

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Pickens County

Honorable Edward W. Miller, Circuit Court Judge

JOSEPH PETTIGREW SANDERS, IV.,

RECEIVED
MAR 20 2017
S.C. SUPREME COURT
PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-001795

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

-VS-)

JOSEPH P. SANDERS, IV AND)
ANITA GEARHART,)

DEFENDANTS.)
_____)

2010-GS-39-1115 AND 1116
2009-GS-39-355

JUNE 21, 2010

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

DOUG RICHARDSON, ESQUIRE
ATTORNEY FOR THE STATE

JOHN DEJONG, ESQUIRE
SCOTT ROBINSON, ESQUIRE
ATTORNEYS FOR THE DEFENDANTS

DANETTE P. HANKS
CIRCUIT COURT REPORTER

FILED
JUN 21 2010
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

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VOIR DIRE

Juror #	Name	Race	Sex	<u>Strikes</u>			Accept
				Court	Plaintiff	Def.	
119	Turner, Toni J	W	F				x
58	Hutton, Susan C	W	F			x	
51	Griffin, Charles H	W	M			x	
21	Clark, Catherine H	W	F				x
22	Clark, Chadwick A L	W	M				x
79	Messenger, Jonathan P	W	M			x	
57	Hunter, William T	W	M				x
3	Amoroso, Frank	W	M				x
84	Moon, Regina F	W	F			x	
46	Gillespie, Starr H	W	F				x
83	Miller, Richard S	W	M		x		
88	Nichols, Christopher E	W	M			x	
28	Crawford, Rose T	W	F				x
106	Rogers, Brandy E	W	F		x		
86	Nabors, Dina S	W	F			x	
91	Parmer, Brittany J	W	F		x		
13	Blake, Joshua L	B	M		x		
102	Reed, Carl A Jr	W	M		x		
2	Allison, Dorothy A	W	F			x	
11	Bielmyer, Janice N	W	F			x	
114	Stewart, Shana R	W	F			x	
113	Spearman, Mary A	W	F			x	
8	Barton, Joshua A	W	M				x
16	Campbell, Stacie D	B	F			x	
100	Raymond, Mary A	W	F			x	

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52	Grover, Varun	I	M		x		
19	Cartee, Stephanie D	W	F			x	
112	Sparks, Elaine J	W	F				x
49	Green, Stacey B	B	M		x		
39	Eron, Amanda R	W	F			x	
32	Dalton, Craig A	W	M		x		
	Tedder, Mary E	W	F			x	
50	Greene, Bethany A	W	F			x	
44	Freeman, Corey H	W	M	x (S)			
124	Watson, Teresa C	W	F				x
92	Parris, Shawn J	W	M			x	
24	Connor, Michael M	W	M				x
107	Schmidt, Karen E	W	F			x	
95	Perry, Melissa D	W	F				x
17	Cannizzaro, Debbi A	W	F				x
20	Clardy, Doris E	W	F		x		
129	Woolbright, Nona L	W	F			x	
14	Bradish, Carolyn R	W	F				x

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

3 THE COURT: All right. Mr. Robinson.

4 MR. ROBINSON: May it please the Court.

5 Judge, this is a Motion in this case to sever. Your
6 Honor, I represent Ms. Anita Gearhart, who is seated to
7 my right. She, in this case, is the mother of the
8 alleged victim in this matter, the co-defendant, along
9 with Mr. Sanders.

10 Your Honor, the Motion is based on this. The
11 State is going to -- I am anticipating that they're
12 going to be saying this is going to be the same
13 witnesses, the same evidence and so forth. We disagree
14 with that and this is why.

15 First of all, the theories in the case are
16 different in the fact that in some of the statements
17 that were made by the alleged victim in this case, she
18 said the mother was never -- knew about anything, when
19 she gave a victim's statement. It was an omission as
20 far as that goes, that she did not know about. And
21 another allegation is that she was told something and
22 didn't act on it properly. But Your Honor, we believe
23 that there are different theories in this case, also
24 different defenses are going to be presented by the
25 different defendants in this matter. And, frankly,

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1 Your Honor, we believe that being tried together, as
2 co-defendants in this matter, will prejudice Ms.
3 Gearhart in this matter. Because if the jury -- I'm
4 not saying the jury -- I'm not anticipating that this
5 is going to happen, but if the jury believes that the
6 Defendant Sanders committed these acts in this matter,
7 they're going to automatically believe that the mother
8 did not do what she was supposed to. That's where the
9 unlawful conduct towards a child came in, an omission
10 by her. They're not saying a commission of a crime,
11 they're saying it was an omission because she didn't do
12 enough, or did not notify, or did not do something
13 enough. But some of the statements, or one of the
14 statements from the child, the written statement states
15 that she didn't tell her mother this. But there's
16 other parts in different parts -- different sections of
17 this where she allegedly told the mother and the mother
18 didn't do something as a result of it, didn't believe
19 it.

20 But, Your Honor, we believe that the defenses are
21 different. The theories of the case are different.
22 I'm sure they'd argue the same witnesses and same basic
23 case, but we believe it's prejudicial. It will be a
24 prejudicial matter for Ms. Gearhart to be tried with
25 Mr. Sanders in this case, because she's the mother of

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1 the alleged victim and he's allegedly the perpetrator.

2 THE COURT: All right. Thank you, Mr.

3 Robinson. Mr. Richardson.

4 MR. RICHARDSON: Well, Your Honor, it does

5 all stem out of the action, occurrences. The

6 allegations against the mother is a Unlawful Conduct

7 Towards the Child. And that is through an omission.

8 Your Honor, the events as they took place, all the

9 facts as they took place involved the mother, along

10 with at the same time the facts involving the Defendant

11 Sanders were taking place. It happened at the same

12 locations. Her omission happened at the same location

13 as the rape. She -- the witnesses that would be called

14 in my case are virtually going to be the same ones that

15 would be called in any case that I would present

16 against her.

17 Mr. Robinson refers to different statements and

18 things of that nature. That simply goes to his cross-

19 examination and weight as to the evidence. But as far

20 as this Severance Motion is concerned, we're dealing

21 with the same acts and the same occurrence during the

22 same time period in the same locations.

23 THE COURT: Mr. Robinson, you state that the

24 defenses would be different. How would they be

25 antagonistic one to another?

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1 MR. ROBINSON: I think that -- I think what I
2 would submit, Your Honor, is that she's stating that
3 she, one, did not know about this, and two, was never
4 told by the child, the alleged victim in this case,
5 about any incident. In fact, in one of -- in her
6 statement in this case she states that -- she states
7 about the fact that she never notified her mother,
8 never told her mother anything about it. But we
9 believe that the defenses are different in the sense
10 that what they're alleging in this matter is that
11 they're trying to say that he did commit these acts and
12 so forth.

13 THE COURT: That he did.

14 MR. ROBINSON: That he did perpetrate these
15 acts in this matter.

16 THE COURT: They, the State.

17 MR. ROBINSON: The State, correct. And as
18 far as we're concerned, I mean, there's statements and
19 so forth in this matter that -- in one of the
20 statements she does, as I said before, she states that
21 her mother knew nothing about it.

22 THE COURT: Okay.

23 MR. ROBINSON: It's a different -- it's kind
24 of a different defense.

25 THE COURT: Well, I understand that defenses

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1 can be different, but I'm having a hard time
2 understanding why a severance would be needed to -- if
3 the defense that you have for our client is
4 antagonistic toward the defense that Mr. DeJong would
5 have for his client.

6 MR. ROBINSON: I think they're antagonistic
7 in the sense that one is an act of commission and the
8 other is an act of omission. That's kind of -- and on
9 top of that, Your Honor, I think if we're -- part of
10 the severance in terms of not granting a severance, is
11 the judicial economy in this case, of course.

12 But in this matter, we believe that not only are
13 the defenses different in terms of commission versus
14 omission, but also as well, there's a large amount of
15 prejudice when the person who is being charged with
16 omission is tried at the same time as the person that
17 committed or allegedly perpetrated these acts. That's
18 where it comes in. Because she is going to be
19 extremely prejudiced if the jury doesn't believe him or
20 doesn't believe his defense in this matter. And it's
21 going to make it virtually -- it's going to make it
22 very difficult, I believe, to believe anything she says
23 if they don't believe what he says. And we believe
24 she'd be very prejudiced in this matter as a result of
25 that.

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1 THE COURT: Well, obviously, Mr. Robinson, at
2 this stage I haven't heard any testimony and it makes
3 it difficult to make a ruling. I certainly don't want
4 to jeopardize your client or the co-defendant from that
5 standpoint, but I -- from what I've heard, I fail to
6 see that there will be a serious risk that in any way a
7 joint trial to compromise the specific trial right of
8 either of the co-defendants.

9 And I believe the jury would certainly not be
10 prevented from making a reliable judgment over the
11 guilt of each one of them. I'll certainly try to give
12 them proper instruction on that, as I normally try to
13 do. That they're separate and distinct defenses;
14 they're separate and distinct defendants, and they
15 should not paint with a broad brush. They'll certainly
16 have an opportunity to hear the evidence as to each of
17 the defendants. I respectfully deny your Motion for
18 the severance.

19 MR. ROBINSON: Thank you, Your honor.

20 THE COURT: All right. Anything else we need
21 to take care of? We need to talk about our jury
22 strikes. But is there anything short of that that we
23 need to talk about from anyone? Has the State -- have
24 y'all talked about it yourself? Is there any
25 agreement? Otherwise, I'll make my ruling as to --

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1 I've read the Statute again. Is there any question but
2 that the State gets ten strikes?

3 MR. DEJONG: Your Honor, we had a brief bench
4 conference prior to you qualifying the jury when this
5 issue was brought up. We're referring, I think, to
6 Code Section 14-7-1110, which speaks of pre-emptory
7 challenges in criminal cases. That Statute is not the
8 most artfully drawn Statute from my perspective, as I
9 read it. The first part of that particular Statute
10 designates those offense that a defendant is charge
11 with, where the defense gets ten charges -- excuse me,
12 ten pre-emptory challenges. It then goes into the area
13 of where there are more than one defendant tried at a
14 time. And to me, that is really not quite clear.

15 However, coming down in there about two-thirds of
16 the way down, Your Honor, it says, in no case where
17 there are more than one defendant jointly tried, are
18 more than twenty pre-emptory challenges allowed to the
19 defendants. And then it discusses misdemeanors. And I
20 think that may even cloudy up the water when they start
21 talking about misdemeanors there.

22 Because that leaves open to the question,
23 obviously those enumerated offenses listed in the first
24 part of that Code Section are all felonies. And then
25 they say, no more than twenty, where there's more than

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1 one defendant jointly tried. Then they talk about
2 misdemeanors where there's no more than ten for the
3 defense when more than one is jointly tried. And then
4 that last sentence in there is the one that is
5 troubling to me. In felonies, when there is more than
6 one defendant jointly tried, the State has ten
7 challenges.

8 That leads me to believe, Your Honor, when they
9 enumerate and set forth that in felony cases the State
10 has ten charges -- ten pre-emptory challenges, excuse
11 me, that if the defendants are tried for either the
12 enumerated offenses or felonies, that the defense is
13 entitled to twenty pre-emptory challenges. To do
14 otherwise would totally water down where we have stood
15 historically on pre-emptory challenges, to give the
16 State ten in felonies.

17 And, if under a normal circumstance, let's take it
18 out of the area of the enumerated offenses that gives
19 the defense ten. Let's just talk about felonies. If
20 we were talking about felonies and we were trying two
21 defendants, just simply charged with felonies, if that
22 then goes to ten, that puts the State on the very same
23 footing as the defense. Now, historically, it has not
24 been that way in this state as long as I remember for
25 the few years I've been practicing law. That the

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1 defense had five under normal situations and the State
2 had five. But if you're trying jointly, you're
3 effectively giving the State more strikes than you're
4 giving the defense. Not numerically, but as a
5 philosophical theoretical matter, you're giving the
6 State more strikes than you are giving the defense. So
7 upon my reading of the Statute, Your Honor, I think we
8 are entitled to twenty challenges. I don't think
9 there's any question that the State is entitled to ten,
10 Your Honor.

11 THE COURT: Mr. Richardson, do you agree with
12 that analysis?

13 MR. RICHARDSON: Your Honor, I agree with the
14 Court's analysis in that Mr. Robinson's charges did not
15 come under the enumerated charges that were established
16 in that Statute. I don't have it right here in front
17 of me. And therefore, that the correct number would be
18 fifteen.

19 THE COURT: But the -- well, that was my
20 analysis in the hallway, but it doesn't designate, it
21 just says felonies. This is a felony that Ms. Gearhart
22 is being tried for.

23 MR. RICHARDSON: Yes, Your Honor, I don't
24 have the Statute in front of me.

25 MR. DEJONG: I will be happy to loan you

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1 mine, Mr. Richardson.

2 MR. RICHARDSON: A benevolent Public
3 Defender.

4 The way I read it, more than one defendant,
5 jointly tried, the State has ten. I think Mr. DeJong
6 has conceded that. The top portion of that
7 establishes, and this would be pertaining to Mr.
8 Robinson, any person who's indicted for any crime or
9 offense other than those enumerated above has a right
10 in those cases -- and is entitled to pre-emptory
11 challenges, not exceeding five. It's somewhat
12 confusing the way it's written. It states, when more
13 than one defendant is jointly tried, there are no more
14 than twenty. They're saying there can be no more than
15 twenty. It doesn't say that it has to be twenty.

16 THE COURT: Yeah. I think an argument could
17 be made that would be multiple, more than two
18 defendants, when you had five defendants all tried,
19 that that would be the maximum that everybody would
20 have.

21 I believe, based on the wording of the Statute,
22 Mr. Richardson, I'd rather err on the side of caution
23 toward the defendant. I'm going to allow ten each for
24 the defendants. How do y'all plan to use your strikes?
25 Are each of you going to strike or one person going to

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1 be the spokesman for both?

2 MR. ROBINSON: Your Honor, I'm going to defer
3 to Mr. DeJong.

4 THE COURT: So you'll be doing all of the
5 strikes for both -- Ms. Gearhart, you're okay with
6 that?

7 MR. DEJONG: The only caveat, Your Honor, and
8 it might slow down the selection just a little bit,
9 because I'm going to have to ---

10 THE COURT: Well, we're going to take
11 whatever time we need.

12 MR. DEJONG: Thank you, Your Honor.

13 THE COURT: So the Defense is going to have
14 twenty strikes. The State will have ten strikes?

15 MR. DEJONG: That's my understanding.

16 THE COURT: Let's go to the next step in this
17 process now and talk about alternates. How many
18 alternates do you feel would be necessary in this
19 trial? How long do you anticipate it lasting?

20 MR. RICHARDSON: It appears it's going to
21 last ---

22 THE COURT: How many witnesses do you have?

23 MR. RICHARDSON: I have ten, of which I may
24 not call all of them. They've given me a witness list
25 with numerous witnesses on it. It appears -- and Mr.

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1 DeJong, you correct me if I'm wrong -- it will take
2 approximately four days.

3 THE COURT: Four days, does that sound about
4 right, Mr. DeJong?

5 MR. RICHARDSON: I'm just anticipating any
6 defense.

7 MR. DEJONG: Probably counting today as a
8 day, I would say we're pretty close, Your Honor.

9 THE COURT: All right. Well, what we'll do
10 is shoot for getting two alternates, if we have enough
11 jurors. I'm going to probably have the whole panel
12 come up here. I think we've got sixty-two, maybe,
13 left. And we'll -- how many strikes did you anticipate
14 on the alternate?

15 MR. DEJONG: Two and one. Two for the
16 Defense, one on the State, for each alternate, Your
17 Honor.

18 THE COURT: So each alternate will be two and
19 one?

20 MR. RICHARDSON: I agree.

21 THE COURT: Everybody agree with that?

22 MR. RICHARDSON: I agree. The State agrees.

23 MR. DEJONG: Your Honor, I think we
24 clarified, we're just doing those Motions now that
25 would affect our striking the jury, obviously.

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1 THE COURT: Yeah. And then I understand
2 there's an evidentiary Motion pending. What I propose
3 we do is get our jury selected, send them for a long
4 lunch. We'll take a -- have whatever -- do you
5 anticipate witnesses being called in the In-Camera
6 Hearing for the 404. Is that the issue?

7 MR. RICHARDSON: That's correct, Your Honor.
8 I can make my argument without a witness, but I'd have
9 to leave that up to the Court's discretion, Your Honor.

10 THE COURT: Well, when we get our jury
11 struck, it's going to be nearly lunch time then anyhow.
12 Maybe have them come back at two -- we'll see when they
13 break, two-thirty or three o'clock and we'll be ready
14 to proceed then. Do you have any other Motions, Mr.
15 Robinson?

16 MR. ROBINSON: Your Honor, the only thing --
17 and I spoke to Mr. DeJong about this. We do have some
18 specific Voir Dire though that we would like to have
19 presented to the jury?

20 THE COURT: Yeah. I haven't gotten a witness
21 list or a Voir Dire, so we'll need to ---

22 MR. DEJONG: I need about three minutes, Your
23 Honor, just to separate mine here.

24 THE COURT: All right.

25 MR. ROBINSON: And, Your Honor, actually the

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1 -- I haven't shared this with Mr. Richardson, but --
2 and it's not the typical Voir Dire that you're going to
3 see, but this is a very unusual case because you do
4 have a child making these statements, and this is the
5 -- if I can pass this up to the Court. It's probably
6 not artfully worded but ...

7 MR. DEJONG: For the record, Your Honor, I've
8 already furnished -- on behalf of Mr. Sanders, I have
9 furnished Mr. Richardson a copy of the Defense witness
10 list; correct?

11 MR. RICHARDSON: Thank you, yes.

12 MR. DEJONG: May I approach, Your Honor?

13 THE COURT: Yes, sir.

14 MR. DEJONG: Ms. Hanks, would you like a copy
15 of my witness list?

16 COURT REPORTER: Yes, please. Thank you.

17 THE COURT: Are all of the -- are any
18 witnesses on either side you know they're unavailable.
19 Do I need to call all of the names out? I'll be glad
20 to. I just didn't know if there was someone you knew
21 for sure would not be available on either side?

22 MR. DEJONG: Your Honor, with regard to Mr.
23 Sanders, Dr. Marti Loring, I'm not sure about Dr. Marti
24 Loring because Mr. Richardson threw me a bit of a curve
25 ball this morning when he put Shauna Galloway-Williams

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1 or Shauna Galloway-Williams, whatever her name is, on
2 the State's witness list. I'll be candid, I do not
3 have Dr. Loring under subpoena as she is in Georgia.
4 It would take me some time to get her up here, but I am
5 going to ask you to publish her name anyway.

6 THE COURT: Okay.

7 MR. DEJONG: Dr. Barksdale, I think he is
8 either the last or the next to the last. He is not
9 present in the courtroom by agreement. He is under
10 subpoena. But, again, I can get him here. I'm not
11 sure if I'm answering Your Honor's question or not.

12 THE COURT: Okay. I just didn't know if you
13 knew for sure someone wasn't going to be here. That's
14 fine.

15 Any other witnesses, other than what I've
16 received. Mr. Robinson, do you have any other
17 additional witnesses other than what Mr. DeJong has
18 given me?

19 MR. ROBINSON: Your Honor, on our list,
20 we're not going to call Nicole Holder. She's not
21 available.

22 MR. DEJONG: Well, Your Honor, she's on my
23 witness list also, and I don't know at this point in
24 time whether I would call her or not.

25 THE COURT: Okay.

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1 MR. DEJONG: Again, it's very difficult to
2 say without hearing the State's case at this point in
3 time.

4 THE COURT: Yeah. I understand that. I'm
5 not asking you -- are there any more duplicates on the
6 two lists from the Defense.

7 MR. DEJONG: I really haven't looked at that
8 closely at Mr. Robinson's, Your Honor. Dianne Chappell
9 is a duplicate on both, Your Honor.

10 THE COURT: All right.

11 MR. DEJONG: And the same thing would be as
12 to her.

13 THE COURT: Okay. I just didn't want to read
14 the same names out.

15 MR. DEJONG: The only two that are duplicates
16 on the two list would be Nicole Holder and Diane
17 Chappell. That is seventeen and eighteen on Defendant
18 Sanders' witness list, and number six and -- five and
19 six on Defendant Gearhart's list, Your Honor.

20 THE COURT: Mr. DeJong, I think the Voir Dire
21 that you've submitted -- any objections to any of the
22 Voir Dire from anyone that have been submitted? I
23 think mostly I'll cover in my general. You let me know
24 if I haven't covered that. And the State didn't have
25 any specific Voir Dire?

