: That's fine with us, Judge.

4 THE COURT: All right. And then one and two on the
5 alternate.

6 Let's go ahead and bring them up. I already told her
7 how many I wanted.

8 Ms. Bentley, have you had an opportunity to look at
9 the Defendant's additional voir dire?

10 MS. BENTLEY: I have, Your Honor. And I don't
11 believe that I have any -- I don't have any issues with
12 that. As a matter of fact, there are some [inaudible]
13 that the State would have requested as well.

14 THE COURT: All right then.

15 MS. BENTLEY: And may I approach to have my last two
16 exhibits marked?

17 THE COURT: Oh, sure.

18 And would the attorneys approach just while we're
19 waiting on the jury pool?

20 (WHEREUPON, a bench conference was held.)

21 (WHEREUPON, the jury panel entered the courtroom.)

22 THE COURT: All right. Good morning, ladies and
23 gentlemen.

24 My name is Letitia Verdin.

25 Earlier in the week, I believe Judge Miller qualified

1 you to serve as jurors here this week in Greenville
2 County. I need to find out if you are, more particularly,
3 qualified to serve in the trial of this case.

4 This is a very important case to both sides.
5 However, the attorneys -- I will go ahead and tip my hand
6 and tell you the attorneys have told me they don't
7 anticipate this to be a lengthy case. But, nonetheless,
8 it's very important to both sides.

9 But I need to ask you some questions to find out if
10 you're qualified. Now, I don't know what Judge Miller did
11 earlier in the week, but here's what we're going to do in
12 here.

13 I'm going to go through this list of questions for
14 you. And if you need to respond to any of them, if you'll
15 stand, and then I'll call on you one by one. And if
16 you'll give me your name and juror number. And this is
17 the moment where everybody looks at their tag to remember
18 their juror number. But your name and your juror number.
19 Then I'll let you respond.

20 I've got a few questions that are not going to ask
21 for any personal information, or anything like that. I've
22 got some other questions that might ask for something of
23 more of a personal nature. If you need to respond to
24 anything, any question and you don't feel comfortable
25 talking about it just standing up in front of everybody,

1 you just signal to me or you just say, I want to come up
2 there, and the attorneys will come up here and we'll talk
3 about it up here at the bench. Okay. Fair enough.

4 So I'm going to ask some questions mainly about
5 whether or not you know anything about this case, or
6 anybody involved in this case. And then if you feel like
7 you need to respond, if you'll stand, give me your name
8 and juror number. And if you need to speak with me about
9 it at the bench, then I'll -- then you just let me know
10 you want to come up here.

11 JURY QUALIFICATION

12 THE COURT: All right. Our first order of business
13 is I'll allow the --

14 Ms. Bentley, for you to identify yourself and the
15 folks with you.

16 MS. BENTLEY: Good morning, ladies and gentlemen.

17 My name is Lisa Bentley. I'll do my best to project
18 as much as I can. I'm a prosecutor for the Thirteenth
19 Circuit on this case. And with me is my investigator and
20 paralegal, Bennie Mosley.

21 THE COURT: All right. Anyone on the jury panel
22 related by blood or marriage, or otherwise acquainted with
23 in any way Ms. Bentley, or anyone from the Thirteenth
24 Circuit Solicitor's Office?

25 And the Thirteenth Circuit Solicitor's Office is

1 Greenville and Pickens County prosecutors. Some people --
2 in some states, they call them prosecutors or district
3 attorneys. In South Carolina, we call them solicitors.

4 Anybody on the jury -- in our jury panel here today
5 related by blood or marriage, or otherwise acquainted with
6 in any way anyone from the Thirteenth Circuit Solicitor's
7 Office? And if so, please, stand.

8 (WHEREUPON, there was no response.)

9 THE COURT: And none are standing.

10 Ms. Wicker.

11 MS. WICKER: Good morning.

12 My name is Amanda Wicker.

13 And I'm representing Tommy Wiseman here in this trial
14 today.

15 THE COURT: All right. Any member of the jury panel
16 related by blood or marriage, or otherwise acquainted
17 with, ever been represented by, ever been involved in a
18 case with Ms. Wicker? And if so, please, stand.

19 (WHEREUPON, there was no response.)

20 THE COURT: And none are standing.

21 Any member of the jury panel related by blood or
22 marriage, or otherwise acquainted with in any way the
23 Defendant in this case, Tommy Lee Wiseman? And if so,
24 please, stand.

25 (WHEREUPON, there was no response.)

1 THE COURT: None are standing.

2 I'm going to go through a list of potential witnesses
3 in this case. These attorneys are fantastic attorneys on
4 both sides. They've listed every possible witness. I do
5 not know if they will testify in the trial of this case,
6 but they are potential witnesses.

7 If you think you know any of these potential
8 witnesses -- I've been on mute this whole time, I
9 apologize -- any of these potential witnesses, even if you
10 think you might know somebody by that name, just stand and
11 let's talk about it and figure it out. Because it's
12 better for us to know upfront if you have any relationship
13 with any of these potential witnesses now.

14 All right. Any member of the jury panel related by
15 blood or marriage, or otherwise acquainted with in any way
16 Jennifer Martin Flores, Jessica Martin Selgado, Minor1
17 Minor1 , Minor2 , Sarah Davis of the Julie Valentine
18 Center, Shauna Galloway-Williams of the Julie Valentine
19 Center, Kristina Whitted, or Kathy Perez? Any member of
20 the jury panel believe he or she is acquainted with,
21 related to, has any knowledge of any of these potential
22 witnesses in this case? And if so, please, stand.

23 (WHEREUPON, there was no response.)

24 THE COURT: And none are standing.

25 If you serve on the jury in the trial of this case,

1 you're going to hear a lot about what an indictment is and
2 what an indictment is not. But for our purposes here
3 today, an indictment is not any sense -- in any sense
4 evidence of anyone's guilt. All right. It's simply the
5 document by which someone is charged with a crime and
6 brought into court. That's it.

7 And, for the purposes of this morning, I'm just going
8 to read to you the body of the indictment. I'm just going
9 to read to you some information from the indictment. My
10 sole purpose in doing so is to find out if any member of
11 the jury panel thinks he or she knows anything about the
12 allegations in this case.

13 All right. The first indictment is for criminal
14 sexual conduct with a minor third degree. The indictment
15 is that Tommy Lee Wiseman did in Greenville County between
16 the 1st day of January, 2013, and the 11th day of March,
17 2013, being over the age of 14 years willfully and lewdly
18 commit or attempt a lewd and lascivious act upon or with
19 the body parts -- or with the body or its parts of A.M., a
20 child under the age of 16 years, with the intent of
21 arousing, appealing to, or gratifying the lusts, passions,
22 or desires of himself or such child.

23 And the second indictment is, also, for criminal
24 sexual conduct with a minor third degree. And it alleges
25 that Tommy Lee Wiseman did in Greenville County between

1 the 1st day of March, 2012, and the 31st day of December,
2 2012, being over the age of 14 years, willfully and lewdly
3 commit or attempt a lewd and lascivious act upon or with
4 the body or its parts of A.M., a child under the age of
5 16 years, with the intent of arousing, appealing to, or
6 gratifying the lusts, passions, or sexual desires of
7 himself or such child.

8 As I said, the indictment is in no sense evidence of
9 anyone's guilt. It's merely an allegation.

10 But does any member of the jury panel believe he or
11 she knows anything about the allegations in this
12 particular case? And if so, please, stand..

13 (WHEREUPON, there was no response.)

14 THE COURT: And none are standing.

15 All right. I've got a few other questions to ask
16 you. I am going to ask you all of these questions
17 together. I'm going to ask you to hold your response. If
18 anyone needs to speak with me about it, I'm going to have
19 some questions in here that are not very embarrassing
20 questions, and then some of them that you might not want
21 to stand up and speak to me about.

22 I'm going to ask you to hold your response until I've
23 asked all my questions from here on out. And if you need
24 to speak with me for any reason, I'm going to ask you, at
25 this point, just to form a line and you just come up one

1 by one. All right. We're just going to go ahead and --
2 you don't even have to ask me to come up. I'm just going
3 to bring you up. Okay.

4 First question, has any member of the jury panel, or
5 member of your immediate family, or close friend been the
6 victim of child molestation?

7 Second -- and I'll repeat that. Has any member of
8 the jury panel, or a family member, or a close friend been
9 the victim of child molestation?

10 Has any member of the jury panel, or family member,
11 or close friend been the victim of a sexual assault?

12 Does any member of the jury panel have such strong
13 feelings for or against the allegations or charges in this
14 case that it would prevent that jury member from giving
15 the State or the Defendant a fair and impartial trial?

16 Has any member of the jury panel or anyone related to
17 you ever sought assistance from, been employed by, or
18 performed volunteer work for any center or program whose
19 primary purpose is treating the victims of sexual assault?

20 And, finally, I will ask you, you've heard the
21 witnesses -- the potential witnesses. You've met the
22 attorneys in the case. You've met the Defendant in this
23 case. You know somewhat of the nature of the allegations.

24 And I will ask the jury panel if any member of the
25 jury panel for any reason whatsoever believes he or she

1 could not be a fair and impartial juror in the trial of
2 this case.

3 And by fair and impartial juror, I mean give both the
4 State and the Defense a fair trial, not make your mind up
5 about anything -- any allegation in this case until after
6 you have heard closing arguments from the attorneys and my
7 charge on the law.

8 Anyone -- does anyone need to respond to any of those
9 five questions that I just asked?

10 And, if so, I hate to ask you to do this, but if you
11 would, please, come forward. All right. Just form a line
12 and come forward.

13 Will the attorneys approach?

14 (WHEREUPON, a sidebar was held with the Court, the
15 attorneys, and potential jurors.)

16 (WHEREUPON, Juror #139, Sabrina McIntyre, came
17 forward.)

18 THE COURT: Okay. I just want to tell you in advance
19 I'm so sorry to have to have asked you this.

20 But, yes, ma'am, is there anything you'd like to say?

21 JUROR #139, SABRINA MCINTYRE: I just I know I
22 couldn't be fair. This happened to my sister and best
23 friend.

24 THE COURT: Okay.

25 JUROR #139, SABRINA MCINTYRE: And I know I could not

1 be fair.

2 THE COURT: I understand. Listen, I appreciate you
3 giving me that response.

4 Thank you so much.

5 (WHEREUPON, Juror #139, Sabrina McIntyre, was
6 seated.)

7 THE COURT: She was Juror #139.

8 (WHEREUPON, Juror #34, Cynthia Brokaw, came forward.)

9 THE COURT: Hey. Come up.

10 Juror #34.

11 Yes, ma'am.

12 JUROR #34, CYNTHIA BROKAW: My daughter has been
13 sexually assaulted.

14 THE COURT: I'm so sorry.

15 JUROR #34, CYNTHIA BROKAW: It's okay. It's not only
16 this one person, but by her father, so.

17 THE COURT: Do you think that there is any way you
18 could be fair and impartial to the State and the
19 Defendant?

20 JUROR #34, CYNTHIA BROKAW: No. I don't imagine
21 so.

22 THE COURT: I probably couldn't be either. So I
23 appreciate your candor for coming up.

24 (WHEREUPON, Juror #34, Cynthia Brokaw, was seated.)

25 THE COURT: She was Juror #34.

1 (WHEREUPON, Juror #178, David Sherbert, came
2 forward.)

3 THE COURT: This is Juror #178.

4 JUROR #178, DAVID SHERBERT: Yes, ma'am.

5 THE COURT: Yes, sir.

6 JUROR #178, DAVID SHERBERT: My daughter was molested
7 by my ex-wife's husband.

8 THE COURT: I understand. I understand.

9 JUROR #178, DAVID SHERBERT: But he wasn't given but
10 four or five years probation.

11 THE COURT: Okay. And do you --

12 JUROR #178, DAVID SHERBERT: Do you want me to give
13 her name?

14 THE COURT: No, no. I don't want you to give me any
15 of that information.

16 All I want to know is having gone through that
17 experience with the court system, do you think you could
18 be a fair and impartial juror?

19 JUROR #78, DAVID SHERBERT: Yes. But I didn't like
20 what happened last time. But I'm pretty sure I think I
21 could still do it.

22 THE COURT: I understand. I appreciate your candor.

23 (WHEREUPON, Juror #78, David Sherbert, was seated.)

24 THE COURT: I'm going to strike him for cause, too.
25 He said he's not sure.

1 MS. BENTLEY: Okay.

2 MS. WICKER: Thank you, Judge.

3 THE COURT: Thank you.

4 (WHEREUPON, the sidebar was concluded.)

5 THE COURT: Any member of the jury panel need to
6 speak with me at all about whether or not you could be a
7 fair and impartial juror in the trial of this particular
8 case?

9 (WHEREUPON, there was no response.)

10 THE COURT: All right. Next, we're going to turn to
11 jury selection. This is going to go pretty quickly. I
12 want -- some of you may have been in jury selection
13 earlier this week. And if you have, you already know the
14 drill.

15 But for those of you who might not have, I'm going to
16 go through it for you. You'll come forward when you hear
17 your name and juror number called. Turn and face your
18 fellow jurors. Don't face me. Face your fellow jurors.
19 And we'll show you where to stand. And I promise we'll
20 walk you through it.

21 And then you're just going to stand there. And
22 you're going to hear the State say something like excuse
23 the juror, or present the juror. And then you're going to
24 hear the Defense say something like seat or swear the
25 juror, or excuse the juror. And then we'll tell you what

1 to do from there.

2 If you are picked as a juror in this case, we're
3 going to ask you to go sit over in the jury box. Because
4 you'll serve as a juror. And we'll start pretty shortly
5 hereafter.

6 If you are not selected as a juror, we'll ask you to
7 return to your seat.

8 A couple of things. When you come up here, bring all
9 your belongings with you. And then that way, you won't
10 have to go back if you are selected as a juror.

11 And the next thing is -- I say this to people. I
12 don't think anybody is going to get their feelings hurt.
13 But if you are excused for any reason -- if you're
14 excused, I promise you it's nothing personal. It's --
15 lawyers strike jurors for lots and lots of reasons and
16 they're not personal, I tell you. And so although I don't
17 think you'll get your feelings hurt, please do not.

18 All right. All that being said, are the attorneys
19 ready to proceed? Any other matters we need to take up
20 before we start?

21 MS. BENTLEY: The State is ready.

22 MS. WICKER: The Defense is ready.

23 THE COURT: All right. We'll just double-check.

24 THE CLERK: Yeah.

25 (Pause.)

1 THE COURT: All right.

2 JURY SELECTION

3 THE CLERK: Juror #106, Emily Husband-Griffin.

4 (WHEREUPON, Emily Husband-Griffin, a white female
5 came forward.)

6 THE CLERK: What says the State?

7 MS. BENTLEY: Please present the juror.

8 THE CLERK: What says the Defendant?

9 MS. WICKER: Please swear the juror.

10 THE CLERK: Okay. You may have a seat in the jury
11 box.

12 Juror #147, Charles Morgan.

13 (WHEREUPON, Charles Morgan, a white male, came
14 forward.)

15 THE CLERK: What says the State?

16 MS. BENTLEY: Please present the juror.

17 THE CLERK: What says the Defendant?

18 MS. WICKER: Please swear the juror.

19 THE CLERK: You may have a seat in the jury box.

20 Juror #158, Joshua Porter.

21 (WHEREUPON, Joshua Porter, a white male, came
22 forward.)

23 THE CLERK: What says the State?

24 MS. BENTLEY: Please excuse the juror from the trial
25 of this case.

1 THE CLERK: You may take your seat.

2 Juror #190, Brandon Stoddard.

3 (WHEREUPON, Brandon Stoddard a white male, came
4 forward.)

5 THE CLERK: What says the State?

6 MS. BENTLEY: Please excuse Mr. Stoddard from this case.

7 THE CLERK: Juror #101, Jessica Hill.

8 (WHEREUPON, Jessica Hill, a white female, came
9 forward.)

10 THE CLERK: What says the State?

11 MS. BENTLEY: Please present the juror.

12 THE CLERK: What says the Defendant?

13 MS. WICKER: Please excuse the juror.

14 THE CLERK: You may take a seat.

15 THE BAILIFF: Whoa, this seat.

16 THE CLERK: No. She said excused. Sorry.

17 THE BAILIFF: Oh, okay.

18 THE CLERK: Juror #41, Lee Catoe.

19 (WHEREUPON, Lee Catoe, a white male, came forward.)

20 THE CLERK: What says the State?

21 MS. BENTLEY: Please excuse Mr. Catoe from the trial
22 of this case.

23 THE CLERK: Juror #3, Andrew Allen.

24 (WHEREUPON, Andrew Allen, a white male, came
25 forward.)

1 THE CLERK: What says the State?

2 MS. BENTLEY: Please present Mr. Allen.

3 THE CLERK: What says the Defendant?

4 MS. WICKER: Please swear the juror.

5 THE CLERK: You may take your seat in the jury box.

6 Juror #4, Elizabeth Allman.

7 (WHEREUPON, Elizabeth Allman, a white female, came
8 forward.)

9 THE CLERK: What says the State?

10 MS. BENTLEY: Please present Ms. Allman.

11 THE CLERK: What says the Defendant?

12 MS. WICKER: Please excuse the juror.

13 THE CLERK: You may take your seat.

14 Juror #58, Marcia Cunningham.

15 (WHEREUPON, Marcia Cunningham, a white female, came
16 forward.)

17 THE CLERK: What says the State?

18 MS. BENTLEY: Please present Ms. Cunningham.

19 THE CLERK: What says the Defendant?

20 MS. WICKER: Please excuse the juror.

21 THE CLERK: You may take your seat.

22 Juror #210, John Wallace.

23 (WHEREUPON, John Wallace, a white male, came
24 forward.)

25 THE CLERK: What says the State?

1 MS. BENTLEY: Please present the juror.

2 THE CLERK: What says the Defendant?

3 MS. WICKER: Please swear the juror.

4 THE CLERK: You may have a seat in the jury box.

5 Juror #71, Connor Fleck.

6 (WHEREUPON, Connor Fleck, a white male, came
7 forward.)

8 THE CLERK: What says the State?

9 MS. BENTLEY: Please present the juror.

10 THE CLERK: What says the Defendant?

11 MS. WICKER: Please swear the juror.

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

13 Juror #160, Crystal Pyles.

14 (WHEREUPON, Crystal Pyles, a black female, came
15 forward.)

16 THE CLERK: What says the State?

17 MS. BENTLEY: Please present Ms. Pyles.

18 THE CLERK: What says the Defendant?

19 MS. WICKER: Please swear the juror.

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

21 Juror #12, Diana Azula.

22 (WHEREUPON, Diana Azula, a white female, came
23 forward.)

24 THE CLERK: What says the State?

25 MS. BENTLEY: Please present the juror.

1 THE CLERK: What says the Defendant?

2 MS. WICKER: Please excuse the juror.

3 THE CLERK: You may take your seat.

4 Juror #14, Richard Bailey.

5 (WHEREUPON, Richard Bailey, a white male, came
6 forward.)

7 THE CLERK: What says the State?

8 MS. BENTLEY: Please present Mr. Bailey.

9 THE CLERK: What says the Defendant?

10 MS. WICKER: Please swear the juror.

11 THE CLERK: You may have a seat in the jury box.

12 Juror #68, Jeffrey Fant.

13 (WHEREUPON, Jeffrey Fant, a black male, came
14 forward.)

15 THE CLERK: What says the State?

16 MS. BENTLEY: Please present Mr. Fant.

17 THE CLERK: What says the Defendant?

18 MS. WICKER: Please swear the juror.

19 THE CLERK: You may have a seat in the jury box.

20 Juror #80, Vernon Gayle.

21 THE COURT: Mr. Fant, would you have a seat right
22 there?

23 Thank you.

24 (WHEREUPON, Vernon Gayle, a black male, came
25 forward.)

1 THE CLERK: What says the State?

2 MS. BENTLEY: Please present the juror.

3 THE CLERK: What says the Defendant?

4 MS. WICKER: Please swear the juror.

5 THE CLERK: You may have a seat in the jury box.

6 Juror #157, Robert Poole.

7 (WHEREUPON, Robert Poole, a white male, came
8 forward.)

9 THE CLERK: What says the State?

10 MS. BENTLEY: Please excuse the juror from the trial
11 of this case.

12 THE CLERK: You may take your seat.

13 Juror #188, Rita Steele.

14 (WHEREUPON, Rita Steele, a white female, came
15 forward.)

16 THE CLERK: What says the State?

17 MS. BENTLEY: Please present the juror.

18 THE CLERK: What says the Defendant?

19 MS. WICKER: Please excuse the juror.

20 THE CLERK: You may take your seat.

21 Juror #167, Renee Romberger.

22 (WHEREUPON, Renee Romberger, a white female, came
23 forward.)

24 THE CLERK: What says the State?

25 MS. BENTLEY: Please present the juror.

1 THE CLERK: What says the Defendant?

2 MS. WICKER: Please excuse the juror.

3 THE CLERK: You may take your seat.

4 Juror #116, Rebecka Kiser.

5 (WHEREUPON, Rebecka Kiser, a white female, came
6 forward.)

7 THE CLERK: What says the State?

8 MS. BENTLEY: Please present the juror.

9 THE CLERK: What says the Defendant?

10 MS. WICKER: Please swear the juror.

11 THE CLERK: You may take a seat in the jury box.

12 Juror #142, Anna McPherson.

13 (WHEREUPON, Anna McPherson, a white female, came
14 forward.)

15 THE CLERK: What says the State?

16 MS. BENTLEY: Please present the juror.

17 THE CLERK: What says the Defendant?

18 MS. WICKER: Please excuse the juror.

19 THE CLERK: You may take your seat.

20 Juror #222, Amparo Zurita.

21 (WHEREUPON, Amparo Zurita, a Hispanic female, came
22 forward.)

23 THE CLERK: What says the State?

24 MS. BENTLEY: Please present the juror.

25 THE CLERK: What says the Defendant?

1 MS. WICKER: Please excuse the juror.

2 THE CLERK: You may take your seat.

3 Juror #132, Allen Mayhew.

4 (WHEREUPON, Allen Mayhew, a black male, came
5 forward.)

6 THE CLERK: What says the State?

7 MS. BENTLEY: Please excuse the juror from the trial
8 of this case.

9 THE CLERK: You may take your seat.

10 Juror #13, John Bailey.

11 (WHEREUPON, John Bailey, a white male, came forward.)

12 THE CLERK: What says the State?

13 MS. BENTLEY: Please present the juror.

14 THE CLERK: What says the Defendant?

15 MS. WICKER: Please swear the juror.

16 THE CLERK: You may have a seat in the jury box.

17 Juror #224, Justin Bagwell.

18 (WHEREUPON, Justin Bagwell, a white male, came
19 forward.)

20 THE CLERK: What says the State?

21 MS. BENTLEY: Please present the juror.

22 THE CLERK: What says the Defendant?

23 MS. WICKER: Please swear the juror.

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

25 THE COURT: Just one alternate. One and two.

1 THE CLERK: Juror #32, Alicia Bradshaw.

2 (WHEREUPON, Alicia Bradshaw, a white female, came
3 forward.)

4 THE CLERK: What says the State?

5 MS. BENTLEY: Please present the alternate.

6 THE CLERK: What says the Defendant?

7 MS. WICKER: Please excuse the juror.

8 THE CLERK: You may take your seat.

9 Juror #217, Roger Woods.

10 (WHEREUPON, Roger Woods, a white male, came forward.)

11 THE CLERK: What says the State?

12 MS. BENTLEY: Please present the juror.

13 THE CLERK: What says the Defendant?

14 MS. WICKER: Please swear the juror.

15 THE CLERK: You may take a seat in the jury box.

16 THE COURT: Any objection to the manner in which the
17 jury was selected from the State?

18 MS. BENTLEY: Nothing from the State.

19 THE COURT: From the Defense?

20 MS. WICKER: No, Your Honor.

21 THE COURT: Ladies and gentlemen who were not
22 selected for this particular jury --

23 What does she want them to do?

24 THE CLERK: Miss Judy would like them to go back
25 downstairs.

1 THE COURT: Oh, yes.

2 If you would, please, return to your jury assembly
3 room for further instructions.

4 I thank you so much for your service this week. I
5 will very likely not see you again.

6 But thank you.

7 (WHEREUPON, the remaining jury panel members exited
8 the courtroom.)

9 THE COURT: All right. Ladies and gentlemen, you are
10 going to serve as jurors on this case. And I will tell
11 you that we are fortunate in this trial. We have two
12 outstanding attorneys on both sides. And so you'll really
13 see the best -- some of the best of what the legal
14 profession has to offer.

15 I need to give you some initial instructions on the
16 law. Then I'll tell you a little bit about -- or not on
17 the law, but about what's going to happen in this case.
18 And then I need -- then I'm going to tell you a little bit
19 about our schedule.

20 Will you swear the jury?

21 THE CLERK: Yes, ma'am.

22 THE COURT: Thank you.

23 THE CLERK: The correct response to the oath is, "I
24 will."

25 Will you, please, stand and raise your right hand.

1 (WHEREUPON, the jury was sworn at approximately
2 11:00 a.m.).

3 THE CLERK: Thank you.

4 INTRODUCTORY REMARKS

5 THE COURT: Ladies and gentlemen, what I'm going to
6 say to you now is not going to be my charge on the law.
7 I'm going to charge you on the law applicable to this case
8 at the end of this trial. What I need to tell you now is
9 the procedures that we're going to follow through the
10 balance of this trial.

11 As I told you earlier, these attorneys, who are
12 outstanding, do not believe that this is going to be a
13 lengthy trial by any stretch of the imagination. So you
14 might have been a little jealous watching your fellow
15 jurors walk out to go back downstairs to the jury assembly
16 room. They're going to be in a case that's likely --
17 they're going to be in a pool for a case that's likely to
18 go into Friday. So, anyway, you lucked out.

19 The Defendant in this case is charged by two
20 indictments with the crime of criminal sexual conduct with
21 a minor third degree. The elements of which will be
22 explained to you later.

23 The indictment, as I've told you earlier, is simply
24 the document by which someone is charged with a crime, and
25 is in no sense any evidence of anyone's guilt in any way.

1 The Defendant has pled not guilty to these
2 indictments. And the State, therefore, has the burden of
3 proving each of the elements of the indictment beyond a
4 reasonable doubt. It will be your duty to determine
5 whether or not the State has met that burden. Your
6 purpose is to find and determine the facts, as jurors.
7 You are the sole judge of the facts.

8 If at any time I make any comment on the facts in
9 this case, you must disregard those comments. Because I
10 do not have an opinion on the facts in the case. And the
11 law doesn't allow me to have an opinion on the facts in
12 the case.

13 You're to determine the facts from the testimony you
14 hear from this witness stand and anything -- any exhibits
15 that are introduced into evidence. As I said, you are the
16 sole judge of the facts. And the same law that makes you
17 the judge of the facts makes me the judge of the law.

18 And you must accept the law as I give it to you,
19 apply the law to the facts as you find them. And, from
20 that, you'll render your verdict. Even if you have a
21 different idea about what the law is or what the law ought
22 to be and what I tell you is different, then you must take
23 the law as I give it to you and apply it in this case to
24 find your verdict.

25 Until I advise you to begin your deliberations, you

1 must not discuss this case with anyone. I do think --
2 although this is going to be a shorter case, I do think
3 that we probably will stretch -- you'll probably have this
4 case overnight, meaning you'll come back in the morning,
5 at least, for some finish up in the case. And you may not
6 discuss it with your fellow jurors. You may not discuss
7 this case with anyone, including your family members at
8 home.

9 It's especially important that you not discuss it
10 with anyone at home. And here's why, if you even say what
11 kind of case you're on, any type of criminal charge would
12 likely draw a comment from a family member, or something
13 along those lines. So that you are best able to keep an
14 open mind and comply with your oath that you just took, do
15 not discuss -- excuse me, my voice is going. Do not
16 discuss this case with anyone. You just -- you can simply
17 say that you're on a criminal case, and a juror on that
18 case, and can't say anything else under instructions from
19 the Judge.

20 I -- the reason we want you to do that is I want you
21 to keep an open mind and not decide any fact whatsoever
22 until you have heard all the testimony, seen all the
23 evidence, and heard the arguments from the attorneys, and
24 my final charge on the law.

25 I do not believe there's going to be any type of

1 media coverage of this case. But just in the event if
2 there is, then you may not read anything or do anything
3 along those lines.

4 The same thing would apply to any kind of research on
5 the charge in this case or anyone involved in the case.
6 No research whatsoever. I want you to go home this
7 evening and just forget for a brief time that you're a
8 juror on this case.

9 That, also, includes -- I guess in this day and age
10 I've got to say it, although I don't totally understand
11 it. You can't put anything on your Facebook page about
12 being a juror in this particular case. You can't use
13 Twitter. I don't even know -- I'm talking about stuff I
14 don't know about. But just you can't use any of that to
15 talk about this particular case while it's ongoing.
16 Because that would be the same thing as discussing the
17 case or inviting comment about the case.

18 It's your solemn responsibility to determine the
19 guilt or innocence of the Defendant. And your verdict
20 must be solely based on just the evidence that is
21 presented and the testimony from the witness stand.

22 In just a moment, you're going to hear the Solicitor
23 make something that's called an opening statement. It is
24 not evidence in any way. But it is -- it will be her
25 contention as to what the issues in this case are. The

1 attorney for the Defendant may, also, make an opening
2 statement, although she is not required to do so or to
3 present any evidence. As I said, that is not evidence in
4 any way. It is simply the contention as to what the
5 issues are.

6 The evidence in this case is mainly going to be
7 presented to you by the testimony of sworn witnesses in
8 this case. And so you're going to have to determine the
9 credibility of those witnesses. You do it just like you
10 do in your everyday lives. You look at the way someone
11 acts, you listen to what they say, and see how it matches
12 up with what others have said. You see how it matches
13 with the physical evidence in this case. And you consider
14 whether anyone has any bias or interest in the outcome of
15 the case. And, thus, you must determine the believability
16 of the witnesses. And you can use anything in the record
17 that will assist you in determining the believability.

18 From time to time, you might hear the attorneys say
19 something like they need to approach on a matter of law,
20 or need to take up a matter of law outside your presence.
21 I want to explain what that is to you. I want to make
22 sure you don't think we're hiding the ball from you in any
23 way. We would not be.

24 You heard me say a few minutes ago that I can't have
25 an opinion on the facts in this case. And, sometimes,

1 when I rule on a matter of law, I have to comment on the
2 facts in the case. So as not to influence you in any way,
3 if it's something we can take up very briefly, we'll do it
4 up here at the bench. If I need to excuse you to your
5 jury deliberation room for just a moment, then I will. I
6 promise you, however, that if we've got you in your jury
7 deliberation room, we're in this courtroom working. And I
8 will not trespass on your time any more than is absolutely
9 necessary.

10 All right. Mr. Foreperson -- Mr. Fant, I'm
11 appointing you as Foreperson of this jury.

12 JUROR #68, JEFFREY FANT: Yes, ma'am.

13 THE COURT: Your verdict must be a unanimous one. So
14 no ones opinion is any more important than another persons
15 opinion. I simply need someone to guide the deliberations
16 when it becomes time to deliberate in this case, someone
17 to be the spokesperson for the jury, and to, ultimately,
18 sign the indictment either guilty or not guilty in this
19 case. And I would appreciate it if you would serve as our
20 Foreperson on this jury.

21 JUROR #68, JEFFREY FANT: Yes, ma'am.

22 THE COURT: All right. Thank you.

23 Sir, you are our alternate. You probably know what
24 that means. That if I had to remove a juror for any
25 reason, then -- or there were an emergency, you could just

1 step in the shoes of that juror and be as if you'd been
2 one of the 12 jurors all along.

3 You'll stay with us through the balance of the trial
4 until we hear final arguments and my charge on the law.
5 If before deliberations your services aren't needed, we'll
6 excuse you.

7 But I appreciate your service as well.

8 I appreciate all of your service on this jury.

9 This is an important case to both sides. I will tell
10 you one thing. I don't think I've seen any of you this
11 week or had you on a jury thus far this week.

12 But I will tell you that the thing that surprises me
13 the most about this job is that at the end of the week if
14 someone, actually, does get to serve as a juror on a case,
15 they'll tell me, I was dreading it when I came here, I
16 really did not want to serve on a jury, and it was a
17 complete inconvenience in my life. And we all know that
18 and we all understand that. But, at the end of the week,
19 I hear time and time again, it was one of the best
20 experiences of my life.

21 I really appreciate your service so much.

22 Now, I've got a couple of rules for jurors, and it's
23 this. When witnesses are coming in and out and there's --
24 and we're changing up witnesses, if you feel like it,
25 please, stand, stretch, do what you need to do. I want

1 you to be comfortable. And I promise if you stretch one
2 time like that, you'll say, gah [phonetic], I do feel a
3 lot better. And if it makes you feel any better, I'll
4 stand and stretch, too.

5 And, also, if you need to take a break at any time,
6 if you need a break for any reason, all you need to do is
7 signal to me, you can signal to one of these people in the
8 red jackets, who I promise you are the sweetest people in
9 the world. We will take a break immediately. And I won't
10 even single you out and say it was you who wanted a break.
11 We'll take a break whenever you need to.

12 Now, we've been going for a little while. Is there
13 anybody who does think he or she needs a break?

14 Otherwise, we'll move to some opening statements.

15 Do y'all want a break?

16 (WHEREUPON, there was no response.)

17 THE COURT: Okay. Do y'all want a break?

18 MS. WICKER: Your Honor, if you don't mind, that
19 would be great.

20 THE COURT: Okay. Very good.

21 Well, this would be a good chance for y'all to go and
22 see where your jury deliberation room is, so you'll know
23 where to return to after lunch.

24 All right. And I'm going to sound like a broken
25 record and, please, forgive me for doing so. But, please,

1 don't discuss this case with anyone.

2 Thank you.

3 (WHEREUPON, the jury was excused from open court at
4 approximately 11:10 a.m.)

5 THE COURT: All right. Any objection to my initial
6 charge from the State?

7 MS. BENTLEY: No, Your Honor.

8 THE COURT: Any from the Defense?

9 MS. WICKER: No, Your Honor.

10 THE COURT: All right. We'll be in recess.

11 Is five minutes good?

12 MS. WICKER: That would be super.

13 THE COURT: All right. Thank you.

14 (WHEREUPON, a break was taken.)

15 THE COURT: Are y'all ready to bring the jury back
16 in?

17 MS. BENTLEY: Yes, Your Honor.

18 MS. WICKER: Yes, Your Honor.

19 THE COURT: Okay. Bring the jury in.

20 (WHEREUPON, the jury came into open court at
21 approximately 11:28 a.m.)

22 THE COURT: Ladies and gentlemen, I told you I'd tell
23 you a little bit about scheduling, and I didn't. I'm
24 sorry... What we're going to do is we're going to go for
25 about -- we'll just see where we naturally break. It may

1 be about 45 more minutes. Then I'm going to give you a
2 good lunch break. And then we'll come back this afternoon
3 and continue with testimony.

4 I do not believe that we will be going anything past
5 5:00. We may even break a little earlier than that just
6 if we get to a natural break in the case.

7 Again, if at any time you need a break whatsoever,
8 just let me know.

9 All right. Ms. Bentley.

10 OPENING STATEMENTS

11 MS. BENTLEY: May it please the Court.

12 THE COURT: Yes, ma'am.

13 MS. BENTLEY: Ms. Wicker.

14 Fear comes in many forms, especially for children.
15 We are here today because some children have a reason to
16 be scared. That reason is not imagined monsters that live
17 under their beds, or hide in their closets. It is not
18 because of what might be lurking in the dark.

19 What children in Greenville County and across this
20 nation have to fear is someone who looks like an ordinary
21 person, someone who plays with them during the day, and
22 looks their parents in the eye, a person who does not hide
23 who they are, but rather what they do.

24 The fact that an adult could physically abuse a child
25 is not something that anyone wants to talk about. The

1 fact that a trusted adult could sexually abuse a child is
2 not something that anyone wants to believe, much less
3 discuss in detail. Unfortunately, child sexual abuse is a
4 reality in Greenville County, and it is the topic of our
5 trial today.

6 My name is Lisa Bentley. And I'm the Prosecutor in
7 this case. I will present evidence that the Defendant,
8 Tommy Wiseman, committed the crime of criminal sexual
9 conduct with a minor in the third degree.

10 As you heard from the Judge, the Defendant has been
11 indicted for two offenses relating to the sexual abuse of
12 a person with the initials Minor1. You will soon hear that
13 Minor1 are the initials of Minor1.

14 And the evidence will show that while Mr. Wiseman was
15 visiting her grandmother, he took the opportunity to abuse
16 Minor1 when she was five and six years old. Due to the
17 nature of these allegations and the State's burden of
18 proof, you will hear some things that you probably never
19 wanted to hear.

20 It is the State's job, it is the State's burden, it
21 is the State's responsibility to prove the Defendant
22 guilty beyond a reasonable doubt, to leave you firmly
23 convinced of his guilt. This is one of the most serious
24 charges a person can face. And nobody expects you to take
25 that burden lightly.

1 Now, you heard that he's been charged with two counts
2 of sexual abuse, both criminal sexual conduct with a minor
3 in the third degree both with the same victim, Minor 1
4 Minor 1 . The State is not alleging that this is something
5 that happened once or twice, or that it was a continuous
6 course of conduct while Minor 1 lived with her mother and
7 grandmother. Minor 1 moved while she lived with her mother
8 and grandmother to several different locations. And
9 Mr. Wiseman is facing one count for each of the locations
10 where the State can prove this happened.

11 So now that you know why Mr. Wiseman is facing two
12 counts of the same crime with the same victim, what is
13 criminal sexual conduct with a minor in the third degree?
14 What does the State have to prove?

15 The Judge told you that she will not explain the law
16 until the end of the trial. But, essentially, criminal
17 sexual conduct with a minor in the third degree is any
18 inappropriate sexual touching, rubbing, fondling, groping,
19 all of those would be inappropriate sexual touching. And
20 the specific allegation in this case is that the
21 Defendant, Tommy Wiseman, placed his hand on Minor 1 's
22 vaginal area underneath her clothing.

23 So that you know what this case is about and what the
24 State has to prove, I want to tell you what you can expect
25 from the State's case. You will hear from a number of

1 witnesses. You will hear from Minor1 's mother, Kristina
2 Whitted. You'll hear from her grandmother, Kathy Perez.
3 Both of whom she lived with. You'll hear from her
4 brother, Minor2 , who witnessed, at least, one of the
5 events. And you'll hear from the extended family members
6 that she, initially, disclosed to.

7 But keep in mind that child sexual abuse is a secret
8 crime. It's not going to be performed out in the open.
9 It's not going to be performed with an accomplice. It's
10 not going to be bragged about later. And in cases
11 involving touching, there is not going to be CSI-type
12 evidence. The most important evidence will be the
13 testimony of the victim and witness, Minor1 and Minor2 .

14 The benefit of a child sexual abuse trial is that you
15 get a unique opportunity to go back in time. The initial
16 videos of Minor1 and Minor2 were video and audio recorded
17 due to their age. And you will have an opportunity to go
18 back over two years and watch them when they were first
19 asked about what occurred.

20 At this time, I'm going to let the evidence speak for
21 itself. I want to thank you for your time and for your
22 attention. I want to thank you for your patience, and for
23 giving Minor1 a chance at justice.

24 THE COURT: Thank you.

25 Ms. Wicker.

1 MS. WICKER: Thank you, Your Honor.

2 Ms. Bentley.

3 Good morning.

4 As you've heard, the allegations in this case are
5 very serious. And they're of a very sensitive nature.
6 And, as such, they need to be examined. They need to be
7 fully scrutinized. But I think as you listen to the
8 testimony, you'll see the allegations just don't make
9 sense.

10 You're going to hear a lot of testimony today --
11 while we don't think it's going to be a lengthy trial, you
12 will hear from several witnesses. And as you do so, I'm
13 going to ask you to do what Judge Verdin has told you, to
14 pay attention to the demeanor of the witnesses,
15 discrepancies in what they're telling you, any biases they
16 might have, and just your gut, what makes sense.

17 Again, this is very serious. And, certainly,
18 criminal sexual conduct should not be tolerated. And,
19 particularly, when a child is making an allegation of that
20 nature, it should be fully examined. It should be
21 scrutinized. And that's why you're here. You're our
22 jurors. You're here to do that scrutinizing, to pay
23 attention to the testimony that's presented to you, to
24 what the witnesses are telling you. And I think that if
25 you do so, you'll see that it simply doesn't make any

1 sense. And I'll ask you to return a verdict of not
2 guilty.

3 Thank you.

4 THE COURT: Thank you, ma'am.

5 Okay. Ms. Bentley, are you ready to proceed?

6 MS. BENTLEY: Yes.

7 Your Honor, the State calls Jennifer Flores.

8 THE BAILIFF: Place your left hand on the Bible and
9 raise your right hand.

10 WHEREUPON,

11 JENNIFER LYNN FLORES,

12 after first having been duly sworn, testified as follows:

13 THE CLERK: Please have a seat.

14 Will you state your full name for the record?

15 THE WITNESS: Jennifer Lynn Flores.

16 THE CLERK: Thank you.

17 DIRECT EXAMINATION

18 BY MS. BENTLEY:

19 Q Ms. Flores, are you currently employed?

20 A No. I'm attending GED classes.

21 Q You're in some GED classes?

22 A Uh-huh.

23 Q Okay. If I ask you to repeat anything, it's just so

24 I can make sure that everyone can hear you in the

25 courtroom. Okay.

1 When were you last employed?

2 A 2000 and -- what? Last year, 2015 --

3 THE COURT: Ma'am, I'm going to need you to speak up.

4 THE WITNESS: It's kind of hard for my voice. I'm
5 sick.

6 THE COURT: Okay. If you can just -- let's see.

7 Now, try it. Now, try turning your mic up.

8 Will you answer that question again?

9 THE WITNESS: What was the last --

10 BY MS. BENTLEY:

11 Q When were you last employed?

12 A 2015, June.

13 Q All right. And where did you work?

14 A Dollar General.

15 Q Okay. And what was your position there?

16 A Key holder.

17 Q Okay. Where do you currently live?

18 A

19 Q Okay. Is that in Greenville County?

20 A Spartanburg.

21 Q All right. Do you have any children?

22 A Two.

23 Q What are their names and ages?

24 A I. is six, and E. is three.

25 Q Okay. Are you married?

1 A I am.

2 Q And does anyone else live with you and your family
3 right now?

4 A Right now, I have my niece and my nephew.

5 Q Okay. And how long have they lived with you?

6 A December 9th.

7 Q Excuse me. Since --

8 A They moved in December 9th --

9 THE COURT: Sorry. I was trying to make it better
10 and made it much, much worse.

11 THE WITNESS: I'm trying to speak up.

12 THE COURT: That's okay. Let's try it now

13 BY MS. BENTLEY:

14 Q Aside from your -- aside from the niece and nephew
15 that currently live with you, have you ever had other
16 extended family members living with you?

17 A My sister has lived with me.

18 Q Okay. Any other children that have lived with you?

19 A Minor2 and Minor1 .

20 Q And who are Minor2 and Minor1 ?

21 A They're my cousin's kids.

22 Q Okay. And who is your cousin?

23 A Kristina Whitted.

24 Q And can you tell me how you're related to Kristina
25 Whitted?

1 A Kathy had married my uncle. And that was around the
2 time that -- they was together around the time
3 Krissy [phonetic] was born. We grew up together. And
4 that's why I call her my cousin.

5 Q Okay. And who is Kathy?

6 A She's my -- she's Kristina's mom.

7 Q Okay. So you're -- so Kristina's mom was married to
8 your uncle?

9 A Uh-huh.

10 Q Okay. So did you keep in touch with that side of the
11 family after Kathy divorced?

12 A I mean, yeah, for a little while.

13 Q And you and Kristina grew up together you said?

14 A Uh-huh.

15 Q All right. When did Minor 1 and Minor 2 move in with
16 you?

17 A March -- I think it was March something.

18 Q Okay.

19 A It was in 2013.

20 Q March of 2013?

21 A Uh-huh.

22 Q And why did they move in with you?

23 A Kristina lost her kids.

24 Q She -- do you know why she lost her kids?

25 A I think drugs. I'm not sure.

1 Q Okay. How old was Minor 1 when she came to live with
2 you?

3 A She had just turned six.

4 Q And how old was Minor 2 ?

5 A Eight.

6 Q Where had they been living immediately prior to
7 living with you?

8 A I had picked them up from

9 Q Okay. Do you know what county that's in?

10 A I don't.

11 Q Okay. Do you know what town that's in?

12 A Greer.

13 Q All right. How long have you known Minor 1 and
14 Minor 2 ?

15 A Their whole life.

16 Q Okay. And prior to living at , do you
17 know where they lived?

18 A They've lived on

19 Q Okay.

20 A

21 Q Okay.

22 A And

23 Q All right. And do you know the Defendant in this
24 case?

25 A I don't -- I've seen him at their house, but I don't

1 know him know him.

2 Q Okay. Do you remember the first time that you saw
3 him at their house?

4 A No.

5 Q Do you remember which house it was that you first saw
6 him at?

7 A What is it?

8 Q Okay. And tell me about what you would observe when
9 you were there. How often did you visit Kathy's house?

10 A I didn't visit that much. But whenever I was over
11 there, I mean, once in a while, he'd be over there.

12 Q Okay. Did you have a chance to observe him interact
13 with anyone there?

14 A He was more around Minor 1 than anybody.

15 Q All right. Tell me a little bit about Kathy's house.
16 Who lived with Kathy on a regular basis?

17 A All her kids and their kids.

18 Q Can you tell me -- how many kids did she have?

19 A Four.

20 Q And what were their names?

21 A Kristina, Cody, Heath, and Heather.

22 Q Okay. So her four children were living with her and
23 you said who else?

24 A The kids that they have.

25 Q Okay. And about how many kids would that have been

1 total?

2 A Oh, Lord. Krissy's got four; Cody, I think, has got
3 two; and Heath has got one; and Heather had three.

4 Q Okay. And all of those people would be living with
5 Kathy?

6 A Krissy had her own apartment at one time. So her and
7 the kids was living in an apartment. But Kathy had
8 others.

9 Q Okay. And tell me about the environment that was
10 Kathy's house.

11 A Well, it was always busy.

12 Q Okay. Can you elaborate on that any more?

13 A There was always people there like the kids was
14 always there. I mean, I don't...

15 Q Tell me about the adults that were living at Kathy's
16 house aside from Kathy, Kristina, Cody, her other brother,
17 and sister.

18 A Jose, her husband, was there. But, I mean, he was
19 only on and .

20 Q Okay. And did everyone pitch in and watch the
21 children?

22 A Yeah.

23 Q Okay. Would you say that Kristina and her siblings
24 were responsible parents?

25 A At times.

1 Q Okay. And what about other times?

2 A I mean, sometimes, you would see people sleeping and
3 the kids would be up, but.

4 Q Okay.

5 A Like I said, I never went over there that often.

6 Q What occasions would bring you over there?

7 A Birthday parties.

8 Q Okay. How did Tommy -- you said you had a chance to
9 observe Tommy interact with the children, particularly
10 Minor1 . How was that interaction?

11 A I mean, he was always wanting to be right there
12 beside her.

13 Q Did you ever have any -- did he ever -- was he ever
14 mean to Minor1 ?

15 A Huh-uh.

16 Q Did you ever have any concerns regarding his
17 behavior?

18 A I had concerns, but I just kept my opinions to
19 myself.

20 Q Okay. And you told me that Minor1 and Minor2 moved
21 in with you because they were being taken from their
22 mother?

23 A Uh-huh.

24 Q And the reason was?

25 A Drugs.

1 Q Drug use. Did you know whether anyone else in that
2 house had drug problems?

3 A Their brother -- her brother, her sister, they all
4 lost their kids to it.

5 Q Okay. Tell me about when you went -- did you go
6 directly to pick up -- tell me about the process of
7 getting Minor1 and Minor2 . Did you go to pick them up
8 from school? From their home?

9 A I went to get their stuff from
10 . And then I went to get the kids from school.

11 Q Who was present when you went to go get their
12 belongings?

13 A Tommy.

14 Q Anyone else?

15 A Kristina, Kathy -- I think maybe Kathy, my mom.

16 Q Okay. And who is your mom?

17 A Karen Perez.

18 Q Okay. And you said Tommy was, also, present there?

19 A Uh-huh.

20 Q How did everyone take it that the children were
21 leaving the home?

22 A I mean, nobody likes to see kids leave homes. But, I
23 mean, there was -- honestly, he was the one that was
24 crying for Minor1 .

25 Q Okay. Was anyone else crying or upset that they were

1 leaving?

2 A Yeah. Of course, their mom was.

3 Q Okay.

4 A They was.

5 Q All right. Did he say anything while you were there?

6 A He was in the closet with Krissy getting Minor 1 and
7 Minor 2 s' stuff ready. And I heard him say Minor 1 , Minor 1 ,
8 and crying.

9 Q All right. Tell me about Minor 1 and Minor 2 moving in
10 with you. How was that transition?

11 A It was hard at times. But, I mean, it got to be
12 easier.

13 Q Okay. Did anything happen that concerned you in the
14 spring of 2013?

15 A Yeah.

16 Q Tell me what happened.

17 A My son was three at the time.

18 Q Which son was this?

19 A My oldest.

20 Q What is his name?

21 A I .

22 Q I . . Okay.

23 A He was three at the time. And he had gummy worms.

24 And Minor 1 went over to him and asked him if he gave her
25 gummy worms, she would let him touch her on her private

1 part.

2 Q And what was your reaction to that event? What did
3 you do?

4 A I grabbed my son and went to talk to him. And then
5 my sister grabbed Minor 1 and went to talk to her. And
6 after the talking, I called the social worker and asked
7 her what I should do.

8 Q Okay.

9 A That's when --

10 Q If you'll just let me ask the questions. I want to
11 make sure we don't go into any hearsay evidence.

12 A Okay.

13 Q So you went and you spoke to your son separately?

14 A Yeah.

15 Q Did you -- were you able to hear anything that
16 Jessica and Minor 1 spoke about?

17 A No. We was in the front of the house, and they was
18 in the back.

19 Q Okay. Did you, at any point, go back and speak with
20 Jessica and Minor 1 ?

21 A Huh-uh.

22 Q Okay. Did you go back and speak with Jessica, or did
23 Jessica call you in at any point?

24 A Yeah.

25 Q Okay. And what did you do after speaking with

1 Jessica?

2 A I called the social worker and asked her what she
3 could recommend me doing.

4 Q And, based on her recommendation, what did you do?

5 A The Julie Valentine Center came.

6 Q Okay. Did you call law enforcement?

7 A Oh, yeah. I called them first.

8 Q So did you call DSS first or law enforcement first?

9 A Law enforcement.

10 Q Okay. And what did you do?

11 A They came out to my house. And they said since I
12 live in Spartanburg County and the incident happened in
13 Greer, I would have to go to Greer.

14 Q Okay. And so did you go to Greer?

15 A Uh-huh.

16 Q And did the police speak with Minor2 or Minor1 at
17 that time?

18 A They -- yeah. I was going to say they only spoke to
19 Minor2 -- I mean Minor1 , but they did spoke -- speak to
20 Minor2 .

21 Q Okay. Did -- you mentioned the Julie Valentine
22 Center. Tell me -- the Julie Valentine Center came to get
23 the children?

24 A Yes.

25 Q And when did that happen?

1 A Not long after it happened.

2 Q Okay. Did you ever speak to Minor I about what
3 happened with the gummy worms again?

4 A Huh-uh.

5 Q Did you speak to her about anything she said at the
6 Julie Valentine Center?

7 A (There was no audible answer.)

8 Q Was any --

9 THE COURT: I need to you to say "yes" or "no," please.

10 THE WITNESS: Okay. No.

11 BY MS. BENTLEY:

12 Q Was any of that ever discussed in your home after
13 their Julie Valentine Center interview?

14 A No.

15 Q Was there anything that you told them to say to
16 anyone involved in this case?

17 A I didn't.

18 MS. BENTLEY: All right.. I have no further
19 questions.

20 Please answer any questions Ms. Wicker may have.

21 THE COURT: Ms. Wicker.

22 CROSS-EXAMINATION

23 BY MS. WICKER:

24 Q Good afternoon, Ms. Flores.

25 I just have a couple of questions. I just want to

1 make sure I got something right. Okay.