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1 MR. RICHARDSON: No. I would address one of
2 Mr. Robinson's.

3 THE COURT: Yes, sir.

4 MR. RICHARDSON: His Voir Dire, I didn't
5 actually read it, but he told me, basically, he said,
6 questioning ---

7 THE COURT: Why would that be an appropriate
8 question to ask?

9 MR. ROBINSON: Your Honor, this is an unusual
10 case because we have a child witness. She was twelve
11 at the time. I believe she's fourteen now. Fourteen
12 now. You know, we have a lot of teachers on the panel
13 as I can see, but it's a question because a lot of
14 people come into a courtroom thinking that children
15 don't lie. That's true. That's what I believe.

16 And what I'm concerned about is the jury coming
17 into this courtroom and we're not knowing it that --
18 you go through all the questions that you're going to
19 ask regarding their background, relationship to law
20 enforcement, things of that nature, but I believe that
21 that question, what it does -- and I know I didn't
22 artfully prepare that, but what it does, it would let
23 the defense know that we have a juror that has this --
24 that believes that children don't lie. And if that's
25 the case then there's really no reason for them to put

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1 up a ---

2 THE COURT: Okay.

3 MR. ROBINSON: -- listen to the defense say
4 that it didn't happen. So that's my biggest concern
5 with it. And I know it's a weird situation.

6 THE COURT: Do you want to ask if any jurors
7 believe adults lie?

8 MR. DEJONG: I would join in that, but I
9 would phrase the Voir Dire question somewhat
10 differently. That would be, does any member -- would
11 any member of the jury panel be more prone to believe
12 the testimony of a child, simply because they are a
13 child?

14 THE COURT: I'll cover that with law
15 enforcement. I'll add the child back to law
16 enforcement.

17 MR. DEJONG: So if I understand, Your Honor,
18 you're going to basically say are they more prone to
19 believe they are -- to tell the truth because of law
20 enforcement and/or because they are a child?

21 THE COURT: Yes, sir.

22 MR. DEJONG: All right, sir. Very well.

23 MR. ROBINSON: I think that would cover it,
24 Your Honor. Thank you.

25 THE COURT: We've got a lot of jurors coming

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1 up here. I don't know which of the audience will be
2 allowed to stay, but we're going to probably need the
3 room because we're going to have pretty much the full
4 panel up here.

5 MR. DEJONG: May I have just a moment, Your
6 Honor?

7 THE COURT: Yeah.

8 (WHEREUPON, Court stood at recess for a short
9 break.)

10 THE COURT: Thank you very much, ladies and
11 gentlemen, for bearing with us. We're now ready to
12 select a jury for the trial in the first case that we
13 have. You've been qualified already to serve as
14 jurors. I need to now ask you some additional
15 questions about this case that we're about to begin.

16 This is a case where the State of South Carolina
17 has filed charges against two defendants. I have
18 indictments before me that have been presented.
19 Obviously, this is not any evidence of the case. It's
20 merely the papers by which the case comes to this Court
21 for disposition. Both of these individuals have plead
22 not guilty to these charges and that necessitates a
23 trial. Every person accused of a crime in South
24 Carolina is presumed innocent until the State of South
25 Carolina can prove that guilt beyond a reasonable

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1 doubt. Both of these defendants have entered pleas of
2 not guilty to the charges in the indictment, and that
3 places the burden on the State to prove that guilt
4 beyond a reasonable doubt.

5 We need to find twelve fair and impartial jurors
6 to hear the facts, determine just what the facts are
7 based upon the evidence that you hear from this
8 courtroom, the law that I give you, and that alone.

9 Charged in this case, the State has filed an
10 indictment against Mr. Joseph Pettigrew Sanders, IV,
11 two different charges. One says that he did here in
12 Pickens County between January the 1st and June the 1st
13 of 2008 commit a sexual battery on an individual named
14 -- with the initials MJH, who was fourteen years of age
15 or less, but who was at least eleven years of age, and
16 this is in violation of the law of South Carolina
17 involving criminal sexual conduct with a minor in the
18 second degree.

19 There's also a charge against Mr. Sanders between
20 those same dates of January and June 2008, alleges that
21 he willfully and lewdly committed or attempted to
22 commit a lewd and lascivious act upon the body of the -
23 - or the parts of that body of MJH, again a child under
24 the age of sixteen, with the intent of arousing,
25 appealing to, or gratifying the lust, the passion, or

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1 the sexual desire of himself or of that child.

2 Again, he's entered a plea of not guilty to each
3 of these charges.

4 We also have a charge against -- the State has
5 brought a charge against Ms. Anita Jordan Gearhart.
6 This charge is for the unlawful neglect of a child, and
7 it says that on or about the 15th of April of 2008,
8 while being the legal custodian or parent or guardian
9 of the child, MJH, placed that child in unreasonable
10 risk of harm affecting the child's physical, mental
11 health or safety and did cause to be done to that
12 child, endangered that child in some way or by act or
13 omission committed the unlawful neglect of a child.
14 She's also entered a plea of not guilty to this charge.
15 Again, placing the burden on the State of South
16 Carolina.

17 I need to ask you some additional questions about
18 this particular -- these cases, ladies and gentlemen.
19 First of all, is there any member of the jury panel who
20 has any independent knowledge about this particular
21 incident, either through news media, indirect comments
22 at the coffee shop, or hearing about it, or know
23 anything about it as far as being involved in any way
24 with the parties? If so, if you have any prior
25 knowledge, would you please stand?

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1 All right, sir. Your name, please?

2 JUROR: Tommy Edwards.

3 THE COURT: Is your knowledge limited to what
4 you've read in the newspaper?

5 JUROR: Yes, sir.

6 THE COURT: Or TV?

7 JUROR: Friends that have commented about it.

8 THE COURT: All right. And you've heard
9 friends talk about. All right. Let me ask you this
10 sir. You've heard some things about it from some of
11 your friends, you've read something in the newspaper
12 about it. The fact that you have received that
13 information from those sources, both the State of South
14 Carolina and these Defendants, they desire to have fair
15 jurors to hear this case and they deserve to have fair
16 jurors to hear this case. If you're selected, do you
17 believe that you'd be able to make a decision about the
18 facts of this case on what happens in this courtroom,
19 the evidence that you hear, the law that I give you,
20 would any of this information that you have from the
21 past, do you believe it would affect your ability to be
22 a fair juror?

23 JUROR: Probably.

24 THE COURT: I'll excuse you from the trial of
25 this case. If you'd just have a seat, please. Your

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1 name again, sir?

2 JUROR: Tommy Edwards.

3 THE COURT: Thank you very much, sir. You're
4 excused from the trial of this case.

5 Is there any member of the jury panel who has a --
6 related by blood or marriage to Mr. Joseph Pettigrew
7 Sanders, IV or Ms. Anita Jordan Gearhart? If you're
8 related by blood or marriage to either of those
9 individuals, would you please stand?

10 (No response.)

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

12 Is there any member of the jury panel who has a
13 close business, a social or a personal relationship
14 with either of these two individuals, Ms. Gearhart or
15 Mr. Sanders? If you have a close business or social
16 relationship with either one, would you please stand?

17 (No response.)

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

19 Ladies and Gentlemen, there are several witnesses
20 who may be called upon to testify in this case. Not
21 all of these individuals may be actually sworn in and
22 testify, but they're potential witnesses. I'm going to
23 read you the names of those witnesses. If you'll just
24 listen carefully as I call out these names, I'll then
25 have some follow-up questions to ask of you.

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1 Potential witnesses would include, Teresa Woods,
2 Fallon Barnes, Carol King, Taylor King, Bonnie Fulghum,
3 Lisa Merrill, Mary Beth Hill, Gail Sanders, Joseph P.
4 Sanders, III, Dean Wright, Taylor Finch, Terrell
5 Lankford, Jacquelyn Lankford, Brenda Sisson, Courtney
6 Sisson, Julie Mayer, Lindley Mayer, Deborah Rogers,
7 Charles Kelley, Dawn Smith Jordan, Cindy Bishop, Rhonda
8 Robertson, Diane Chappell, Nicole Holder, Dr. Marti
9 Loring, Dr. Collis Barksdale, Complainant, Michael
10 Hurt. From the Easley Police Department, David
11 Suddeth. From the Pickens County Sheriff's Office,
12 Rita Burgess, Will Bryant, Shauna Galloway-Williams,
13 Dr. Mary Fran Croswell. From the Department of Social
14 Services Laura Hammond, Amanda Davis, Greg Davis.

15 Is there any member of the jury panel related by
16 blood or marriage to any of these potential witnesses?
17 If so, would you please stand?

18 You're related by blood or marriage to one of
19 these?

20 JUROR: Well, I have a question about one of
21 them, a Diane Chappell. My sister is a Diane Chappell.

22 THE COURT: All right. Can either of you who
23 have that person down, we want to make sure that's a
24 different Diane Chappell. Does your sister work
25 somewhere?

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1 JUROR: She works for a lawyer.

2 THE COURT: She works for a lawyer. Either
3 of you ---

4 MR. DEJONG: The address would be ---
5 Chappelville Road, Norris.

6 THE COURT: Norris.

7 JUROR: No.

8 THE COURT: Okay. Thank you for sharing
9 that.

10 Is there any member of the jury panel who has a
11 close business, a social or a personal relationship
12 with any of these potential witnesses. If so, would
13 you please stand?

14 Yes, ma'am, your name, please?

15 JUROR: Beverly Watson.

16 THE COURT: Okay. And which witnesses --
17 witness or witnesses do you know?

18 JUROR: I know Jeff Rogers. I also have a
19 vague connection with the Sanders family.

20 THE COURT: All right. You know this witness
21 and you have a connection, you say, with the Sanders
22 family?

23 JUROR: In the past, yes.

24 THE COURT: In the past. Do you believe that
25 that association, and the fact that you know one of

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1 these witnesses, if that witness testifies and the
2 Sanders testify, do you believe that would interfere
3 with your ability to be a fair juror in this case?

4 JUROR: I'm not sure. I also have a vague
5 connection with the child.

6 THE COURT: Okay. Well, if you have any
7 hesitancy at all, I'll excuse you from the trial of
8 this case.

9 Again, your name, please, ma'am?

10 JUROR: Beverly Watson. I prefer to be
11 excused.

12 THE COURT: Well, if you'll just be seated.
13 Thank you. You may be seated at this time. You're
14 excused from this case.

15 Yes, ma'am, your name, please?

16 JUROR: Doris Clardy.

17 THE COURT: Okay. Which witness do you ---

18 JUROR: Charlie Kelly.

19 THE COURT: Charlie Kelly is a friend of
20 yours?

21 JUROR: Well, I taught the child that he was
22 raising.

23 THE COURT: Okay. The fact that you have
24 this connection with this witness, having taught the
25 child that he was raising, if he is called upon to

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1 testify, you hear his testimony and if you're picked as
2 a juror, do you believe that would interfere in any way
3 with your ability to be a fair juror? Could you be
4 fair to the State, be fair to the Defendants and make a
5 decision on what you hear from this courtroom, the law
6 and evidence, and that alone. If you believe you could
7 be fair, I need to know it. If you believe you have a
8 hesitancy that you couldn't be fair, I need to know
9 that as well.

10 JUROR: I hope I could be fair.

11 THE COURT: Well, do you believe you could?

12 JUROR: I've never done this before so it's a
13 little ---

14 THE COURT: Yes, ma'am. I understand that.

15 JUROR: I think so.

16 THE COURT: I mean, you can decide the case
17 on the law and the evidence?

18 JUROR: I think I can.

19 THE COURT: Is that what you're saying?

20 JUROR: I believe I could.

21 THE COURT: All right. Thank you, ma'am.
22 You may be seated.

23 Is there any member of the jury panel or a member
24 of your immediate family involved in law enforcement in
25 any way? If so, would you please stand?

1 All right. Yes, ma'am, your name, please?

2 JUROR: Mary Spearman. My nephew is a jailer
3 in Pickens.

4 THE COURT: All right. If you'd remain
5 standing. Yes, sir.

6 JUROR: My son, Christopher Griffin works
7 with the detention -- the Sheriff's Department at the
8 Detention Center.

9 THE COURT: All right. And your name,
10 please, ma'am? If you would remain standing. Excuse
11 me.

12 JUROR: Sally Jenkins. And my brother is a
13 deputy for Oconee County.

14 THE COURT: Those of you who have relatives
15 in law enforcement, if you're picked to be a juror,
16 would that interfere with your ability to be a fair
17 juror? Could you make a decision, if you're selected,
18 based on the evidence that you hear, the law that I
19 give you and that alone? If you believe in any way you
20 could not be a fair juror in this case, I'll ask if you
21 would remain standing. Otherwise, you may be seated.

22 You believe you could not be a fair juror?

23 JUROR: I'm not really sure.

24 THE COURT: Okay. Your name again, please,
25 ma'am?

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1 JUROR: Sally Jenkins. I would try, but to
2 be honest with you, I'm just not sure.

3 THE COURT: Based upon the very fact that you
4 have a relative as a law enforcement officer in Oconee
5 County, you don't believe you could be a fair juror?

6 JUROR: I would really try, but it's just
7 hard to say. I would try.

8 THE COURT: Well, in other words, I need to
9 know whether or not you believe that because of that
10 relationship, you just couldn't be fair, that that
11 would interfere with your ability to make a decision on
12 what evidence is presented here.

13 JUROR: I'd be fair.

14 THE COURT: You'd be fair. You could make a
15 decision on that and that alone, the evidence?

16 JUROR: I, I believe so.

17 THE COURT: All right. Thank you, ma'am.
18 You may be seated.

19 Is there any member of the jury panel expressed or
20 formed an opinion in any way about the facts in this
21 particular case? If so, would you please stand?

22 (No response.)

23 THE COURT: Is there any member of the jury
24 panel aware of any bias or prejudice that would
25 interfere with your ability to be a fair juror in this

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1 case? If so, would you please stand? Thank you.

2 Yes, ma'am, your name please?

3 JUROR: I'm Patricia Bearden. I guess I'm
4 prejudiced because I worked with the health department
5 for ten years.

6 THE COURT: Okay. I was going to ask that
7 question in just a little bit. While you're up, let me
8 ask the question. You're the only one standing on that
9 question.

10 Is there any member of the jury panel who now or
11 in the past has been employed with the Department of
12 Social Services or any agency that investigates or
13 counsels victims of alleged sexual abuse? If you've
14 been working or associated with any of those agencies
15 or the Department of Social Services, would you please
16 stand? All right. Again, ma'am, your name?

17 JUROR: I'm Patricia Bearden.

18 THE COURT: And you used to work for the
19 Department of ---

20 JUROR: The Health Department.

21 THE COURT: -- Health?

22 JUROR: Yeah.

23 THE COURT: And you believe that that
24 knowledge that you have, you would not be able to
25 utilize that in making a fair decision in this case?

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1 JUROR: No, no. Because I feel like you
2 should hang every one of them. I'm sorry.

3 THE COURT: Well, I'll excuse you from the
4 trial of this case. All right. You understand, ladies
5 and gentlemen, everyone is innocent until proven
6 guilty. Yes, ma'am, your name, please?

7 JUROR: Sherry Moore. And I'm a School
8 Counselor ---

9 THE COURT: Okay.

10 JUROR: -- in Oconee County, but my job is to
11 counsel ---

12 THE COURT: Okay. So you're aware of that
13 through your school responsibilities in Oconee County?

14 JUROR: Yes. As a counselor with children.

15 THE COURT: All right. The fact that you
16 counsel children and perhaps have some that approach
17 you about these allegations, would that interfere with
18 your ability to be a fair juror?

19 JUROR: It would.

20 THE COURT: It would?

21 JUROR: Yes.

22 THE COURT: I'll excuse you from the trial of
23 this case. Thank you, ma'am. You may be seated.

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

25 JUROR: Dena Nabors. I've worked in the

1 emergency room as a physician when the first people
2 that interact often with the patient after a sexual
3 assault. We collect the evidence and ---

4 THE COURT: All right. I understand that,
5 but the fact that you have that insight, would that --
6 I appreciate you sharing the information, but would
7 that cause you to not be a fair juror in the case?

8 JUROR: I don't think so.

9 THE COURT: You could be -- you could listen
10 to the evidence and make a decision on what you hear
11 from the witness stand, the evidence that's presented,
12 the law that I give you and that alone, you believe?

13 JUROR: Yes.

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

16 Is there any member of the jury panel who is a
17 contributing member of any organization whose primary
18 goal is the promotion of law enforcement or victims'
19 rights, such as MADD, SADD, CAVE, PARR, any
20 organization such as that? If you are a contributing
21 member of those organizations, would you please stand?

22 (No response.)

23 THE COURT: Thank you. There is no response.
24 You've heard from the list of witnesses that I've
25 called out that some might be law enforcement and some

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1 might be children. Is there any member of the panel
2 who, if you hear testimony from law enforcement or you
3 hear the testimony of a child, would be more prone to
4 believe the testimony of a law enforcement officer or a
5 child over any other testimony that's presented. If
6 you believe that you would believe that more than any
7 other, would you please stand? Thank you. There's no
8 response. Is there any member of the jury panel or a
9 member of your immediate family who has ever made a
10 complaint or allegations of sexual abuse? You've had
11 complaints made against or you've been the victim of a
12 offense of sexual molestation or abuse. If those apply
13 to any of you, would you please stand? Thank you.
14 There is no response. At this time, I'm going to ask
15 the attorneys, if you would, please, stand and
16 introduce yourselves to the jury. Mr. Richardson.

17 MR. RICHARDSON: Good morning, ladies and
18 gentlemen. My name is Doug Richardson. I work for the
19 Thirteenth Judicial Circuit Solicitor's Office.

20 THE COURT: Mr. DeJong.

21 MR. DEJONG: May it please the Court, Your
22 Honor. I'm John DeJong. I practice law here in
23 Pickens County. I have the pleasure of representing
24 Mr. Joey Sanders today. Also seated at the far end of
25 Counsel table over there is Mr. Johnny Duncan my

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1 investigator.

2 THE COURT: Thank you, sir. Mr. Robinson.

3 MR. ROBINSON: Good morning. My name is
4 Scott Robinson. I practice in Greenville. And I'll be
5 representing Ms. Anita Gearhart to my right. Thank
6 you.

7 THE COURT: Thank you, gentlemen. Is there
8 any member of the panel related by blood or marriage to
9 any of these attorneys? If so, would you please stand?

10 (No response.)

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

15 (No response.)

16 THE COURT: Is there any member of the jury
17 panel who's ever been involved in any litigation in
18 which any of these attorneys represented you or
19 represented the opposing side? If so, would you please
20 stand?

21 (No response.)

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

23 Ladies and gentlemen, I've told you and it bears
24 repeating, the parties, the State, all desire to have
25 fair jurors and they deserve fair and impartial jurors

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1 who will make a decision on the law and the evidence
2 and that alone. Is there any member of the panel,
3 who's not been previously excused by me, aware of any
4 reason whatsoever that in this case you could not be a
5 fair juror, listen to the evidence and return a fact --
6 a decision that would be factually based under the law
7 that would speak the truth. If for any reason you
8 believe you could not be a fair juror, would you please
9 stand. Yes, ma'am. Again, your name, please?

10 JUROR: Sally Jenkins.

11 THE COURT: Excuse me?

12 JUROR: Sally Jenkins.

13 THE COURT: I'll excuse you from the trial of
14 this case. You may be seated. Yes, ma'am, your name,
15 please?

16 JUROR: Jodi Kiser.

17 THE COURT: You don't believe you could be a
18 fair juror in this case?

19 JUROR: My sister was molested when she was
20 eight years old.

21 THE COURT: All right. Thank you very much.
22 I'll excuse you from the trial of this case. Your name
23 again, please?

24 JUROR: Jodi Kiser.

25 THE COURT: All right. Thank you, ma'am.

1 Any other questions from the state?

2 MR. RICHARDSON: Nothing further from the
3 State.

4 THE COURT: From the Defense?

5 MR. DEJONG: Nothing on behalf of Mr.
6 Sanders, Your Honor.

7 THE COURT: All right.

8 MR. ROBINSON: Nothing on behalf of Ms.
9 Gearhart.

10 THE COURT: All right. Thank you. All
11 right, Amy, if you'd get the process going. I
12 mentioned to you downstairs, ladies and gentlemen, this
13 computer now is going to randomly select names. Those
14 who have been excused will not be included in that
15 list. Once we get those random names listed, then
16 we'll have a list of eligible jurors that decide this
17 case. At that time, Mr. Welborn will call your name
18 when we get the list. What I'm going to ask you to do
19 -- I know it's kind of close in some of the benches
20 there, but I would ask you at this time that if you
21 would, when your name is called, if you would -- you
22 can let your fellow jurors out -- come forward. Come
23 to the front of the desk here and just face the back
24 door and each side will have an opportunity to decide
25 whether or not they want to select you or let you go

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1 downstairs to be selected in another trial. So if
2 you'll just bear with us just for a moment the
3 selection process will be completed here in just a
4 moment with the computer.

5 THE CLERK: Juror number 119, Toni J. Turner.
6 If you would, please come forward. What says the
7 State?

8 MR. RICHARDSON: Please present Ms. Turner.

9 THE CLERK: And the Defense?

10 MR. DEJONG: Please swear the juror.

11 THE CLERK: Ma'am, if you would, have a seat
12 in the jury box over there.

13 Juror number 58, Susan C. Hutton. What says the
14 State?

15 MR. RICHARDSON: Please present Ms. Hutton.

16 THE CLERK: And the Defense?

17 MR. DEJONG: Please excuse this juror from
18 the trial of this case.

19 THE CLERK: If you would return to your seat,
20 ma'am.

21 Juror number 51, Charles H. Griffin. What says
22 the State?

23 MR. RICHARDSON: Please present Mr. Griffin.

24 THE CLERK: And the Defense?

25 MR. DEJONG: Please excuse this juror from

1 the trial of this case.

2 THE CLERK: Return to your seat, sir.

3 Juror number 21, Catherine H. Clark. What says
4 the State?

5 MR. RICHARDSON: Please present Ms. Clark.

6 THE CLERK: And the Defense?

7 MR. DEJONG: Please swear the juror.

8 THE CLERK: Juror number 22, Chadwick Clark.
9 What says the State?

10 MR. RICHARDSON: Please present Mr. Clark.

11 THE CLERK: And the Defense?

12 MR. DEJONG: Please swear the juror.

13 THE CLERK: Juror number 79, Jonathan P.
14 Messenger. What says the State?

15 MR. RICHARDSON: Please present Mr.
16 Messenger.

17 THE CLERK: And the Defense?

18 MR. DEJONG: Please excuse this juror from
19 the trial of this case.

20 THE CLERK: Juror number 57, William T.
21 Hunter. What says the State?

22 MR. RICHARDSON: Please present Mr. Hunter.

23 THE CLERK: And the Defense?

24 MR. DEJONG: I'm sorry, Mr. Clerk, what
25 number?

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1 THE CLERK: 57.

2 MR. DEJONG: 57. Thank you so much, sir.

3 Please swear the juror.

4 THE CLERK: Juror number 3, Frank Amoroso.

5 What says the State?

6 MR. RICHARDSON: Please present Mr. Amoroso.

7 THE CLERK: And the Defense?

8 MR. DEJONG: Please swear the juror.

9 THE CLERK: Juror number 84, Regina F. Moon.

10 What says the State?

11 MR. RICHARDSON: Please present Ms. Moon.

12 THE CLERK: And the Defense?

13 MR. DEJONG: Please excuse this juror from

14 the trial of this case.

15 THE CLERK: Juror number 46, Starr H.

16 Gillespie. What says the State?

17 MR. RICHARDSON: Please present Ms.

18 Gillespie.

19 THE CLERK: And the defense?

20 MR. DEJONG: Please swear the juror.

21 THE CLERK: Juror number 83, Richard S.

22 Miller. What says the State?

23 MR. RICHARDSON: Please excuse Mr. Miller

24 from the trial of this case.

25 THE CLERK: Okay. Juror number 88,

1 Christopher E. Nichols. What says the State?

2 MR. RICHARDSON: Please present Mr. Nichols.

3 THE CLERK: And the Defense?

4 MR. DEJONG: Please excuse this juror from

5 the trial of this case.

6 THE CLERK: Juror number 28, Rose T.

7 Crawford. What says the State?

8 MR. RICHARDSON: Please present Ms. Crawford.

9 THE CLERK: And the Defense?

10 MR. DEJONG: I didn't hear you, to make my

11 decision.

12 THE CLERK: 28.

13 MR. DEJONG: Thank you, sir. I'm sorry. I

14 didn't hear you. Please swear the juror.

15 THE CLERK: Juror number 106, Brandy E.

16 Rogers. What says the State?

17 MR. RICHARDSON: Excuse Ms. Rogers from the

18 trail of this case.

19 THE CLERK: Okay. Juror number 86, Dina S.

20 Nabors. What says the State?

21 MR. RICHARDSON: Please present Ms. Nabors,

22 Dr. Nabors.

23 THE CLERK: And the Defense?

24 MR. DEJONG: Please excuse this juror from

25 the trial of this case.

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1 THE CLERK: Juror number 91, Brittany J.
2 Farmer. What says the State?
3 MR. RICHARDSON: Please excuse Ms. Farmer for
4 the trial of this case.
5 THE CLERK: Okay. Juror number 13, Joshua L.
6 Blake. What says the State?
7 MR. RICHARDSON: Please excuse Mr. Blake from
8 the trial of this case.
9 THE CLERK: Juror number 102, Carl A. Reed,
10 Jr. What says the State?
11 MR. RICHARDSON: Please excuse Mr. Reid from
12 the trial of this case.
13 THE CLERK: Okay. Juror number 2, Dorothy A.
14 Allison. What says the State?
15 MR. RICHARDSON: Please present Ms. Allison.
16 THE CLERK: And the Defense?
17 MR. DEJONG: Please excuse this juror from
18 the trial of this case.
19 THE CLERK: Juror number 11, Janice N.
20 Beilmyer. What says the State?
21 MR. RICHARDSON: Please present Ms. Beilmyer.
22 THE CLERK: And the Defense?
23 MR. DEJONG: Please excuse this juror from
24 the trial of this case.
25 THE CLERK: Juror number 114, Shana R.

1 Stewart. What says the State?

2 MR. RICHARDSON: Please present Ms. Stewart.

3 THE CLERK: And the Defense?

4 MR. DEJONG: Please excuse this juror from

5 the trial of this case.

6 THE CLERK: Juror number 113, Mary A.

7 Spearman. What says the State?

8 MR. RICHARDSON: Please present Ms. Spearman.

9 THE CLERK: And the Defense?

10 MR. DEJONG: Please excuse this juror from

11 the trial of this case.

12 THE CLERK: Juror number 8, Joshua A. Barton.

13 What says the State?

14 MR. RICHARDSON: Please present Mr. Barton.

15 THE CLERK: And the Defense?

16 MR. DEJONG: Please swear the juror.

17 THE CLERK: Juror number 16, Stacie D.

18 Campbell. What says the State?

19 MR. RICHARDSON: Please present Ms. Campbell.

20 THE CLERK: And the Defense?

21 MR. DEJONG: Please excuse this juror from

22 the trial of this case.

23 THE CLERK: Juror number 100, Mary A.

24 Raymond. What says the State?

25 MR. RICHARDSON: Please present Ms. Raymond.

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1 THE CLERK: And the Defense?

2 MR. DEJONG: Please excuse this juror from
3 the trial of this case.

4 THE CLERK: Juror number 52, Varun Grover.
5 What says the State?

6 MR. RICHARDSON: Please excuse Mr. Grover
7 from the trial of this case.

8 THE CLERK: Juror Number 19, Stephanie D.
9 Cartee.

10 MR. RICHARDSON: What number?

11 THE CLERK: 19.

12 MR. RICHARDSON: Thank you, sir.

13 What says the State?

14 MR. RICHARDSON: Please present Ms. Cartee.

15 THE CLERK: And the Defense?

16 MR. DEJONG: Please excuse this juror from
17 the trial of this case.

18 THE CLERK: Juror number 112, Elaine J.

19 Sparks. What says the State?

20 MR. RICHARDSON: Please present Ms. Sparks.

21 THE CLERK: And the Defense?

22 MR. DEJONG: Please swear the juror.

23 THE CLERK: Juror number 49, Stacy B. Green.

24 What says the State?

25 MR. RICHARDSON: Please excuse Mr. Green from

1 the trial of this case.

2 THE CLERK: Juror number 39, Amanda R. Eron.

3 What says the State?

4 MR. RICHARDSON: Please present Ms. Eron.

5 THE CLERK: And the Defense?

6 MR. DEJONG: Please excuse this juror from

7 the trial of this case.

8 THE CLERK: Juror number 32, Craig A. Dalton.

9 What says the State?

10 MR. RICHARDSON: Please excuse Mr. Dalton

11 from the trial of this case.

12 THE CLERK: Juror number -- I don't have a
13 number on this list. It's Mary E. Tedder. We had the
14 spelling wrong on her name and we had to change it.
15 And I think that knocked her number off as well. But
16 it's Tedder, T-E-D-D-E-R.

17 MR. RICHARDSON: T-E-D-D-E-R?

18 THE CLERK: Yes, sir.

19 MR. RICHARDSON: Thank you, sir.

20 THE CLERK: What says the State?

21 MR. RICHARDSON: Please present Ms. Tedder.

22 THE CLERK: And the Defense?

23 MR. DEJONG: T-E- ---

24 THE CLERK: No, that's the way it was
25 spelled.

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1 MR. DEJONG: Oh, okay. Okay. Okay. Thank
2 you. Please excuse this juror from the trial of this
3 case.

4 THE CLERK: Juror number 50, Bethany A.
5 Greene. What says the State?

6 MR. RICHARDSON: Please present Ms. Greene.

7 THE CLERK: And the Defense?

8 MR. DEJONG: Please excuse this juror from
9 the trial of this case.

10 THE CLERK: Juror number 44, Corey H.
11 Freeman. What says the State?

12 MR. RICHARDSON: Your Honor, may we approach?

13 THE COURT: Yes, sir.

14 (WHEREUPON, Mr. Richardson, Mr. DeJong and Mr.
15 Robinson approached the bar.)

16 THE COURT: All right. After a conference
17 with the attorneys at the bench, Mr. Freeman, you may
18 return to your seat. If you will strike the call.

19 THE CLERK: Juror number 124, Teresa C.
20 Watson. What says the State?

21 MR. RICHARDSON: Please present Ms. Watson.

22 THE CLERK: And the Defense?

23 MR. DEJONG: Please swear the juror.

24 THE CLERK: Juror number 92, Shawn J. Parris.
25 What says the State?

1 MR. RICHARDSON: Please present Mr. Paris.
2 THE CLERK: And the Defense?
3 MR. DEJONG: Please excuse this juror from
4 the trial of this case.
5 THE CLERK: Juror number 24, Michael M.
6 Connor. What says the State?
7 MR. RICHARDSON: Please present Mr. Connor.
8 MR. DEJONG: 124?
9 THE CLERK: Yes, sir. 24.
10 MR. DEJONG: 24. Thanks.
11 THE CLERK: The Defense?
12 MR. DEJONG: Please swear the juror.
13 THE CLERK: Juror number 107, Karen E.
14 Schmidt. What says the State?
15 MR. RICHARDSON: Please present Ms. Schmidt.
16 THE CLERK: And the Defense?
17 MR. DEJONG: Please excuse this juror from
18 the trial of this case.
19 THE CLERK: Juror number 95, Melissa D.
20 Perry. What says the State?
21 MR. RICHARDSON: Please present Ms. Perry.
22 THE CLERK: And the Defense?
23 MR. DEJONG: Please swear the juror.
24 THE CLERK: Two alternates, now.
25 MR. DEJONG: Is that our twelfth?

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1 THE CLERK: That's our twelve. We need two
2 alternates.

3 MR. DEJONG: All right. Thank you, sir.

4 THE CLERK: Juror number 17, Debbie A.
5 Cannizzaro. This will be for the first alternate.
6 What says the State?

7 MR. RICHARDSON: Please present Ms.
8 Cannizzaro.

9 THE CLERK: And the Defense?

10 MR. DEJONG: Please swear the juror.

11 THE CLERK: And for the second alternate,
12 Juror number 20, Doris E. Clardy. What says the State?

13 MR. RICHARDSON: Please excuse Ms. Clardy
14 from the trial of this case.

15 THE CLERK: Juror number 129, Nona L.
16 Woolbright. What says the State?

17 MR. RICHARDSON: Please present Ms.
18 Woolbright.

19 THE CLERK: And the Defense?

20 MR. DEJONG: Please excuse this juror from
21 the trail of this case.

22 THE CLERK: Juror number 14, Carolyn R.
23 Bradish. What says the State?

24 MR. RICHARDSON: Please present Ms. Brandish.

25 JUROR: Please be seated?

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1 MR. RICHARDSON: Present.

2 JUROR: Oh, I thought you said ---

3 THE CLERK: And the defense?

4 MR. DEJONG: Please swear the juror.

5 THE COURT: Any matters we need to take care
6 of from the attorney as far as the selection of the
7 jury in this case? Anything from the State.

8 MR. RICHARDSON: Nothing from the State, Your
9 Honor.

10 THE COURT: From the Defense?

11 MR. DEJONG: Nothing on behalf of Mr.
12 Sanders, Your Honor.

13 MR. ROBINSON: Nothing on behalf of Ms.
14 Gearhart.

15 THE COURT: Thank you very much. Ladies and
16 gentleman who were not selected for the trial of this
17 case, they're going to take a lunch break downstairs.
18 So if you'll be back in Courtroom Number One, down
19 where we assembled this morning at two o'clock, Judge
20 McCaulay will be ready for you to be selected through
21 that process for another trial. Thank you very much
22 for your patience with us. Once we get started we'll
23 have a little smoother operation, hopefully. You're
24 dismissed at this time. If you'll be back downstairs
25 at two o'clock, they'll be ready to start the next

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1 trial.

2 (WHEREUPON, the jury panel exited the open court.)

3 THE COURT: You've been patient with us,
4 ladies and gentlemen. You've seen the process by which
5 you were selected to serve as jurors on this case.
6 You've seen the unique process, the tedious process, if
7 you will, of these parties selecting you to serve, and
8 I'm honored to have an opportunity to serve with you.
9 You're going to be the fact finders. You're going to
10 be judges of the facts in this case. And I'll give you
11 a little more explanation about your role and my role
12 and somewhat about our schedule when you come back.
13 You've been sitting a long time. I know you're ready
14 for lunch as well as these other jurors. So I'm going
15 to let you go to lunch at this time.

16 We have some matters we need to take care of. We
17 need a lunch break to, the staff, the parties certainly
18 do. We've got some matters we need to take care of,
19 again, to try to facilitate the smooth movement of the
20 case once it does begin. I believe we'll be ready to
21 start back at three o'clock. I'm going to ask you to
22 be back. We'll work on these things either now or
23 later, get those resolved. And if you'll be back at
24 three o'clock in your jury room. The bailiffs will
25 certainly show you where you need to report back. I'll

1 give you a longer lunch hour, but if you'll be back
2 then, we'll be ready to start.

3 I'll remind you of this other times during the
4 course of the trial, I'm sure, but it's very important
5 that you maintain the purity of the process that we've
6 begun here. I asked you lots of questions to determine
7 your eligibility to serve, and now that you are
8 selected to serve, it's very important that you remain
9 immune from any influences about this case, from family
10 members. You're obviously going to have some family
11 members and loved ones who are going to want to know,
12 and business associates or they know you've had jury
13 service today, did you get picked, what's the case
14 about? Those kind of things. Obviously, you can let
15 your family and friends know that you're serving on a
16 jury, but it would be improper for you to be talking
17 about the case, anything related to this particular
18 case. You'll have an opportunity when this case is
19 concluded to share your experience with your friends
20 and associates and family. But while the case is going
21 on, that's not the time for you to do that, and you
22 should not do that. You should not let anyone contact
23 you. You might be out at lunch and decide to eat with
24 some of your fellow jurors and get to know them. You
25 may go home. You may find some other friends to have

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1 lunch with. You should not be discussing the case with
2 them, and don't let anyone discuss the case with you.
3 I wouldn't imagine anyone would be approaching you and
4 wanting to ask you questions or share information with
5 you about this case. If that were to happen, please
6 explain to the person that you're a juror and you can't
7 be talking about the case. And if that individual were
8 to persist and want to give you information or ask you
9 questions, please excuse yourself as quickly as you
10 can. If possible, get the name of that individual. If
11 you'll report it back here to me, I'm confident we can
12 take care of that matter. I don't expect anything like
13 that to happen, but I want to emphasize to you how
14 important it is that now that you're selected that you
15 maintain that purity, that you've made a commitment to
16 these parties that you're going to decide this case on
17 the law and the evidence and what takes place here in
18 this courtroom and not somewhere else. There may be
19 some media information about this during the day or
20 overnight tonight. You should refrain from reading any
21 newspapers, watching any television about it. Whatever
22 is reported, that has nothing to do with you. You're
23 going to be isolated in this courtroom based upon your
24 commitment to these parties, your promise to these
25 parties and make a decision there, not in what the news

1 media may say. And if something were to be on the news
2 you can sure have a loved one or a family friend or
3 whoever it may be to record that or clip the newspapers
4 out. When this case is over, you can catch up on what
5 the news may be, if there is any news about it. But by
6 the same token, you should refrain from any independent
7 research.

8 Sometimes we get curious by nature and we want to
9 do our own research about this and check old newspapers
10 or go to the library and find out a word that's been
11 used or do any kind of internet check. That would be
12 highly improper, ladies and gentlemen, for you to do
13 that. That would be against the oath that you've taken
14 already, the oath that you're going to take in a little
15 bit to try this case. So you must refrain from doing
16 anything like that to jeopardize the State of South
17 Carolina, Mr. Sanders, and Ms. Gearhart. They're
18 depending on you to maintain this purity that I talked
19 about, to hear this case and decide what is the truth.

20 When you come and go in our courthouse, you may
21 see the attorneys in the hallway and the elevator. If
22 they seem a little unfriendly toward you, please don't
23 hold that against the attorneys. That's their
24 training. They don't want to even give an appearance
25 of any impropriety that they're in the hallway talking

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1 to you. You might be talking about a baseball game or
2 the weather or something else, but someone then sees a
3 lawyer talking with you or socializing with you, they
4 could get the wrong impression and these lawyers are
5 trained not to do that. So don't hold it against them
6 if they may high-hat you in any way or not be as
7 friendly as you think they ought to be. That's their
8 training.

9 I'll give you some other instructions about how
10 we'll be proceeding and when we'll be taking breaks,
11 but I know you're anxious to go ahead and get your
12 lunch now. If you would be back at three o'clock this
13 afternoon, we'll be ready to proceed with the trial at
14 that time. If you'll go now with the bailiffs -- here
15 you are, Mr. Teal. If -- he'll come around here in
16 just a minute and get you. Mr. Teal, Mr. Henry is in
17 the back. They'll certainly be able to assist you in
18 any way that you need. That man over here is a deputy.
19 So they'll show you where to come back and where to
20 report back as you go. You'll just go with Mr. Welborn
21 at this time.

22 (WHEREUPON, the jury exited the open court at
23 approximately 1:10 p.m.)

24 THE COURT: Mr. DeJong, do you want to be
25 heard at this time?

1 MR. DEJONG: Thank you, Your Honor. May it
2 please the Court. At this point in time, I would move
3 for a mistrial on this case. During the Voir Dire of
4 the panel, I do not remember the jurors name, I know
5 she was sitting off to Your Honor's right. And I'm not
6 sure which question or questions she stood up to
7 respond to, but during the course of her response, and
8 quite candidly before Your Honor could cut her off, she
9 was quite, verbose and that goes to my Motion. She
10 said, I think they all need to be hung.

11 Well, Your Honor, I've tried a number of these
12 cases and you get a mob mentality on jury panels, at
13 least that is my perception, and then you get some
14 juror comes in here and throws gasoline on the fire of
15 saying, I think they all need to be hung, or words to
16 that extent. That was what I heard her say. We will
17 never know nor can we know how much that affected every
18 other juror that was sitting out there on this panel,
19 and more particularly how much it affected every juror
20 that ultimately was seated to hear this case. It was
21 uncalled for. It was inflammatory. It was
22 prejudicial. If I stood here a moment or two longer, I
23 could come up with some more words, but I just think,
24 Your Honor, that that statement of that potential juror
25 in the presence of all the jury panel was of such an

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1 inflammatory nature that I respectfully request the
2 court to declare a mistrial, let us get another panel
3 of jurors in here that is not tainted with such
4 comments as those and start afresh.