2 Regarding Kathy's house, you were there infrequently
3 mainly for like birthday parties and the like?

4 A Yeah. Once in a while, I would stop by just to see
5 the kids.

6 Q Okay. And there were about eight kids living in the
7 house at the time?

8 A Her four -- there was like nine, I think.

9 Q Nine kids. Okay. How many adults were there?

10 A There was Kathy, Krissy, Cody, Heather.

11 Q Okay.

12 A And Heath.

13 Q And Heath?

14 A Yeah.

15 Q Okay. And whenever you were there, it was a pretty
16 busy household; is that correct?

17 A (Witness nodded.)

18 MS. WICKER: Thank you.

19 I don't have any further questions.

20 THE COURT: Anything else?

21 MS. BENTLEY: No redirect.

22 THE COURT: Ma'am, you can step down.

23 MS. BENTLEY: May Ms. Flores be excused?

24 THE COURT: Any objection?

25 MS. WICKER: No objection, Your Honor.

1 THE COURT: Thank you for being here.

2 MS. BENTLEY: The State calls Jessica Selgado.

3 THE BAILIFF: Place your left hand on the Bible and
4 raise your right hand.

5 WHEREUPON,

6 JESSICA NICOLE SELGADO,
7 after first having been duly sworn, testified as follows:

8 THE CLERK: Please have a seat.

9 Will you state your full name for the record?

10 THE WITNESS: Jessica Nicole Selgado.

11 THE CLERK: Thank you.

12 DIRECT EXAMINATION

13 BY MS. BENTLEY:

14 Q Ms. Selgado, are you currently employed?

15 A No, ma'am.

16 Q When was the last time you worked?

17 A April of 2015.

18 Q And what kind of work did you do?

19 A I was a manager at a gas station.

20 Q Okay. And what do you do currently now to occupy
21 your time?

22 A Full-time mom.

23 Q Okay. How many children do you have?

24 A I have one.

25 Q Okay. How old is your child?

- 1 A Nine months.
- 2 Q And where do you currently live?
- 3 A Franklin, North Carolina.
- 4 Q Prior to living in Franklin, where did you live?
- 5 A With my sister in Spartanburg, South Carolina.
- 6 Q And who is your sister?
- 7 A Jennifer Flores.
- 8 Q The one that just testified?
- 9 A Yes.
- 10 Q Okay. Tell me when you moved in with Jennifer, if
- 11 you recall.
- 12 A December of 2012.
- 13 Q Okay. And how long did you live with her? Do you
- 14 recall?
- 15 A About a year and a half.
- 16 Q Okay. So from December of 2012 through the beginning
- 17 of 2014?
- 18 A Yes.
- 19 Q And while you were there, were there children in the
- 20 home?
- 21 A In the beginning, it was just my sisters two sons,
- 22 I. and E. . And then during March, Minor2 and Minor1
- 23 moved in.
- 24 Q Okay. And who are Minor2 and Minor1 ?
- 25 A They're my second cousins, I guess. They're my

1 cousin's two kids, Kristina Whitted.

2 Q All right. And how long have you known Minor1 and
3 Minor2 ?

4 A Since they were born.

5 Q And how long have you known their mother, Kristina
6 Whitted?

7 A Too long to remember.

8 Q Okay. And what was your relationship with Minor1 and
9 Minor2 ' family like?

10 A We were connected through -- Kathy had married my
11 uncle. And so we were connected through that. And we
12 just stayed involved with each other throughout the years.

13 Q Okay. Prior to Minor1 and Minor2 moving in with your
14 sister, did you see them on a quasi regular basis?

15 A Just for birthday parties, which there were plenty of
16 with all the kids, and sometimes we went over for
17 Christmas dinner.

18 Q Okay. And where would you go? Where did the
19 children, typically, live when you visited them?

20 A With Kathy and Kristina. Mostly and

21

22 Q Okay. And let me ask you, do you know the Defendant
23 in this case?

24 A Yes. I met him a few time.

25 Q And how did you meet him?

1 A Through Kathy's house at a birthday party.

2 Q Okay. And did you know his name?

3 A Yes.

4 Q What did you know him as?

5 A Tommy.

6 Q Okay. And how often was Tommy present when you would
7 be at Kathy's house?

8 A Pretty much for every birthday party I went to.

9 Q Okay. Did you have a chance to observe Tommy
10 interact with the children at the home?

11 A Not too much. Because I didn't really pay too much
12 mind to him. But when I did, he seemed friendly enough.

13 Q Okay. And tell me about your impression of Kathy's
14 house on and ?

15 A Chaotic, always something going on. I mean, but I
16 was mostly there for parties, so that's typical, but
17 always friends there, and everything.

18 Q Okay. And you said there were a bunch of kids there.
19 Who was -- what is your recollection of the people that
20 lived with Kathy on a regular basis?

21 A As to who lived there?

22 Q Yes.

23 A Her four kids, Kristina, Heath, Heather, and Cody,
24 and Heath's girlfriend, Adrianna, had lived there as well.

25 Q Okay.

1 A And then all of their kids, so.

2 Q Okay. And tell me about who would be taking care of
3 all those children when you came over.

4 A Pretty much anyone that was there as far as adults.

5 Q Okay. Were all the adults coherent when you were
6 around?

7 A Mostly.

8 Q Did you have any concerns over whether people were
9 under the influence of drugs or alcohol when you were
10 present?

11 A I knew that sometimes a few of them were.

12 Q Under --

13 A The influence of drug usage.

14 Q Okay. And do you know, specifically, what drug that
15 was?

16 A I know that -- I know for sure that marijuana was
17 one, but...

18 Q Okay. Do you recall when it was that you first met
19 Tommy at Kathy's house, how old you were?

20 A Middle school.

21 Q Okay. And how old are you now?

22 A 21.

23 Q All right. Did you ever observe Tommy single out any
24 child for special attention during those parties?

25 A Minor 1 .

1 Q Okay. And how would he single her out for attention?

2 A It just seemed like he, I guess, had formed a closer
3 bond with her. So he would always, you know, play with
4 her more or...

5 Q Okay. What was your understanding of why Minor2 and
6 Minor1 moved in with you and your sister?

7 A They -- their mother had gotten in trouble for drug
8 usage.

9 Q Okay. And how was the transition of Minor1 and
10 Minor2 moving into Jennifer's house?

11 A It was difficult at first, especially for them. But
12 with time, they adjusted as well as everybody else.

13 Q Okay. Did Minor1 ever do or act out in a way that
14 concerned you when you were present?

15 A The one time where she had offered my nephew to touch
16 her for gummy worms.

17 Q Okay. And tell me what you remember about that
18 event.

19 A After it happened, my sister took I. and she talked
20 to him. So I took Minor1 to the back room, which is,
21 also, the laundry room to talk to her about it.

22 Q Okay. And tell me what your demeanor was when you
23 were speaking with Minor1.

24 A I tried to stay like calm so she felt comfortable
25 talking to me about whatever had happened.

1 Q Okay. And tell me what you recall you said to Minor 1
2 without kind of telling us what she said in response. Do
3 you remember what you said to her?

4 A I asked Minor 1 why she would say that, why she would
5 think at six years old something like that was appropriate
6 for her to ask a three year old.

7 Q Okay. And what was her demeanor when she was
8 responding to you?

9 A She was really upset. She was crying.

10 Q Okay. And, at that time, did Minor 1 disclose sexual
11 abuse to you?

12 A Yes.

13 Q Did she tell you where it happened?

14 A Yes.

15 Q Did she tell you when it happened?

16 A Not the exact dates, no.

17 Q Did she tell you the locations?

18 A Yes.

19 Q What locations did she tell you?

20 A On , , and at the

21

22 Q Okay. And, based on her responses, what did you do?

23 A I called my sister back there because it really
24 worried me. So --

25 Q And how old were you at the time?

1 A I had just turned 18.

2 Q Okay. And so you called your sister back there. And
3 what did the two of you decide to do at that time?

4 A To call the police.

5 Q Okay. And did you -- were you with Jennifer when
6 y'all went to the Greer Police Department?

7 A Yes. Because I had to make a statement.

8 Q Okay. After that statement, did you speak to Minor 1
9 any further about what happened?

10 A No. Because it was a really sensitive subject. And
11 it was just uncomfortable to speak about.

12 Q Okay. Did you speak to her about anything that she
13 disclosed to you further?

14 A No.

15 Q Did she bring it up to you?

16 A No. Just only when her mother came and she had
17 disclosed it to her mother. But besides that, we...

18 Q Were you present when she talked to her mother?

19 A Yes.

20 Q Okay. And did you ever speak to Minor 1 and tell her
21 what to say when people talked to her?

22 A No.

23 Q Okay. And did she ever try to bring it up or speak
24 to you about it?

25 A No.

1 MS. BENTLEY: I have no further questions.

2 Please answer any questions Ms. Wicker may have.

3 THE WITNESS: Okay.

4 CROSS-EXAMINATION

5 BY MS. WICKER:

6 Q Just very briefly, Ms. Selgado.

7 A Okay.

8 Q So you were there pretty infrequently as well for
9 Christmas' and birthday parties; correct?

10 A Yes.

11 Q Okay. But it was a pretty full household; right?

12 A Yes.

13 Q Lots of kids, lots of adults living there?

14 A Yes.

15 Q And just a really busy environment; right?

16 A Yes.

17 MS. WICKER: Okay. Thank you.

18 I don't have any further questions.

19 THE COURT: Anything else?

20 MS. BENTLEY: Nothing for this witness.

21 THE COURT: Ma'am, you can step down.

22 MS. BENTLEY: May Ms. Selgado return to North
23 Carolina?

24 THE COURT: Any objection?

25 MS. WICKER: No objection, Your Honor.

1 THE COURT: Thank you for being here.

2 THE WITNESS: Thank you.

3 MS. BENTLEY: The State calls Minor 2

4 (Pause.)

5 MS. BENTLEY: Would you, please, go sit in that chair
6 for me, Minor 2 ?

7 THE BAILIFF: Put your left hand on the Bible and
8 raise your right hand.

9 WHEREUPON,

10 Minor 2

11 after first having been duly sworn, testified as follows:

12 THE COURT: All right. If you'll have a seat right
13 here.

14 And I'm going to have to tell you, this mic is funny.
15 So I want you to sit back from it. Okay.

16 THE WITNESS: Okay.

17 THE COURT: Maybe back a little bit further.

18 THE BAILIFF: Say something.

19 What's your name?

20 THE WITNESS: Minor 2

21 DIRECT EXAMINATION

22 BY MS. BENTLEY:

23 Q Minor 2 , was that your full name?

24 A Yes, ma'am.

25 Q And how old are you, Minor 2 ?

1 A 11 years old.

2 Q When is your birthday?

3 A -- I mean

4 Q Okay. And do you have brothers and sisters?

5 A Yes, ma'am.

6 Q What are your brothers and sisters names?

7 A M. , C. , and Minor1 .

8 Q How old are M. , C. , and Minor1 ?

9 A Minor1 is eight, fixing to turn nine. C. is
10 four years old. And M. , I think he's five or six.

11 Q Okay. And, Minor2 , who is your mom? Do you know her
12 name?

13 A Yes, ma'am.

14 Q What's her name?

15 A Kristina.

16 Q Do you know her last name?

17 A Whitted.

18 Q Minor2 , do you live with your mom?

19 A No, ma'am.

20 Q Who do you live with?

21 A I live with Jessica. And, sometimes, I go stay with
22 my grandma. And she comes and sees us. And she feeds us
23 and helps us with our homework every single night.

24 Q Okay. And you said Jessica. Do you know Jessica's
25 last name?

1 A Martin.

2 Q Okay. And was that the Jessica that was just in
3 here?

4 A No, ma'am.

5 Q A different Jessica?

6 A (Witness nodded.)

7 Q Okay. What grade are you in, Minor 2 ?

8 A Fourth grade because I -- third -- I meant fourth --
9 I meant fifth.

10 Q So you're in fourth grade, but you're supposed to be
11 in fifth?

12 A Uh-huh. I failed first grade.

13 Q Okay. Why did you fail first grade?

14 A My reading.

15 Q Are you getting better at reading?

16 A Yes, ma'am.

17 Q What do you like to read now?

18 A I like to read Little House on the Prairie.

19 Q Okay. And, Minor 2 , where do you go to school?

20 A Lyman Elementary.

21 Q Okay. Where is -- and you don't have to tell me the
22 whole address. But do you know where Miss Jessica lives?

23 A She moved from -- she went to her mother's house. I
24 can't remember.

25 Q Okay. Well, where does your grandmother live?

1 A My grandma, she lives right in the middle of the -- a
2 field where the Hollywild Zoo is.

3 Q Okay. Did she -- how long has she lived there? Do
4 you know?

5 A We just now moved there like in November.

6 Q Okay. Before there, where did she live?

7 A

8 Q And before , what other addresses
9 did she have?

10 A

11 Q Okay. Were there any more?

12 A I don't know the other one after that.

13 Q Okay. Did you ever live with your grandmother?

14 A Yes, ma'am.

15 Q When did you live with your grandmother?

16 A In Greer on . And I lived on across
17 from Tommy's house.

18 Q Okay. Did you ever live in an apartment with your
19 grandmother?

20 A Yes, ma'am.

21 Q Okay. And how long did you live at that apartment?

22 A Like for a couple of weeks, or one month.

23 Q Okay. So not very long?

24 A No, ma'am.

25 Q Okay. Minor 2 , when you lived with your grandmother,

1 who all lived at that house?

2 A It was my grandpa, my grandma, and me, and Minor 1 .

3 Q Okay. Did you have any aunts or uncles that lived
4 there?

5 A Sometimes, my aunt, she would come and -- just to see
6 us.

7 Q Okay. And is that now that you're talking about?

8 A It was my Aunt Heather.

9 Q Is that who lives with your grandmother now?

10 A No, ma'am.

11 Q Okay. Who lived with your grandmother on ?

12 A It was my grandma, me, Minor 1 , M. , and C. ,
13 her husband, Jose, Heather, Cody, Heath, their kids,
14 Ca. , K. , and S. , N. , and my mom.

15 Q Okay. That's a lot of people that lived there, isn't
16 it?

17 A Yes, ma'am.

18 Q How big was that house?

19 A There was only three rooms.

20 Q Okay.

21 A And it wasn't big, but it was like a medium size.

22 Q Okay. And can you tell me, did you ever live with
23 anybody aside from Jessica or your grandmother?

24 A I lived with my cousin.

25 Q Who is your cousin?

1 A Jenny.

2 Q Okay. And when did you move in with Jenny?

3 A I was with my mom. And then I moved to her house.
4 And then I went with Jenny. I lived with her like just
5 for a half of a year.

6 Q Okay. And, Minor 2, can you tell me, do you know the
7 man at that table right there?

8 A Yes, ma'am.

9 Q What is his name?

10 A Tommy.

11 Q And how do you know Tommy?

12 A Every single time on , he would always give my
13 grandma rides and my mom rides to go to the store. We
14 didn't have a car.

15 Q Okay. So he helped out?

16 A Yes, ma'am.

17 Q How often did you see him at ? Do you remember
18 how often he came over?

19 A Kind of a lot.

20 Q Okay. Was he -- did he ever bring you anything?

21 A Uh-huh.

22 Q What kind of things did he bring you?

23 A Like, sometimes, we would ask my Nana if we could go
24 with her, and she said yes. And, sometimes, we would ask
25 him if he could get us something.

1 Q And what would he bring you?

2 A A drink, or some chips, or gum.

3 Q Okay. And would he bring that to just you, or would
4 he bring it to other kids as well?

5 A Me and my sister.

6 Q Which sister is that?

7 A Minor 1 .

8 Q Okay.

9 A Because I've only got one sister.

10 Q Okay. And what about the other kids? Did he bring
11 the other kids things?

12 A Yes, ma'am.

13 Q Okay. What did he bring them?

14 A Same things as us.

15 Q Okay. What would he do when he would visit?

16 A He would come. And then he would ask my grandma if
17 she was ready to go so she can go to the place, and then
18 they went.

19 Q Okay. Would he ever play with you?

20 A Sometimes he would push me on this little swing that
21 I had.

22 Q Okay. And what kind of car did Tommy drive?

23 A A truck that was silver in the middle of it like all
24 around. And it was like a brownish dark red.

25 Q Okay. And did you -- did you think that Tommy was

1 a -- was kind of a friend for you?

2 A I thought he was. But after my sister told me what
3 happened --

4 Q Okay. Well, let me stop you right there, Mr. Minor 2 .
5 Did Tommy ever do anything to you that you did not like?

6 A The last time on my porch whenever -- the last time,
7 he jerked me by my arm.

8 Q Okay. And what porch was that on?

9 A The back porch on

10 Q On . And why did he jerk your arm?

11 A Because like whenever -- I can't remember, though,
12 but it happened on the back porch on , though.

13 Q Okay. And how did it feel when he jerked your
14 arm?

15 A It hurt.

16 Q Did you tell anyone about him jerking your arm?

17 A I told my mom.

18 Q Okay. What did your mom tell you to do?

19 A She told me just to go sit down. And there was a big
20 red mark of his handprint.

21 Q Okay. Did he hurt you just that one time, or more
22 than one time?

23 A That one time.

24 Q Okay. Did you ever see Tommy hurt anybody else?

25 A No, ma'am.

1 Q Okay. Tell me -- were there any grown-ups outside
2 when that happened?

3 A No, ma'am.

4 Q Who was outside when that happened?

5 A Just me and him. I think it was when we were
6 bringing in groceries.

7 Q Okay.

8 A And we was inside. And they was taking the groceries
9 inside.

10 Q Okay. Do you remember that event very well?

11 A Not much.

12 Q Okay. Did you ever talk to anybody else about this
13 event?

14 A Just my mom and my grandma.

15 Q Did you go anywhere else and talk to another lady
16 about it?

17 A One time whenever we went -- when we was living with
18 my cousin, Jenny, this woman, she came and took us to the
19 place to go talk to the woman about it, and everything
20 else, me and my sister went.

21 Q Okay. And did you remember it better then, or do you
22 remember it better now?

23 A I remembered it better then.

24 Q Okay.

25 A Because I was younger and because I -- it wasn't

1 long.

2 Q It's been long?

3 A Yes.

4 Q Okay. Did you ever see Tommy do anything to your
5 sister?

6 A No, ma'am.

7 Q Okay. Minor 2, do you know the difference between
8 telling the truth and telling a lie?

9 A Yes, ma'am.

10 Q What is the truth?

11 A The truth is when you're being honest and you're not
12 making up stuff.

13 Q Okay. And what's a lie?

14 A A lie is when you're making up stuff and you're just
15 not being honest.

16 Q Okay. And when you -- here today, have you told us
17 anything that was not the truth?

18 A I told all the truth today.

19 Q Okay. When you went to talk to that lady at the
20 Julie Valentine Center, did you tell her any lies?

21 A No, ma'am.

22 MS. BENTLEY: Okay. I don't have any more questions
23 for you.

24 Answer any questions Ms. Wicker may have.

25 THE COURT: All right. Ms. Wicker.

CROSS-EXAMINATION

BY MS. WICKER:

Q Hi, Minor 2.

I have just a couple of questions for you. Okay.

A Okay.

Q I just want to make sure I got it right. So you knew Tommy when you were living with your grandmother and your mom; is that right?

A Yes, ma'am.

Q Okay. There were a lot of people living with you in that house?

A (Witness nodded.)

Q Were there?

A Yes, ma'am.

Q Okay. And Tommy would come and give your mom and your grandma a ride sometimes?

A Yes, ma'am.

Q And he would, sometimes, bring you a drink and some gum; right?

A Yes, ma'am.

Q And to your sister, too?

A Uh-huh.

Q And to the other kids in the house?

A Yes, ma'am.

MS. WICKER: I don't have any further questions.

1 Thank you.

2 THE COURT: Anything else?

3 MS. BENTLEY: No.

4 THE COURT: You can step down.

5 Thank you.

6 MS. BENTLEY: You can go outside.

7 THE COURT: All right. Ladies and gentlemen, we've
8 now come to a point for a lunch break. If you would be
9 back in your jury deliberation room at 1:30. We'll start
10 back at 1:30.

11 And I told you I would sound like a broken record,
12 but, please, don't discuss the case with anyone.

13 Thank you so much.

14 And I hope you have a good lunch.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 12:12 p.m.)

17 THE COURT: Ms. Bentley, those ladies that are on the
18 back row, do you mind having just a word with them -- they
19 were here -- to ask them, please, no reactions during
20 testimony, and, also, to stay seated until the jury
21 leaves.

22 MS. BENTLEY: Yes, ma'am. I will do that.

23 THE COURT: Okay. I appreciate you're doing that. I
24 didn't want to call them out necessarily and embarrass
25 them here today. They didn't do anything I thought was

1 real noticeable. But I did have some concern that as we
2 got a little further into it that it might be a little
3 worse. That's all.

4 MS. BENTLEY: Yes, ma'am. I'll do that.

5 THE COURT: All right. Is there anything we need to
6 take up before we break for lunch?

7 Anything from the State or the Defense?

8 MS. BENTLEY: Just the Defendant being on bond, Your
9 Honor.

10 MS. WICKER: Yes, ma'am.

11 THE COURT: All right. I'll set a PR bond, a \$30,000
12 PR bond as a trial bond so he can be out.

13 You're still on bond, sir.

14 DEFENDANT WISEMAN: Yeah.

15 THE COURT: Do you understand that?

16 DEFENDANT WISEMAN: Yes, ma'am.

17 THE COURT: So if you don't come back, do you
18 understand --

19 DEFENDANT WISEMAN: Oh, I'll be back.

20 THE COURT: I'm not going to make you put any money
21 up here today --

22 DEFENDANT WISEMAN: Yeah.

23 THE COURT: --, but they're going to take -- they're
24 going to come --

25 DEFENDANT WISEMAN: Oh, yeah. I know.

1 THE COURT: All right. Then we're in recess until
2 1:30.

3 DEFENDANT WISEMAN: I'll be here.

4 THE COURT: Okay.

5 (WHEREUPON, a lunch break was taken.)

6 (WHEREUPON, State's Exhibit No. 8 was marked for
7 identification only.)

8 THE COURT: I apologize. I agreed to speak at
9 something over the lunch break. And that was a mistake.
10 So I'm sorry.

11 Bring the jury in, please.

12 MS. BENTLEY: Your Honor, may we approach briefly?

13 THE COURT: Sure.

14 (WHEREUPON, a bench conference was held.)

15 (WHEREUPON, the jury came into open court at
16 approximately 1:56 p.m.)

17 THE COURT: Ladies and gentlemen, I owe you a sincere
18 apology. I agreed to a speaking thing over lunch. And I
19 should have never done that. And I apologize because I
20 never want to keep you waiting. I thought I would be
21 finished by a certain time, and I was not. It is not
22 these attorneys fault at all. Your waiting is my fault
23 entirely. And I am very sorry.

24 All right. Are you ready to proceed?

25 MS. BENTLEY: The State calls Minor 1 to the

1 stand.

2 THE BAILIFF: Raise your right hand and place your
3 left hand on the Bible.

4 WHEREUPON,

5 Minor 1

6 after first having been duly sworn, testified as follows:

7 THE COURT: All right. Thank you.

8 You can have a seat right here.

9 I've got it turned off, but I'm going to turn it back
10 on.

11 THE BAILIFF: I'll adjust it.

12 THE COURT: And you're not -- that microphone is real
13 loud, so you don't have to really talk into it. Okay.

14 THE WITNESS: (Witness nodded.)

15 THE COURT: So you can just sit back like that.

16 Thank you.

17 DIRECT EXAMINATION

18 BY MS. BENTLEY:

19 Q Can you, please, tell us your full name?

20 A Minor 1

21 Q Thank you.

22 And, Minor 1, how old are you?

23 A Eight.

24 Q When is your birthday?

25 A

1 Q Do you know what year you were born in?

2 A No.

3 Q Okay. Do you go to school?

4 A Yes.

5 Q Where do you go to school?

6 A Lyman Elementary.

7 Q What grade are you in?

8 A Third.

9 Q Who is your teacher?

10 A Ms. Howell.

11 Q Minor1 , who are your parents? What are their names?

12 A Kristina and Minor2 .

13 Q And do you live with your parents?

14 A No.

15 Q Who do you live with right now?

16 A I live with Jessica. But Nana babysits us when
17 Jessica is working.

18 Q Okay. And the Jessica that you live with, is she the
19 Jessica that was here earlier?

20 A No.

21 Q She's a different Jessica?

22 A Yeah.

23 Q And your Nana -- what is your Nana's real name? Do
24 you know.

25 A Kathy.

1 Q Okay. Minor 1 , do you have brothers or sisters?

2 A Brothers only.

3 Q Only brothers?

4 A (Witness nodded.)

5 Q What are their names?

6 A Minor 2 , M. , and C. .

7 Q And how old are Minor 2 , M. , and C. .

8 A Minor 2 is 11. C. is four. And I think M.
9 is five.

10 Q Okay. Do you live with all of your brothers?

11 A No.

12 Q Who do you live with?

13 A Only with Minor 2 .

14 Q Okay. And, Minor 1 , do you remember the first house
15 that you lived in?

16 A Yes.

17 Q Where was that house?

18 A I think

19 Q Okay.

20 A I forgot the address.

21 Q That's okay. And after , where did you
22 move to?

23 A

24 Q Okay. And did you live anywhere after ?

25 A In the apartments.

1 Q Okay. Do you know the name of the apartments?

2 A No.

3 Q How long did you live at those apartments?

4 A I don't know.

5 Q Okay. Minor 1, do you remember how old you were when
6 you lived on ?

7 A No.

8 Q Do you remember when you moved -- how old you were
9 when you moved?

10 A (Witness shook her head.)

11 Q Do you remember how old you were when you lived at
12 the apartments?

13 A I think seven or six.

14 Q Okay. And your birthday you said was what day?

15 A

16 Q And how old are you going to be on your
17 next birthday?

18 A Nine.

19 Q Nine. You said you live with a lady named Jessica
20 right now; is that right?

21 A Yes.

22 Q Who did you live with before you lived with this
23 Jessica?

24 A Nana and mom.

25 Q Okay. Did you ever live with anybody that wasn't

1 your mom or your Nana?

2 A Yeah.

3 Q Who was that?

4 A My uncle -- well, like they lived in the same house
5 on

6 Q Okay. Did you ever live with a lady named Jenny?

7 A Yes.

8 Q When did you live with her?

9 A When we got taken [sic] from mommy.

10 Q Okay. And let's talk -- who lived at Jenny's house
11 with you?

12 A Jessica, and her husband, and her two kids.

13 Q Okay. Do you remember how long you lived with Jenny?

14 A No.

15 Q Okay. Minor 1, do you know who that is at that table
16 right there?

17 A Yes.

18 Q What is his name?

19 A Tommy.

20 Q How do you know Tommy?

21 A He used to come -- he was Nana's friend.

22 Q Okay. And what house did he come and visit at?

23 A , . And I think,
24 sometimes, he would come over to the apartments.

25 Q Okay. How often did he visit your Nana?

1 A Like mostly every day.

2 Q Okay. When you lived with your Nana, Minor 1 , who
3 else lived at that house?

4 A On ?

5 Q Yes.

6 A My uncle, and his two kids, my aunt, Heather, and her
7 three kids, and my brother, and my mama, and my uncle's
8 girlfriend.

9 Q Okay. How old were the other kids that lived there
10 with you?

11 A I don't know.

12 Q Were they older or younger than you?

13 A Younger.

14 Q Okay. Were you and Minor 2 the oldest kids there?

15 A Yes.

16 Q Okay. And did Tommy ever play with you or the kids
17 when you visited?

18 A No.

19 Q Okay. What would he do when he would come over and
20 visit?

21 A We would be -- me and my brother would be swinging on
22 the swings in the back yard. He would come and bring us
23 coffee. And I would stand on his truck and he would touch
24 me.

25 Q Okay. You said he brought you coffee. When would he

1 bring you coffee?

2 A Every time he would visit.

3 Q Okay. Did he bring coffee for just you?

4 A No, me and my brother.

5 Q Okay. Did he bring you other things?

6 A Yeah, bubble gum. He would take me, my momma, and my
7 brother to his house and give me and my brother a piece of
8 gum.

9 Q Okay. You said you would go on his truck?

10 A (Witness nodded.)

11 Q How would you get on his truck?

12 A He would pick me up and sit me on his truck.

13 Q What part of the truck would he sit you on?

14 A Like on the side or the back.

15 Q On the side or the back. And where would your mom be
16 when that happened?

17 A In the house.

18 Q What about your Nana?

19 A In the house, too.

20 Q Where would all those other kids be?

21 A They'd be, sometimes, playing outside with us.

22 Q Okay.

23 A And we'd see them sometimes.

24 Q Sometimes, you would see them?

25 A (Witness nodded.)

1 Q How many times did he put you on the side of the
2 truck?

3 A A lot.

4 Q Okay. Did it happen every time he came over?

5 A Yeah.

6 Q Okay.

7 A Well, not every time, sometimes.

8 Q Okay. Do you remember the first time it happened how
9 old you were?

10 A No.

11 Q Do you remember the last time it happened?

12 A When -- after I got taken [sic] away. Me and my
13 brother got taken [sic] away from my mom.

14 Q How did that happen?

15 A I don't know.

16 Q Okay. Well, Minor 1, let me ask you, what kind of
17 truck did Tommy have?

18 A It was kind of like a reddish brown.

19 Q It was a reddish brown truck. And where would he
20 park that truck?

21 A In the backyard.

22 Q He'd park it in the backyard. And could you see
23 inside your house from where you were on the truck?

24 A I don't remember.

25 Q Okay. Would anyone else be on the truck when you

1 were on the truck?

2 A No.

3 Q Did he say anything to you --

4 A No.

5 Q -- when he picked you up?

6 A No.

7 Q Did you ever climb up on the truck on your own?

8 A No, not that I know of.

9 Q Were -- would you be able to stand up and get on the
10 truck by yourself?

11 A No. It was too high up.

12 Q Okay. You said he would touch you. Where would he
13 touch you?

14 A On my private.

15 Q Does your private have a name?

16 A My pee-pee.

17 Q Okay. And how did it feel when he touched your
18 pee-pee?

19 A I didn't like it.

20 Q Did he do that on top of your clothes, or under your
21 clothes, or something else?

22 A Under.

23 Q Under your clothes?

24 A (Witness nodded.)

25 Q What about -- did you wear panties?

1 A Uh-huh.

2 Q Did he do that on top of your panties or under your
3 panties?

4 A Under.

5 Q Did you ever say anything to him?

6 A I asked him to stop, but he wouldn't.

7 Q Did he say anything to you?

8 A He told me not to tell no one.

9 Q When did he tell you that?

10 A Sometimes when we would sit on -- when I would -- he
11 would pick me up and sit me on the back of his truck.

12 Q Okay. And did you ever tell anyone?

13 A No. Because I was scared of how I was going to get
14 in trouble.

15 Q Why did you think you'd get in trouble?

16 A For letting him do that.

17 Q Okay. Did you ever tell Ms. Jenny about that?

18 A First, it was Jessica. And then Jessica told Jenny.

19 Q Okay. And why did you tell Ms. Jessica?

20 A Because I felt safe telling her.

21 Q Okay. Did he ever touch you anyplace other than on
22 the truck?

23 A No.

24 Q What about anyplace inside a house?

25 A Huh-uh.

1 Q Okay. Did this just happen at ?

2 A No. It happened on and sometimes

3

4 Q Tell me about . Who lived there?

5 A Me, and my Nana, and my brother, and my momma. And I
6 can't remember who else.

7 Q Okay. And where would he put his truck at

8 ?

9 A I think in the front yard.

10 Q In the front yard. And how would you -- why would
11 you get on the truck at ?

12 A Because he would tell me to come in and grab my
13 coffee.

14 Q He would tell you to come get your coffee?

15 A (Witness nodded.)

16 Q Did he -- did he ever bring the coffee inside the
17 house, or did he always make you come get it?

18 A He would -- sometimes, he would walk inside the house
19 and hand it to me.

20 Q But if he didn't walk inside the house, he'd ask you
21 to come get it?

22 A (Witness nodded.)

23 Q And where would he be when he had the coffee?

24 A He would be on -- right there beside his truck on the
25 side.

1 Q Okay. And how did he -- tell me again how you got on
2 the truck -- on the side of the truck.

3 A He picked me up.

4 Q And where did you sit in the truck?

5 A I didn't sit in. I sat on the side.

6 Q On the side of the truck?

7 A (Witness nodded.)

8 Q Do you think anybody ever saw this happen?

9 A No.

10 Q Okay. Why not?

11 A I told my brother, though. But I told him to keep it
12 a secret, because I was scared I was going to get in
13 trouble.

14 Q Okay. Did this ever happen when you were at the
15 apartments?

16 A I don't know. I forgot.

17 Q Okay. How does it feel to be here today?

18 A Scary.

19 Q Okay. Minor 1, did -- do you know what the difference
20 between a truth and a lie is?

21 A (Witness nodded.)

22 Q What's a truth?

23 A When you tell the truth and don't tell a lie.

24 Q What's a lie?

25 A When you tell lies and you don't tell the truth.

1 Q Okay. Can you give me an example of what a lie would
2 be?

3 A Like if you hit someone and then they told on you.
4 And then you lied to them and said, no, you didn't.

5 Q Okay. And have you told anything that was not the
6 truth today?

7 A No.

8 Q Do you remember going and talking to a lady about
9 what Tommy did and body parts?

10 A Yes.

11 Q Did you tell her anything that wasn't a truth?

12 A Yes. I told her the truth.

13 Q Oh, you told her just the truth?

14 A Uh-huh.

15 Q Okay. Minor 1, has anyone talked to you and told you
16 what to say in here today?

17 A No.

18 Q Did you talk to your mom or your Nana about what
19 happened with Tommy before you came here today?

20 A Yeah. I told them what happened.

21 Q When did you do that?

22 A On the way there.

23 Q On the way where?

24 A Here.

25 Q Okay. Had you been talking to your grandmother or

1 your mom about that before then?

2 A No.

3 MS. BENTLEY: Okay. I don't have any more questions
4 for you.

5 Answer any questions Ms. Wicker may have.

6 THE COURT: Yes, ma'am.

7 MS. WICKER: Thank you.

8 CROSS-EXAMINATION

9 BY MS. WICKER:

10 Q Hi, Minor 1 . How are you?

11 A Good.

12 Q I just have a couple of questions. I want to make
13 sure I got what you said right. Okay.

14 When you were living on , were there
15 lots of people living in the house with you?

16 A Yes.

17 Q Okay. Lots of other kids there, too?

18 A (Witness nodded.)

19 Q And you would go outside with your brother and the
20 other kids?

21 A Uh-huh.

22 Q And y'all would be outside swinging?

23 A (Witness nodded.)

24 Q And, sometimes, Tommy would be there as well; right?

25 A Yes, ma'am.

1 Q Okay. And you said that Tommy would bring you coffee
2 and gum sometimes?

3 A Uh-huh.

4 Q Did he bring it to your brother, too?

5 A Yeah.

6 Q Any of the other kids in the house?

7 A I forgot.

8 Q You forgot. That's okay. And you said that it was
9 just you and Tommy at the truck; is that right?

10 A Uh-huh.

11 MS. WICKER: Okay. Thank you.

12 I don't have any other questions for you.

13 THE COURT: Anything else for this witness?

14 MS. BENTLEY: Nothing further, Your Honor.

15 THE COURT: All right. You can step down.

16 MS. BENTLEY: The State calls Detective Dale
17 Arterburn to the stand.

18 THE BAILIFF: Raise your right hand and place your
19 left hand on the Bible.

20 WHEREUPON,

21 DALE ARTERBURN,

22 after first having been duly sworn, testified as follows:

23 THE CLERK: Please have a seat.

24 Will you state your full name for the record?

25 THE COURT: I turned it off.

1 So do you mind just trying to speak up?

2 THE WITNESS: Yes, ma'am.

3 THE COURT: All right.

4 THE WITNESS: I just -- I didn't know if I had to sit
5 at the wall or not.

6 THE COURT: Okay.

7 DIRECT EXAMINATION

8 BY MS. BENTLEY:

9 Q Can you, please, state your full name?

10 A Sure. Dale Arterburn.

11 Q And where are you employed?

12 A City of Greer Police Department.

13 Q What is your job there?

14 A I am a detective in violent crimes.

15 Q And how long have you been with the Greer Police
16 Department?

17 A Almost -- it will be 20 years in July of this year.

18 Q All right. And, at some point, were you assigned a
19 case regarding Tommy Wiseman to investigate?

20 A Yes, ma'am.

21 Q Approximately when did you receive that assignment?

22 A The report was forwarded to my office on May the
23 13th, 2013.

24 Q Okay. And how -- or what is the process for you
25 having a case assigned to you in Greer as a detective?

1 A Normally, the reporting officers will take the
2 general information, meet with the victim or the
3 complainant. And on cases that involve either heavy
4 follow-up or a violent crime that may potentially need
5 more follow-up, it comes up to our office and it's
6 assigned to an investigator for follow-up.

7 Q And so what do you have when you are first assigned a
8 case?

9 A Normally, I just start with the report.

10 Q Okay.

11 A It's just an incident report that's taken by the
12 reporting officer. Sometimes, there may be statements.
13 But that's, basically, the beginning of what I would
14 normally start with on a case.

15 Q Okay. And, based on the report in this case, what
16 was the first action that you took?

17 A After being assigned the case -- once again, like I
18 said, on the 13th of May, I -- after reviewing the case, I
19 was able to establish that the child was, obviously, too
20 small for myself to talk to. And I don't talk to kids
21 just because of -- I like to be a neutral -- or have
22 somebody neutrally to do these interviews with them.

23 So we refer them to the Julie Valentine Center on the
24 Greenville side of Greer, or the Children's Advocacy
25 Center on the Spartanburg County side of Greer. In this

1 case, it was the Julie Valentine Center, based on the
2 locations of where these incidents may have occurred at.

3 Q And what were the potential locations you had based
4 on the report?

5 A One was on . And I don't remember the
6 exact address offhand. I think it was .

7 Q Okay.

8 A There was, also, one on , which is out in
9 Greenville County, not in our jurisdiction for the city.
10 And then the other one being at the

11 , which was off of in the city
12 limits of Greer and in Greenville County as well.

13 Q And so those are all three Greenville County
14 residences?

15 A All three are in the County of Greenville, yes.

16 Q Okay.

17 A Two in the city limits.

18 Q And, based on that initial report, did you have a
19 suspect, or did you have to develop a suspect?

20 A We didn't need to develop one. We had a name,
21 obviously, that had been disclosed within the incident
22 report. And the name being Tommy Lee. It was in
23 parenthesis. That's what I had to start with.

24 Q Okay. And, based on that, how did you develop
25 potential suspects in this case?

1 A Working with that -- once again, I've been doing this
2 almost 20 years. And I don't know too many Tommy Lee's.
3 I've heard of one that resides in Greer. I was able to
4 use a database we have there. And it had his last name as
5 Tommy Lee Wiseman.

6 Q Okay. And did he live close to any of those incident
7 locations?

8 A He did.

9 Q Which one was that?

10 A He lived very close to the , which almost would
11 be like directly across the street of where
12 intersects with . And is on the
13 opposite side of .

14 Q All right. And --

15 A I don't know what the distance would be, but pretty
16 close.

17 Q Okay. And you said that you don't speak to children
18 that are that young. At what age do you, typically,
19 interview a person versus sending them to the Julie
20 Valentine Center?

21 A If they're mature enough to not be working on a
22 lesser education or mentality, I feel comfortable talking
23 to them at about 12 or 13, which would be the cutoff age
24 that the Julie Valentine Center would feel comfortable
25 talking to them under that, unless they're challenged or

1 have special needs. At that point, we would refer them --
2 if they were 14 or 15, but possibly working off the
3 mentality of nine, we might refer them in that case.

4 Q To the Julie Valentine Center as well?

5 A Yes.

6 Q Was there anything that you did in preparation for
7 the Julie Valentine interview?

8 A I did. I knew that I wasn't going to be able to make
9 it to the interview. And based on the name that I had
10 developed, Tommy Lee Wiseman, I had SLED produce two
11 six-person photo lineups to include Tommy Lee Wiseman
12 within the lineups. And those are done through the fusion
13 center with SLED. That's a request we can do through
14 them.

15 Q All right. I'm going to show you what has been
16 marked as State's Exhibit Nos. 2 and 3.

17 A Yes, ma'am.

18 Q And if you could just tell me if you recognize what
19 these are.

20 A I do.

21 Q What are they?

22 A They are the two photo lineups that I had produced to
23 be taken to the Julie Valentine Center.

24 Q Are they -- were they originally identical?

25 A Yes.

1 Q And since you created these, have there been some
2 additions made to them?

3 A Yes, ma'am.

4 Q Okay. Aside from that, have any changes or
5 alterations been made to your lineups?

6 A No, ma'am.

7 Q And are the photographs in color as you presented
8 them?

9 A They are.

10 Q And, otherwise, are these the photo lineups that you
11 sent to the Julie Valentine Center?

12 A Yes, ma'am.

13 Q Okay. You said that you were not able to make it to
14 the Julie Valentine Center interview; is that correct?

15 A That is correct.

16 Q So what was the procedure for you finding out what
17 happened at that interview?

18 A I requested another investigator in my office to fill
19 in for me, which they're able to view the forensic
20 interviews and be present to watch these via a television
21 and audio video setup in a separate room where we, as law
22 enforcement, can watch the video. And, at certain times,
23 the interviewer may take a break and go ask if there's
24 something else that we would like to see, or have
25 something offered of questions that haven't been

1 addressed. We can go that route.

2 So, at that time, I had another detective in my
3 office just to, please, step -- or asked to step in for me
4 on that interview that day, and to take these lineups with
5 her.

6 Q Okay. And did you have a chance to review the
7 forensic interviews after they were conducted?

8 A Yes.

9 Q How did you do that?

10 A I was able to play them there in the office on a DVD.

11 Q So they were recorded?

12 A They were.

13 Q Okay. And after reviewing the forensic interviews,
14 what was your next step?

15 A After reviewing the interviews, I then sought two
16 arrest warrants for Tommy Lee Wiseman for criminal sexual
17 conduct third degree.

18 Q All right. Did you speak to -- or did you conduct
19 any interviews personally in this case?

20 A With?

21 Q With witnesses or family members of Minor 1 or Minor 2 ?

22 A No.

23 Q And why would that be?

24 A Once again, I don't like to interview the children.

25 I like that to be somebody neutral. And I feel it's -- it

1 seems to be the process that we use using a forensic
2 interviewer to conduct those interviews with the children.

3 Q What about Minor1 's family members, mother or
4 grandmother?

5 A I didn't have an opportunity to meet with any of
6 them. I believe the reporting officer was only able to
7 meet with somebody who had -- I believe it was some type
8 of temporary custody -- court-ordered temporary custody.
9 I did not meet with that individual during this
10 investigation whatsoever.

11 Q All right. Would there have been any forensic
12 evidence you could have collected in this case?

13 A No, ma'am.

14 Q And why is that?

15 A Based on the time frame that had expired -- I don't
16 know when the last alleged incident was. But we were
17 talking about -- there wasn't going to be DNA. There --
18 it wasn't freshly committed. And once in that case --
19 usually we try not to push the window of time. And this
20 had been more than 48 hours -- or more than a couple of
21 days.

22 So there was no real need for a medical evaluation to
23 try to seek DNA evidence, or any type of latent
24 fingerprints, or something like that here in this case.

25 Q And, based on the allegations in this case, would you

1 have expected to find any DNA or medical evidence even if
2 it had been reported within 48 hours?

3 A It would have been very rare.

4 Q Okay. Were you present when Mr. Wiseman was arrested
5 on this case?

6 A I was not present when he was arrested. But I was
7 notified that he had been arrested. And I did make a
8 chance to meet with him in our jail.

9 Q Okay. And I'm going to talk to you about that.

10 A Sure.

11 Q Did you meet with Mr. Wiseman after he was arrested?

12 A I did.

13 Q Where did that meeting take place?

14 A It was the Greer Police Department jail.

15 Q Okay. And was he handcuffed when you spoke with him?

16 A No, ma'am.

17 Q Did you advise him of his rights?

18 A I did.

19 Q How did you advise him of his rights?

20 A We have a standard form that we use through the Greer
21 Police Department that it has -- it's a typed form. And
22 it has every right on there that's been entitled to a
23 person under arrest. Obviously, it has a right to these
24 Miranda rights or warnings that we should provide them
25 with. At which point, I would usually read that to

1 somebody that is in custody to give them their rights.

2 Q All right. I'm going to show you what's been marked
3 as State's Exhibit No. 1. Tell me if you can recognize
4 this form.

5 A Yes.

6 Q How do you recognize that form?

7 A It is -- it's the form that we use, advisement of
8 rights form, the Miranda rights. And it's the form that I
9 had filled out with Tommy Wiseman.

10 Q And how do you know that's the same form?

11 A My signature, his signature, my handwriting.

12 Q Are there --

13 A My initials.

14 Q -- some initial notes that you wrote on this
15 statement?

16 A Yes.

17 Q And what are -- what do they indicate?

18 A Normally, on a form like this, when I do meet with
19 somebody at the jail, I usually like to write their name
20 on the top left-hand corner. And then I go over a few
21 common questions. I like to ask them the highest grade of
22 education they've completed just so I can notate that in
23 here. He has notated the eleventh grade education.

24 I, also, ask them if they can read and write. And
25 I've notated that he stated he could read a little and

1 could write a little.

2 I've, also, asked him if he's under the influence of
3 alcohol, drugs, or medications that are, you know, going
4 to alter his ability to talk with me. And I've written
5 sober.

6 So I'm under the impression there that, once again,
7 he didn't appear to be under the impression -- or under
8 the influence of anything like that within that day.

9 Q All right. Were there any words or phrases on that
10 form that you felt you should explain to him?

11 A I did. There's a word, coercion, which is under the
12 waiver of rights. And I've circled that and initialed it
13 with my initials.

14 Q Okay.

15 A Which I like to explain to folks so that they
16 understand what that word means. Some do not. I'd say
17 the majority of people do not know what coercion means.

18 So if -- I asked him, do you know what coercion
19 means? And I believe he said yes or no. And I'd still
20 explain to him that I'm not putting you under any
21 persuasive threat or pressure to talk to me right now, at
22 which point he voluntarily stated he'd talk to me.

23 MS. BENTLEY: Your Honor, at this point, the State
24 submits State's Exhibit No. 1 into evidence.

25 THE COURT: Any objection?

1 MS. WICKER: No objection, Your Honor.

2 THE COURT: All right. It's so admitted.

3 (WHEREUPON, State's Exhibit No. 1 was admitted into
4 evidence.)

5 BY MS. BENTLEY:

6 Q Detective Arterburn, after going over that form with
7 Mr. Wiseman, did you ask him questions?

8 A I did.

9 Q What questions did you ask him, or what was your
10 procedure here?

11 A Sure. Normally, when I have someone brought in on my
12 warrants, I like to ask them if somebody had read the
13 warrant to them, and if they understand what they were --
14 have been charged with, and if they'd like to talk to me.
15 Obviously, he did state he would like to talk to me
16 because he signed his name on the waiver.

17 He said he'd like to know who made these allegations
18 on him. And he did want to talk with me. And I stated
19 that it was a five-year-old little girl who made the
20 allegations.

21 Q And what was his response when you said that?

22 A He immediately just dropped his shoulders and
23 shrugged, and he sighed.

24 And I said, Well, how many five-year-old girls do you
25 know?

1 And he said, Minor1 .

2 Q Okay. Did he make any other statements regarding the
3 allegations?

4 A He just stated he didn't do it. He'd never been left
5 alone with her. I don't think there was any other
6 statement. He just -- he, basically, wrapped up -- he,
7 basically, said he didn't want to talk with me anymore
8 after I advised him it was Minor1 .

9 Q And after he indicated he didn't want to speak to you
10 anymore, what did you do?

11 A We concluded the interview. That was the end of it.

12 MS. BENTLEY: I have no further questions.

13 Please answer any questions Ms. Wicker may have.

14 THE WITNESS: Sure.

15 MS. WICKER: Judge, I don't have any questions for
16 this witness.

17 THE COURT: All right. Sir, you can step down.

18 THE WITNESS: Thank you.

19 THE COURT: Thank you.

20 All right. Ladies and gentlemen, I'm going to ask
21 you to step to your jury deliberation room for just a
22 moment. We're going to take an afternoon break. We're
23 going to come back. And in -- our next time in here might
24 be a little lengthier. So I want anybody to say something
25 to me any time you need to take a break.

1 All right. Thank you.

2 (WHEREUPON, the jury was excused from open court at
3 approximately 2:25 p.m.)

4 THE COURT: We'll be in recess for 10 minutes.

5 (WHEREUPON, a break was taken.)

6 THE COURT: Are you ready to start?

7 MS. BENTLEY: Yes, Your Honor.

8 THE COURT: Okay. Bring the jury in.

9 (WHEREUPON, the jury came into open court at
10 approximately 2:46 p.m.)

11 THE COURT: Yes, ma'am.

12 MS. BENTLEY: The State calls Sarah Davis.

13 THE BAILIFF: Place your left hand on the Bible and
14 raise your right hand.

15 WHEREUPON,

16 SARAH DAVIS,

17 after first having been duly sworn, testified as follows:

18 THE CLERK: Please have a seat.

19 Will you state your full name for the record?

20 THE WITNESS: Sarah Davis.

21 DIRECT EXAMINATION

22 BY MS. BENTLEY

23 Q Ms. Davis, where are you employed, and in what
24 capacity?

25 A I'm the clinical coordinator at the Julie Valentine

1 Center.

2 Q And how long have you been employed by the Julie
3 Valentine Center?

4 A Four and a half years.

5 Q Can you tell us a little bit about what the Julie
6 Valentine Center is?

7 A Yes. The Julie Valentine Center is a rape crisis and
8 child abuse center here in Greenville County.

9 Q And who -- what services does the Julie Valentine
10 Center provide?

11 A We have three different parts to the agency, the
12 Children's Advocacy Center, the rape crisis department,
13 and, also, an education department.

14 So in the Children Advocacy Center, we provide
15 investigative services like forensic interviews and
16 medical exams. We, also, provide individual and group
17 therapy services for children and their families.

18 In the rape crisis department, they provide
19 accompaniment for victims to the emergency room and court
20 accompaniment.

21 And, in the education department, they do educational
22 talks in schools and to PTA's, and other community events.

23 Q All right. And prior to working at the Julie
24 Valentine Center, tell me a little bit about your
25 educational background and your training.

1 A Sure. I have a Bachelors in Psychology from Clemson
2 University, and a Masters in Social Work from the
3 University of South Carolina. And I'm, also, a licensed
4 independent social worker of clinical practice in South
5 Carolina.

6 Q Do you have additional training and experience
7 working with young children?

8 A I do.

9 Q Could you tell us a little bit about that?

10 A Sure. I have attended a variety of trainings, one of
11 them being the Child First training to be trained in
12 forensic interviews. I've attended other additional more
13 advanced forensic interview trainings and other trainings
14 related to working with children who may have had a
15 history of trauma.

16 Q All right. And can you tell us briefly what a
17 forensic interview is and how that process works?

18 A Yes. So a forensic interview is a developmentally
19 appropriate semistructured method of questioning children
20 about allegations of abuse.

21 Q Okay. And what -- are there certain ages of children
22 that you will interview?

23 A We interview children as young as if they can talk.
24 So I've interviewed two and three year olds before. And,
25 typically, because of some laws, we go up to about age 12.

1 Sometimes, we will interview developmentally delayed
2 children who are older than age 12.

3 Q And how many forensic interviews have you conducted
4 in your four and a half years with the Julie Valentine
5 Center?