5 Thank you, Your Honor.

6 THE COURT: Mr. Richardson, anything from the
7 State?

8 MR. RICHARDSON: My position is, Your Honor,
9 you cured it. You cured it though an instruction. You
10 said, do you understand everybody is innocent. The
11 jury panel heard that. They will also hear that when
12 you charge this particular panel as to the law.

13 THE COURT: Mr. DeJong, I'll certainly be
14 glad when the jury comes back to Voir Dire them further
15 as to any influence that comment may have had on them.
16 I think I did cure it immediately. I cut that juror
17 off as quickly as I could. And I think based on the
18 follow-up questions that I asked, I don't feel -- I
19 gave them every opportunity for any reason to bow out
20 of this case, maybe more so than I normally to do to
21 any reason that they felt they could not -- I excused
22 most -- I think everyone that stood up and had any
23 hesitancy whatsoever. Perhaps the doctor that you
24 struck, she finally said she could be fair. She was
25 struck.

1 I'll be glad to offer an additional curative
2 instruction or additional Voir Dire of this particular
3 panel if you feel that would be helpful. Or if you
4 feel that the taint is so deep that it can't be cured,
5 then I certainly can respect that to, but I'll
6 certainly give you an opportunity to have a curative
7 instruction from me before we actually start the
8 trial.

9 MR. DEJONG: And I appreciate Your Honor's
10 offer, but -- and I'm going to respectfully decline
11 that offer, because I think that only would exacerbate
12 what feelings they've already had. And in light of
13 what Your Honor has said now, they didn't respond to
14 any other questions. I understand they are under oath,
15 Your Honor, but sometimes I think -- certainly think
16 jurors get into that witness box with hidden agendas
17 that they are not going to share come heaven or high
18 water. So I respectfully decline, but I renew my
19 Motion for a mistrial.

20 THE COURT: Yes, sir. I understand Motion
21 and it's well taken, but I think that you've got a
22 fair jury based upon all the questions that were asked
23 and the instruction I gave them immediately upon
24 hearing the short statement of that particular juror.

25 Anything else we need to take care of now?

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1 MR. DEJONG: Your Honor, can we have a -- and
2 if you say I can't smoke, that's fine. But I do need
3 to use the bathroom.

4 THE COURT: All right. Y'all want to get the
5 -- do y'all want to have lunch first and then come back
6 and argue the other stuff or do you want to go on and
7 do that now?

8 MR. DEJONG: I full suspect, Your Honor,
9 we're going to get a shot lunch. But I would really
10 like to grab a PB&J, if I could, before we move
11 forward.

12 THE COURT: Okay. Let's -- again, even if I
13 take testimony in your Motion, is it going to be one
14 witness or more than one on whatever issue it is that
15 you have?

16 MR. RICHARDSON: It will be one -- well, it's
17 two things. There's the *Jackson v. Denno* that will
18 require me to call an officer.

19 THE COURT: Okay.

20 MR. RICHARDSON: If you're going to hear
21 testimony in the prior bad acts, that's going to
22 require me to call the victim.

23 THE COURT: Well, I don't know that -- maybe
24 there can be an agreement as to what that would say,
25 but an hour, is that going to take care of everything

1 you think?

2 MR. DEJONG: I think that's really going to
3 push us, Your Honor.

4 MR. RICHARDSON: I agree.

5 MR. DEJONG: I think it's really going to
6 push us. If you want to cut the lunch hour down, I
7 don't have a problem with that. But in all candor, I
8 think it's probably going to take a little longer than
9 an hour.

10 THE COURT: All right. Let's be back by five
11 to two. Be ready to start then.

12 MR. DEJONG: Very well. Thank you, Your
13 Honor.

14 (WHEREUPON, court stood at recess for a lunch
15 break.)

16 THE COURT: Please be seated, ladies and
17 gentlemen.

18 If I could see the attorneys over here just a
19 minute, and some representatives from the news media,
20 if I could see you as well over here. Let's see if we
21 can get some arrangements made.

22 (WHEREUPON, Mr. Richardson, Mr. DeJong, Mr.
23 Robinson and the news media approached the bar.)

24 THE COURT: All right. The jury's not back
25 yet. I understand we might have some motions that we

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1 can take care of and then I'll instruct the jury
2 depending on how we're going with time as far as what
3 schedule we're going to have today. I understood there
4 was a *Jackson v. Denno* hearing that needed to be held.
5 Maybe we will be able to start that now and take care
6 of the other Motions later.

7 MR. RICHARDSON: Okay.

8 THE COURT: You can call your first witness,
9 Solicitor.

10 MR. RICHARDSON: Rita Burgess.

11 MISTER CLERK: Place your left hand on the
12 bible and raise your right hand. Do you solemnly swear
13 or affirm the testimony you're about to give in this
14 case to be the truth, the whole truth and nothing but
15 the truth, so help you God?

16 MS. BURGESS: I do.

17 MISTER CLERK: If you would have a seat and
18 state your name for the record.

19 MS. BURGESS: Rita Burgess.

20 RITA BURGESS,

21 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION

23 BY MR. RICHARDSON:

24 Q. Ms. Burgess, where are you employed?

- 1 A. Pickens County Sheriff's Office.
- 2 Q. Okay. And in what capacity?
- 3 MR. DEJONG: Your Honor, before we head to
- 4 the meat of it, a couple of things. Could we get the
- 5 witness closer to the microphone and maybe turn the
- 6 sound system up just a little bit. She's not very loud
- 7 over here.
- 8 THE COURT: All right. If you'd make sure
- 9 you keep your voice elevated, Ms. Burgess, ---
- 10 MS. BURGESS: Sure.
- 11 THE COURT: -- so everybody can hear you.
- 12 MS. BURGESS: Yes, sir.
- 13 Q. How are you so employed at the Pickens County
- 14 Sheriff's Office?
- 15 A. I'm a detective in the Juvenile Division..
- 16 Q. Okay. And do you have a particular rank?
- 17 A. Detective Sergeant.
- 18 Q. All right. And as a detective in the Juvenile
- 19 Division, do you have the responsibility of
- 20 investigating sexual assaults against children?
- 21 A. Yes, I do.
- 22 Q. Okay. And did there come an occasion in June of
- 23 2008 that you investigated a case involving Joseph
- 24 Sanders?
- 25 A. Yes.

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1 Q. And also Anita Gearhart?

2 A. Yes, sir.

3 Q. Okay. Now, in your investigation, did you have an
4 occasion to speak to either one of those defendants?

5 A. Yes. I spoke with both of them.

6 Q. Okay. Let's -- which one did you speak to first?

7 A. Ms. Gearhart.

8 Q. Let's talk about Ms. Gearhart. Now, so that the
9 Judge gets a perspective, at this point in time when
10 you talked to Ms. Gearhart, had you taken the victim
11 child into protective custody?

12 A. Yes, I had.

13 Q. Okay. And where were you when you first talked to
14 Ms. Gearhart?

15 A. At the Sheriff's Office.

16 Q. Okay. And how did you come to make contact with
17 her?

18 A. By phone.

19 Q. Okay. And did you call her or did she call you?

20 A. I called her. She was in Blacksburg at the time,
21 and I left a message for her to contact me and she
22 returned my call.

23 Q. Okay. And did y'all have a conversation about her
24 coming to the law enforcement center?

25 A. Yes.

1 Q. Okay. And did she, in fact, come to the law
2 enforcement center?

3 A. Yes, she did.

4 Q. Okay. Upon arrival, what -- can you tell the
5 court what happened between you and Ms. Gearhart?

6 A. Well, I advised her on the phone what the
7 situation was, that I had been notified of a possible
8 sexual abuse and that's why I needed her to come and
9 speak with me.. And once she arrived, due to the
10 allegations that were made, I read her her *Miranda*
11 warning.

12 Q. Okay. Now, where was the *Miranda* warning read?
13 Where were you in the law enforcement center?

14 A. We were in the conference room at the law
15 enforcement center.

16 Q. Okay. All right. Is that a small room, large
17 room?

18 A. It's a fairly large room.

19 Q. Okay. Who was in the conference room?

20 A. I was there, Laura Hammond with the Department of
21 Social Services was there and Ms. Gearhart.

22 Q. Okay. Now, when you read *Miranda* to a defendant
23 or a suspect, do you use a form?

24 A. Yes, I do.

25 Q. Okay. Did you use that form with regards to the

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1 Defendant, Gearhart?

2 A. Yes, I did.

3 Q. Do you have that form with you?

4 A. Yes, I do.

5 Q. Would you show it to me, please?

6 A. Sure.

7 MR. ROBINSON: I have no objection, Your
8 Honor.

9 MR. DEJONG: No objection, Your Honor.

10 THE COURT: Without objection.

11 MR. RICHARDSON: Your Honor, at this time,
12 then we will mark -- I guess we want to mark it as a
13 Court's Exhibit at this time.

14 THE COURT: A Court Exhibit for the purpose
15 of this hearing.

16 (WHEREUPON, Court's Exhibit Number 1 was marked
17 for identification.)

18 Q. And now I refer you to Court's Exhibit Number 1.
19 Does that form state the standard rights that you read
20 to a defendant?

21 A. Yes, it does.

22 Q. Okay. What are those rights?

23 A. It reads, before we ask you any questions, you
24 must understand your rights. You have the right to
25 remain silent. Anything you say can be used against

1 you in court. You have the right to talk to a lawyer
2 for advice before we ask you any questions, and to have
3 him or her with you during questioning. If you have no
4 money to pay a lawyer's fee, the court will appoint one
5 to represent you without cost, if you wish. If you
6 decide to answer questions without a lawyer present,
7 you still have the right to stop answering at any time.
8 You also have the right to stop answering at any time
9 until you talk to a lawyer.

10 Q. Okay. Now, how do you know you read those rights
11 to the Defendant, Gearhart?

12 A. Beside each line there's a checkmark that I put
13 there myself after I read it to her, and she also
14 initialed beside each line.

15 Q. Okay. Did she initial those after you read each
16 one?

17 A. I actually read this to them and put my checkmark
18 on there. Then I have them to read it and initial it.

19 Q. Okay, ma'am. And is there also a place on there
20 for a waiver of rights?

21 A. Yes, there is.

22 Q. And can you read that to the court, please?

23 A. Yes, sir. It states, I have read this statement
24 of my rights and I understand what my rights are. I
25 am willing to make a statement and answer questions. I

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1 do not want a lawyer at this time. I understand and
2 know what I'm doing. No promises or threats have been
3 made to me and no pressure or coercion of any kind has
4 been used against me.

5 Q. And likewise, did she initial that?

6 A. She did. And she also signed the bottom part.

7 Q. Okay. With -- you were a witness?

8 A. Yes. I witnessed her to sign the paper, along
9 with Laura Hammond from the Department of Social
10 Services.

11 Q. Okay. Now, at any time prior to this or after
12 this, did you make any threats against Ms. Gearhart to
13 make a statement?

14 A. No, I did not.

15 Q. Okay. Did you make any promises of leniency
16 towards her to make a statement?

17 A. No, I did not. No.

18 Q. Did she, in fact, ---

19 THE COURT: Hang on just a minute. You may
20 proceed, Mr. Richardson.

21 MR. RICHARDSON: Thank you, Your Honor.

22 Q. And how long, approximately, was she there during
23 the time that you were reading her that form and she
24 was signing it?

25 A. From the time she got there until she signed it?

1 Q. Yes.

2 A. As soon as she got there and we went to the
3 conference room, I read her her rights and she signed
4 it.

5 Q. All right. And did she, in fact, give you any
6 type of statement?

7 A. A verbal statement, yes.

8 Q. Okay. It was an oral statement?

9 A. Yes.

10 Q. Okay. Now, in that oral statement did she talk
11 about the allegations that had been placed by the
12 victim?

13 A. Yes, she did.

14 Q. What did she say, what did she say happened?

15 A. She said that Complainant had talked to her and told
16 her that Joey was grabbing at her boobs.

17 Q. Now, so we're clear, Complainant that's the victim in
18 the case; is that correct?

19 A. Yes. Ms. Gearhart's daughter.

20 Q. That's her daughter?

21 A. Yes.

22 Q. Okay. Go ahead.

23 A. And that she -- Complainant had told her that Joey was
24 grabbing at her boobs, and Anita asked Complainant if she
25 told Joey to stop. And Complainant told her yes. Ms.

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1 Gearhart then said she asked Joey about the allegations
2 and he denied touching or trying to touch Complainant.

3 Q. Okay. And did she talk about anything else
4 regarding Complainant in particular?

5 A. She did. She said that Complainant wants to do a lot
6 of things with her boyfriend like go to church and go
7 out to eat. She said -- well, that was the next thing
8 she told me about Complainant when she began talking about,
9 Joey.

10 Q. Okay. And what, if anything, did she say about
11 the Defendant Sanders and their meeting?

12 A. She said that they met on-line back when she lived
13 in Virginia, and that she would -- their relationship
14 grew over time. She would come down and visit with
15 him. And that they would -- she would come and visit
16 with him and she would stay in a motel and they would
17 go to dinner and maybe to his house and then back to
18 the motel.

19 Q. And what motel did she stay in, if any?

20 A. She mentioned two -- I believe she mentioned two
21 motels. Let me look here in my report. She stated
22 usually the Comfort Inn in Easley.

23 Q. Okay. And did she ever state anything about her
24 moving to South Carolina from Virginia?

25 A. Yes. She stated she moved here in January of

1 2006.

2 Q. Now, was anything stated by the Defendant Gearhart
3 regarding her being intimate with the Defendant
4 Sanders?

5 A. Yes. She stated that over the time that they had
6 known one another, they had only been intimate
7 approximately three times.

8 Q. Okay. And what, if anything, did she say about --
9 in reference to them being in the motel together?

10 A. Well, she said when she first started coming to
11 visit with Joey that she would come alone. And then
12 she started bringing Complainant with her. And that
13 sometimes while they were in the motel room, they would
14 lay on the bed and watch TV together, that being her
15 and Joey. And that sometimes Complainant would get into bed
16 with them and watch TV.

17 Q. Okay. Now, at this point in the questioning, had
18 the Defendant Gearhart, had she seen Complainant

19 A. No, she had not.

20 Q. Okay. At some point, did you take her to see
21 Complainant

22 A. Yes. She had asked if she could see Complainant And
23 I told her that she could. Complainant was waiting in my
24 office and we were in the conference room.

25 Q. Okay. And what happened when she went in to meet

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1 Complainant

2 A. I actually went to my office and brought Complainant to
3 the conference room where Anita was waiting with the
4 Department of Social Services.

5 Q. Okay. And what, if anything, did Defendant
6 Gearhart do?

7 A. As ---

8 MR. ROBINSON: Your Honor, I'm going to
9 object to relevance. This is going to the statement
10 that she made, not to her actions at the LEC?

11 THE COURT: I'll overrule your objection for
12 the purpose of this hearing.

13 MR. ROBINSON: Thank you.

14 A. When we walked into the conference room, Complainant
15 and I walked in and Ms. Gearhart looked at Complainant and
16 immediately said, give me your cell phone. I'm having
17 it disconnected.

18 Q. Now, did you arrest Ms. Gearhart this day?

19 A. No, I did not.

20 Q. Did she leave voluntarily?

21 A. Yes, she did.

22 Q. And you let her go?

23 A. Yes,

24 Q. At some point in time, was there any type of
25 contact made with the Defendant Sanders?

1 A. Yes. Later on that same day.

2 Q. How did that come to be?

3 A. I received a call at approximately four forty-five
4 that afternoon from Ms. Gearhart stating that Mr.
5 Sanders wished to come to my office and speak to me
6 concerning these allegations.

7 Q. Okay. And did Sanders, in fact, come to your
8 office?

9 A. Yes, sir, he did.

10 Q. And did he meet with you?

11 A. Yes, he did.

12 Q. Did he come to your office voluntarily of his own
13 free will?

14 A. Yes, sir.

15 Q. Okay. And what did you do at that time?

16 A. Once I got him -- once I took him to my office, I
17 also gave him his *Miranda* warning.

18 Q. Okay. And would those be the same warnings that
19 you just read to the Court regarding Ms. Gearhart?

20 A. Yes, sir.

21 Q. Okay. Do you have a form that you went by with
22 regard to Defendant Sanders?

23 A. Yes, I do.

24 Q. Do you have that form with you?

25 A. Yes, I do.

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1 Q. Okay. Can I see it, please?

2 MR. DEJONG: Without objection, Your Honor.

3 THE COURT: Without objection from both
4 Defendants, the document may be marked, for purposes of
5 this hearing, as Court's Exhibit Number 2.

6 (WHEREUPON, Court's Exhibit Number 2 was marked
7 for identification.)

8 Q. Okay. Detective Burgess, I am now referring to
9 Court's Exhibit Number 2. And what is that?

10 A. That is the Miranda warning that I read to Mr.
11 Sanders.

12 Q. Okay. Can you read those warnings to the Court?

13 A. Yes, sir. It says, before we ask you any
14 questions you must understand your rights. You have
15 the right to remain silent. Anything you say can be
16 used against you in court. You have the right to talk
17 to a lawyer for advice before we ask you any questions,
18 and to have him or her with you during questioning. If
19 you have no money to pay a lawyer's fee, the court will
20 appoint one to represent you without cost, if you wish.
21 If you decide to answer questions without a lawyer
22 present, you still have the right to stop answering at
23 any time. You also have the right to stop answering at
24 any time until you talk to a lawyer.

25 Q. Okay. And did he, being Defendant Sanders,

- 1 likewise initial each right that you read him?
- 2 A. Yes, sir. He did.
- 3 Q. And can you tell from that form -- is there some
4 denotation that allows you to ascertain if you read
5 those to him?
- 6 A. Yes. There's the checkmark at the end of each
7 sentence, just the same as it was with Ms. Gearhart.
- 8 Q. Okay. And did you do these -- did you read him
9 those rights immediately upon his arrival?
- 10 A. I did. As soon as we went to my office.
- 11 Q. Okay. And are there also a waiver of rights on
12 that same form?
- 13 A. Yes, sir.
- 14 Q. Okay. Can you read that to the court, please?
- 15 A. It states, I have read this statement of my rights
16 and I understand what my rights are. I'm willing to
17 make a Statement and answer questions. I do not want a
18 lawyer at this time. I understand and know what I'm
19 doing. No promises or threats have been made to me,
20 and no pressure or coercion of any kind has been used
21 against me.
- 22 Q. Okay. And who signed it?
- 23 A. Joseph Sanders, IV.
- 24 Q. Okay. And is that also witnessed by you?
- 25 A. It was witnessed by me, along with Detective

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1 Michael Hendricks.

2 Q. Okay. And did you in anyway threaten him to give
3 any type of Statement?

4 A. No, sir.

5 Q. And did you promise him any leniency or anything
6 of that nature?

7 A. No, sir, I did not.

8 Q. Okay. And did he, in fact, give a statement?

9 A. Yes. An oral statement, yes.

10 Q. He also gave an oral statement?

11 A. Yes, sir.

12 Q. Okay. And in his oral statement did he talk about
13 his relationship with Defendant Gearhart?

14 A. Yes, sir.

15 Q. And what did he say?

16 A. He advised me that they had met online about five
17 years ago and it started out as a friendship and that
18 friendship developed into a relationship.

19 Q. Okay. And did he also give any information
20 regarding meeting her at any point in time?

21 A. Yes. He said that she would drive down from
22 Virginia and would either stay at the Marriott Hotel in
23 Spartanburg or the Comfort Inn in Easley. It just
24 depended on where he was and what his schedule would
25 consist of as to where she would stay when she would

1 come down to visit.

2 Q. Okay. And did he mention the year in his
3 statement that that was going on?

4 A. I don't believe he told, I don't believe he told
5 me what year they actually began talking on-line. The
6 only time he referenced a year was when he mentioned
7 that she had planned on moving down here.

8 Q. Okay. And what, if anything, did he state about
9 Complainant?

10 A. He stated that to begin with Ms. Gearhart would
11 come down here alone and then she would bring -- she
12 began bringing Complainant with her. He said that he and
13 Complainant hit it off well. That they always did family
14 oriented activities so that Complainant would be included.
15 And that Complainant was very involved here, and once they
16 moved here that she's very involved with church
17 activities, basketball, so forth. But he's -- and he
18 stated back in November in 2005 that Anita had made
19 plans to move here.

20 Q. Okay. And did he deny any sexual intercourse with
21 the victim?

22 A. He did. He denied it.

23 Q. That's all the questions I have. Please answer
24 any questions from Mr. DeJong or Mr. Robinson may have
25 for you, if you will, please.