6 A 704.

7 Q And what types of questions are you trained to use
8 when speaking with children?

9 A When I talk with children in a forensic interview, I
10 utilize a continuum of non-leading questions.

11 Q And can you kind of explain what a continuum of
12 non-leading questions is?

13 A Sure. So non-leading questions would be questions
14 that do not introduce any kind of information to the
15 child. So we want to make sure that all the information
16 that we get from the child in the interview is information
17 from them that they're bringing in.

18 And a continuum of questions would look like --
19 starting with things like that are very open ended like
20 tell me about that, or tell me more, all the way down to
21 types of questions that are maybe a little bit more direct
22 like a yes-no question that's still non-leading, but it's
23 just a more direct question.

24 Q All right. And what are some of the benefits of
25 having a child interviewed at a place like the Julie

1 Valentine Center, as opposed to in a police department?

2 What is the Julie Valentine Center like?

3 A It's very child friendly. We have, you know, toys,
4 and bright colors, and all that kind of thing. But the
5 Julie Valentine Center, one of the benefits of having a
6 child interviewed there is that it's a neutral
7 environment.

8 So we're not conducting any kind of investigation.
9 There's not people in -- with guns on their hips and
10 badges. We are, you know, a group of professionals
11 trained to speak with children.

12 And so it's just a much more child-friendly
13 environment than like a police station.

14 Q And as an employee and forensic interviewer at the
15 Julie Valentine Center, did you have an occasion to meet

16 Minor 1 ?

17 A I did.

18 Q And what about Minor 2 ?

19 A Yes.

20 Q Can you tell me what dates -- on what dates you met
21 Minor 1 and Minor 2 ?

22 A June 4th, 2013.

23 Q Did you meet with them separately or together?

24 A Separately.

25 Q And tell me, what person or agency referred Minor 1

1 and Minor 2 to the Julie Valentine Center.

2 A Dale Arterburn with the Greer Police Department.

3 Q How old was Minor 1 when you met with her?

4 A She was six.

5 Q How old was Minor 2 ?

6 A Eight.

7 Q Did you personally perform the forensic interview of
8 Minor 1 ?

9 A Yes.

10 Q And was that interview preserved using audio and
11 video recording?

12 A Yes.

13 Q I'm going to show you what's been marked as State's
14 Exhibit No. 4. Can you tell me if you recognize this
15 disk?

16 A I do.

17 Q How do you recognize it?

18 A The -- by the writing that's on it, the initials, and
19 the handwriting.

20 Q And what is that disk -- or what is preserved on the
21 disk?

22 A That is the forensic interview of Minor 1 .

23 Q Have any changes been made to that recording, any
24 additions, or deletions?

25 A No.

1 MS. BENTLEY: All right. Your Honor, at this time,
2 the State wishes to introduce State's Exhibit No. 4 into
3 evidence.

4 THE COURT: Any objection?

5 MS. WICKER: No objection, Your Honor.

6 THE COURT: Without objection, it's so admitted.

7 (WHEREUPON, State's Exhibit No. 4 was admitted into
8 evidence.)

9 BY MS. BENTLEY:

10 Q I'm going to show you what's been marked now as
11 State's Exhibit No. 5. Do you recognize what's been
12 marked as State's Exhibit No. 5?

13 A Yes. . . .

14 Q And how do you recognize that?

15 A By my initials on the envelope.

16 Q And what is State's Exhibit No. 5?

17 A That is Minor2 's forensic interview.

18 Q And have there been any changes made to that
19 recording?

20 A To this recording, no.

21 Q To Minor2 ' recording?

22 A Oh, yes.

23 Q Can you tell me what has been added or deleted from
24 Minor2 ' video?

25 A I think a piece towards the end was taken out.

1 MS. BENTLEY: Okay. Your Honor, at this point,
2 the State wishes to place State's Exhibit No. 5 into
3 evidence.

4 THE COURT: Any objection?

5 MS. WICKER: No objection, Your Honor.

6 THE COURT: So admitted.

7 (WHEREUPON, State's Exhibit No. 5 was admitted into
8 evidence.)

9 BY MS. BENTLEY:

10 Q When you were conducting the interview of Minor 1 and
11 Minor 2 , who else was present in the room?

12 A Nobody.

13 Q All right. And did you have any concerns about
14 Minor 1 's ability to understand your questions?

15 A No.

16 Q Did you have any concerns about Minor 2 ' ability to
17 understand your questions?

18 A No.

19 Q During your interview, did Minor 1 disclose sexual
20 abuse to you?

21 A Yes.

22 Q Did she tell you when that abuse occurred?

23 A I'm sorry. Could you repeat that?

24 Q Did she disclose information as to the time that that
25 abuse occurred, the time frame?

1 A Yes.

2 Q And what time frame did she give you?

3 A She said that it first started when she was four,
4 four or five, and then up until -- I think the last age
5 she gave me was eight.

6 Q Okay. But she was not quite eight at the interview?

7 A Correct.

8 Q All right. And was she able to tell you where that
9 abuse took place?

10 A Yes.

11 Q Where did she tell you the abuse took place?

12 A At apartments where she lived, and, also, at
13 , a home there.

14 Q All right. I want to show you what's been marked as
15 State's Exhibit Nos. 6 and 7. Do you know what State's
16 Exhibit Nos. 6 and 7 are?

17 A Yes.

18 Q How do you know what they are?

19 A By my initials and handwriting on them.

20 Q And what are State's -- what is State's Exhibit
21 No. 6?

22 A That is the male anatomical drawing that I used with
23 Minor 1 .

24 Q And how do you know it's the one that you used with
25 Minor 1 ?

1 A Her name is written at the top, which is what I
2 always do after an interview, and then my initials at the
3 bottom.

4 Q All right. And what is State's Exhibit No. 7?

5 A That's the female anatomical drawing that I used with
6 Minor1 .

7 Q And how do you recognize that it's the one you used
8 with Minor1 ?

9 A Because her name is at the top and my initials are at
10 the bottom.

11 Q All right. Have any changes or deletions been made
12 to State's Exhibit Nos. 6 or 7 since you last finished
13 with them?

14 A No.

15 Q Okay. And the writing on them, who wrote on these
16 exhibits?

17 A Me.

18 MS. BENTLEY: Your Honor, at this time, the State
19 wishes to introduce State's Exhibit Nos. 6 and 7 into
20 evidence.

21 THE COURT: Any objection?

22 MS. WICKER: No objection.

23 THE COURT: So admitted.

24 (WHEREUPON, State's Exhibit Nos. 6 and 7 were marked
25 for identification and admitted into evidence.)

1 BY MS. BENTLEY:

2 Q In addition to the anatomical drawings, did you use
3 anything else with Minor 1 ?

4 A Yes.

5 Q What else did -- what other tools did you use during
6 your interview?

7 A We have a -- like an easel paper that we'll write on.
8 And then I, also, used anatomical dolls with her. And I
9 introduced a photo lineup.

10 Q Okay. I'm going to show you what's been marked as
11 State's Exhibit Nos. 2 and 3. Do you recognize State's
12 Exhibit Nos. 2 and 3?

13 A Yes.

14 Q How do you recognize those?

15 A By my initials on them.

16 Q Okay. And are these documents that you -- are these
17 photographs that you prepared yourself?

18 A No.

19 Q Where did you get these from?

20 A An officer at the Greer Police Department.

21 Q Okay. And are these the photo lineups that you used
22 during your interviews with Minor 1 for State's Exhibit
23 No. 2?

24 A Yes.

25 Q And Minor 2 for State's Exhibit No. 3?

1 A Yes.

2 Q And how do you know that?

3 A Because I asked each child to write their name on
4 the -- each lineup.

5 Q Okay. And aside from the child writing their name on
6 the lineup, have any other changes been made to these
7 documents?

8 A Other -- they circled and then I put my initials and
9 the date. That's it.

10 MS. BENTLEY: Your Honor, at this time, the State
11 wishes to introduce State's Exhibit Nos. 2 and 3 into
12 evidence.

13 THE COURT: Any objection?

14 MS. WICKER: No objection.

15 THE COURT: So admitted.

16 (WHEREUPON, State's Exhibit Nos. 2 and 3 were admitted
17 into evidence.)

18 BY MS. BENTLEY:

19 Q Ms. Davis, did you have any concerns that Minor 2 had
20 any difficulty understanding your questions?

21 A No.

22 Q Did you have any difficulty understanding either
23 Minor 1 or Minor 2 ' responses to your questions --

24 A No.

25 Q -- any speech impediments?

1 Who did you speak with and interview first?

2 A Minor 1 .

3 Q Okay. Was there any particular reason for that?

4 A We usually go youngest to oldest.

5 Q Okay. And did Minor 2 indicate whether he had
6 witnessed sexual abuse?

7 A Yes.

8 Q Okay. And was he able to give you details regarding
9 what he saw?

10 A Yes.

11 MS. BENTLEY: All right. I have no further questions
12 for this witness, Your Honor.

13 I would like to publish those videos for the jury.
14 If Ms. Wicker would like to cross-examine first.

15 THE COURT: Certainly.

16 Would you like to do that first?

17 MS. WICKER: Your Honor, I don't have any questions
18 for this witness.

19 THE COURT: Okay. Very well then.

20 We'll go ahead and publish those exhibits to the
21 jury.

22 MS. BENTLEY: All right.

23 THE COURT: Now, you don't need her on the stand any
24 more.

25 Ma'am, you can step down.

1 Thank you.

2 (Pause.)

3 THE COURT: Remember, if you need a break at any
4 time, let me know.

5 (WHEREUPON, the jurors indicated in the affirmative.)

6 (WHEREUPON, State's Exhibit No. 4 was played in open
7 court.)

8 THE COURT: All right. Ladies and gentlemen, we
9 probably have come to a point for a break. And I need to
10 take up some legal matters with the attorneys.

11 So I'll tell you what I'm going to do. We still
12 anticipate you will have this case in your hands tomorrow.
13 But we've got another video that's going to probably take
14 a little bit more than an hour.

15 So I'm going to let you go on home this evening. And
16 then we'll start back tomorrow morning at 9:30.

17 As I said, we still do believe that tomorrow before
18 lunch that you'll have this case in your hands. I do
19 intend on bringing lunch in for you tomorrow. So you
20 don't have to worry about making arrangements for lunch
21 tomorrow.

22 All right. And, as I did tell you earlier, and I
23 hate to keep repeating myself. But, please, don't discuss
24 the case with anyone or do any type of independent
25 research whatsoever.

1 Thank you so much.

2 And I hope you have a good evening.

3 (WHEREUPON, the jury was excused from open court at
4 approximately 3:52 p.m.)

5 THE COURT: All right. I thought we were kind of
6 cutting it close for watching the other video. We'll
7 start tomorrow morning at 9:30.

8 I have got a jury charge for you. I'll e-mail it to
9 you this afternoon, if you like, so you can see it and
10 make sure I have not left anything out. We've got child
11 witnesses, identification, of course, the statement, and
12 then the -- and charging the statute for it, and one about
13 multiple indictments, and, you know, must consider them
14 independently.

15 I, also, have a section in there -- and this is up to
16 you all. But I have a section in there with regard to
17 having a copy of the charge to go back to the jury room
18 with them as they deliberate. I've had good success with
19 sending my written charge back.

20 First of all, I'll tell you I read my charge
21 verbatim. So what I say to them is what's written on the
22 page, and that's what they get. But I only do it if both
23 sides consent.

24 So if you want to think about that, and let me know
25 if that's -- it suits you all. I mark it as an exhibit

1 and make it a part of the record in the case, of course.

2 Mr. Wiseman, I -- there's going to come a point in
3 this trial where you're going to have to make the decision
4 whether or not you're going to testify in this case.

5 Okay. Have you talked to your lawyer about that,
6 about whether or not to testify?

7 DEFENDANT WISEMAN: She --

8 THE COURT: Oh, you don't have to tell me your answer
9 now. I'm not asking --

10 DEFENDANT WISEMAN: Oh, yeah, yeah. We talked about
11 it.

12 THE COURT: I just want to make sure you've talked.
13 That's it.

14 DEFENDANT WISEMAN: Yeah, yeah. We talked.

15 THE COURT: Okay. Very good.

16 Because tomorrow pretty early, probably about -- if
17 I'm guessing right, at about 11:30 or 11:00 tomorrow, I'm
18 going to come to you and ask you that question. And I
19 just want you to be prepared --

20 DEFENDANT WISEMAN: Okay.

21 THE COURT: -- that you've had enough time to talk to
22 your lawyer.

23 DEFENDANT WISEMAN: Yeah.

24 THE COURT: Here is the number one thing I want you
25 to remember, I want you to remember it has to be your

1 decision. Okay.

2 DEFENDANT WISEMAN: Yeah.

3 THE COURT: You want to listen to your lawyer. Of
4 course, she's going to give you good advice.

5 DEFENDANT WISEMAN: Yes, ma'am.

6 THE COURT: You want to listen to her. But it has to
7 be your decision. Do you know that?

8 DEFENDANT WISEMAN: Yeah.

9 THE COURT: Okay. Mr. Wiseman, will you raise your
10 right hand for me.

11 Other one.

12 WHEREUPON,

13 TOMMY LEE WISEMAN,

14 after first having been duly sworn, testified as follows:

15 THE COURT: Okay. You can put your hand down.

16 Tell me this, do you understand what we're doing here
17 today? Do you understand what's been going on here today?

18 DEFENDANT WISEMAN: Yes, ma'am.

19 THE COURT: What's been happening? What do we call
20 this?

21 DEFENDANT WISEMAN: Court.

22 THE COURT: Yes. And when we've had the jury here
23 and people have been -- witnesses have been getting up
24 here and testifying, what's that called?

25 DEFENDANT WISEMAN: I can't remember what you call

1 it.

2 THE COURT: Well, let me ask you this. Have you ever
3 heard the term trial?

4 DEFENDANT WISEMAN: Yeah.

5 THE COURT: Okay. Who is going to decide whether
6 you're guilty or not guilty?

7 DEFENDANT WISEMAN: (Defendant Wiseman made a
8 motioning gesture.)

9 THE COURT: The jury. That's right. He's motioning
10 to the jury. That's exactly right.

11 If you were to be convicted -- I'm just saying if you
12 were to be convicted, who would decide what your sentence
13 would be? Do you know that?

14 DEFENDANT WISEMAN: Probably you or them.

15 THE COURT: Well, you're right. You're right. It's
16 me.

17 DEFENDANT WISEMAN: You?

18 THE COURT: Right.

19 And do you know what my role is? I mean, what's my
20 job? You don't have to know my name, but what my job is.

21 DEFENDANT WISEMAN: You're the Judge.

22 THE COURT: And this lady sitting beside you --

23 DEFENDANT WISEMAN: That's my lawyer.

24 THE COURT: That's your lawyer. And do you know what
25 her job is?

1 DEFENDANT WISEMAN: Defend me.

2 THE COURT: Okay. Yes. That's a pretty concise way
3 to put it.

4 How far did you go in school?

5 DEFENDANT WISEMAN: Eleventh grade.

6 THE COURT: Okay. And what kind of work did you do
7 after you got out of school?

8 DEFENDANT WISEMAN: I worked on sand barges in
9 [inaudible].

10 THE COURT: Okay.

11 DEFENDANT WISEMAN: And I came down here from West
12 Virginia. And I worked in the mill down here.

13 THE COURT: Got you. Okay. I got you. Very good.

14 And it's my understanding that he's had an
15 evaluation. Was that by the Department of Mental Health
16 or DDSN?

17 MS. BENTLEY: I believe it was DDSN, Your Honor.

18 THE COURT: Was it?

19 MS. WICKER: Yes --

20 DEFENDANT WISEMAN: I went down to the lower part of
21 the state.

22 THE COURT: I got you. For an evaluation?

23 DEFENDANT WISEMAN: Yeah.

24 THE COURT: Do you remember going and talking to the
25 people and everything about that?

1 DEFENDANT WISEMAN: Yeah.

2 THE COURT: Well, I find -- and let me ask you,
3 Ms. Wicker, we had a brief conference at the bench about
4 this. But has he been able to have fruitful discussions
5 with you? Has he been able to help you prepare for the
6 defense of this case?

7 MS. WICKER: Yes, ma'am, he has. I believe that he
8 understands what's going on.

9 THE COURT: And does he -- you think he understands
10 the conversations he's had -- that you've had with him?

11 MS. WICKER: Yes, ma'am. Sometimes, we have to
12 explain a little bit more. But I think he understands
13 what's going on.

14 THE COURT: I got you. I got you.

15 All right. And so -- well, I find that he is, in
16 fact, competent to stand trial. We did that -- we
17 discussed this in a bench conference.

18 That means up here, we talked about it.

19 DEFENDANT WISEMAN: Yeah, yeah.

20 THE COURT: That you understand what's going on here
21 today. You've been able to assist in your defense. And
22 you understand the process. And you, actually, understand
23 the process very well. And you completed -- you almost
24 completed high school.

25 So, I mean, you were very close to having completed

1 high school.

2 The evaluation, let's make it a part of the record.

3 But I do find that he is, in fact, competent to stand
4 trial. And I wanted to be sure that we did that before we
5 got away today.

6 DEFENDANT WISEMAN: I can't read or write now.

7 THE COURT: You can't read or write?

8 DEFENDANT WISEMAN: No.

9 THE COURT: Okay. But --

10 DEFENDANT WISEMAN: I can write my name, but that's
11 about it.

12 THE COURT: Okay. But you seem to have a pretty good
13 understanding of what is happening.

14 DEFENDANT WISEMAN: Yeah, yeah.

15 THE COURT: So good. Very good then.

16 Yes, ma'am.

17 MS. BENTLEY: This is --

18 THE COURT: We'll mark that as a Court's Exhibit,
19 Court's Exhibit No. 1.

20 Anything else on that from the State or the Defense?
21 On that matter?

22 MS. BENTLEY: Nothing from the State, Your Honor.

23 MS. WICKER: Nothing from the Defense, Your Honor.

24 THE COURT: All right. Well, that took a little bit
25 less time than I thought it would.

1 Well, we've got a little bit of a break here this
2 afternoon. We will e-mail you --

3 Amanda, I don't know that I've got your e-mail
4 address.

5 Ms. Bentley, I think I can guess what yours is.

6 MS. WICKER: It AWicker@GreenvilleCounty.org.

7 THE COURT: Oh, okay. Perfect. Well, I learned
8 something good today.

9 And so we'll e-mail you the jury charge here now
10 shortly. Take a look at it and make sure I haven't left
11 anything out, or put anything in that I'm not supposed to.

12 All right. Anything else to take up?

13 MS. BENTLEY: Nothing from the State, Your Honor.

14 Would you be putting the non-corroboration charge in
15 your jury charge somewhere about the testimony of the
16 victim? Would that be --

17 THE COURT: Oh, yeah. You know, I don't think we --
18 Is that in there?

19 Any objection on that from --

20 MS. WICKER: No, Your Honor.

21 THE COURT: Yes. Ms. Bentley, I'm glad you told
22 me -- you reminded me of that. Because I did not see
23 that.

24 All right. Yes. And anything else that you think
25 of, if you'll just e-mail it tonight. And my law clerk is

1 going to have his computer with him and he'll be in
2 contact with me and with y'all, too.

3 We'll start in the morning -- tomorrow morning at
4 9:30. But I think we're going to get this to the jury
5 before lunchtime from what I'm hearing. So that'll be
6 good.

7 All right. Very good then.

8 MS. WICKER: Thank you, Your Honor.

9 MS. BENTLEY: Thank you, Your Honor.

10 THE COURT: Thank you.

11 (WHEREUPON, Court's Exhibit No. 1 was marked for
12 identification and admitted into evidence.)

13 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 3rd day of February, 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 30, 2016

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA	) COURT OF GENERAL SESSIONS
	)
COUNTY OF GREENVILLE	) Case No(s) : 2013GS2307701,
	) 2013GS2307702
State of South Carolina,	)
	)
Plaintiff,	)
	)
-VS-	) TRANSCRIPT OF RECORD
	)
Tommy Lee Wiseman,	)
	)
Defendant.	)
	)

February 04, 2016
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

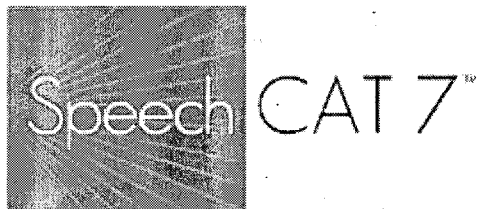
A P P E A R A N C E S:

LISA A. BENTLEY, Esquire
Attorney for the Plaintiff

AMANDA WICKER, Esquire
Attorney for the Defendant

Teresa B. Johnson, CVR-M
Certified Court Reporter
P.O. Box 2812
Greenville, S.C. 29602

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I N D E XDIRECT CROSS REDIRECT RECROSS

Kristina Whitted

by Ms. Bentley 5

by Ms. Wicker 21

Kathy Perez

by Ms. Bentley 22

by Ms. Wicker 37

State Rest 38

Motions 38

Court Remarks to Defendant 39

Closing Argument

by Ms. Bentley 43

by Ms. Wicker 54

Jury Charge 60

Deliberation of the Jury 79

Question of the Jury 79

Allen Charge 80

Verdict 85

Sentencing of the Court 87

Certificate of Reporter 91

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
------------	--------------------	-----------	-----------

PLAINTIFF EXHIBITS

S-8	Photo		36
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DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

C-2	Jury Note		
C-3	Jury Note	89	
C-4	Jury Note	89	
C-5	Jury Note	89	
C-6	Jury Note	89	
C-7	Jury Note	89	
C-8	Jury Note	89	

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 4th day of February, 2016 at approximately 9:39 a.m.)

THE COURT: All right. I think we've got all the jurors here. All right.

THE BAILIFF: Yes.

THE COURT: They're all here. All right. Are y'all ready to bring them back in?

MS. BENTLEY: Yes, Your Honor. I have one quick question.

THE COURT: Yes.

MS. BENTLEY: May Sarah Davis be excused?

THE COURT: Oh, sure. Oh, yes. Oh, you came back because of that?

MS. BENTLEY: I asked her to.

THE COURT: Okay. That's very nice of you to do, but just email me next time or something. Thank you for being here. Okay.

(WHEREUPON, the jury enters at approximately 9:39 a.m.)

THE COURT: Good morning, Ladies and Gentlemen. When we broke yesterday, we had watched one video. Now, we're set to watch the second video. Again, if anybody needs a break during that time, just let me know.

1 **(WHEREUPON, the forensic interview of Minor2**
2 Minor2 is played.)

3 **THE COURT:** Ladies and Gentlemen, I
4 believe we have got two very short witnesses.
5 Is everybody all right or does anybody need to
6 take a break?

7 (No audible response.)

8 All right.

9 **MS. BENTLEY:** The State calls Kristina
10 Whitted.

11 **KRISTINA WHITTED**
12 having first been duly sworn, testifies as follows:

13 **THE CLERK:** Please have a seat. Please
14 state your full name for the record.

15 **THE WITNESS:** Kristina Mae Whitted.

16 **DIRECT EXAMINATION**

17 **BY MS. BENTLEY:**

18 **Q** Kristina, how old are you?

19 **A** 26.

20 **Q** And are you currently employed?

21 **A** Yes.

22 **Q** What do you do?

23 **A** I am a dishwasher at Stone Soup in Landrum.

24 **Q** Okay. And how long have you worked there?

25 **A** Going on a month.

1 **Q** All right. And before that, where did you
2 work?

3 **A** The last job I had was Great American
4 Paper.

5 **Q** Okay. And what did you do there?

6 **A** Great American Paper? I made boxes for
7 them to ship out -- put the orders in and ship them
8 out.

9 **Q** All right. Kristina, are you currently
10 married?

11 **A** No.

12 **Q** Do you have any children?

13 **A** Yes.

14 **Q** How many children do you have?

15 **A** I have four.

16 **Q** What are their names and ages?

17 **A** Minor2 is 11; Minor1 will be nine next
18 month; M. is five; and C. just turned
19 four.

20 **Q** We've heard the names Mal. and Ma.
21 yesterday. Are those your children?

22 **A** No, those are my son's -- my son, C.,
23 those are his father's kids.

24 **Q** Okay. Did they live or stay with you at
25 any point in time?

1 **A** No.

2 **Q** Did they visit?

3 **A** Yes. They would come and visit their
4 brother with her dad -- with their dad and, uh,
5 mother.

6 **Q** Okay. Tell me where you currently live.

7 **A** Right now, I live at

8 **Q** Okay. And who else lives with you?

9 **A** My sister -- well, she's not my sister-in-
10 law. It was my fiance's sister.

11 **Q** Okay. And do your children live with you?

12 **A** No.

13 **Q** Where do your children live?

14 **A** My oldest two live with Jessica. My son
15 M. lives with my aunt. C. lives with his
16 dad.

17 **Q** Okay. And when was the last time that your
18 children lived with you?

19 **A** March will be three years.

20 **Q** Okay. Tell me why your children do not
21 currently live with you.

22 **A** Because I got on meth.

23 **Q** When did that begin?

24 **A** 2013.

25 **Q** Okay.

1 **A** 2000 -- yeah, 2012, 2013.

2 **Q** Okay. Where were you living when you first
3 began using meth?

4 **A**

5 **Q** Okay. Who did you live with at ?

6 **A** My mom and brother -- well, my brothers
7 were in and out. They weren't always there. My
8 sister, my mother's brother's son's mom and my nieces
9 and nephews.

10 **Q** Okay.

11 **A** Well, my nephew.

12 **Q** Okay. Can you tell me about how many
13 children were at ?

14 **A** 7 to 8.

15 **Q** And who were the oldest two of those
16 children?

17 **A** Minor2 and Minor1 .

18 **Q** What were the other ages of the kids that
19 were there?

20 **A** Kay. and Ka. were four; M. and
21 S. was two; and C. was, uh, under one.

22 **Q** Okay.

23 **A** And Noah -- I mean, N. was under one.

24 **Q** Were there other children that would come
25 in and out sometimes?

1 **A** No. Well, my brother's kids would come
2 visit.

3 **Q** Okay. And who would be in charge of
4 watching all of those children?

5 **A** A lot of times, me. I would take care of
6 them and my mom when she was sick.

7 **Q** When did your mom get sick?

8 **A** Uh, 2011, 2012.

9 **Q** Okay. What was the nature of her health
10 problems?

11 **A** She's a diabetic. She had to have thyroid
12 surgery. She had different problems. Her heart
13 would -- she had something wrong with her heart.
14 And, I mean, different times, she would get sick.
15 With her being a diabetic, I mean, she went through a
16 lot of problems during that point in time.

17 **Q** Okay. Kristina, if you're being honest,
18 were you able to adequately care for all of the
19 children that were at ?

20 **A** Honestly, I tried my best, but no.

21 **Q** Okay. And --

22 **A** It's hard to watch that many kids at one
23 time.

24 **Q** Okay. Were there children that needed more
25 of your attention the others?

1 **A** The youngest ones.

2 **Q** Okay.

3 **A** Especially C. and N. . I mean,
4 they were babies.

5 **Q** All right.

6 **A** The younger, Kay. , Ka. , M. and
7 S. , they were toddlers, all under the age of
8 four.

9 **Q** All right. Is it fair to say that you had
10 your hands full?

11 **A** Very much so.

12 **Q** All right. Kristina, do you know the
13 defendant in this case?

14 **A** Yes.

15 **Q** How do you know him?

16 **A** He was friends with my mom.

17 **Q** Do you recall when he first became friends
18 with your mother?

19 **A** Uh, 2008, 2009 is when we met him.

20 **Q** Do you remember how you met him?

21 **A** He lived across the street from us.

22 **Q** All right. And was there a point in time
23 where that -- tell me the nature of the friendship,
24 how it evolved.

25 **A** How it started?

1 **Q** Yes.

2 **A** Tommy lived across the street. My mom, she
3 always seen him over there by himself, no family, no
4 nothing. I believe it was Thanksgiving or Christmas,
5 we took him a plate. We'd do that on holidays and
6 stuff, and that's really how it started.

7 **Q** Okay. Was there ever a point in time when
8 he would visit the house at ?

9 **A** He would come and take my mom to the doctor
10 and places we needed to go because, at that point in
11 time, my stepfather went back to Mexico. And we
12 didn't have a ride, so Tommy would take us where we
13 needed to go.

14 **Q** Do you know approximately when your
15 stepfather went back to Mexico?

16 **A** 2012.

17 **Q** Do you recall when in 2012?

18 **A** April -- no, August. July or August 2012.

19 **Q** All right. Was there ever a point in time
20 when Tommy was a frequent visitor to the house?

21 **A** After my stepdad was deported.

22 **Q** Okay. How long would he be over?

23 **A** After that? After he was deported? Every
24 day.

25 **Q** And where would you be when he was there?

1 **A** Trying to take care of the kids ---

2 **Q** Okay. Where were you?

3 **A** --- most of the time. Uh, inside, outside,
4 different places. He wasn't always in one spot. I
5 mean, he would be outside. I mean, he would come
6 inside.

7 **Q** Did you have a chance to observe him with
8 the children there?

9 **A** Yes.

10 **Q** How was he with the children?

11 **A** He seemed fine. He was more towards some
12 than others, but I mean...

13 **Q** Okay. Did he ever -- did you ever witness
14 him physically striking the children?

15 **A** No.

16 **Q** Did any of the children ever complain about
17 him?

18 **A** No.

19 **Q** Did he ever bring the children any type of
20 toys or treats or anything?

21 **A** Uh-huh.

22 **Q** What would he bring?

23 **A** He would bring them candy. He would bring
24 toys. He would bring different things. I mean,
25 Minor 1 , he was, all the time, buying her stuff.

1 Q Okay. Uh, Minor 1, mentioned coffee
2 yesterday?

3 A Uh-huh.

4 Q Could you tell me about that?

5 A Yeah. In the mornings, -- like, in the
6 mornings, when he would come, he would have coffee
7 and he would bring them hot chocolate.

8 Q Okay. And did they think that was their
9 coffee?

10 A Uh-huh.

11 Q Okay. Did he appear to be good with
12 children?

13 A Uh-huh.

14 Q You said he was constantly buying Minor 1
15 things?

16 A Uh-huh.

17 Q What else that he buy her?

18 A Uh, he's bought her all kind of stuff, I
19 mean, clothes, underwear, at one point in time.

20 Q Okay.

21 A Uh, he -- for Christmas one year, he bought
22 her a DS. One year for Easter, I believe Minor 1 was
23 two, he bought her an Easter dress. He told my mom
24 he would buy Minor 1 's dress if she bought Minor 2 's.
25 He bought her -- so he bought her her Easter dress.

1 All the time, different things. I mean, sometimes he
2 would bring the other kids stuff. But like I said,
3 whenever my mom would have trouble, he would always
4 say I'll buy Minor 1 's.

5 Q Okay. Did you ever have a chance to
6 observe him playing with the children?

7 A Some, yeah.

8 Q Okay. How would they play?

9 A They -- I mean, he would just play with
10 them with the toys. That's all.

11 Q You ever have a chance to observe him with
12 them outside?

13 A He would push them on the swing and stuff.

14 Q How would Tommy get to your house? You
15 said he was a neighbor?

16 A He lived -- in Greer, there's . We
17 lived on one side. And then, in the middle, is
18 . On the other side, across from ,
19 is -- directly upon across is . Well,
20 it's not , it's from the back of . But
21 it's directly across the main --

22 Q So would he walk to your house?

23 A No, he would drive.

24 Q What kind of car did he drive?

25 A A truck.

1 Q What did this truck look like?

2 A Red and silver.

3 Q I want to take you back to the summer of
4 2012. You said that Tommy was around fairly often at
5 that point?

6 A Uh-huh.

7 Q Would Tommy ever be alone with any of the
8 children?

9 A There would be times when him and my mom
10 would come -- come home, like, he would bring her
11 home and the kids would be out in the backyard
12 playing, the older kids. I would be out there or I'd
13 be attended to the kids in a house or doing laundry
14 or something.

15 Q So let me rephrase the question. Was an
16 adult or another adult always with Tommy when he was
17 there?

18 A Not always. Like I said, sometimes, I
19 mean, I would have the back door open or whatever and
20 the kids would be out swinging and I would be inside
21 attending to the younger kids.

22 Q Okay. Did -- do you recall Minor 1 ever
23 coming to you with complaints about Tommy?

24 A No.

25 Q Would she ever tell you that Tommy touched

1 her in an inappropriate way?

2 A No, ma'am.

3 Q Tell me when you first found out about the
4 allegations in this case.

5 A When I first found out, uh, my cousin told
6 me when it happened.

7 Q Who is your cousin?

8 A Jennifer Flores.

9 Q The Jennifer that testified yesterday?

10 A (Nods head.)

11 Q And when did you hear about it?

12 Approximately, the time frame?

13 A Uh, the summer of 2013.

14 Q All right. And did you speak to Minor 1
15 directly about this?

16 A She really wouldn't talk much.

17 Q Okay. Where were you when you spoke with
18 Minor 1 ?

19 A My cousin's home, Jennifer Flores.

20 Q Were you in a room alone with Minor 1 ?

21 A Uh, I believe Jenny was there with me.

22 Q Okay. All right. And without telling me
23 what she said, did Minor 1 disclose inappropriate
24 sexual touching at that time?

25 A Yes.

1 Q Did she tell you where it happened?

2 A Uh-huh.

3 Q Where did she tell you it happened?

4 A .

5 Q Okay. Did she tell you when it happened?

6 A She didn't tell me exactly when. I believe
7 she said, uh, when she was five.

8 Q Where did you live after ?

9 A We moved, uh,

10 Q Okay. And who lived at ?

11 A My mom, my sister, my nieces, my children.

12 My brother, Cody, was in jail by the point. My
13 brother, Heath, he lived there until he went to jail.
14 But that was it. Well -- yeah.

15 Q How far was from ?

16 A 10 minutes maybe.

17 Q Did Tommy visit ?

18 A Uh-huh.

19 Q And --

20 A Tommy still came then to take us where we
21 needed to go. I mean, he was still around often.

22 Q Did he have an opportunity to be with the
23 children at ?

24 A Yeah.

25 Q In Minor 2 ' video, he talks about the bad

1 stuff. Do you know what that is?

2 A The bad stuff?

3 Q In the shed.

4 A My brother Heath was -- the police came.
5 He went to jail for manufacturing meth.

6 Q Was he doing that at the home?

7 A He was doing that in a shed.

8 Q Okay. Where did y'all live -- how long did
9 you live at ?

10 A We wasn't there long. The house had a lot
11 of problems.

12 Q Okay.

13 A Ma. , M. , and S. were allergic
14 -- they have bad allergies. The house, it was -- I
15 guess the people that had lived there prior to us had
16 animals. When we moved in, we tried to clean it, but
17 the house was so bad that we couldn't. So we moved.

18 Q Okay. Where did you move to?

19 A .

20 Q Are those apartments?

21 A Yes, ma'am.

22 Q Tell me who lived at
23 initially.

24 A Me, my mom, my sister, and my kids, my
25 sister's kids, my brother's girlfriend and my nephew.

1 Q Did Tommy visit at the

2 ?

3 A Yeah.

4 Q Tell me about the day that -- tell me about
5 the process of losing Minor1 and Minor2 .

6 A What you mean?

7 Q Were they -- did you have any say as to
8 where they were going to go?

9 A Uh-huh.

10 Q Why was that?

11 A I signed temporary custody over to my
12 cousin.

13 Q Why did you do that?

14 A Because DSS came for my sister's children.
15 At that point in time, I had to stop doing meth, but
16 I knew -- I mean, I had did it. I knew that they
17 would drug test me and I would fail. I didn't want
18 them going to foster care, so I did what was best for
19 them.

20 Q All right. Do you remember the day that
21 Jennifer came to pick up their things?

22 A Yes.

23 Q Who was present that day?

24 A Me, my mom, Tommy, my sister and my
25 nephew's mom.

6 Q What was the reaction?

9 | Q Was the defendant upset?

11 Q How do you know he was more upset about
12 Minor 1 ?

16 Q Do you know if he had an opportunity to see
17 her after she was taken from your custody?

22 Q All right. I have no further questions.

23 Please answer any questions Ms. Wicker may have.

24 THE COURT: Yes, ma'am.

25 CROSS-EXAMINATION

1 BY MS. WICKER:

2 Q I have just a few questions for you, okay?

3 A (Nods head.)

4 Q You said there were between 7 and 8 kids
5 living in the home on , is that correct? And
6 you were responsible for watching them?

7 A A lot of time.

8 Q A lot of time. Is it fair to say you love
9 those kids?

10 A I love those kids with all my heart.

11 Q Were there any other adults living in the
12 home at that time other than you and your mother?

13 A My sister was there some towards the end.
14 I mean, she came and went like everyone else.

15 Q Okay. And you said that Tommy would
16 provide transportation for you and your -- uh, to run
17 errands?

18 A (Nods head.)

19 Q And he bought clothes for the kids?

20 A Uh-huh.

21 Q And he bought treats for the kids?

22 A Uh-huh.

23 Q Thank you. I don't have any further
24 questions.

25 THE COURT: Anything else for this

1 witness?

2 **MS. BENTLEY:** Nothing for this witness, Your
3 Honor.

4 **THE COURT:** You can step down.

5 **MS. BENTLEY:** The State calls Kathy Perez.

6 **KATHY PEREZ**

7 having first been duly sworn, testifies as follows:

8 **THE CLERK:** Please have a seat. Please
9 state your full name for the record.

10 **THE WITNESS:** Kathy Jones Perez.

11 **DIRECT EXAMINATION**

12 **BY MS. BENTLEY:**

13 **Q** Ms. Perez, how old are you?

14 **A** 45.

15 **Q** All right. And are you currently employed?

16 **A** I'm not. I'm disabled.

17 **Q** When was the last time you worked?

18 **A** In 2009.

19 **Q** Okay. And what kind of work did you do?

20 **A** I was a restaurant manager.

21 **Q** Okay. Do you have children, Ms. Perez?

22 **A** I do.

23 **Q** Are you married?

24 **A** I'm married, but he is in Mexico.

25 **Q** Okay. How many children do you have?

1 **A** I have four.

2 **Q** What are their names and ages?

3 **A** Kristina Whitted is 26; Cody is 25; Heath
4 and Heather are twins, and they are 23.

5 **Q** All right. Where do you currently live?

6 **A** At , Wellford.

7 **Q** How long have you lived there?

8 **A** Just about three months.

9 **Q** Who currently lives there with you?

10 **A** My children's father ---

11 **Q** Okay.

12 **A** --- and myself.

13 **Q** Okay. That's fine. Prior to living at
14 this location, did you ever live in a place with most
15 of your children and grandchildren?

16 **A** Yes, ma'am.

17 **Q** Where was that or which location was that?

18 **A** They have always been there.

19

20 **Q** When did you live on ?

21 **A** We moved in in '06, 2006.

22 **Q** After , where did you live?

23 **A**

24 **Q** After , where did you live?

25 **A**

1 **Q** Okay. What was your address at ?

2 **A**

3 **Q** How long did you live at ? Do you
4 remember?

5 **A** Three years, three-plus years.

6 **Q** Okay. How many of those years did Minor 1
7 and Minor 2 live with you?

8 **A** The whole time.

9 **Q** The whole time. And who else lived with
10 you at ?

11 **A** There was Kristina. Heather, Cody and
12 Heath were in and out. They lived there, but
13 sometimes I wouldn't see them for days.

14 **Q** Okay.

15 **A** And then, uh, there was eight kids.
16 Kristina's four; I had custody of Heather's three
17 girls; and then Heath's baby, N.

18 **Q** How old were the eight of those children?
19 I guess, in 2012, about how old would those children
20 had been?

21 **A** I think Minor 1 was five; Minor 2, seven; the
22 twins were born in ; and then 10 months later,
23 they had a sister. So that was ' .

24 **Q** Do you remember how old N. was?

25 **A** N. was a baby.

1 Q Okay.

2 A Less than six months.

3 Q Okay. Would any other children visit?

4 A My oldest son's kids would come to visit.

5 Q Okay. Now we have heard a lot about the
6 situation at . Tell me about the problems that
7 your children were having in 2012, 2013.

8 A They were on drugs.

9 Q What kind of drugs were they on?

10 A Meth.

11 Q They were using -- how long where they
12 using, do you know?

13 A I don't know. A lot of times, I wouldn't
14 see them until they were to the point of starving.
15 They would come home to eat. I guess they'd been up
16 for days, weeks. Just somewhere to sleep it off and
17 get up and go again.

18 Q Okay. So who would be there with you and
19 the children?

20 A Kristina was always there.

21 Q Okay.

22 A The other three is the ones that were in
23 and out. It was really me and Kristina.

24 Q All right. N s' mom was the same way.
25 She was in and out.

1 **Q** Okay. And, uh, did either you or Kristina
2 have any health problems at that time?

3 **A** I did.

4 **Q** Tell me about your health problems.

5 **A** In '09, I found out I had thyroid problems.

6 **Q** Okay. How did that affect you?

7 **A** It affected my heart. I was in ICU, over a
8 week, with my heart. I had to have a complete
9 thyroidectomy. After they took my thyroids out, I
10 became a diabetic with diabetic neuropathy and
11 permanent heart problems.

12 **Q** Okay. How did that impact your ability to
13 care for seven or eight children?

14 **A** It was hard.

15 **Q** Okay.

16 **A** Sometimes I was just so sick, I couldn't
17 go.

18 **Q** In your opinion, were those -- were all of
19 those children adequately supervised at all times?

20 **A** Pretty much, because I had made my living
21 room like a playroom for them. I had a gate up so
22 that they couldn't run out either door or whatever.
23 I mean, there was times -- you can't stay on a child
24 24/7. I would have to, you know, go cook for them,
25 get ready for meals, get ready for naps.

1 Q Okay. Were any of the children old enough
2 to kind of play by themselves?

3 A Yes.

4 Q Which children with those?

5 A Minor 2 and Minor 1 .

6 Q All right. Did you ever have any adult
7 visitors to your home?

8 A I did.

9 Q Do you know the defendant in this case?

10 A I do.

11 Q How do you know him?

12 A When I lived on , when we
13 first moved in, I noticed he lived directly across
14 from us -- well, give a little, you know. I noticed
15 he was all alone. Never seen nobody visit him. He
16 was just all alone. So I've always told anybody at
17 my house or anybody around, food is not for one
18 person. It is not named. So I started taking him
19 plates of food like Thanksgiving, Christmas, Easter.
20 I even bought him groceries. I mean, that's how we
21 -- I got to know him.

22 Q Okay. Was there a point where your
23 friendship progressed to either you would visit him
24 or he would visit you?

25 A He would visit -- my husband went back to

1 Mexico in 2012. After that, I had no transportation.
2 Tommy used to come and take me to doctor's
3 appointments, to the grocery store, just errands that
4 Kristina or I needed to do.

5 Q Would he ever come to visit?

6 A He would.

7 Q How often would you say Tommy was at your
8 house?

9 A Every day.

10 Q Okay. And how long would he stay?

11 A Sometimes 10, 15 minutes. Sometimes an
12 hour. Sometimes he would come two or three times in
13 a day.

14 Q And did you have a chance to observe Tommy
15 with your grandchildren?

16 A I did. They loved Tommy.

17 Q Tell me about his relationship with the
18 kids.

19 A He would play with them. It was majority
20 -- I think, Minor2 and M. , I think, where the
21 only two boys. Everybody else was girls. So he was
22 -- Minor1 was his pick. Minor1 was, as he would say,
23 his pride and joy.

24 Q Okay. How would he -- would he act
25 differently around Minor1 then the others?

1 **A** Yes. He didn't want Minor1 to get in
2 trouble, no time out, nothing, anything like that.

3 **Q** Okay. Did he bring any of your
4 grandchildren treats of any sort?

5 **A** He would.

6 **Q** What kind of treats would he bring?

7 **A** Candy, gum, little toys.

8 **Q** Did he bring those for all of your
9 grandchildren?

10 **A** That, he did.

11 **Q** Did he ever produce any special for any of
12 the grandchildren?

13 **A** Minor1 .

14 **Q** What kind of special things would Minor1
15 get?

16 **A** He bought a uh, -- a DS three one year for
17 Christmas, but he also bought Minor2 a Wii that year.

18 **Q** Okay.

19 **A** So that wasn't just Minor1 . He used to buy
20 underwear for Minor1 all the time.

21 **Q** When did that begin?

22 **A** After she was potty trained pretty much,
23 but it just progressed. At that time, when he -- he
24 would take Kristina to the store, you know, and get
25 her some underwear since we were potty-training her.

1 Then, it got, he would just show up with them.

2 Q Did that concern you at all?

3 A I put a lot of trust in Tommy. It did. I
4 mean, I was curious of why is it underwear, but I
5 trusted him. I looked at Tommy as a friend.

6 Q All right. Did he buy her other clothing
7 besides underwear?

8 A He would. He would buy her outfits. Like,
9 he bought her an Easter dress. It was a little
10 yellow Easter dress.

11 Q All right. When Tommy would come to visit,
12 how would he get to your house?

13 A He would drive.

14 Q And where would he park his car?

15 A In the backyard.

16 Q What kind of car did he have?

17 A A truck.

18 Q Did you ever see the children on or around
19 the truck?

20 A Yeah, they used to play on the back of the
21 truck, like, when I would come from bringing
22 groceries and we would stand out at the truck
23 talking, you know, they would play on the back of it.
24 But now, I have to mind you, the twins were born at
25 25 weeks, weighing one pound. They were born without

1 sweat glands.

2 Q Okay.

3 A They couldn't be outside a lot in the
4 summer. They couldn't sweat, and they could have a
5 heat stroke.

6 Q So they would not be outside playing on the
7 truck?

8 A For a little -- you know, sometimes. But
9 they couldn't be out there for a while like Minor2
10 and Minor1 used to play on the swing.

11 Q Did you ever have any concerns or
12 complaints with Tommy playing with the children
13 alone?

14 A No, he was just pushing them on the swing
15 outside.

16 Q All right.

17 A I would be in putting up groceries or
18 either on the back porch.

19 Q Okay. I want to take you back to March
20 2013 when Minor2 and Minor1 were taken away. Tell me
21 what was happening with your other children at that
22 -- with your children at that time.

23 A Heath -- Cody was already in jail. Heath
24 had just got busted for manufacturing meth. And --

25 Q Was DSS involved with them and their

1 | children?

2 **A** No, not then. A month later, DSS came. We
3 had already moved to when DSS came. It
4 was 30 days later.

5 Q All right. And do you recall who all
6 tested positive for methamphetamine?

7 **A** Well, nobody went for the test, but myself,
8 other than the children.

9 | Q Okay.

10 **A** None of the adults had went for a drug
11 test. They wouldn't go.

12 | Q Okay. So all the adults refused to go?

13 | **A** Yeah.

14 Q But they would've tested positive?

15 **A** Yes, ma'am.

16 Q And what were the results of your test?

17 **A** Uh, I had a positive methamphetamines. I
18 think that's what it was.

19 Q Okay. Do you --

20	A	Meth.
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21 Q Do you know how you would have ended up
22 testing positive?

23 **A** It was like four days later, they came back
24 and said it was like a contact. It was from where
25 the adults was -- at night, when I was sleeping, they

1 were using it in the house.

2 Q Okay. And they were also making it; is
3 that correct?

4 A It was -- they weren't, that I know of.

5 Q Okay.

6 A They weren't making it in the house.

7 Q In a shed?

8 A Yes.

9 Q Okay. I want to tell you up until these
10 allegations came out, what was your relationship like
11 with Tommy?

12 A We were still friends. He still came. He
13 would take me to the grocery store. I mean, take us.
14 He would take Kristina and I to see Minor 2 and
15 Minor 1.

16 Q You moved a lot. Did he ever assist you
17 with that?

18 A Yes.

19 Q Tell me when did you find out about these
20 allegations.

21 A After Tommy had been arrested.

22 Q Okay. And what did you do in response?
23 Did you have any reason to contact him at that point?

24 A He was in jail. I didn't ever contact him.
25 I called Greer City Police Department because, when I

1 moved, Tommy took some, like, my pictures and my fire
2 safe box. He had took my TV. He had took things to
3 his house, because he also had a building behind his
4 house.

5 Q Did you ask him to assist you?

6 A He got -- to be honest, it happened because
7 he got mad the night we were moving. He just went to
8 his house with what he had.

9 Q Was he storing those items for you?

10 A Yes, ma'am.

11 Q You knew that he had them?

12 A Yes, ma'am.

13 Q Okay. Did you go to pick those items up
14 that he got --

15 A After I found out and I called and asked a
16 Greer City Officer to meet me there.

17 Q Okay. Was everything still in his shed?

18 A Everything, but my TV and a picture of
19 Minor 1 , he bought out. I'm not sure if it was his
20 landlord, Danny, or the gentleman that took me --

21 Q Okay. Well, just let -- I'm sorry -- ask
22 the questions, if that's all right. I'm going to
23 show you what is the marked as State's Exhibit 8. Do
24 you recognize this?

25 A I do.

1 Q How do you recognize it?

2 A That's the Easter dress that he bought for
3 her.

4 Q How do you recognize that picture? I'm
5 sorry.

6 A The picture is the one he had in his house.

7 Q Did you take this picture or were you there
8 when the picture was taken?

9 A Yes, I took the picture.

10 Q Okay. You took the picture. And, uh, what
11 is this a picture of?

12 A Minor 1 .

13 Q Okay. I'm sorry. There is a reason I'm
14 asking these questions.

15 A Okay.

16 Q And you said something about the dress that
17 she is wearing in the picture. What is the
18 significance of that dress?

19 A That's the Easter dress that -- I said he
20 bought her an Easter dress one year. That's the
21 dress.

22 Q And that was the year that you purchased
23 Minor 2 something and he purchased Minor 1 's dress?

24 A Yes.

25 Q Is this the actual picture or a copy of the

1 picture?

2 **A** It's a copy of the picture.

3 **Q** Where was the original picture found when
4 you went to go get your belongings?

5 **A** Tommy bought it out of his house.

6 **Q** Was it -- where was it, when you last knew
7 about the picture?

8 **A** With all my other pictures.

9 **Q** Where were those pictures?

10 **A** In his building behind his house.

11 **Q** Were they packaged individually or
12 separately? How were they packaged?

13 **A** To be honest with you, it was -- I probably
14 have 60, 70 pictures or more in frames. They were
15 just, like, laying in the shed.

16 **MS. BENTLEY:** Your Honor, at this time, the
17 State wishes to put Exhibit 8 into evidence.

18 **THE COURT:** Any objection?

19 **MS. WICKER:** No objection.

20 **THE COURT:** So admitted.

21 **(WHEREUPON, State's Exhibit 8 is admitted into**
22 **the record.)**

23 **BY MS. BENTLEY:**

24 **Q** So out of the 60 or 70 pictures, that one
25 picture and the television were where?

1 **A** Inside his house.

2 **Q** And you observed him bring those out to
3 you?

4 **A** Yes, ma'am.

5 **Q** All right. I have no further questions.
6 Please answer any questions --

7 **A** Yes, ma'am.

8 **CROSS-EXAMINATION**

9 **BY MS. WICKER:**

10 **Q** Good morning, Ms. Perez.

11 **A** Good morning.

12 **Q** You said that you had made the living room
13 in your house kind of a play room?

14 **A** Yes. It still had the furniture, but it
15 was big.

16 **Q** Okay.

17 **A** It was really big.

18 **Q** Is it fair to say there was a lot of things
19 going on in there?

20 **A** With eight kids, yes, ma'am.

21 **Q** Pretty busy going on in there. Okay. And
22 you said Minor 1 and Minor 2 were old enough to be
23 outside and playing?

24 **A** Uh-huh.

25 **Q** You had seen them outside playing on the

1 swings with Tommy; is that correct?

2 **A** Yeah, Tommy would come. It was a fenced-in
3 backyard.

4 **Q** Isn't it fair to say that even though you
5 weren't out there necessarily all the time, you
6 checked on them to make sure everything was okay?

7 **A** Yes, ma'am.

8 **MS. WICKER:** Okay. Thank you. I don't
9 have any further questions.

10 **THE COURT:** Anything else from the State?

11 **MS. BENTLEY:** Nothing further from the
12 State.

13 **THE COURT:** You may step down.

14 **MS. BENTLEY:** Your Honor, the State rests.