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1 THE COURT: Mr. DeJong.

2 MR. DEJONG: Thank you, Your Honor. May it
3 please the Court.

4 CROSS EXAMINATION

5 BY MR. DEJONG:

6 Q. Ms. Burgess, you've been with the Pickens County
7 Sheriff's Office how long?

8 A. Nineteen and a half years.

9 Q. How long you been a detective down there?

10 A. A little over five years.

11 Q. Have y'all got recording devices down there?

12 A. We just recently got new recording devices, yes,
13 sir.

14 Q. You have tape recorders back there in 2008?

15 A. Yes, sir.

16 Q. Did you record either one of these conversations?

17 A. No, sir, I did not.

18 Q. Did you video tape either one of the
19 conversations?

20 A. No, sir.

21 Q. So basically, what you did is you made notes based
22 upon what you believe they said; right?

23 A. I made notes on what they did tell me.

24 Q. Yes, ma'am. Now, with regard to Ms. Gearhart,
25 what you say Ms. Gearhart said was in a report, if I'm

1 reading it right, dated June the 17th of 2008, fourteen
2 fifty-five in the afternoon. Are we on the same sheet
3 of music?

4 A. We are.

5 Q. All right. Now, what you said was the statement,
6 that was not the entire statement that Ms. Gearhart
7 made; was it?

8 A. No.

9 Q. There's certainly more than what you have
10 portrayed to this Court today that Ms. Gearhart told
11 you?

12 A. There's more documented in the report than I have
13 here in front of me. What's in the report is all that
14 she told me.

15 Q. Yes, ma'am. But what you have shared today with
16 the Court is not all that you say was in her statement;
17 is it?

18 A. No, it's not.

19 Q. Right. For example, she -- well, you may have
20 said that, she went to Joey and asked him about this
21 allegation of grabbing, quote, boobs, end quote;
22 right?

23 A. Yes, sir.

24 Q. And what was her response in her statement to
25 that?

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1 A. She stated when she asked Joey about the
2 allegations of touching Complainant he stated he has not
3 done that. He denied touching or trying to touch
4 Complainant.

5 Q. Right. And in the course of that statement she
6 indicated to you that the alleged victim in this case,
7 there were certain discipline issues in the household,
8 too; didn't she?

9 A. Yes, she did.

10 Q. All right. What were the discipline issues?

11 A. She stated that Complainant would run through the house
12 naked and they would have to make her put clothes on.

13 Q. All right. Anything else?

14 A. She stated she liked to do a lot of things with
15 her boyfriend such as going to church.

16 Q. All right. Okay. Let's talk about -- I believe
17 you have shared with this Court that Ms. Gearhart told
18 you that she and Mr. Sanders had sexual intercourse
19 three times over the time of the relationship; is that
20 correct?

21 A. Yes. That's what she told me.

22 Q. Now, the statement didn't end there, did it? She
23 told you why, didn't she?

24 A. She stated they had only been intimate about three
25 times since she has known him. Anita said Complainant has

- 1 not discussed intercourse with her at all. She also
2 said -- there's a lot that she said that ---
3 Q. Well, yes, ma'am. But if we're going to discuss
4 her statement, let's get it all out here, okay?
5 A. Okay. Let me find where she was talking about
6 that. She said, she doesn't believe the allegations
7 that Complainant made against Joey because he's impotent due
8 to numerous medical problems. I asked her at that
9 point if he had any medication such as Viagra or Cialis
10 prescribed to him to assist him with that problem, and
11 she said he did not. That he had some samples that
12 were given to him by the doctor, but he'd never used it
13 because he was afraid of them.
14 Q. All right. And she goes on to discuss, I believe,
15 additional behavior or discipline problems with the
16 alleged victim; doesn't she?
17 A. She did state, that -- and I quote her, Complainant, can
18 be hell to live with.
19 Q. Right.
20 A. She stomps and slams doors.
21 Q. Right. All right. Now -- well, now I'm going on
22 to -- well, how many times did you talk to Ms.
23 Gearhart?
24 A. I only spoke to her once.
25 Q. Okay. Because when you were answering Mr.

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1 Richardson's questions, you said that Ms. Gearhart said
2 that when they were in the motel that the alleged
3 victim would get in the bed and watch television with
4 them; right?

5 A. Yes. She did say that.

6 Q. Right. Well, now I'm looking at -- I don't know
7 what order this report's in, but now I'm looking at one
8 of the top that says, date/time, 06/18/2008, eleven
9 twenty-eight. Now, is that still part of your report
10 on Ms. Gearhart's statement?

11 A. Yes, sir. In this -- in the old computer system
12 that we had, we put our report in Word, and then we
13 would copy and paste it into the computer system for
14 the Sheriff's Office. And that's the date and time
15 that it was copied into the ---

16 Q. Okay. Well, the point I'm trying to make here,
17 even though the first sheet I had talk to you about,
18 it's got a date of 6/17/2008 at two fifty-five. And
19 then the next sheet's got a date of 6/18/2008 at eleven
20 twenty-eight, but that is a continuous part of Ms.
21 Gearhart's statement. Is that correct?

22 A. Yes. That is correct.

23 Q. All right. Now, Ms. Gearhart in her statement
24 also shared with you, did she not, that the alleged
25 victim wanted to live in Virginia with her grandmother?

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1 A. Yes, she did.

2 Q. All right. I believe she talked about certain
3 dress issues with the alleged victim, did she not?

4 A. Yes, she did.

5 Q. To the point of the mother saying the child liked
6 to wear inappropriate clothing?

7 A. Yes, she did.

8 Q. All right. Went back to the motel. That's where
9 she said that the child, the alleged victim, laid in
10 bed and they watched television together?

11 A. That's correct.

12 Q. All right. All right. And talked about -- a part
13 of the statement talked about the alleged victim's
14 father and his involvement in her up until that point
15 in time; did she not?

16 A. She did, yes.

17 Q. Talked about an issue where a cell phone and text
18 messaging that the alleged victim was involved in; did
19 she not?

20 A. Yes.

21 Q. All right. That's all in your report; right?

22 A. Yes, sir, it is.

23 Q. All right. And that's a part of her statement; is
24 it not?

25 A. Yes.

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1 Q. Okay. At one point in time in her statement she
2 talks about young people that the alleged victim is
3 hanging around with; right?

4 A. Yes, sir.

5 Q. And she says, I feel like I'm damned if I do and
6 damned if I don't; right?

7 A. That's correct.

8 Q. All right. There was some talk in her statement
9 about some problems as the mother perceived it with an
10 interracial friendship, I believe; was there not?

11 A. Yes, sir.

12 Q. All right. Let's move on to Mr. Sanders. Now,
13 Mr. Sanders came voluntarily to the Pickens County
14 Sheriff's Office?

15 A. Yes, sir, he did.

16 Q. And that was a situation where Ms. Gearhart had
17 called you and shared with you that Mr. Sanders wanted
18 to come and speak to you?

19 A. Yes, sir.

20 Q. Now, after that did you call Mr. Sanders or how
21 did Mr. Sanders get to the Pickens County Sheriff's
22 Office?

23 A. When Ms. Gearhart called me, she stated that he
24 wished to come and speak to me. And I advised her that
25 I would wait for him to arrive. And he got there

- 1 around five-fifteen that day. She called me around
2 four forty-five and he arrived at my office around five
3 fifteen.
- 4 Q. All right, ma'am. And you Mirandized him as has
5 introduced; correct?
- 6 A. Yes, sir.
- 7 Q. All right. But he had not been charged at that
8 point in time; had he?
- 9 A. No, he had not.
- 10 Q. Let's talk a little bit about his statement.
- 11 A. Okay.
- 12 Q. And, again, it's a situation that, bottom line, he
13 denied not only any allegations of having sexual
14 intercourse, he denied any inappropriate touching at
15 all with this alleged victim; did he not?
- 16 A. Yes, he did.
- 17 Q. And I don't want to particularly go through this
18 line by line, but what now I am looking at, again, page
19 number -- well, I guess there is a page number.
- 20 A. There's a page number six.
- 21 Q. Yes, ma'am. This would have the date and time of
22 6/18/2008 at eleven forty-five, page number zero zero
23 six, correct?
- 24 A. Yes, sir. That's correct.
- 25 Q. And you would say, and you are under oath, that

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1 everything that is on page six of that document dated
2 6/18/2008 of eleven forty-five was Mr. Sanders'
3 statement?

4 A. Yes, sir.

5 Q. And, actually, it carries on a bit, looks like
6 about four lines on page seven; correct?

7 A. Yes, sir. That's correct.

8 Q. All right. Okay.

9 MR. DEJONG: One moment, please, Your Honor.

10 THE COURT: Yes, sir.

11 MR. DEJONG: The witness is with you, Mr.
12 Robinson.

13 MR. ROBINSON: May it please the Court.

14 THE COURT: Yes, sir, any cross-examination?

15 MR. ROBINSON: A few follow-up for Ms.
16 Burgess.

17 **CROSS EXAMINATION**

18 **BY MR. ROBINSON:**

19 Q. Ms. Burgess, following up what Mr. DeJong spoke
20 about a second ago, this is on page two of your
21 statement that you took of Ms. Gearhart. It's around
22 half-way down. I think Mr. DeJong asked you about the
23 fact as far as the kids she was hanging around with,
24 some interracial relationship. Is that correct?

25 A. Yes. That's correct.

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1 Q. Didn't she also state that she had questioned

2 Complainant about why did she talk about sex to her

3 friends?

4 A. Yes, she did say that.

5 Q. And went on to say that she was talking to a black

6 male, fifteen to sixteen years old, concerning sex and

7 thought she had intervened and stopped this type of

8 talk; isn't that right?

9 A. Yes, that's correct.

10 Q. And isn't that why she wanted the cell phone from

11 her daughter, from Complainant because it was emails going

12 back and forth? Didn't she also tell you that?

13 A. I don't know why she wanted the cell phone. She

14 just asked for it. I did not question why she wanted

15 the phone.

16 Q. Okay. So you never -- it's your statement that

17 this statement that you wrote out, non-

18 contemporaneously, which means not at the same time,

19 but later, this statement had nothing in it regarding

20 that?

21 A. The statement does say that she had problems with

22 Complainant and the cell phone, but it doesn't -- she never

23 said why she took the phone from Complainant when we walked

24 into the conference room.

25 Q. Is there any particular reason why you put in here

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1 about the -- this interaction between Complainant and her
2 mother, the last couple of paragraphs -- or last
3 paragraph? Is there any particular reason why you put
4 that in there?

5 A. Are you speaking of from the point when she took
6 the cell phone?

7 Q. Yeah.

8 A. She questioned Complainant as to ---

9 Q. Yes.

10 A. -- do you know what's going on here?

11 Q. Is there any reason for that? Any reason why you
12 put that in there?

13 A. Other than that was just part of her statement,
14 no.

15 Q. Okay. Now, you testified on cross with Mr. DeJong
16 that you don't record, you don't do any video
17 statements or anything like that. You would agree with
18 me that this is not a contemporaneous statement,
19 meaning you did not write it -- you didn't start
20 writing the statement at the same time as it was being
21 done.

22 A. I hand wrote it. And then I go back and put my
23 handwritten notes into the computer and copy and paste
24 onto the program.

25 Q. Did you bring a copy of your notes or did you

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1 submit those to the a Solicitor or anyone, as far as
2 your notes that you took during the interview?

3 A. I do not have the handwritten notes.

4 Q. Don't have those?

5 A. No, sir.

6 Q. Okay. Now, in terms of -- it's just something I'm
7 curious about. As far as you took, you took the
8 child's statement around about the 12th; right, June
9 12th, 2008, right?

10 A. June 13th.

11 Q. June 13, okay. And you had an idea in your mind
12 as far as what the child said happened; right?

13 A. I spoke to her the morning of June 13th. I spoke
14 to Ms. Gearhart and Mr. Sanders on the afternoon of
15 June 13th.

16 Q. Okay. What's missing in this, what's omitted from
17 this is any date. Is there any particular reason why
18 there's no date in here for when this allegedly
19 occurred as far as the -- let's go to page one, which
20 is talking about this when she made some allegations
21 about Joey grabbing at her boobs and so forth, but
22 there's no date here. Is there any reason why there's
23 no date?

24 A. Ms. Gearhart didn't tell me what date Complainant told
25 her that Joey had been grabbing at her boobs.

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1 Q. So you have no idea what date it was?

2 A. No. She said that Complainant told her one morning

3 before school, but she could not tell me a day. I

4 don't think -- she did not know the day, I don't

5 believe or she did not volunteer to tell me the day. I

6 have, I have some information -- I mean, I have dates

7 on other things, but I don't have dates on that

8 particular incident.

9 Q. But you have -- but as far as this particular

10 incident that you're speaking of where he allegedly

11 grabbed at her boobs and so forth, you don't have a

12 date for that; correct?

13 A. Not from Ms. Gearhart, no.

14 Q. Nor from Mr. Sanders, who denied this; correct?

15 A. Right. He denied, yes.

16 Q. Now in your notes -- and I want to make sure

17 because you said you don't have your notes with you.

18 Answer this if you know. Isn't it true that Ms.

19 Gearhart, when she was explaining to you why, when she

20 asked her daughter about, and asked Joey about this,

21 didn't she explain to you that her daughter had lied a

22 lot -- many times before about different things like

23 school, sex, boys, things like that? Isn't that one of

24 the reasons that she told you that she had a hard time

25 believing her daughter?

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1 A. She did not tell me that ---

2 Q. She didn't tell you that?

3 A. -- that Complainant had lied to her about sex and boys.

4 She, I mean, she actually told me that Complainant had been
5 talking to a black male about sex and so forth, but she
6 never told me that Complainant denied any of that.

7 Q. And with this particular cell phone that we're
8 speaking of, did you get the cell phone back, by the
9 way?

10 A. No, sir. Ms. Gearhart took the phone.

11 Q. And as far as in the statement here where she told
12 you that she had stayed at hotels and -- it's your
13 testimony not that they were in bed, like under covers
14 here, but they'd lay on top of the bed. Isn't that
15 what your statement says, what the statement from Ms.
16 Gearhart says?

17 A. I don't think I said that they were under the
18 cover or on top of the cover.

19 Q. So you don't know if they were on or under;
20 correct?

21 A. No. She just said they would be in -- they would
22 lay on the bed and watch TV together and Complainant would
23 sometimes get in bed with them.

24 MR. ROBINSON: One second, Your Honor.

25 THE COURT: Yes, sir.

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1 Q. And as far as on the last page, which is
2 6/18/2008, this is after your -- after this meeting
3 regarding the cell phone with her daughter. You put
4 in a statement here, Complainant acknowledged that she was
5 aware of what was going on. That's not was Ms.
6 Gearhart told you; is it? That's not part of her
7 statement?

8 A. No. That's -- when she questioned Complainant that
9 was Complainant response. She asked Complainant

10 Q. Okay.

11 A. I can tell you what she -- I can read from this
12 report. She asked, do you know what's going here?
13 They're taking you away from me. Complainant acknowledged
14 that she did, she was aware of what was going on and
15 did tell her mother that she and Joey had had sex. Her
16 mother then stated that was not possible. And Complainant
17 told her again that it did happen.

18 Q. And this was after, after you had taken this
19 statement? This is actually in front of you at the
20 police station; correct?

21 A. Yes. That's correct. This is when Complainant -- she
22 had requested to see Complainant and I brought Complainant into
23 the room where we were.

24 MR. ROBINSON: That's all the questions I
25 have. Thank you.

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1 THE COURT: Any follow-up questions, Mr.

2 DeJong?

3 MR. DEJONG: No, Your Honor.

4 THE COURT: Any redirect?

5 MR. RICHARDSON: Nothing from the State.

6 THE COURT: Thank you. Ms. Burgess, you may
7 step down. Any other witnesses from the State?

8 MR. RICHARDSON: Nothing further.

9 THE COURT: Anything from the defense?

10 MR. DEJONG: Not on behalf of Mr. Sanders for
11 purposes of the *Jackson v. Denno*, Your Honor.

12 MR. ROBINSON: Nothing on behalf of Ms.
13 Gearhart for this purpose, Your Honor.

14 THE COURT: Well, I'll be glad to hear from

15 ---

16 MR. DEJONG: May I be heard on one issue,
17 please, Your Honor?

18 THE COURT: Yes, sir.

19 MR. DEJONG: Based on the waiver of rights
20 and everything, I do not object to the statement of Mr.
21 Sanders coming in. The reason I may have been
22 questioning Ms. Burgess rather vigorously about the
23 entirety of the statement -- and my eye at this time in
24 the afternoon will not fall on the rule I'm looking for
25 -- but if we're going to get into statements, Your

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1 Honor, then I don't believe the State can pick and
2 choose what they want. I'm raising that at this time.
3 But if we're going to ---

4 MR. RICHARDSON: I'll stop him right now.
5 I'll put the whole statement in.

6 MR. DEJONG: All right. That's all I want to
7 know. But we're not going to pick and choose. The
8 whole statement's going to come in.

9 MR. RICHARDSON: But -- well, he's got the
10 right to cross-examination. It's not an argument, but
11 I'll put the whole statement in.

12 MR. DEJONG: And I still have the right to
13 cross.

14 MR. RICHARDSON: Sure. Well ---

15 THE COURT: But you're ---

16 MR. DEJONG: That takes care of my argument,
17 Your Honor.

18 THE COURT: Okay.

19 MR. DEJONG: If he's going to put the whole
20 statement in, that's all I wanted.

21 MR. ROBINSON: Your Honor?

22 THE COURT: Yes, sir.

23 MR. ROBINSON: I've got just one objection to
24 these two -- actually both statements. I'm not going
25 to take anything from Mr. DeJong. But the issue that I

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1 have with the statement that she took, because the
2 allegation they have against my client is for one
3 specific day. And I am not seeing in what they've
4 presented as far as from Ms. Burgess, any sort of dates
5 that say anything about when the date was or anything
6 was like that. And I think it's very prejudicial to my
7 client just to have these dates rolling around out
8 there that they can't really point to. And I don't
9 think that they can -- the statement's great, but it
10 doesn't really have any sort of substance to it
11 regarding what took place on the dates that they say
12 this happened with Mr. Sanders or Ms. Gearhart. So I
13 don't see, I don't -- I think it's a statement about a
14 general variety of things, but I think it's irrelevant
15 because it doesn't have any sort of substance to it.
16 It doesn't say, well, this is the date it happened.
17 That's kind of the way I look at it. I don't think
18 it's relevant to this case.

19 THE COURT: Thank you, Mr. Robinson. I
20 believe, as I heard the testimony, the witness said
21 there were no dates mentioned and even -- her
22 impression was that the -- your client did not even
23 know the date. But I believe that there were proper
24 warnings given, that the statements are voluntary.
25 Certainly, you can cross-examine them further before

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1 the jury is here, Mr. Robinson, the witnesses. I find
2 by the preponderance of the evidence that both
3 statements are admissible and based upon the discussion
4 between the State and Mr. DeJong, I understand that
5 statement will be introduced in its entirety, without
6 objection. And your objection is noted, Mr. Robinson,
7 but I respectfully deny it.

8 MR. DEJONG: Your Honor, and I'm not trying
9 to quibble, it's coming in without objection as to the
10 voluntariness of it. The *Miranda*, I don't want you to
11 -- I don't want to be put in a box where you're saying
12 without objection that I don't have a right to cross-
13 examine when the statements come in.

14 THE COURT: Yeah. That's understood.

15 MR. DEJONG: Okay. Very good.

16 THE COURT: You certainly have a right to
17 cross-examine on what was said, and everything about
18 the statement. All right. Before I talk with the
19 jury, let's take just a short break. If I could see
20 the attorneys just for a moment.

21 (WHEREUPON, Mr. Richardson, Mr. DeJong and Mr.
22 Robinson approached the bar.)

23 (WHEREUPON, the Court stood at recess for a short
24 break.)

25 THE COURT: All right. From consulting with

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1 the attorneys I believe that we're going to probably
2 have more matters to take care of, for which it'll be
3 more convenient for the jury if we just start in the
4 morning with the testimony and opening statements. I
5 certainly wouldn't want you to have to make your
6 opening statements today and then come back tomorrow
7 for the testimony. We've got some other motions, I
8 understand.

9 So rather than keeping the jury waiting, I'm going
10 to call them out and dismiss them at this time for the
11 day.

12 May I see the attorneys again, just for a moment
13 here.

14 (WHEREUPON, Mr. Richardson, Mr. Dejong and Mr.
15 Robinson approached the bar.)

16 (WHEREUPON, the jury entered the open court at
17 approximately 3:56 p.m.)

18 THE COURT: Thank you very much for bearing
19 with us, ladies and gentlemen. We've taken a little
20 longer than I thought. And I understand from the
21 attorneys that there might be some more matters that we
22 need to take care of that we have to get resolved
23 before we have your presence in the case to hear the
24 facts.

25 Let me just reiterate what I've told you earlier.

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1 The fact that you've been selected as a juror in this
2 case means that you're going to be a judge of the
3 facts. You may never have served as a juror before.
4 You may have never even been in a courtroom before or
5 in the courthouse for any purposes. But I'm honored to
6 get to work with you as a judge, also. I'll be judging
7 the law. You'll be judging the facts. I'm well aware
8 of the sacrifice that you made to be here, because
9 you've got other things that you need to be doing, but
10 it's a high calling and one that, as I've said earlier,
11 these parties have particularly chosen you to be the
12 fact finders in this case. You may have some
13 apprehension about the title I've bestowed upon you as
14 a judge, thinking to yourself, well, I can't be a
15 judge. I don't have any legal training whatsoever.
16 I've never taken a course online. I've not even had
17 legal ed in middle school. I can't be a judge.

18 But let me assure you, ladies and gentlemen, you
19 have every skill you're going to need to be judges of
20 the facts in this case because you bring into this
21 courtroom the everyday experiences that you enjoy in
22 your home, and business, and social activities. You
23 bring into this courtroom the good common sense with
24 which you've been blessed. And that's going to be the
25 skill that you're going to need to utilize in being the

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1 fact finder in this case. You've accepted this
2 responsibility willingly and I'm grateful to be working
3 with you in this case.

4 Trials take place in stages. Normally, the
5 attorneys would make an opening statement to you. They
6 would give you an overview of what the case is about,
7 from each of their perspectives. What the lawyers say
8 to you is not evidence. They -- the evidence that will
9 be presented will be whatever documents or other
10 tangible evidence that might be introduced by either
11 party. The evidence will be what a witness testifies
12 to here on the stand under oath. But even though what
13 the lawyers have to say to you in opening and closing
14 statements are not evidence, still it's an important
15 part of the trial and I would urge you to listen
16 carefully as they address you in their opening
17 statements and their closing statements.

18 Evidence is normally presented through testimony.
19 A witness is called, sworn in, asked questions, give
20 answers, cross-examined by other attorneys. Sometimes
21 there's redirect testimony. As testimony is given or
22 as documents are presented, sometimes objections are
23 made by one of the lawyers. Sometimes cases have no
24 objections. There might be that they've worked out all
25 of those issues.

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1 But we have rules of evidence by which trials take
2 place, and those rules of evidence are for me to
3 determine whether or not a piece of evidence is
4 admissible or not admissible. Sometimes I can rule on
5 that. A question may be asked, one side or the other
6 objects to the question, and I can say sustained or I
7 can say overruled, and we can move on to the next one
8 or let them answer that. Sometimes you've already seen
9 that we maybe have a conference with the lawyers up
10 here and we can whisper and try to get a legal matter
11 worked out. Sometimes it necessitates for you to be
12 excused to the jury room while we work through these
13 legal matters, as we already have this afternoon.

14 You're the judge of the facts. You're going to be
15 the sole decider of what the facts are. I'm the judge
16 of the law. And I want to make the very best decisions
17 that I possibly could make in judging the law. And
18 sometimes when I do that, I have to hear some matters
19 that wouldn't even be presented before a jury. It
20 might be testimony. It might be some legal treatises
21 that I have to read. It might be some other evidence
22 that I have to examine. And when you have to go back
23 in your jury room while I work through these matters, I
24 hope you understand, we're not hiding things from you.
25 It's just evidence that would not be properly presented

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1 to you that I have to rule upon, or make a decision and
2 study, to rule upon legal matters.

3 It's very similar to you and your deliberation.
4 When the case is over and completed and you've heard
5 all the evidence and you're back in your jury room
6 deliberating, you're the judge of the facts. I, as
7 the judge of the law, won't be back there with you. I
8 won't be giving you my ideas of what the facts are
9 because that's not my prerogative at all. The law
10 prohibits me from having an opinion about the facts,
11 that's exclusively yours and yours alone to decide,
12 just like the matters of law are mine and mine alone to
13 decide.

14 So I hope you understand that there are occasions
15 when you have to be back there as you already have
16 today. You understand that I want to be able to hear
17 everything I need to hear to make a good decision on
18 the law.

19 After all the evidence is in, the attorneys will
20 again have an opportunity to address you in a closing
21 statement. I'll give you instructions on the law at
22 that time as to how the evidences come in and what law
23 I have to share with you relating to the particular
24 facts in the case. Then and only then will you have an
25 opportunity to start your deliberations about the case.

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1 While the case is going, of course, you should not
2 be discussing, deliberating, or making decisions. You
3 should keep an open mind and listen to all of the
4 evidence that is presented. I've mentioned to you
5 already about the impropriety of you getting
6 information from any other source whatsoever during the
7 course of the trial. That would be against the oath
8 that you've taken, the commitment that you've made to
9 these parties to be fair and impartial to both sides,
10 to seek the truth so that justice can prevail for both.

11 To emphasize this to you, I just want to make sure
12 that all of the bases are covered. I've told you we're
13 going to start this case in the morning as far as the
14 opening statement now, rather than the attorneys having
15 to do that this afternoon. We still have some other
16 legal matters we have to take care of.

17 The Chief Justice of our Supreme Court has
18 recently issued an Order and I want to make sure that I
19 explain this Order to you. It basically says that this
20 is what I shall do for jurors who are selected on a
21 trial until their jury service is concluded. And that
22 order says for me to instruct you that jurors shall not
23 discuss the case with others, including other jurors
24 and may not read or listen to any news reports about
25 the case. A juror serving on a case may not use a

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1 computer or cell phone or electronic device with
2 communication capabilities while in attendance at trial
3 or during deliberations.

4 These devices, of course, could be used during
5 lunch breaks, but they may not be used to obtain or
6 disclose any information prohibited by this particular
7 order. And that would include that jurors are
8 prohibited, while on a case, from using a computer, a
9 cell phone, any electronic device to obtain or disclose
10 information about the case when they're not in court.
11 Information about a case would include but not be
12 limited to any information about a party or a witness,
13 an attorney or a court officer, any news accounts of
14 the case. Any information collected through juror
15 research or on any topic raised or testimony offered by
16 any witness, any information collected through a juror
17 research or other topic the juror may think would be
18 helpful in deciding the case. Those are all prohibited
19 by Order of this Court and certainly by Order of the
20 Supreme Court of South Carolina.

21 These fine attorneys are going to present
22 everything to you that you're going to need to make a
23 decision in this case. And I'm going to give you all
24 the law. And under your commitment, you're to make a
25 decision on that and that alone, and not any other

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1 source.

2 So let me remind you that while you're out
3 tonight, you're not to be discussing the case or
4 getting any information that I've just told you. That
5 would be in violation of the court order and you should
6 not do that in any way. And I don't believe anybody
7 will be contacting you. But if that were to happen,
8 you let me know and I'll certainly take care of that.

9 It makes me proud that you've accepted this
10 responsibility to serve on this case and make the
11 commitment to both sides to be fair and impartial and
12 render a verdict that will, in fact, speak the truth.

13 We have matters to take care of this afternoon.
14 We also have some matters that we have to take care of
15 first thing in the morning. I know that for some of
16 you, you would like to vote tomorrow in the primary,
17 some of you might wish to do that. I don't believe
18 we're going to be ready for your services until about
19 ten-thirty, anyhow, so if you'll be back at ten-thirty,
20 we'll be ready to proceed then. That will give you a
21 chance to vote first thing in the morning, maybe, if
22 you desire to do that.

23 The last two jurors who were picked are the
24 alternates in this case. They'll always occupy the
25 seats on the back, the last two seats there. An

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1 alternate is every bit a part of a jury as anyone else.
2 Alternates are necessary in case something were to
3 happen to one of the jurors that he could not continue
4 serving. The alternate would step into their shoes so
5 we wouldn't have to start the trial all over from
6 scratch as the case progresses. So the alternates are
7 to be involved in listening to the testimony as well as
8 any other jurors. And they'll always occupy -- the
9 last two jurors who were picked will occupy the two
10 seats on the back row, closest to the door here.

11 There's also a seat that will be occupied by a
12 foreperson. The rest of you can sit in any seat you
13 like. Sometimes you may want a back seat, a front row
14 seat, one end or the other.

15 I'm going to appoint Ms. Crawford as the
16 foreperson of this jury. She'll occupy the seat on the
17 front row, closest to the witness box here. The
18 foreperson doesn't mean that she has more votes than
19 anyone else, or anymore authority. But sometimes when
20 you're back in your jury room, issues may arise that
21 you need to call to get a child picked up or the
22 temperature needs adjusting or you need some more
23 snacks, whatever it may be, either for the Court, for
24 the Clerk's Office, or whatever, the foreperson will be
25 liaison. She'll be the one who'll contact the bailiffs

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1 who will assist us in that of whatever information we
2 need. If one of the jurors has a special need that
3 they need, they would just give that information to the
4 foreperson, and the foreperson would write out that
5 need, give it to the bailiffs. The bailiffs will give
6 it either to me or to the Clerk's Office or whatever we
7 need to do to get that matter taken care of for you.
8 Sort of the liaison, as I said, with the Court and with
9 the Clerk's Office.

10 Sometimes exhibits are offered into evidence and
11 the attorneys will want to offer something, and pass it
12 around to the jury. Oftentimes, they'll give that to
13 the foreperson, let the foreperson look at it and pass
14 it around to others. Ultimately, when all of the
15 evidence is in, and I've instructed you on the law,
16 what the foreperson's job will be is to help facilitate
17 that discussion, to make sure everyone has their say,
18 and give their opinion about the case, the facts of the
19 case, and how it applies to the law. So the foreperson
20 will be the one who will make sure that that discussion
21 is facilitated, will write out a verdict form that I'll
22 have for you to sign on behalf of the fellow jurors at
23 the time that you have completed your deliberations.
24 I'll ask Ms. Crawford, if you would, please, to assume
25 that seat tomorrow when you come back, on the front

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1 row. The rest of you, other than the alternates, who
2 will sit back there, can sit anywhere you'd like.
3 I look forward to working with you ladies and
4 gentlemen. We'll be ready to start at ten-thirty in
5 the morning. We'll be starting earlier than that. But
6 when you report, just report to your jury room. Mr.
7 Wilson, Mr. Teal or Mr. Hendrix, you've met all of
8 those. They'll certainly be here to help you. You've
9 met Mr. Welborn. Mr. Harris, the officer over here,
10 Van Harris, who maybe be in the hallway, you'll see
11 him. Seated beside me is Ms. Anna Lake. She's a
12 recent law school graduate, law clerk for me, and
13 she'll be coming and going during the course of the
14 trial. You'll see her. The young lady seated with her
15 back to you, directly in front of you, is Ms. Danette
16 Hanks. She's the court reporter. You may have noticed
17 she's taking down everything that's said to make sure
18 we can keep an accurate record. She'll be helping with
19 the marking of any exhibits that may be marked during
20 the course of the trial.

21 Have a good evening, ladies and gentlemen, and
22 remember the admonitions I've made. If you'll be back
23 at ten-thirty in the morning, we'll be ready to start
24 at that time. You may be excused at this time.

25 Mr. Connor, if I may see you just a moment. If

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1 you could just wait and let the other jurors out. Just
2 come around this way so the jurors can get out.

3 (WHEREUPON, the jury exited the open court at
4 approximately 4:11 p.m)

5 THE COURT: All right. For the record, one
6 juror, Mr. Connor, had a conflict that developed. I
7 discussed it with the attorneys on that. I'll explain
8 that to the fellow jurors tomorrow. He's going to be
9 serving on another trial tomorrow, but he developed a
10 conflict on this particular case. The attorneys have
11 been briefed on that and had a chance to be a part of
12 that discussion. So he has been dismissed from this
13 case. Is that correct?

14 MR. RICHARDSON: That's correct from the
15 State.

16 MR. DEJONG: Correct as far as Mr. Sanders is
17 concerned, Your Honor.

18 MR. ROBINSON: That's correct, Your Honor.

19 THE COURT: All right. We need to take a
20 short break and then we'll be ready to proceed with the
21 other Motions that we have for the rest of the
22 afternoon and then we'll be ready to start back
23 tomorrow.

24 BY MR DEJONG: Thank you, Your Honor.

25 (WHEREUPON, the court stood at recess for a short

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1 break.)

2 THE COURT: All right. Any other motions we
3 need to take care of?

4 MR. DEJONG: I'll defer to Mr. Richardson and
5 then I'll go, Your Honor, if he's ---

6 THE COURT: Anything from the State?

7 MR. RICHARDSON: Your Honor, the only pre-
8 trial motion I have is that I would move to sequester
9 all witnesses. And that certainly goes both ways for
10 the State and also the Defense, throughout the course
11 of the trial. Also, with the instruction that they're
12 not to talk to each other about their testimony at any
13 time.

14 THE COURT: What's the Defense position on
15 that, Mr. Robinson, Mr. DeJong?

16 MR. DEJONG: Your Honor, my position on that
17 is that I think the State has to show more than just a
18 request for sequestration. I think there has to be
19 some reason why they want sequestration, such as
20 overlapping testimony or whatever. And I don't believe
21 that in this case, as far as -- speaking only for Mr.
22 Sanders. Mr. Robinson can speak for himself. But I
23 don't believe that there -- factually there would be
24 any overlapping testimony in this case.

25 THE COURT: Are there factual witnesses that

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1 may be in dispute?

2 MR. RICHARDSON: Well, Your Honor, I don't
3 know. I've gotten a list of -- I don't have the list
4 right in front of me, but I've got a lengthy list that
5 you read to the panel, jury panel, from Mr. DeJong.
6 And then, in addition to that, a whole list from Mr.
7 Robinson.

8 Now whether they can sync their cases together or
9 not, I don't know. They overlapped two potential
10 witnesses on each of their lists. And certainly
11 testimony -- and I don't know if it's character or what
12 the case may be, but the purpose of the sequestration
13 is just that. If their testimony is going to be what
14 they're going to say, then there's no need for them to
15 be in here listening to everybody else's testimony. I
16 can't say what ---

17 THE COURT: Do you have witnesses that are
18 factual witnesses as to the allegations?

19 MR. DEJONG: Your Honor, I'll be very candid
20 with the court. If I can find my witness list -- there
21 it is. Factually, to some degree Joseph P. Sanders,
22 III. To some degree, Gail Sanders. Factually, it
23 could be Jacquelyn Lankford, witness number seven on
24 Mr. Sanders' witness list. Thirteen, Charles Kelley.
25 Possibly seventeen, Diane Chappell, eighteen,

Nicole Holder

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1 . I would not -- if I call Dr. Marti Loring and
2 Dr. Collis Barksdale, both of them being professional
3 people, I don't think they would want to be in the
4 courtroom, other than that period of time that they
5 would be testifying. If I do call Dr. Loring, maybe --
6 I don't think it's a factual overlap anymore than
7 probably the State's witness, Shauna Galloway-Williams
8 would be more of a factual witness than Dr. Marti
9 Loring. But, again, I don't know what the State is
10 going to use it for -- use her for.

11 And that, when we start talking factually, Your
12 Honor, that gets into whether it is witnesses as to the
13 alleged incident, which as to the alleged incident,
14 none of my witnesses would be factual as to that.
15 There may be peripheral issues involved with the
16 factual part of the allegations that I would put
17 witnesses up to, but nothing as to the, if you will,
18 the facts of the alleged incidents themselves. Maybe
19 some on -- again, I don't know exactly where the
20 State's going with the 404(b) situation. There could
21 be some witnesses that would testify as to that. But,
22 again, only one or two, Your Honor.

23 THE COURT: Mr. Robinson?

24 MR. ROBINSON: May it please the Court. Your
25 Honor, our witnesses are primarily -- one would go --

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1 as far as attacking the credibility of the -- as far as
2 catching Complainant potentially in some lies and so forth.
3 There's also some -- possibly some character evidence,
4 some character information on Ms. Gearhart as far as
5 nurses or people that work with her, that know her
6 standing in the community. So that's what my case is
7 about. Not about the particular incidents, but could
8 possibly just go to the credibility of my client.

9 THE COURT: Any other motion from the State,
10 other than sequestration?

11 MR. RICHARDSON: No other motions at this
12 time, Your Honor.

13 THE COURT: All right. I'll take that under
14 advisement. I might defer that until after the first
15 witness that I hear in the opening session to see what
16 I think the potential for danger to not sequester would
17 be, particular as to the character witnesses. I don't
18 know that it would be a necessity to sequester all of
19 them. Certainly, they might want to have an
20 opportunity to be here. I'll take that under
21 advisement, Mr. Richardson, at this time.

22 Anything from the Defense?

23 MR. DEJONG: Yes, Your Honor, may it please
24 the Court. The first motion I have, Your Honor, is as
25 to the indictment. As a charging document, I think

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1 both of the indictments with regard to Mr. Sanders are
2 adequate. It puts him on notice of what he is being
3 charged with.

4 Our Supreme Court has said there's nothing wrong
5 with that five month span of time in this case from
6 January 1st of 2008 to June the 1st of 2008. So it
7 does the apprise the Defendant of what he is being
8 charged with. And I will agree with that.

9 What I don't agree with is that it apprises the
10 Defendant of what he is defending himself on. Now,
11 it's already been brought to the Court's attention -- I
12 don't know if it is on the record or not -- but it has
13 been brought to the Court's attention that we will have
14 a 404(b) hearing in the morning with regard to, I
15 gather a common scheme or plan. I'm not sure. The
16 State hasn't really made me aware of that. The point I
17 make, though, Your Honor, not knowing what we are
18 defending, without having a date in here and the nature
19 of the sexual battery in these indictments, I don't
20 know what we're defending, number one. And number two,
21 I don't think the jury's going to know what they're
22 supposed to be looking at factually. I mean, I don't
23 believe, Your Honor, that the State can come in here
24 with prior bad acts, some shotgun approach, and tell
25 the jury to pick one that they want to convict him on.

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1 I think I am entitled to notice, something closer than
2 that, especially in light of what they're talking
3 about, the prior bad acts under 404(b), again, I assume
4 for common scheme of plan. I don't know. I don't have
5 a clue at this point in time. I know what allegations
6 have been made. I don't have a clue what allegation I
7 am defending as opposed to prior bad acts that they
8 want to try to bring in. I'm not conceding that they
9 should come in. But for the purposes of this argument,
10 if those prior bad acts do come in, then what am I
11 defending? I don't know what I'm defending. I don't
12 think the jury would know at this point in time what
13 they are supposed to deliberate on. What they are
14 either supposed to find Mr. Sanders innocent of or
15 guilty of. There's nothing in there to let us know.
16 It's almost a motion to require the State to elect, I
17 guess. It's not quite that, Your Honor. It's more of
18 a notice giving function. So at least we have the
19 ability, if Your Honor allows those prior bad acts, to
20 be able to distinguish between prior bad acts and what
21 act he has actually been charged with.

22 Additionally, Your Honor, I think that goes to
23 your function. I think, in the course -- if you allow
24 the prior bad act -- which I again submit that you
25 should not, but we'll address that tomorrow -- but if

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1 you allow the prior bad act, I think there's a limiting
2 instruction that goes with that, simply because that is
3 there, that they are not to use that to say that he is
4 guilty of these particular offenses. I might be wrong
5 about that, but there's something that sticks in my
6 mind. They can use it, but it's almost the propensity
7 charge. That because of prior bad acts they're not to
8 necessarily to say that he committed this act,
9 something along those lines. I forget exactly how it
10 goes. So I submit I'm entitled to more. Mr. Sanders
11 is entitled to more than what we have got in the docket
12 before we must proceed with defending this case.

13 THE COURT: All right. Thank you, sir. Mr..
14 Richardson? What's your view on that ---

15 MR. RICHARDSON: Well, Your Honor, I'm not
16 sure what he's arguing. I think ---

17 THE COURT: Well, let me see if I can restate
18 it. Are the prior bad acts within the time frame of
19 the warrant January to June 2008, or are they at a
20 different time frame?