15 **THE COURT:** All right. Ladies and
16 Gentlemen, I'm going to ask you to step in the
17 jury room for our morning break. We have a
18 couple of matters we need to take up in here.
19 We will be back with you shortly. Thank you.

20 **(WHEREUPON, the jury exits at approximately**
21 **11:19 a.m.)**

22 **THE COURT:** All right. Anything we need
23 to take up?

24 **MS. WICKER:** Your Honor, for the record,
25 we'd make a motion for directed verdict at this

1 time.

2 **THE COURT:** Your motion is respectfully
3 denied. Uh, you indicated yesterday that you
4 don't believe you'll be putting up any sort
5 of --

6 **MS. WICKER:** No, ma'am, but if I can have a
7 brief recess just to, uh, confirm ---

8 **THE COURT:** Sure.

9 **MS. WICKER:** --- that with my client.

10 **THE COURT:** Sure. Why don't we take a
11 five-minute break? Then, we'll come back and
12 I'll have some questions with him about that.

13 **MS. WICKER:** Okay.

14 **THE COURT:** All right. Thank you.
15 Actually, let's take a 10-minute break.

16 (WHEREUPON, a recess was taken.)

17 **THE COURT:** So have you all had enough
18 time to talk?

19 **MS. WICKER:** We have, Your Honor.

20 **THE COURT:** All right. Sir, will you
21 stand and raise your right hand please. Are you
22 able to stand?

23 **MR. WISEMAN:** Yeah.

24 (WHEREUPON, the defendant is first duly sworn.)

25 **THE COURT:** Okay. You can put your hand

1 down. Have you had enough time to discuss with
2 your attorney whether or not you'll testify in
3 the trial of this case?

4 **MR. WISEMAN:** Yes, ma'am.

5 **THE COURT:** You feel like you understood
6 your conversation with her?

7 **MR. WISEMAN:** Yes, ma'am.

8 **THE COURT:** You understand that you have
9 an absolute right to remain silent. Do you know
10 that?

11 **MR. WISEMAN:** Yes, ma'am.

12 **THE COURT:** You also know that I will
13 instruct the jury that you -- that the fact that
14 you do not testify could not be held against you
15 in any way. You understand that?

16 **MR. WISEMAN:** Yes, ma'am.

17 **THE COURT:** They're not even to discuss it
18 in the jury deliberation room. Do you know
19 that?

20 **MR. WISEMAN:** Yes, ma'am.

21 **THE COURT:** The flip side of that, this is
22 your one chance to tell your side of the story,
23 in order words, your day in court. You
24 understand that as well?

25 **MR. WISEMAN:** Yes, ma'am.

1 **THE COURT:** Are you under the influence of
2 drugs or alcohol here today?

3 **MR. WISEMAN:** No, ma'am.

4 **THE COURT:** Have you, in fact, made a
5 decision about whether or not you will testify?

6 **MR. WISEMAN:** Yes, ma'am.

7 **THE COURT:** Is that your -- is the
8 decision your decision ---

9 **MR. WISEMAN:** It's mine.

10 **THE COURT:** --- and your decision alone?

11 **MR. WISEMAN:** It's mine.

12 **THE COURT:** All right. And what is your
13 decision?

14 **MR. WISEMAN:** I ain't going to testify.

15 **THE COURT:** All right. Any other
16 questions from either the State or the defense?

17 **MS. BENTLEY:** Nothing from the State.

18 **THE COURT:** All right. All right.

19 Thank you, sir.

20 You don't anticipate any other witnesses?

21 **MS. WICKER:** No.

22 **THE COURT:** All right. By my memory of
23 the case, you had not introduced any evidence?

24 **MS. WICKER:** No, ma'am.

25 **THE COURT:** All right. The State would

1 agree she is entitled to final argument?

2 **MS. BENTLEY:** Yes, Your Honor.

3 **THE COURT:** All right. I just wanted to
4 be sure. Are y'all ready to go into final
5 arguments?

6 **MS. BENTLEY:** Yes.

7 **THE COURT:** All right.

8 All right. Let me just make one little
9 announcement for the courtroom as we get going.
10 When the attorneys are making their arguments,
11 there is to be no -- no emotion, no gesturing.
12 You might not agree with everything that is said
13 but -- one way or another, but absolutely no
14 distractions for this jury whatsoever. They
15 didn't asked to be involved in this, and they
16 don't need to be distracted like that.

17 Furthermore, during my charge on the law,
18 if anyone -- if I have anyone try to leave or
19 try to disturb while I am charging on the law --
20 I have never had that happen before, but if it
21 happened, I wouldn't like it at all. I would
22 probably exercise my contempt powers, which are
23 up to -- which is up to 10 years in jail. So
24 I'm asking everyone to please be respectful of
25 these attorneys and to the Court as we close

1 this case. All right. Thank you.

2 **(WHEREUPON,** the jury enters at approximately
3 11:37 a.m.)

4 **THE COURT:** All right, Ladies and
5 Gentlemen. We are now ready for the final
6 arguments from the attorneys in this case.

7 Yes, ma'am.

8 **MS. BENTLEY:** May it please the court?

9 **THE COURT:** Yes, ma'am.

10 **MS. BENTLEY:** Ladies and Gentlemen, at the
11 beginning of this trial, I told you that fear
12 comes in many forms for children. I think after
13 experiencing this trial and listening to all the
14 testimony you've heard and seen, the videos, you
15 currently believe that now more than ever.
16 Where Minor 1 and Minor 2 lived in 2013 and in
17 2012 was full of confusion and chaos and
18 different types of fear. Their home life was
19 the perfect breeding ground for sexual abuse to
20 occur.

21 At the beginning of the trial, Ms. Wicker
22 told you two things that really stayed with me.
23 She told you that you needed to listen to your
24 gut and that this case just does not make sense.
25 On a base level, I agree with each one of those

1 things.

2 First, the fact that you need to go with
3 your gut. Now, neither one of us is asking you
4 to evaluate this serious criminal case based
5 solely on your gut feelings. That is not fair.
6 That is not what the justice system is about.
7 But you do not leave your commonsense at the
8 door when you become a juror.

9 To some extent, you take your own life
10 experiences, your own personal knowledge and
11 common sense with you when you are back there
12 deliberating, when you are going through the
13 witnesses' testimony, when you are discussing
14 the videos. You take your common sense with you
15 and you use that to evaluate people to see
16 whether anybody that testified had a reason to
17 give you anything other than the full truth,
18 whether anybody had some motive to make anything
19 up or to perpetuate it for three years.

20 You use your gut in determining whether --
21 if anybody had that motive back then and whether
22 they had a motive that would be strong enough
23 for them to hold it for three years. Justice is
24 slow. These allegations came forward in May of
25 2013. We are here, believe it or not, in

1 February 2016. You use your common sense to
2 think about all of those different factors.

3 The State has the burden of proof. The
4 State had to prove that Tommy Wiseman touched
5 Minor 1 in a sexual manner beyond a reasonable
6 doubt. Beyond a reasonable doubt is a legal
7 term that the judge will define to you in just a
8 little bit. Nobody was there in 2012 at the
9 house on , at the house on , at
10 the house at . Nobody
11 was watching Minor 1 and Tommy at that time.
12 None of us were there. We cannot know with 100
13 percent certainty what happened, but that's not
14 the State's burden of proof.

15 The burden of proof is to leave you firmly
16 convinced of his guilt. If, after the
17 testimony, after deliberation, you go back and
18 you discuss it and, if you are firmly convinced,
19 if you do not hesitate to sign your name to a
20 verdict of guilty, then you are firmly
21 convinced, and the State has met its burden. If
22 you go back there and you discuss the evidence
23 and you have concerns that somebody was lying,
24 that this was not the absolute truth that we put
25 out to you today, then you must find him not

1 guilty. It's as simple as that.

2 This brings me to the second part of what
3 Ms. Wicker said that make sense to me, that is,
4 that this case does not make sense. Yes and no.
5 If Tommy and Minor 1 were at my house or any one
6 of your houses or any house where adults that
7 were reasonably equipped to care for children,
8 then this case would not make sense. But Minor 1
9 did not live in that environment in 2012 and
10 2013.

11 Kathy Perez and Kristina Whitted were not
12 equipped to care for Minor 1 and Minor 2 , much
13 less six-plus other children on a regular basis.
14 She was not in an environment where adults sat
15 down and spoke to her, where adults saw red
16 flags, such as a grown man buying his neighbor
17 panties, and looked into it. That's not the
18 environment she lived at. She lived in an
19 environment where, unfortunately, her mother and
20 aunts and uncles were using and manufacturing
21 methamphetamine, where her grandmother was
22 constantly ill, where there was essentially a
23 daycare in the living room. As the two oldest
24 children, they were allowed to play by
25 themselves or with Tommy, when he came over.

1 Ladies and Gentlemen, let's look at the
2 testimony that was presented in this case. You
3 first heard from Jennifer Flores and Jessica
4 Selgado. They were the ones that took Minor1
5 and Minor2 when their biological family lost
6 custody. They told you that they knew of Tommy.
7 They had seen him around. They told you that
8 the transition was a little bit difficult for
9 Minor1 and Minor2, but that things had smoothed
10 out.

11 Things had smoothed out until one day in
12 May, Minor1 offers her three-year-old cousin to
13 let her touch -- to let him touch her private
14 parts in exchange for a gummy worm. Luckily,
15 Jennifer and Jessica realized that that was not
16 appropriate behavior for a six-year-old. A six-
17 year-old would not know that their private parts
18 were worthy of a treat.

19 They sat her down and they spoke to her.
20 The way Jessica tells you that she sat down and
21 spoke to Minor1 is important. She said she
22 remained calm. She wasn't angry. Minor1 wasn't
23 in trouble. She was worried. That's important.
24 Minor1 did not know what she had done was wrong.
25 She didn't understand what was going on.

1 It was during that discussion that she
2 initially disclosed sexual abuse, and it's what
3 started the investigation. Keep in mind that,
4 at that time, she had been removed from her
5 family and, pretty much, the defendant for
6 several months. This is May of 2013.

7 After Jennifer and Jessica, you heard from
8 Minor2 and Minor1. Minor2 is 11. Minor1 is
9 currently 8. Keep in mind that almost a third
10 of their lives had passed since this
11 investigation began. Almost 3 years for a child
12 that age is like a lifetime.

13 Minor2 did not remember seeing Tommy with
14 Minor1. That's okay. That brings up a point.
15 One, it proves that, as everybody said, this was
16 not something that was discussed in the home.
17 Jennifer and Jessica didn't go back and talk
18 about what happened. He wasn't lectured and
19 shown this video and coached. He wasn't told
20 what to say. And it's okay that he doesn't
21 remember.

22 What did he remember? Well, he remembered
23 the part that happened to him. He remembered
24 Tommy jerking his arm when he went to go tell.
25 He remembered that it left a mark. He

1 remembered that he tried to tell his mother and
2 she told him to go sit in a corner or to go
3 swing. That's what he remembered from that
4 situation. Nobody else thought it was a problem
5 back then, so why would he remember it now?

6 You did see him, two and a half years ago,
7 at the Julie Valentine Center, this morning. He
8 clearly had no idea why he went there initially.
9 It could have been for a lot of reasons. He had
10 a lot of reasons that somebody would want to
11 know what was going on in his life. He had
12 witnessed his mother having sex in the bed with
13 him. He had witnessed his aunts and uncles
14 using and making the bad stuff, which we know
15 was methamphetamine. He had been threatened
16 that if he told about getting spanked, DSS might
17 come and take his things.

18 Finally, when Sarah is talking about
19 private parts, he looked and said, oh, well,
20 yeah, he saw -- he saw Tommy touch his sister
21 there. What detail did he give you? On the
22 side of the truck. And when the interviewer
23 said were you on the side of the truck? He said
24 no, just my sister. He corrected her when she
25 got a detail wrong.

1 He remembered she was wearing a tank top.
2 He remembered she was wearing stretchy pants.
3 He remembered that she had on a pull-up because
4 her underwear was dirty that day. Is it
5 reasonable to think that, at eight years old, he
6 made up that level of detail? It's not. He was
7 telling the truth because he had witnessed Tommy
8 touch his sister in that manner.

9 You heard from Minor1 yesterday. She is
10 eight years old. She is still a young child, but
11 she bravely got up on that stand and she gave
12 you the details of her abuse. She went through
13 her siblings. She went through her family. She
14 went through all those different houses she had
15 been bounced back and forth from. She told you
16 that when she went out to get the coffee that he
17 bought her, he'd pick her up and put her on the
18 side of the truck. She wasn't in the truck, she
19 wasn't on the truck, she was at the side of the
20 truck. He would put his hands down her pants
21 and into her panties and touch her.

22 It's been almost 3 years since that
23 happened. She came in here and told you the
24 same thing that she had said all along, that
25 Tommy Wiseman touched her peepee under her

1 clothing. She took that stand as brave as any
2 other witness I've seen and maintained it. She
3 has not lived with her family. She has been
4 bounced back and forth, but she remembers that
5 because it happened. She didn't make up
6 anything else. She didn't hide any of the
7 details.

8 In the video, Minor 1 tells you that she did
9 tell her mom and her Nana what happened. She
10 tells you that they were there when it happened.
11 Keep in mind that Minor 1 was six years old. As
12 we heard, her mom and mother -- her mom and
13 grandmother probably weren't around. They could
14 have been in the living room. They could have
15 been outside.

16 Where they in any position to really know
17 what was happening? In the condition they were
18 in, between sickness and methamphetamines and
19 surgery, would they have known if she did tell
20 them anything or if they saw anything? I'm
21 telling you that it's reasonable that they would
22 not have known. They were in no position to
23 know or maybe even care at that point.

24 Minor 1 told you, on that Julie Valentine
25 Center interview, several responses that her

1 mother gave when she would tell her. Oh, come
2 sit by me. We'll call the police if it happens
3 again. Oh, he just won't come back anymore.
4 Those are the responses of someone who either
5 does not fully care enough to listen or who was
6 just not able to deal with what was happening in
7 their life along with everything else. That is
8 a reasonable explanation for what Minor1 said in
9 that video.

10 Today, you finally heard from Kathy Perez
11 and Kristina Whitted. It's clear that Kristina
12 loves her children and Kathy loves her
13 grandchildren. They are not bad people, but
14 they were not equipped to care for Minor1 or
15 Minor2 or any of the other children. To this
16 day, they are still not caring for them. The
17 environment that they provided, maybe it was the
18 best they could do, but it was an environment
19 that allowed Tommy Wiseman to come in and abuse
20 Minor1. There should be no doubt in your mind
21 that with that level of care, anything could
22 have happened, and it did. It happened right
23 under their nose, in the backyard on the truck,
24 in the living room, whenever Tommy would come
25 over.

1 They also gave you some other pieces of
2 evidence in this case. Nobody, nobody had any
3 reason to make this up. Tommy Wiseman was not a
4 bad neighbor. He was not a sore thumb. He was
5 not a problem. Tommy Wiseman was a help to
6 Kathy Perez and her children and her
7 grandchildren. He is the one that gave her
8 rides to the doctor, gave her rides to the
9 store, that took her to get her medicine. He
10 came over and kept her company.

11 He bought the children clothes. He bought
12 them toys at Christmas. He was not someone that
13 they have some beef with, some vendetta against.
14 There is no reason for anyone to have come in
15 here and say that Tommy Wiseman did what he did,
16 except for the fact that it happened.

17 Ladies and Gentlemen, I know this is a
18 difficult case for you. I know there is no
19 video of what happened -- no video of anything
20 actually happening. I know that you weren't
21 actually there. But I trust that when you go
22 back and you deliberate, you look at the
23 lineups, you look at this one picture -- out of
24 60 or 70 that Kathy Perez was storing in his
25 house, the one picture that he kept in his house

1 after Minor1 was taken. If you want to go back
2 and watch these videos of the children two and a
3 half years ago, I'm confident that you will
4 listen to your gut and you will reach a verdict
5 that makes sense, that Minor1 was
6 sexually abused by Tommy Wiseman and you will
7 bring back a verdict that speaks the truth,
8 guilty of criminal sexual conduct with a minor
9 in the third degree. Thank you.

10 **THE COURT:** Thank you.

11 Yes, ma'am.

12 **MS. WICKER:** May it please the Court?

13 The allegations in this case are very
14 serious and they are certainly of a sensitive
15 nature. We heard the allegations that were made
16 yesterday and the video. What we heard in
17 between -- the oral testimony from the children
18 versus what we heard in the Julie Valentine
19 center are two completely different accounts
20 about what happened.

21 In the video, Minor1 says that she was on
22 the back of the truck. Her mother was there.
23 Her grandmother was there. Her brother was
24 there. They all saw what happened. Minor2 even
25 tried help, but Tommy stopped him is what she

1 told us. She said she told her mom about what
2 had happened. Her mom said just stay away from
3 him. She said he also touched her in the living
4 room, that she sat on one side of Tommy, her
5 grandmother sat on the other side of the couch,
6 and there, he touched her in the full view of
7 the grandmother in a very full house. This
8 happened on multiple occasions. Does this make
9 sense? In front of her mother, her brother, her
10 grandmother, Tommy Wiseman would touch her? He
11 did this in the living room of a busy house, in
12 the driveway.

13 They were checked on. They were supervised.
14 There were other adults in the house. Minor 1
15 said that she also told her aunt, Heather. If
16 she did tell them, wouldn't they have done
17 something?

18 In court yesterday, she told that she was
19 only touched by Tommy at the truck. No one else
20 was around, though sometimes, other kids were
21 playing in the yard. She told her brother and
22 told him to just keep it a secret.

23 Minor 2 said in the video that he saw Tommy
24 touch Minor 1 at the truck. He also says that he
25 was in the bed with his mother while she had sex

1 with another man. In court yesterday, he said I
2 didn't see anything happen. Children are
3 certainly confused or getting confused. They
4 were young and a lot of time has passed.
5 Absolutely, they get nervous, and this is a
6 sensitive issue to talk about. But these
7 discrepancies are to a magnitude that you
8 wouldn't forget.

9 They are two completely different stories.
10 There were lots of witnesses; there were no
11 witness. This was in the truck versus this was
12 in the living room. It happened over and over
13 again. I told the bunch of people about it
14 versus I only told my brother and told him don't
15 tell anybody about it. This allegation don't
16 make sense. There are too many differences, too
17 many discrepancies.

18 The State has to prove that what Minor 1
19 says happened did, in fact, happen. They have
20 this case as verifiable facts that her mother
21 saw it, her grandmother saw it, she told her
22 aunts. No one says they saw it. No one knew
23 about it.

24 Certainly, these children have not had a
25 good upbringing. They have been shuffled from

1 relatives and friends, in a house where drugs
2 were manufactured. Even so, does it make sense
3 that someone would commit an act like this in a
4 house this size where they could be walked in on
5 at any time; that a grandmother and mother's
6 reaction to seeing this or hearing about this
7 would just be to say, well, don't come back
8 here? They obviously love the kids. They would
9 take action.

10 These allegations are missing some, even
11 the most basic details. What is described
12 doesn't make sense. There were witnesses who
13 said that Tommy had purchased treats, clothes,
14 including underwear for Minor1. This is only odd
15 if you start with the presumption that he did
16 this and that's why he purchased those things.
17 That's not where we start.

18 We start from the presumption that he
19 didn't do this. In that context, what he's
20 doing is providing for a financially-strapped
21 household. He provided transportation for a
22 family who doesn't have a car. He provided
23 clothes and gifts to a family who can't afford
24 them. Even in Minor2 ' video, he said Minor1 had
25 to wear pull-ups because she didn't have clean

1 underpants. It's not strange for somebody to
2 help a family or friend in that respect. It's
3 no different from buying diapers for friend who
4 just had a newborn.

5 Kathy also said that Tommy had a picture of
6 Minor1 in his home. I don't know where it was.
7 Law enforcement did a search for it and searched
8 where it was, what else was in his house that
9 belonged to her. We don't have any context. We
10 don't know where the photo was. Was it just in
11 a box? Was it on it's leg? Who knows?

12 This case is full of very verifiable facts.
13 Easily verifiable facts. And they haven't been
14 verified. No one has come forward to confirm
15 that they saw this or they knew about it. These
16 allegations don't make sense.

17 It is entirely the State's burden to prove
18 that Tommy Wiseman did this beyond a reasonable
19 doubt that these allegations are true. Tommy
20 Wiseman unequivocally doesn't have to prove that
21 he didn't do this or there was some motive or
22 reason why these allegations would be made.
23 That's not his burden. He is presumed innocent.
24 The State has to prove that these allegations
25 are, in fact, true. They haven't met that

1 burden. There are no corroborating witnesses
2 here to corroborate that, and they are not
3 coming forward because it's not true.

4 One of my parents' favorite story to tell
5 about me when I was little is that one day after
6 school one of my teachers came up down to
7 express their condolences. My parents were
8 completely confused, had no idea what the
9 teacher was talking about.

10 Earlier that day, the teacher had asked
11 everybody tell us about your families. All of
12 my classmates were going around talking about
13 their siblings and their pets and all of that
14 kind of stuff. My brother wasn't born for
15 another year. Rather than saying, hey, I'm an
16 only child, we do have a pet, I said, well, I
17 had a brother, but he died. That's not funny.
18 That's a serious thing. It's not something you
19 joke about, a deceased relative. But it wasn't
20 true. I didn't say it to be malicious, and I
21 didn't comprehend the seriousness of what I was
22 saying.

23 Kids don't always comprehend how serious an
24 allegation is or how serious something they say
25 is or what the consequences of saying that might

1 be. This case just doesn't make sense. There
2 aren't any corroborating witnesses to come
3 forward to support the allegations.

4 As I told you in the beginning, criminal
5 sexual conduct is very serious and it should not
6 be tolerated particularly in cases where
7 children are abused. But even the prosecution
8 of these cases must warrant certainty in that
9 conviction. You want to be sure it happened.
10 You want to scrutinize the evidence to determine
11 that the allegations are true, that they
12 actually occurred. You have to be convinced
13 this what happened.

14 If you go back and you think, you know
15 what, maybe -- maybe this didn't happen, that's
16 not guilty. If you go back and you even think,
17 you know what, this probably happened, that is
18 not guilty. You have to be convinced that this
19 is what happened. You have to be sure that it
20 happened. The State has the burden of proving
21 these allegations are true beyond a reasonable
22 doubt. They haven't done that in this case. I
23 ask you to return a verdict of not guilty.
24 Thank you.

25 **THE COURT:** Ladies and Gentlemen, I am

1 required now to instruct you on the law. I have
2 to give you these instructions. I'm required to
3 do so. I read my instructions to you and
4 there's two reasons for that. The first reason
5 is I want to get it right. I want to make sure
6 I don't forget anything. But secondly, because
7 I'm going to give you these written instructions
8 and I'm going to give you some instructions on
9 how to deal with the instructions during your
10 deliberations.

11 Ladies and Gentlemen of the jury, you have
12 seen and heard the evidence presented, as well
13 as arguments of counsel. It is now my duty and
14 obligation to instruct you on the law applicable
15 in this case. It will then be your duty and
16 obligation to begin your deliberations, through
17 which you will decide the facts, apply the law
18 as instructed by this court and render your fair
19 and impartial decisions.

20 It is your exclusive duty to determine the
21 facts in this case based upon your own common
22 sense examination and evaluation of the
23 testimony and the other evidence presented
24 during this trial.

25 You twelve jurors alone will decide what

1 weight, value, and effect are to be given to any
2 particular testimony or other evidence
3 presented. Your ultimate goal is to simply
4 reach the truth in this matter and, by doing so,
5 you will have fulfilled your obligation as
6 jurors, which is to give both the State and the
7 defendant a fair and impartial trial based upon
8 the evidence presented and the law applicable to
9 this case.

10 In this case, the State of South Carolina,
11 through the Solicitor, has charged the defendant
12 with the criminal offenses known as Criminal
13 Sexual Conduct with a minor in the third degree,
14 two counts. The allegations charging the
15 defendant with these crimes are set forth in the
16 indictments that I explained to you at the start
17 of this trial. As I explained, the indictments
18 are not evidence in this case and may not -- you
19 may not consider it as evidence against the
20 defendant.

21 As to the charges set forth in the
22 indictments, the defendant has entered a plea of
23 not guilty. That plea of not guilty places upon
24 the State the burden of proving the allegations
25 that are set forth in the indictments; the

1 burden of proving each of the essential elements
2 of the crimes charged; and therefore, the burden
3 of proving the guilt of the defendant to the
4 satisfaction of each of you twelve jurors beyond
5 a reasonable doubt, before a verdict of guilty
6 could be returned as to the charges.

7 Each indictment charges a separate and
8 distinct offense. You must decide each
9 indictment separately on the evidence and the
10 law applicable to it, uninfluenced by your
11 decision as to any other indictments. The
12 defendant may be convicted or acquitted on
13 either or both of the offenses charged. You
14 will be asked to write a separate verdict of
15 guilty or not guilty for each indictment.

16 The burden is never upon the defendant to
17 prove that he is not guilty or to prove that he
18 is innocent because, in some cases, that might
19 not be possible. The burden is always upon the
20 State, because they have made the allegations,
21 to prove the defendant guilty beyond a
22 reasonable doubt.

23 You are further instructed that no matter
24 how serious the offense for which the defendant
25 stands charged might be, it is a vital,

1 important and cardinal rule of law that every
2 defendant in a criminal trial shall always be
3 presumed innocent of those charges, and that
4 presumption of innocence shall be with the
5 defendant from the moment of his arrest,
6 throughout the course of the criminal process,
7 and even throughout the course of the actual
8 trial. The presumption of innocence shall be
9 with the defendant even as you go into the jury
10 room to begin your deliberations, and the
11 presumption of innocence shall be with him there
12 and be with him forever, unless you twelve
13 jurors determine that he is no longer entitled
14 to the presumption of innocence. It is only if,
15 unless, and until you are satisfied of the
16 defendant's guilt beyond a reasonable doubt,
17 that he would no longer be entitled to the
18 presumption of innocence.