21 MR. RICHARDSON: The prior bad acts are at a
22 different time frame.

23 THE COURT: Does that help you any, Mr.
24 DeJong? They're before January 1st, 2008?

25 MR. RICHARDSON: Yes.

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1 MR. DEJONG: I don't know if it does or not
2 until I hear what they going to try to bring in. I
3 will do this, Your Honor -- I'm not going to withdraw
4 my argument -- if we could leave the motion open until
5 we can get into the prior bad acts, Your Honor.

6 THE COURT: All right. Well, let's do that.
7 We'll defer the ruling on this attack on the indictment
8 until we have the hearing tomorrow.

9 MR. DEJONG: Thank you, Your Honor.

10 THE COURT: Anything else?

11 MR. DEJONG: Yes, Your Honor. One other
12 matter. This one may be premature also, but we might
13 as well get it out in the open here. There are
14 allegations made by the alleged victim in this case, at
15 least in her statement, and perhaps in statements to
16 law enforcement -- I don't really recall that right
17 now, but I think that might be of a violent -- well, I
18 don't want to use the word violent. But she, the
19 alleged victim, said there was some physical conduct
20 towards the mother and the alleged victim. And Your
21 Honor may not be able to rule on it, but there is
22 nothing, as I understand in the allegations of what
23 we're trying, that physical force was ever used.

24 So I simply bring that up, in the event we get
25 into the alleged victim's statement, this is in the

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1 nature of a motion in limine that she not be allowed to
2 testify about this physical conduct that's directed
3 between her and her mother, that had nothing to do with
4 the allegations that the State is trying now, whatever
5 they might be, Your Honor.

6 THE COURT: Mr. Richardson, do you understand
7 what that his ---

8 MR. RICHARDSON: I do. I got that one.

9 THE COURT: Okay.

10 MR. RICHARDSON: The context of -- to be
11 quite honest with you, I had not thought about that
12 particular statement within the statement. The
13 problem, the problem I'm going to have -- I think that
14 we need to have it come up in the -- and it will -- I
15 think it would come up in the testimony before you
16 could rule on it. The problem being is that there are
17 reasons why she delayed in reporting. And that could
18 come into context with that.

19 THE COURT: And the contact you're talking
20 about is between the victim and her mother?

21 MR. DEJONG: I'm sorry, Your Honor, I didn't
22 ---

23 THE COURT: The physical contact that you're
24 talking about, is that between your client and the
25 victim or the victim and the mother?

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1 MR. DEJONG: Both, Your Honor.

2 THE COURT: Okay. Well, again, that might
3 have to be deferred until after we have the Lyle
4 hearing in the morning.

5 MR. DEJONG: Yes, sir. And I don't oppose
6 that. I just wanted to get it out on the carpet.

7 THE COURT: Anything else, Mr. DeJong?

8 MR. DEJONG: I can't think of anything else
9 at the moment, Your Honor. I might think of something
10 driving home tonight, but that's all I can think of
11 right now.

12 THE COURT: Mr. Robinson, anything from you?

13 MR. ROBINSON: Your Honor, the only in limine
14 motion I would have as far as the limitations go, there
15 was an underlying Department of Social Services case
16 that may -- one of the victims may, for some reason,
17 bring up. I just ask that the prosecution admonish
18 their witnesses not to discuss or bring that into --
19 interject that into this case. That's ---

20 THE COURT: Does that need to be any, in any
21 way, a part of your case, Mr. Richardson?

22 MR. RICHARDSON: I don't -- only for referral
23 purposes. That's how Ms. Burgess got the case.

24 MR. ROBINSON: I would, I would have an issue
25 with that. I think that that bolsters the testimony of

1 Ms. Burgess. I think if they just said a report would
2 be better than saying it came from DSS.

3 MR. RICHARDSON: They get a referral. The
4 Police officer takes into protective custody, and then
5 they -- you know, at that point in time DSS takes the
6 child. That explains the -- it doesn't say -- I mean,
7 nowhere are we implying that DSS has made a ruling or
8 ---

9 THE COURT: Well, I think it would behoove us
10 all to just -- we certainly don't want to try a Family
11 Court case here, but ---

12 MR. RICHARDSON: And I don't intend ---

13 THE COURT: -- those simple matters about
14 there was a referral and I think certainly the fact
15 that -- I gather from what -- the statement Ms. Burgess
16 is going to say that the child was not in the home at
17 that time.

18 MR. ROBINSON: I have no problem with a
19 referral like that. But not when they ---

20 THE COURT: Admonish your witnesses, Mr.
21 Richardson, to not get into any DSS action or inaction.
22 We'll just talk about the matters that are really
23 pertinent here, that there was a referral to Ms.
24 Burgess.

25 MR. RICHARDSON: What my intent was simply,

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1 is not -- I'm not putting up any DSS witnesses. What
2 my intent was, was for Ms. Burgess to tell the jury how
3 she came to go and investigate the case, and then what
4 happened. She took the child into emergency protective
5 custody, and then the child went into foster care
6 through DSS.

7 THE COURT: I think that's appropriate for
8 the jury to know, rather than just that they're out,
9 you know, helter skelter making an investigation into
10 this. I think that would be appropriate. Limit it to
11 that. Mr. DeJong?

12 MR. DEJONG: I'll get with Mr. Robinson. I
13 didn't grasp everything Your Honor said right now, so
14 ---

15 THE COURT: They're going to be allowed to
16 testify that Officer Burgess -- that she got a report,
17 that the child was in protective custody, and she did
18 an investigation.

19 MR. DEJONG: What I don't like about that,
20 Your Honor, is the same age old question we get from --
21 I can see the first question coming from the jury on
22 that. It's kind of like when you cross examine off of
23 the statement and don't enter the statement, one of the
24 first questions is, can we have a copy of the
25 statement? I can see the jury coming back with the

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1 first question. What was the results of the DSS
2 investigation? Of course, I understand what Your
3 Honor's response to that would be. But my problem with
4 that is, it leaves the jury to speculate and invites
5 them to speculate as to what that DSS investigation
6 was.

7 If it was -- I wouldn't oppose it if it was a
8 matter that the referral had come from -- if the report
9 had come to DSS and then on to law enforcement. I
10 think under whatever that old case is, they could
11 testify as to time and place of the report. But this
12 is a little backwards because now if you're going to
13 let DSS testify about taking emergency protective
14 custody and putting this child in foster care ---

15 MR. RICHARDSON: DSS is not -- that's what I
16 said, DSS is not testifying.

17 THE COURT: I understand he said that DSS --
18 a representative was not going to be here at all.
19 Officer Burgess is just going to say, I got a call ---

20 MR. DEJONG: Oh, well, I ---

21 THE COURT: -- and the child -- I had to
22 investigate the fact that I got a call from DSS.

23 MR. DEJONG: I heard you better than I heard
24 him, Judge. That whole argument just went right out
25 the window.

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1 MR. RICHARDSON: Because Mr. DeJong never
2 listens to me.

3 MR. DEJONG: No, I'm hard of hearing, is what
4 it is.

5 THE COURT: Anything else for the day?

6 MR. DEJONG: Not on behalf of Mr. Sanders,
7 Your Honor.

8 THE COURT: All right. We'll be at ease
9 until nine o'clock in the morning. We'll be ready to
10 start with our Lyle hearing.

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

13 THE COURT: This is to amplify the record
14 earlier as to juror Connor. The reason that was
15 dismissed was due to a conference he had with the
16 attorneys. The reason was that in a conference of the
17 attorneys that he shared that he had had a -- had some
18 sexual abuse as a child by a male and he did not feel
19 that he could give an adequate verdict in the case.
20 And he was embarrassed to share that himself.
21 So understandably, he didn't realize that he could
22 have approached me privately, even though I asked the
23 question he ignored the question. With the consent of
24 the parties, I believe it's in the interest of justice
25 that he be dismissed from this case to serve on other

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1 juries this week. That's juror Connor.

2 Mr. Welborn, I've asked him on the record to
3 select a -- randomly selected one of the alternate
4 jurors. He has done that. Again, the attorneys were
5 aware of that. Debbie Cannizzaro will be the sitting
6 juror. The other, Ms. Bradish, will still be the
7 alternate tomorrow.

8 Now, I'll put that on the record again with the
9 jury tomorrow that he was dismissed. I just wanted the
10 record to reflect the reason for his dismissed. This
11 will be the only record of that. Any corrections from
12 you, gentlemen?

13 MR. ROBINSON: Nothing from the Defense.

14 MR. DEJONG: Your Honor, I agree with all of
15 what you have put on the record. I wasn't really
16 clear. Did you ask him if he had shared that with any
17 other juror?

18 THE COURT: Thank you. I did ask him when he
19 approached me and I dismissed him, and he said he had
20 not shared it with anyone, that the juror -- that the
21 jurors did ask, oh, are you going to be the foreman.
22 And he said, no, it's not that. That was what he told
23 me at the bench here. That they thought he was going
24 to be appointed the foreman.

25 MR. DEJONG: Okay. Very good. Thank you,

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1 Your Honor.

2 THE COURT: I did clarify that he had not
3 shared it with anyone as you both -- or all observed,
4 he was very reluctant to share it with even us.

5 MR. DEJONG: Yes, sir. I thought looking at
6 his body language you had asked him that question, but
7 I just wanted the record to be clear.

8 THE COURT: All right. Thank you for
9 bringing that up.

10 MR. DEJONG: Yes, Your Honor.

11 THE COURT: See you at nine o'clock in the
12 morning.

13 MR. DEJONG: Thank you, Your Honor.

14 (WHEREUPON, the Court stood at recess at
15 approximately 4:35 p.m.)

16 JUNE 22, 2010

17 (WHEREUPON, Court convened with all parties
18 present and the following proceedings were had.)

19 THE COURT: All right. I understand there's
20 a hearing on prior acts of misconduct. Is that
21 correct?

22 MR. RICHARDSON: That's correct, Your Honor.

23 THE COURT: All right. Be glad to hear from
24 you. Be glad to hear from any witnesses. Be glad to
25 hear from Mr. DeJong and Mr. Robinson.

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1 MR. RICHARDSON: Your Honor, what we are
2 seeking to introduce are certain acts that took place
3 in 2005. The acts actually took place in a motel
4 located in Easley, South Carolina. Of course, those
5 acts were charged by the Easley Police Department.
6 However, it being a separate and distinct, we are not
7 trying those cases today. However, we are seeking to
8 introduce the acts that were committed in that time
9 period as a prior bad act.

10 Now, I can go forward on the argument based upon
11 the facts that I know that are going to be alleged. Or
12 if you need testimony ---

13 THE COURT: Is the purpose under common
14 scheme and plan?

15 MR. RICHARDSON: Common scheme and plan and
16 just general res gestae.

17 THE COURT: How would it be general res
18 gestae?

19 MR. RICHARDSON: We're seeking to introduce
20 it, number one, under common scheme and plan.

21 THE COURT: All right.

22 MR. RICHARDSON: Also for lack of -- to show
23 intent, lack of mistake, all the common denominators
24 that are established in 404(b). Also, Your Honor,
25 there's case law out there and that would be -- I think

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1 it's Adams. The State v. Adams in which you can bring
2 in -- it's another accepted basis of admissibility of
3 evidence for the full presentation of the case.

4 The way this case was established and started was
5 that these two defendants meeting on line, ultimately
6 meeting in person in Easley. The acts started then by
7 the Defendant Sanders and culminated from that point on
8 into other acts that took place at his residence at a
9 later date. His residence is actually in Liberty,
10 South Carolina, in Pickens County, which is the cases
11 we are trying today.

12 THE COURT: All right, sir. I'll be glad to
13 hear the testimony that you have to offer on that issue
14 of Lyle evidence.

15 MR. RICHARDSON: Your Honor, we would call
16 Complainant to the stand. Judge, do you -- Your Honor,
17 do you still have the case law and all that I handed
18 up?

19 THE COURT: Yes.

20 MISTER CLERK: Place your left hand on the
21 bible and raise your right hand. Do you solemnly swear
22 or affirm the testimony you're about to give in this
23 case to be the truth, the whole truth and nothing but
24 the truth, so help you God?

25 Complainant: I do.

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1 MISTER CLERK: If you would have a seat and
2 state your name for the record.

3 Complainant: Complainant

4 Complainant

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MR. RICHARDSON:

8 Q. Okay. Now, Complainant what we're going to have to do
9 ...

10 MR. RICHARDSON: Your Honor, may I approach
11 the witness?

12 THE COURT: You may.

13 Q. What I'm going to do for you Complainant is I'm going
14 to -- you see this gentleman over here? He's got to be
15 able to hear you, okay? What I want you to is I want
16 you to move up to that microphone. I think you'll have
17 to put your mouth on the microphone and speak up into
18 it. Okay? I'll let you know if you're not loud
19 enough. Okay. Let's try it again. What's your name?

20 A. Complainant.

21 Q. Okay. And how old are you?

22 A. Fourteen.

23 Q. Okay. And when's your birthday?

24 A.

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1 Q. Okay. Now, where do you presently live?

2 A. In Modoc, North Carolina.

3 Q. Okay. You need to get a little louder, okay?

4 You've got a very soft voice, all right? A little bit

5 louder. Where do you live?

6 A. Modoc, North Carolina.

7 MR. DEJONG: We need to turn -- I don't think

8 the sound system's on very loud, Your Honor. Maybe we

9 can turn it up a little bit.

10 THE COURT: Maybe we ...

11 Q. Okay. Let's try that again. Where do you live?

12 A. In Modoc, North Carolina.

13 Q. Okay. Now, do you know the Defendants?

14 A. Yes, sir.

15 Q. Okay. Who is Anita Gearhart?

16 A. My mom.

17 Q. And who is Joey Sanders?

18 A. Her boyfriend at the time.

19 Q. Okay. And when did you first meet Joey Sanders?

20 A. In 2005.

21 Q. Okay. How did you come to meet him?

22 A. My mom had met him on the internet.

23 Q. Okay. And where were you living when your mom met

24 him on the internet?

25 A. With my grandma.

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- 1 Q. Okay. And where was that?
- 2 A. In Roanoke, Virginia.
- 3 Q. All right. And when you lived with your grandma,
- 4 did your mother also live there?
- 5 A. Yes.
- 6 Q. Now, did there come an occasion that you left
- 7 Virginia to come to South Carolina?
- 8 A. Yes, sir.
- 9 Q. Okay. What happened? How did that come about?
- 10 A. My mom said that we were going to go meet my aunt
- 11 Cindy in Rock Hill. And we were ridin and when we got
- 12 on down the road, coming down here, she said that we
- 13 were going to go meet Joey.
- 14 Q. Okay. And did she tell you where you were going?
- 15 A. To -- like going past Rock Hill, but in South
- 16 Carolina.
- 17 Q. Okay. Now, did you meet Joey?
- 18 A. Yes, sir.
- 19 Q. Where did you first meet him?
- 20 A. We first met him at the Marriott in South -- in
- 21 Spartanburg.
- 22 Q. Okay. Now, let me ask you this. Did you know him
- 23 as Joey?
- 24 A. Well, at first he told my mom that his name was
- 25 Ryan.

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1 Q. Okay. And did your mother tell you you were going
2 to meet Joey or Ryan?

3 A. At first, it was Ryan. And then later on she said
4 it was Joey.

5 Q. Okay. And when did you first find out it was
6 Joey?

7 A. After we'd left and started coming down here.

8 Q. Okay. Now, did you say -- you testified that the
9 first time you met him was at the Marriott?

10 A. Yes.

11 Q. Okay. Which Marriott is that?

12 A. The one where they like -- where all the
13 contestants stay during the pageant week.

14 Q. Okay. Do you know what city or town that's in?

15 A. Spartanburg. That's all I know.

16 Q. Did you stay at the Marriott?

17 A. No, sir.

18 Q. Where did you go?

19 A. We left there and went to the Comfort Inn in
20 Easley.

21 Q. Okay. Did you stay at the Comfort Inn in Easley?

22 A. Yes, sir.

23 Q. Okay. Who got the room for you?

24 A. Joey.

25 Q. Okay. How do you know that?

1 A. Because he went in and he had his credit card and
2 stuff.

3 Q. Okay. Now, once you got a room, can you -- when
4 was this approximately, do you remember?

5 A. Around -- I don't know.

6 Q. Okay. Do you remember what year it was?

7 A. In 2005.

8 Q. Okay. Now, the first time you were there after he
9 got the hotel room, what did y'all do?

10 A. We like -- when we first got there, we went in,
11 took our stuff in and then we like stayed there for a
12 few minutes and then we went out and went shopping and
13 had, like -- we went out and got food and stuff and we
14 came back.

15 Q. Okay. And was your mother with you the entire
16 time?

17 A. Yes, sir.

18 Q. Okay. And was Defendant Sanders with you the
19 entire time?

20 A. Yes, sir.

21 Q. All right. And then when you came back, where did
22 you go?

23 A. We went back into the room.

24 Q. Okay. And was this daytime or nighttime, or do
25 you remember?

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1 A. It was in the middle, but like in the evening.

2 Q. Okay. And what happened when you went back to the
3 room?

4 A. My mom and Joey started talking and everything and
5 they decided, well, not they decided, but they -- like
6 they started having sex and everything in the bed.

7 Q. Okay. Now, you said they started having sex.
8 Where were you in the room?

9 A. At first I was sitting in the chair and then I was
10 laying in the floor.

11 Q. Okay. And where were they?

12 A. In the bed.

13 Q. All right. And what were they doing that made you
14 believe they were having sex?

15 A. Their clothes were on the floor and like their
16 bodies were moving and I could hear moaning.

17 Q. Okay. And during this, what were you doing?

18 A. I was laying in the floor watching TV.

19 Q. Okay. What happened then?

20 A. Well, while I was watching TV, I had fallen
21 asleep. And like when they were finished my mom went
22 in the bathroom and they told me that I could get in
23 the bed since I was tired. And when I get in, like,
24 Joey started touching me.

25 Q. Okay. Now, when you got in the bed, what kind of

- 1 clothes did you have on?
- 2 A. I had on my pajamas.
- 3 Q. What kind of clothes did he have on?
- 4 A. None.
- 5 Q. All right. And when you say he was touching you,
- 6 where was he touching you?
- 7 A. On my breasts and between my legs.
- 8 Q. Okay. What was he touching you with?
- 9 A. His hands.
- 10 Q. All right. Was he moving his hands or was his
- 11 hands still?
- 12 A. He was moving his hands.
- 13 Q. Did he use his fingers on you?
- 14 A. Yes, sir.
- 15 Q. What did he do?
- 16 A. He took his finger and put it inside me.
- 17 Q. Okay. Now, where was your mother during that
- 18 time?
- 19 A. In the bathroom.
- 20 Q. Okay. And did your mother ever come out?
- 21 A. She did.
- 22 Q. And what was she doing in the bathroom?
- 23 A. She took a shower.
- 24 Q. All right. And when she came out, what happened?
- 25 A. Joey was still touching me and she laid down in

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1 the bed and -- because it was me, it was Joey, me and
2 then mom. I mean, he had kind of like stopped a little
3 bit, but he still kept feeling me.

4 Q. Okay. And were you and -- was Joey under the
5 covers?

6 A. Yes, sir.

7 Q. Were you under the covers?

8 A. Yes, sir.

9 Q. When your mother came back in, what was she
10 wearing?

11 A. Her pajamas.

12 Q. Was she on top of the covers or under the covers?

13 A. Under.

14 Q. Okay. And what happened then?

15 A. Joey had got -- he had gotten up and put on his
16 clothes and him and mama talked for a few minutes and
17 then they kissed goodnight, and he left.

18 Q. Okay. Now, did he come back -- was this
19 nighttime?

20 A. (Affirmative nod.)

21 Q. Okay. You've got to answer yes.

22 A. Yes.

23 Q. Okay. What -- after that, after he left, what did
24 you and your mother do?

25 A. I went back to sleep and I guess mom did because

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1 ...

2 Q. Okay. And what happened the next day?

3 A. We got up and then like Joey came over and like
4 after that we decided that we were going to go ahead
5 and start heading back to Virginia.

6 Q. Okay. And did you go back to Virginia?

7 A. Yes, sir.

8 Q. At that time, did you tell your mother what
9 happened?

10 A. No, sir.

11 Q. Did there come another occasion that you met the
12 Defendant Sanders?

13 A. Yes, sir.

14 Q. Okay. Do you remember when that was?

15 A. About two or three weeks later.

16 Q. Okay. Was it still 2005?

17 A. Yes, sir.

18 Q. How did it come that you met him again?

19 A. Mom said that we were going to come down and see
20 Aunt Cindy again, and we came down here and we stayed.

21 Q. Okay. Now, when your mother's saying you're going
22 to come meet Aunt Cindy, who is she telling that to?

23 A. Everyone. My grandma and all of my family up
24 there.

25 Q. Okay. And what was the reason for seeing Aunt

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1 Cindy?