19 I remind you that during this trial, you
20 and I have certain duties to perform. As the
21 judge, it is my responsibility to preside over
22 the trial of this case and to rule on the
23 admissibility of the evidence offered during
24 this trial. You are to consider only the
25 competent evidence before you. If there was any

1 testimony I ordered stricken from the record
2 during this trial, you must disregard that
3 testimony. You are to consider only the
4 testimony which has been presented from this
5 witness stand, any exhibits that have been made
6 a part of the record in this case, and any
7 stipulations of counsel.

8 I have the additional duty to charge you
9 the law applicable to this case. As the
10 presiding judge, I am the sole judge of the law
11 in the case, and it is your duty as jurors to
12 accept and apply the law as I now state it to
13 you. If you already have an idea as to what the
14 law is or an opinion as to what the law ought to
15 be and it is different from what I tell you the
16 law is, you must abandon that idea because you
17 are sworn to accept the law and apply the law
18 exactly as I state it to you.

19 It is your duty as jurors to decide the
20 facts in this case. In every case tried in this
21 court before a jury, the jury is the sole and
22 exclusive judge of the facts. The trial judge
23 cannot allude to, repeat, comment on, or make
24 any statement about the facts to the jury.
25 Since you, the jury, are the sole judge of the

1 facts in this case, you are not to infer from
2 what I have said during the progress of this
3 trial while ruling on the admissibility of
4 evidence, or from anything that I say during the
5 course of these instructions to you, that I have
6 an opinion about the facts in this case. The
7 law does not allow me to have an opinion about
8 the facts in this case, and I do not. The facts
9 are solely for you, the jury, to determine. As
10 jurors, it is also your duty to determine the
11 effect, value, weight, and truth of all evidence
12 presented during this trial.

13 The State has the burden of proving the
14 defendant guilty beyond a reasonable doubt.
15 Some of you may have previously served as jurors
16 in civil cases, where you were told that it is
17 only necessary to prove that a fact is more
18 likely true than not true, by the greater weight
19 or preponderance of the evidence. In a criminal
20 case, the State's proof must be more powerful
21 than that. It is must be beyond a reasonable
22 doubt. Proof beyond a reasonable doubt is proof
23 that leaves you firmly convinced of the
24 defendant's guilt. Reasonable doubt is the kind
25 of doubt that would make a reasonable person

1 hesitate to act.

2 There are very few things in this world
3 that we know with absolute certainty. In
4 criminal cases, the law does not require proof
5 that overcomes every possible doubt. It
6 requires that if, based on your consideration of
7 all the evidence, you are firmly convinced that
8 the defendant is guilty of the crime charged,
9 you must find the defendant guilty, if, on the
10 other hand, you think there is a real possibility
11 that the defendant is not guilty, you must give
12 the defendant the benefit of the doubt and find
13 him not guilty.

14 There are two types of evidence which are
15 generally presented during a trial: direct and
16 circumstantial evidence. Direct evidence is the
17 testimony of a person who claims to have actual
18 knowledge of a fact, such as an eyewitness. It
19 is evidence that immediately establishes the
20 main fact to be proved, without inference or
21 presumption.

22 Circumstantial evidence is a proof of a
23 chain of facts and circumstances indicating the
24 existence of another fact. It is evidence which
25 immediately establishes collateral facts from

Jury Charge

1 which the main fact may be inferred.

2 Circumstantial evidence is based on inference
3 and not on personal knowledge or observation.

4 The law makes absolutely no distinction
5 between the weight or value to be given to
6 direct or circumstantial evidence. You should
7 weigh all of the evidence presented in this
8 case. There is no greater degree of certainty
9 required of circumstantial evidence than of
10 direct evidence.

11 Necessarily, you must determine the
12 credibility of the witnesses who testified in
13 this case. Credibility simply means
14 believability. It becomes your duty as jurors
15 to analyze and evaluate the evidence, and to
16 determine which evidence you believe to be true.

17 In determining the believability of
18 witnesses who have testified in this case, you
19 may believe one witness over several witnesses
20 or several witnesses over one witness. You may
21 believe a part of the testimony of a witness and
22 reject the remaining part of the testimony of
23 that same witness. You may believe the
24 testimony of witness in its entirety or reject
25 the testimony of a witness in its entirety. You

1 may consider whether any witness has exhibited
2 to you any interest, bias, prejudice, or other
3 motive to testify in this case. You may also
4 consider the appearance and manner of a witness
5 while on the witness stand. In other words, you
6 are to judge a witness' credibility in the same
7 way you would judge a person's credibility in
8 your daily life.

9 During this trial, you have heard testimony
10 from two children. When a witness is a child,
11 you must determine, as with any witness, whether
12 their testimony is believable. In deciding
13 believability, you may consider not only matters
14 that I have already discussed with you, but you
15 may also consider the age of the child, the
16 child's ability to observe and remember the
17 facts, and the child's ability to understand and
18 answer questions.

19 Because some children may not fully
20 understand what is happening in a trial, it is
21 up to you to decide whether the child witness
22 understood the seriousness of appearing as a
23 witness in this trial, whether the child
24 understood the questions, whether the child has
25 a good memory and whether the child understands

Jury Charge

1 the difference between lying and telling the
2 truth. In addition, some children may be
3 influenced by the way that questions are asked.
4 It is up to you to decide whether the child
5 witness understood the questions asked of them.

6 I instruct you and emphasize that the fact
7 that the defendant did not testify in this trial
8 is not a factor you may consider in any way in
9 your deliberation and consideration of the guilt
10 or the innocence of the defendant. It must not
11 be considered by you in any manner whatsoever.
12 A defendant has the constitutional right to
13 remain silent, and the assertion of this right
14 must not be considered by you in your
15 deliberations. I repeat, under your oath, you
16 are to draw no conclusion whatsoever from the
17 fact that the defendant in this case did not
18 testify. The fact that this defendant did not
19 testify should not even be discussed in the jury
20 room. As I have stated to you, the burden of
21 proof is on the State to prove guilt beyond a
22 reasonable doubt a reasonable doubt, and the
23 defendant is not required to prove his
24 innocence.

25 A statement alleged to have been made by

1 the defendant has been admitted into evidence in
2 this case. However, you must take -- you must
3 make the ultimate decision of whether or not the
4 defendant made each statement. If the defendant
5 did make the statement, you must determine
6 whether the statement was made by the defendant
7 voluntarily and of his own free will. This
8 means that the statement was not caused by
9 pressure, force, fear, threats, coercion, or
10 intimidation, or by hope or a promise of
11 leniency or a reward of any kind.

12 In determining whether the statement was
13 voluntary, you should consider both the
14 characteristics of the defendant and the details
15 of the questioning. Some of the factors that
16 you must consider are: 1, the age of the
17 defendant; 2, the defendant's education or lack
18 of education; 3, the defendant's mental ability
19 or capacity; 4, the defendant's I.Q. or
20 intelligence; 5, the defendant's background and
21 environment; 6, the place and length of
22 detention; 7, the nature of the questioning;
23 and, 8, the advice, or lack thereof, to the
24 defendant of his constitutional rights
25 including, but not limited to, the right to

Jury Charge

1 remain silent; that any statement could be used
2 against him in a court of law; the right to have
3 a lawyer present; that if he could not afford a
4 lawyer, a lawyer would be appointed to represent
5 him without any cost; and that he could stop
6 making the statement at any time.

7 The State must prove beyond a reasonable
8 doubt that the defendant made a knowing,
9 intelligent, and voluntary waiver of his rights,
10 and that he statement of the defendant was
11 voluntary. You must carefully consider all of
12 the surrounding circumstances before you give
13 any weight to an alleged statement.

14 The State has the burden of proving beyond
15 a reasonable doubt that the alleged statement
16 was voluntary. If you determine it was, you may
17 give the statement any further consideration
18 that you deem proper. You must decide what
19 weight, if any, should be given to each of the
20 alleged statements. If you determine the
21 alleged statement was not the free and voluntary
22 statement of the defendant, you should not
23 consider the statement at all.

24 An issue in this case is the identification
25 of the defendant as the person who committed the

1 crime charged. The State has the burden of
2 proving identity beyond a reasonable doubt. You
3 must be satisfied beyond a reasonable doubt of
4 the accuracy of the identification of the
5 defendant before you may convict the defendant.

6 Identification testimony is an expression
7 of belief or impression by a witness. You must
8 determine the accuracy of the identification of
9 the defendant. You must consider the
10 believability of each identi -- I -- of each
11 identification witness in the same way as any
12 other witness. You may consider whether the
13 witness had an adequate opportunity to observe
14 the offender at the time of the offense. This
15 will be affected by things like how long or
16 short a time was available, how far or close the
17 witness was, the lighting conditions, and
18 whether the witness had the chance to see or
19 know the person in the past. Once again, I
20 instruct you the burden of proof is on the State
21 -- the burden of proof on the State extends to
22 every element of the crime charged, and this
23 specifically includes the burden of proving
24 beyond a reasonable doubt the identity of the
25 defendant as the person who committed the crime.

Jury Charge

1 If, after examining the testimony, you have a
2 reasonable doubt as to the accuracy of the
3 identification, you must find the defendant not
4 guilty.

5 In order to establish criminal liability,
6 the State must also prove criminal intent. For
7 a particular crime, the mental state required
8 might be purpose, intent, knowledge,
9 recklessness, or criminal negligence. The State
10 must prove criminal intent beyond a reasonable
11 doubt. Criminal intent is a matter that must be
12 determined by the jury from the facts of the
13 case.

14 There is no way to prove criminal intent to
15 a mathematical certainty, so the law says that
16 criminal intent may be inferred from the
17 circumstances shown to have existed. This is
18 how you determine whether or not the element
19 requiring intent was present. It is not
20 necessary to establish intent by direct
21 evidence. Intent may be established
22 circumstantial evidence or by taking into
23 consideration the acts of the parties and all
24 the facts and circumstances of the case.

25 Criminal intent is a mental state of

1 conscious wrongdoing. It is up to you to
2 determine what the defendant intended to do
3 based on the circumstances shown to have existed
4 in this case. Criminal intent can arise from
5 action or a failure to act. It can arise from
6 negligence, recklessness, or an indifference to
7 duty or consequences, which is considered by the
8 law to be the equivalent of criminal intent.

9 The defendant is charged with two counts of
10 Criminal Sexual Conduct with a minor third
11 degree. The State must prove beyond a
12 reasonable doubt that the defendant lewdly and
13 willfully committed or attempted to commit a
14 lewd or lascivious act upon the body, or its
15 parts, of a child under sixteen years of age,
16 with the intent of arousing, appealing to, or
17 gratifying the lust, passions, or sexual desires
18 of the defendant or the victim.

19 Willfully means voluntarily and
20 intentionally with the specific intent to do
21 something the law forbids. Lewd means obscene,
22 lustful, indecent, or lecherous. While
23 lascivious means tending to incite, lust,
24 indecent, obscene, or tending to deprave the
25 morals in respect to sexual relations.

Jury Charge

1 Consent, willingness, indifference, or
2 ignorance on the part of the minor victim, if
3 any, as to what was taking place, does not in
4 any way affect the charge of criminal sexual
5 conduct with a minor and the testimony of a
6 victim in criminal sexual conduct case need not
7 be corroborated.

8 I will give you a copy of these
9 instructions in written form. During your
10 deliberations, you may refer to my instructions
11 to guide your decision-making. You must
12 consider the instructions as a whole and may not
13 follow some and ignore others. Please return
14 the copy of the instructions to the court at the
15 time your verdict is rendered.

16 Ladies and Gentlemen, your verdict must be
17 a unanimous one.

18 Mr. Foreperson, when the jury agrees on the
19 verdict, you will mark the verdict on the
20 indictments and sign your name as foreperson on
21 each one. Please then knock on the jury room
22 door and inform the bailiff that you have
23 reached a verdict. At that time, we will
24 receive you back into the courtroom.

25 Mr. Foreperson, I'll just direct you -- I'm

1 sure that you can look at these indictments and
2 see the area that's marked verdict on the lower
3 left-hand corner of each of these. I do tell
4 you, you must have two separate verdicts in this
5 case because there are two indictments. And if
6 you will sign -- if you will write your verdict,
7 guilty or not guilty, sign and date it as the
8 foreperson.

9 I ask that you now return to your jury
10 room, but do not begin deliberations until you
11 are told by the bailiff to do so. There are
12 some matters which must be discussed with the
13 attorneys before you begin your deliberations.
14 When you receive the copy of my instructions,
15 the indictments, and the exhibits entered in
16 this case, it will be your signal to begin your
17 deliberations.

18 I believe that your lunch is here. I think
19 your lunch is here. And if this worked out --
20 it is here? Oh, this will be the greatest
21 timing in the history of court because it never
22 works out that way, but it did. Let me give you
23 a little instruction about that. Y'all may want
24 to go ahead and get your lunch as we are just
25 wrapping up a couple of matters here. I will

1 send everything back to you to begin your
2 deliberation. Do not begin deliberating until
3 everyone is in the jury room together. There --
4 you can absolutely eat while you deliberate.
5 That's perfectly fine if you'd like to do it.
6 But you must decide what you're going to, you
7 know, do as a group. In other words, if
8 somebody doesn't feel comfortable deliberating
9 until after they eat, then everyone must wait
10 until after you finish eating, because all 12 of
11 you, in other words, must participate in the
12 deliberations. I just wanted to be sure about
13 that. Thank you again so much for your service.

14 And to our alternate, you have lunch here
15 too. If you go ahead and get your lunch, you're
16 going to uh, to eat a lonely lunch. I'm sorry.
17 But we'll put you in another room for a brief
18 time so you can eat lunch and then I'll speak to
19 you before you live.

20 Thank you all for your service.

21 **(WHEREUPON, the jury exits at approximately**
22 12:20 p.m.)

23 **THE COURT:** Any objection to my charge on
24 the law from the State?

25 **MS. BENTLEY:** No.

1 **THE COURT:** Any from the defense?

2 **MS. WICKER:** No, ma'am.

3 **THE COURT:** All right. If you all will,
4 make sure that all the exhibits are together and
5 that none are going back that were not entered.
6 I've got the two indictments, and I've also got
7 my instructions on the law. We'll send all that
8 back to them and let them begin deliberating
9 after they got the lunch together.

10 As for us, we'll be in recess pending a
11 verdict.

12 **(WHEREUPON, a recess is taken.)**

13 **(WHEREUPON, deliberation of the jury begins at**
14 approximately 12:22 p.m.)

15 **(WHEREUPON, the Court resumes at approximately**
16 1:47 p.m.)

17 **(WHEREUPON, the jury enters at approximately**
18 1:47 p.m.)

19 **THE COURT:** Ladies and Gentlemen, I want
20 to apologize for the sound system. What we did
21 was we turned it back on so you can hear the
22 testimony a little bit better, but I'm afraid
23 it's picking up all kinds of feedback. So if,
24 at any time, you feel like that's interfering
25 too much, let me know. Okay? All right.

1 (WHEREUPON, the entire testimony of Minor 1
2 Minor 1 is played.)

3 THE COURT: All right.

4 (WHEREUPON, the jury exits at approximately
5 2:02 p.m.)

6 THE COURT: All right. We will be in
7 recess until we get a verdict.

8 (WHEREUPON, deliberation of the jury resumes.)

9 (WHEREUPON, a recess is taken.)

10 (WHEREUPON, the Court resumes at approximately
11 3:04 p.m.)

12 THE COURT: This states -- it says we have
13 reached a verdict on one count, but cannot on
14 the second from . So I guess I need
15 to bring them back in here and speak to them --
16 give them an Allen charge, at this point, and we
17 will go from there. All right. Anything else?

18 MS. BENTLEY: No.

19 THE BAILIFF: You ready?

20 THE COURT: Yes, please.

21 (WHEREUPON, the jury enters at approximately
22 3:05 p.m.)

23 THE COURT: It is my understanding that
24 you all have reached a verdict on one charge,
25 but believe you cannot reach a verdict on the

1 second charge; is that correct?

2 **THE JUROR:** Yes, ma'am.

3 **THE COURT:** All right. Mr. Foreman and
4 members of the jury, I'm now going to give you
5 an additional charge on the law. It has to do
6 with trying to reach a verdict. I'm hoping that
7 you will be able to make another effort to reach
8 a verdict in this case.

9 As I've already told you, you are the sole
10 judges of the facts and the evidence in this
11 case. As the judge, I can't, uh, even indicate
12 to you in any way that I have an opinion about
13 the case, and I don't. But it is my duty to
14 have told you the law as I've done and it's now
15 my duty to give you this charge about hoping
16 that you can reach a verdict.

17 When a matter is in dispute, it is not easy
18 or even two people to agree sometimes, much less
19 12 of you to agree. It becomes very, very
20 difficult, I know, when you have to have 12 to
21 agree. It's important that in this case, that
22 it be ended without a single one of you doing
23 anything that is going to be on your conscience.
24 In other words, I don't want you to do anything
25 that would violate your conscience. No juror is

1 expected to give up an opinion based on your
2 reasoning. I don't want you to think I'm asking
3 you to do that.

4 You're not often tried upon -- called to
5 try cases, and I know it's very unusual for you
6 to be here and for this to be a new experience
7 for you. I will tell you, as many cases as I
8 have seen, it's very unusual for a jury to be
9 able to go out and immediately agree and come
10 back with a verdict right away. That is very
11 unusual.

12 But, it means that, uh, -- but it does mean
13 that I need to tell you that sometimes when a
14 jury disagrees like this and they do not believe
15 they can reach a verdict, I'm going to ask you
16 to try again because there's no, uh, -- there's
17 no reason for me to think that any jury that
18 would hear this case again -- and that's what
19 would have to happen. They would have to hear
20 all of the testimony and the evidence in the
21 particular charge that you can't reach a verdict
22 on. They would have to hear all the evidence
23 and testimony again.

24 I don't think there's any jury out there
25 that would have listened more intently than you

1 have, because you definitely have; any jury
2 that's more intelligent than you all are or who
3 has taken the case for both sides as seriously
4 as you have taken it or anymore seriously than
5 you have taken it. You do need to know that
6 that's what would happen. This charge would go
7 back and it would be tried by another jury.

8 I'm going to ask you to return. I'm going
9 to ask you to consider your positions very
10 carefully. Think about if you see any give-and-
11 take in anyone else's position. If you would,
12 try and at least give it one more effort to
13 attempt to resolve this matter.

14 I want to tell you that it's important that
15 this case does come to an end. But I want to
16 stress to you, I don't anyone to do anything
17 that would violate his or her conscience. So
18 even though I'm asking you to reexamine your
19 position, reexamine the position of your fellow
20 jurors and think about it and try to listen as
21 open-mindedly as you could to one another, I do
22 not want you to do anything that would harm your
23 conscience. But I am going to ask you to go
24 back and give it one more try knowing that this
25 case would have to just simply be tried by

1 another jury. All right. Thank you.

2 (WHEREUPON, the jury exits at approximately
3 3:10 p.m.)

4 THE COURT: Y'all give me just one second.
5 Okay. I will just tell you I was unable to get
6 my hands on my Allen charge for some reason.
7 And, at that moment, I had another Allen charge.
8 And I got into the Allen charge and didn't like
9 -- didn't like where it was going to go. So I
10 charged that one from the top of my head. I was
11 just reading my -- I did finally find my correct
12 Allen charge. I said it inartfully, but I think
13 I hit all of the points. But if there's any
14 objection to it from the State or the defense?

15 MS. BENTLEY: No, ma'am.

16 MS. WICKER: No, ma'am.

17 THE COURT: All right. Thank you. Thank
18 you for bearing with me through that. All
19 right. We'll be in recess pending a verdict.

20 (WHEREUPON, deliberation of the jury continues
21 from approximately 3:10 p.m. to 4:00 p.m.)

22 THE COURT: This says no change, with an
23 exclamation mark. So they are -- I guess that
24 means they are really serious this time. But I
25 don't know what else to do other than --

1 **MS. BENTLEY:** Can we receive the one
2 verdict?

3 **THE COURT:** Certainly.

4 **MS. BENTLEY:** Okay.

5 **THE COURT:** Certainly. So I don't know
6 what else to do except declare a mistrial on
7 that one charge, but on the other charge, we'll
8 bring the jury back in and get their verdict.
9 All right.

10 I'll say it again. I say this before I
11 take any verdict. I don't know what the outcome
12 of this will be. I don't have any idea. But
13 any outburst from anybody on any side, I will
14 exercise my contempt powers and somebody will
15 spend the night in jail.

16 **(WHEREUPON, the jury enters at approximately**
17 4:01 p.m.)

18 **THE COURT:** Ladies and Gentlemen, it is my
19 understanding that, despite your best efforts,
20 you have been unable to come to a verdict on one
21 charge; is that correct, Mr. Foreperson?

22 **THE JUROR:** That is correct.

23 **THE COURT:** Okay. I'm going to declare a
24 mistrial on that particular charge. But you've
25 reached a verdict on the other; is that correct

1 as well?

2 **THE JUROR:** Yes, ma'am.

3 **THE COURT:** Will you hand the indictment
4 to the bailiff?

5 **THE JUROR:** Which one?

6 **THE COURT:** Well, both. Sorry.

7 **(WHEREUPON, the verdict form is passed to the**
8 **Court.)**

9 **THE COURT:** All right. The verdict form
10 appears to be in order.

11 **THE CLERK:** Your Honor, in 2013-GS-23-
12 7701, the State versus Tommy Lee Wiseman, they
13 have found guilty.

14 **THE COURT:** All right. All right. And as
15 I have said, I declared a mistrial the other.

16 Any motions from either side before we --
17 before I dismiss the jury?

18 **MS. BENTLEY:** None from the State.

19 **THE COURT:** All right.

20 **MS. WICKER:** Nothing from the defense.

21 **THE COURT:** Well, I speak for both
22 attorneys in this case, I know, thank you so
23 much for your service. I don't think that we
24 could have had a more dedicated jury. I
25 appreciate your effort so much. I want to speak

1 to you be you leave. As you probably know, this
2 will complete your jury service this week in
3 Greenville county, but thank y'all so much.
4 I'll be right on back there if y'all want to go
5 back and get your cell phone and things.

6 (WHEREUPON, the jury exits at approximately
7 4:04 p.m.)

8 THE COURT: All right. Are y'all prepared
9 to move into sentencing?

10 MS. BENTLEY: The State is prepared.

11 THE COURT: All right. And the defense?
12 All right. I will -- let me go back there and
13 let them go and then I will be right back in for
14 that. All right.

15 (WHEREUPON, a short recess taken.)

16 THE COURT: You've got the sentencing
17 sheet ---

18 MS. BENTLEY: I do.

19 THE COURT: --- ready? All right. And
20 just for the record, I don't think I was really
21 -- well, just for the record, I will say 2013-
22 GS-23-7701 is the charge on which I'm passing
23 sentence and the jury has found him guilty. If
24 it means anything to either side, I think the
25 jury really took it seriously and they really

1 struggled with it so. But, uh, we didn't talk
2 about the case very much, but they did seem
3 resolute. All right. Y'all ready?

4 Of course, I don't believe I need to hear
5 anymore about the facts that unless there is
6 anything else the State would like to --

7 **MS. BENTLEY:** No, Your Honor. The State
8 does have a copy of the certified conviction.
9 Mr. Wiseman does have a prior Lewd Act Upon a
10 Child in year 2000. The State would like that
11 taken into account for sentencing. The family,
12 I think they testified that they do want maximum
13 incarceration for this case.

14 **THE COURT:** And any other prior record
15 other than that?

16 **MS. BENTLEY:** No, Your Honor.

17 **THE COURT:** All right. Thank you.

18 Yes, ma'am?

19 **MS. WICKER:** Thank you, Your Honor. May it
20 please the Court. We thought we had some good
21 issues, Your Honor. We understand the jury has
22 spoken. We just ask that you be as lenient as
23 possible. I think we discussed earlier that he
24 does have some mental health issues. He's well
25 competent, but he does struggle.

1 **THE COURT:** All right. And this is
2 classified as a violent and serious offense?

3 **MS. BENTLEY:** It is, Your Honor.

4 **THE COURT:** All right. Mr. Wiseman,
5 anything you would like to say?

6 **MR. WISEMAN:** No, ma'am.

7 **THE COURT:** Okay.

8 **MR. WISEMAN:** The jury done said
9 everything.

10 **THE COURT:** Okay. Alrighty. Well, -- and
11 just for the record, I thought both sides, in
12 this case, did an outstanding job.

13 Ms. Wicker, I know your hands were tied on
14 many things, largely because of that prior
15 conviction that was out there. But I thought
16 you did an outstanding job with what you had to
17 work with.

18 **MS. WICKER:** Thank you, Your Honor.

19 **THE COURT:** Did he spend any time in jail?

20 **MS. BENTLEY:** One day, Your Honor.

21 **THE COURT:** The sentence of the Court is
22 11 years, credit for the day that you served.
23 Good luck to you.

24 **MS. BENTLEY:** Thank you, Your Honor.

25 **THE COURT:** Good luck to you all. Thank

1 you.

2 **(WHEREUPON, the proceedings conclude at**
3 approximately 4:13 p.m.)

4 **(WHEREUPON, Court's Exhibits 2 through 7 are**
5 marked for identification purposes.)

6

7

END OF TRANSCRIPT

8

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville, South Carolina, on this 19th day of May, 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Teresa B. Johnson

Official Court Reporter

WITNESSES

Dale A Arterburn

Greer Police Department

6/20/2013

DA 9/22/15

ARREST WARRANT NUMBER
2013A2320500743

ACTION OF GRAND JURY

TRUE BILL

Wayne Chapman

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury

Date: 2/4/2016

DOCKET NO. 2013-GS-23-007701

AMENDED INDICTMENT

LAB

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September TERM 2015

THE STATE

vs.

TOMMY LEE WISEMAN

Amended Indictment for

3661

**CRIMINAL SEXUAL CONDUCT WITH A MINOR
3RD DEGREE**

VIOLATION § 16-03-0655(C)

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

AMENDED INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR 3RD DEGREE

SEP 22 2015

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That TOMMY LEE WISEMAN did in Greenville County, between 1st day of March, 2012 and 31st day of December, 2012, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of ^{Minor 1} a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-03-0655(C) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

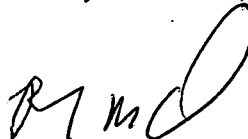

SOLICITOR

BAR # 77787

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 22nd day of February, 2017.

RECEIVED

FEB 22 2017

SC Court of Appeals