2 A. She was either sick or she just wanted to go see
3 her.

4 Q. All right. Did you go see Aunt Cindy this time?

5 A. No, sir.

6 Q. Okay. Where did you go?

7 A. We went to see Joey.

8 Q. Okay. And where did you see him?

9 A. At the Comfort Inn in Easley.

10 Q. And when you got there, did you meet him there or
11 did you meet him somewhere else and go there or how did
12 that come about?

13 A. We met him at the Easley -- or at Comfort Inn.

14 Q. Okay. How did he know you were going to be there?

15 A. Mama told him.

16 Q. How did she tell him?

17 A. She called him.

18 Q. She called him on her cell phone?

19 A. (Affirmative nod.)

20 MR. DEJONG: Your Honor, I realize what a
21 404(b) hearing is, but Mr. Richardson is leading
22 something horribly and I object to it.

23 THE COURT: All right. Just try not to lead
24 the witness.

25 MR. RICHARDSON: Your Honor, I am dealing

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1 with a child witness.

2 THE COURT: I understand.

3 MR. RICHARDSON: And we're in a 404(b).

4 THE COURT: I understand that. Just continue
5 asking your questions.

6 MR. RICHARDSON: Okay.

7 Q. After she called him, where did you go?

8 A. We went to the Comfort Inn.

9 Q. Okay. And what happened at the Comfort Inn?

10 A. Mom and Joey started talking. And he had a room
11 for her. And like she thanked him and gave him a kiss
12 for it and everything. And then they just -- they got
13 in bed and started having sex again.

14 Q. Okay. And prior to that, who got the hotel room?

15 A. Joey.

16 Q. And how do you know that?

17 A. Because he went in and paid for it.

18 Q. Okay. Now, what were they doing that makes you
19 believe that they were having sex?

20 A. Their clothes were on the floor and they were
21 moving back and forth and you could hear them.

22 Q. Okay. And where were you at this time?

23 A. I was in the floor.

24 Q. Okay. And was that the only place you were, in
25 the floor?

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1 A. Yes, sir.

2 Q. Okay. Now, what were you doing in the floor?

3 A. I was watching TV.

4 Q. Okay. And what happened then?

5 A. Like I'd fallen asleep because I was really tired.

6 And like I woke up in the middle and they were still

7 having sex, so I went back to sleep. And they -- after

8 I'd fallen back asleep, mom woke me up and told me that

9 I could lay down in the bed while she was taking a

10 shower.

11 Q. Okay. And did you do that?

12 A. Yes, sir.

13 Q. All right. And do you remember what you were

14 wearing?

15 A. My pajamas.

16 Q. And did you get under the covers or above the

17 covers?

18 A. Under them.

19 Q. Okay. And where was Defendant Sanders?

20 A. Under the covers.

21 Q. Okay. And did he have any clothes on?

22 A. No, sir.

23 Q. All right. And what happened then?

24 A. He started touching me again and he started

25 rubbing me.

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- 1 Q. Okay. And where did he, where did he touch you?
- 2 A. My boobs and between my legs.
- 3 Q. All right. And did he use his finger at all?
- 4 A. Yes, sir.
- 5 Q. What did he do?
- 6 A. He put his fingers on the inside of me.
- 7 Q. Okay. What happened then?
- 8 A. Mama came back out of the bathroom and she was
- 9 sitting in the chair and then Joey had finished and he
- 10 had gotten up and gotten dressed and they told each
- 11 other goodbye and stuff and then he left.
- 12 Q. Okay. Now, did you -- what did y'all do after he
- 13 left?
- 14 A. I went to sleep.
- 15 Q. Okay. And did you see him again that night?
- 16 A. No, sir.
- 17 Q. When did you see him next?
- 18 A. The next day. We were eating.
- 19 Q. All right. And did you leave the next day?
- 20 A. Yes, sir.
- 21 Q. And where did you go?
- 22 A. Back to Virginia.
- 23 Q. Okay. Was there another occasion that you saw
- 24 this Defendant?
- 25 A. It was like later, like the next month.

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1 Q. Okay. What happened then?

2 A. We went down and met him and like he came over
3 after he paid the room and everything, and him and mama
4 just like went straight to the bed and just started
5 having sex.

6 Q. Okay. Now, prior to that, where were you living
7 at this time?

8 A. We were living with Steve, mama's ex-husband.

9 Q. Okay. And were they married at the time?

10 A. Yes, sir.

11 Q. And what was the reason for you and her coming to
12 South Carolina that she told Steve?

13 A. Because Aunt Cindy, she wanted to see her.

14 Q. I'm sorry.

15 A. My mom wanted to see Aunt Cindy.

16 Q. For a visit?

17 A. Yes.

18 Q. Okay. Did you go see Aunt Cindy?

19 A. No, sir.

20 Q. Who paid for the hotel room this third time?

21 A. Joey.

22 Q. All right. How do you know that?

23 A. Because he went in and he had his credit card out.

24 Q. Okay. And how do you know that they were having
25 sex?

1 A. Because like they were under the covers. Their
2 clothes were on the floor, and you could hear them
3 moaning and stuff.

4 Q. Okay. And then what happened?

5 A. And then like at first I was sitting in the chair
6 and then like I laid down in the floor and I fell
7 asleep. And then when I woke up mom was like getting
8 her stuff together to go take a shower. And after that
9 she told me that I could lay down. And I did.

10 Q. You did?

11 A. (Affirmative nod.)

12 Q. Okay. And what, if anything, happened then?

13 A. Joey started touching me on my boobs and between
14 my legs again and he like took my clothes off and
15 stuff.

16 Q. Okay. And what kind of clothes were you wearing?

17 A. My pajamas.

18 Q. All right. And what, if anything, did he do with
19 his finger?

20 A. He would like rub it in my -- between my legs.

21 Q. Okay. And did he penetrate you this time?

22 A. Yes, sir.

23 Q. Okay. Now, after that happened, what happened?

24 A. Mama came back out and when he saw mom he stopped.
25 And he like got up and put his clothes on and left.

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1 Q. And did you see him again after that?

2 A. The next day.

3 Q. All right. And what did y'all do the next day if
4 anything?

5 A. Like we went out and ate and stuff. And then when
6 we went back to the hotel, we got our stuff and then we
7 left.

8 Q. Okay. Now, how many times did you, do you recall,
9 come from Virginia to South Carolina with your mother?

10 A. About five.

11 Q. Did anything happen the other times?

12 A. No, sir.

13 Q. Okay. Now, do you recall your mother moving from
14 Virginia to South Carolina?

15 A. Yes, sir.

16 Q. Okay. Do you know when that was?

17 A. I was in the fourth grade because I had to finish
18 out my school year at my old school with my grandma. I
19 would have been ten.

20 Q. Okay. And do you remember the year?

21 A. It would have been 2006-2007 -- no, 2005-2006
22 school year.

23 Q. Okay. So she -- do you remember when she moved?

24 A. In early 2006.

25 Q. Early in 2006?

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- 1 A. (Affirmative nod.)
- 2 Q. Okay. And did you come with her?
- 3 A. No, sir.
- 4 Q. Where did you stay?
- 5 A. I went to my grandma's.
- 6 Q. Okay. And where did she move?
- 7 A. It was in Joey's house.
- 8 Q. Defendant Sanders?
- 9 A. (Affirmative nod.)
- 10 Q. Okay. Had you ever been to his house before?
- 11 A. No, sir.
- 12 Q. All right. When she -- at some point in time, did
- 13 you move into that house?
- 14 A. Yes, sir.
- 15 Q. Do you remember when that was?
- 16 A. It was during the summer that we -- it was, I
- 17 think end of July, beginning of August.
- 18 Q. Okay. And who lived in that house?
- 19 A. It was me, mom and Joey.
- 20 Q. Okay. And what was the location of that house?
- 21 A. It was Liberty.
- 22 Q. All right. And just you three lived there?
- 23 A. Yes, sir.
- 24 Q. Okay. The entire time you were there, did anybody
- 25 else live in that house?

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1 A. No, sir.

2 Q. All right. Now, when you moved back into that
3 house, did the defendant start doing anything?

4 A. He started touching me on my boobs and between my
5 legs.

6 Q. Okay. And how would he do that?

7 A. Like, he would just like rub and stuff.

8 Q. Okay. And do you know how many times he did that?

9 A. Whenever mom was in the kitchen cooking dinner or
10 doing laundry or sitting in the back or something.

11 Q. Okay. Can you tell me how many times that was?

12 A. Over ten.

13 Q. Okay. And at some point in time -- well, let me
14 ask you this. What room were you in when he did that?

15 A. His bedroom.

16 Q. Okay. And where was he located in the room?

17 A. On his bed.

18 Q. All right. And at some point in time, did it get
19 worse than touching and rubbing?

20 A. When mom went back to work for a doctor's office.

21 Q. Okay. What time would she work there?

22 A. She would take me to school in the mornings and
23 then she would go straight to work. And then she'd get
24 home about six-thirty.

25 Q. Okay. And were you in school?

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- 1 A. Yes, sir.
- 2 Q. Where were you at?
- 3 A. At
- 4 Q. What time did you get out of school?
- 5 A. I would be home by four.
- 6 Q. Okay. Was the Defendant Sanders at home when you
- 7 got home?
- 8 A. Sometimes.
- 9 Q. Okay. And would the Defendant Sanders get home
- 10 before your mother would?
- 11 A. Yes, sir.
- 12 Q. Okay. When she went back -- do you remember when
- 13 she went back to work?
- 14 A. In the beginning of 2008.
- 15 Q. After she went back to work what happened?
- 16 A. Like I would get home from school and then Joey
- 17 would come home early and like one day he started
- 18 touching me and he told me ---
- 19 Q. When you say touching, where are -- touching you
- 20 where?
- 21 A. On my boobs and in between my legs.
- 22 Q. Okay. Go ahead.
- 23 A. And one day he told me to go get him a drink, and
- 24 I did. And when I went to hand it to him, he took the
- 25 drink and like pulled me closer to him and ---

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1 Q. Okay. Now, where were you at this time?

2 A. In his bedroom.

3 Q. Okay. Go ahead.

4 A. And he like pulled me down to him and started
5 kissing me and rubbing me and taking off my clothes.
6 And then he started like touching me between my legs.
7 and then he took his clothes off and put his penis
8 inside me.

9 Q. Okay. Now, were you still on the bed when that
10 happened?

11 A. Yes, sir.

12 Q. Prior to his putting his penis in you, was he
13 rubbing and touching you between the legs?

14 A. Yes, sir.

15 Q. On the bed?

16 A. Yes, sir.

17 Q. What happened when he stopped?

18 A. He like -- he laid back on the bed and he started
19 masturbating and then I got up and went and took a
20 shower.

21 Q. Okay. When you say masturbating, what do you
22 mean?

23 A. Rubbing his penis himself.

24 Q. Okay. Did you eventually tell your mother about
25 the incident?

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1 A. I only told her that he was touching me.

2 Q. Okay. And what brought that on?

3 A. One morning I was like going into the kitchen, and
4 my mom told me to go give Joey a hug before I went to
5 school because that was one of the mornings he was up.
6 And I told her I didn't want to. And she asked me why.
7 And then when we got in the car, I told her that he'd
8 been touching me.

9 Q. Okay. What, if anything, did she do?

10 A. She told him -- she told him -- like when I got
11 home she told me that we're going to leave on Sunday.
12 To get my stuff together because she already had some
13 of her stuff in boxes, and her hanging clothes on top
14 of them. And later when I guess they started talking
15 and we never left.

16 Q. Do you know if she ever called the police?

17 A. No, sir.

18 Q. Or any of the authorities?

19 A. I don't know.

20 MR. RICHARDSON: I beg the Court's
21 indulgence.

22 THE COURT: Yes, sir.

23 Q. And you may have, you may have testified to this,
24 but in 2005 when you first met him, how old were you
25 then?

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1 A. Nine.

2 Q. Okay. And in 2008, how old were you then?

3 A. Twelve.

4 Q. Twelve.

5 MR. RICHARDSON: That's all the questions I
6 have for this hearing. Please answer any questions
7 that they have for you, okay?

8 THE COURT: Mr. Robinson or Mr. DeJong.

9 MR. DEJONG: Thank you, Your Honor. May it
10 please the court.

11 CROSS EXAMINATION

12 BY MR. DEJONG:

13 Q. So if I understand, ma'am, every time you were in
14 the Comfort Inn and you say this happened, your mom was
15 in the room?

16 A. Yes, sir.

17 Q. All right. And all those incidences occurred in
18 2005?

19 A. Yes, sir.

20 Q. Now, between 2005 and when you moved down here,
21 there was some time lapse; right? Some time went by;
22 correct?

23 A. Yes, sir.

24 Q. How much time, do you know?

25 A. 2005 to 2006.

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1 Q. All right. About a year?

2 A. Yes, sir.

3 Q. And in that year did you -- you and your mom still
4 see Joey?

5 A. No. She had moved down here and I was living with
6 my grandma.

7 Q. Okay. Now, your grandma, that's your mother's
8 mother; is that correct?

9 A. Yes, sir.

10 Q. So you were in Virginia for, what, almost a year?

11 A. Yes, sir.

12 Q. And your mother was down here with Joey, as far as
13 you know; right?

14 A. Yes, sir.

15 Q. Okay. And you lived with your grandmother; right?

16 A. Yes, sir.

17 Q. And then -- so nothing -- according to you,
18 nothing happened for that year?

19 A. Yes, sir.

20 Q. Did you ever come and see your mother in South
21 Carolina during that time period?

22 A. No, sir. She came up to visiting me and my
23 grandma.

24 Q. Okay. Well, when she came to visit you and your
25 grandma, was Joey with her?

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1 A. No, sir.

2 Q. Okay. So she came by herself to see you and your
3 grandma?

4 A. Yes, sir.

5 Q. Before your mother ever started seeing Joey, you
6 and your mother lived with your grandmother; correct?

7 A. Yes, sir.

8 Q. You had a close relationship with your grandma?

9 A. Yes, sir.

10 Q. You love her?

11 A. Yes.

12 Q. Okay. You trusted her?

13 A. Yes, sir.

14 Q. You could confide in her?

15 A. Yes, sir.

16 Q. You could tell her things you couldn't tell
17 anybody else; couldn't you?

18 A. Yes, sir.

19 Q. Okay. And your mama, before Joey came into your
20 life, did she work?

21 A. Yes, sir.

22 Q. And did she work pretty long hours?

23 A. Yes, sir.

24 Q. When she wasn't working, was she with you?

25 A. No. Some days I would stay with my mom, but most

1 of the time I just stayed with my grandma.

2 Q. Okay. But when your mom wasn't working, was she
3 home with you and your grandma?

4 A. Yes, sir.

5 Q. Okay. And she gave you time; didn't she?

6 A. Yes, sir.

7 Q. Y'all did things together?

8 A. Sometimes.

9 Q. All right. Well, once Joey came along that
10 changed; didn't it?

11 A. Yes, sir.

12 Q. She didn't have as much time for you; did she?

13 A. No, sir.

14 Q. And about -- well, let me back up a little bit
15 here. So in 2005, the first time you came down, do you
16 remember whether you were still in school or not in
17 school at that time?

18 A. I do not remember.

19 Q. Pardon me?

20 A. I don't remember.

21 Q. Don't remember. Okay. How about the second time,
22 do you remember?

23 A. I think we were -- I think I was in school, but

24 I'm not sure.

25 Q. Okay. And the third time, I believe, right? Were

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1 you in school or was it summer?

2 A. Yes, sir.

3 Q. Okay. Now you -- if I understand correctly, you
4 said you were in the Comfort Inn three times?

5 A. Yes, sir.

6 Q. All right. When did your grandmother die?

7 A. In 2008.

8 Q. Do you remember what month?

9 A. June 6th.

10 Q. Okay. Now, at that point in time, were you living
11 in South Carolina or were you still in Virginia?

12 A. I was living in South Carolina.

13 Q. Okay. How long had you been in South Carolina?

14 A. About two years.

15 Q. Well, when you came from Virginia -- well, the
16 first time you said you met in Spartanburg, if I
17 understand you correctly; correct?

18 A. Yes, sir.

19 Q. And did you stay in a motel in Spartanburg at that
20 time?

21 A. NO, sir.

22 Q. Okay. What did -- but you met at a motel?

23 A. Yes, sir.

24 Q. What motel?

25 A. The Spartanburg Marriott.

1 Q. Okay. And what day would you -- what day of the
2 week would you come down on, if you remember?

3 A. If mom got off work early or if I got home from
4 school early enough, we would go down Friday, but we
5 usually went down on Saturday.

6 Q. All right. So you would be down here Saturday,
7 and ---

8 A. Part of Sunday.

9 Q. -- part of Sunday. When you came down was anybody
10 other than you and your mom that ever came with you?

11 A. No, sir.

12 Q. How long did it take to drive from where you lived
13 in Virginia to Easley?

14 A. About six hours.

15 Q. One way?

16 A. Yes, sir.

17 Q. And only you and your mom in the car during that
18 six hours?

19 A. Yes, sir.

20 Q. Now, so you would get here -- well, the first time
21 you say you came down, do you remember if that was on a
22 Friday or a Saturday?

23 A. I don't remember that.

24 Q. Pardon me?

25 A. I don't remember that.

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1 Q. Okay. Well, do you remember how many nights you
2 stayed?

3 A. One.

4 Q. Okay. So what time would you get here? Well,
5 let's go to the first time. What time did you get
6 here?

7 A. It was in mid-afternoon, so between twelve and
8 five maybe.

9 Q. Twelve o'clock noon and five o'clock in the
10 evening or twelve midnight and five in the morning?

11 A. Noon. In the afternoon.

12 Q. Did you ever do anything other than stay at the
13 motel?

14 A. We went shopping and went out to eat a few times.

15 Q. Okay. Well, a few times. Now, you said you were
16 at the Comfort Inn three times; right?

17 A. Yes, sir.

18 Q. Did you go shopping every time?

19 A. Not every time, but sometimes.

20 Q. Did you ever do anything other than go shopping?

21 A. We went out to eat.

22 MR. RICHARDSON: Your Honor, if it pleases
23 the court, it's my understanding we're in the middle of
24 a 404(b) hearing, which it seems to me the issue is
25 limited to that. It appears that Mr. DeJong ---

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1 THE COURT: Let me just ask, do you have a
2 road you're going on ---

3 MR. DEJONG: I do, Your Honor.

4 THE COURT: -- as far as these questions that
5 relate to shopping? You're going to tie that in for
6 me, sir?

7 MR. DEJONG: Well, I think the point of this
8 is, Your Honor, that I have a right to test her
9 credibility in a 404(b) hearing because you have to
10 find beyond clear and convincing evidence. It puts me
11 in the posture of trying the case.

12 THE COURT: I'll give you some leeway.

13 Q. So when you went shopping, or whatever other
14 things you did, was that before or after you say your
15 mother and Joey had sex?

16 A. It was usually before.

17 Q. Pardon me?

18 A. Before.

19 Q. Before. So that would have been in the afternoon
20 or the evening hours; right?

21 A. Yes, sir.

22 Q. And you were your pajamas in the afternoon?

23 A. No, we would go shopping and then I would come
24 back to the hotel room and I would put on my pajamas.

25 Q. All right. Well, you say you were watching

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1 television. What were you watching on television?

2 A. I don't remember.

3 Q. Okay. All right. And everybody would be in the
4 room, you, your mom and Joey, and they would just start
5 having sex?

6 A. Yes, sir.

7 Q. I see. All right. And do you say that Joey ever
8 had sex with you in that motel room?

9 A. No, sir.

10 Q. Okay. And every time you say you were in the
11 motel room, your mother was present?

12 A. Yes, sir.

13 Q. And Joey was present?

14 A. Yes, sir.

15 Q. Okay. Then sometime in '06 you moved to South
16 Carolina?

17 A. Yes, sir.

18 Q. And was that before your grandmother died?

19 A. Yes, sir.

20 Q. Okay. Did you have any family members here in
21 South Carolina?

22 A. Only my aunt in Rock Hill.

23 Q. Okay. So in this area, you didn't have any family
24 members?

25 A. No, sir.

- 1 Q. Okay. After you moved down here, did you go to --
2 back to Virginia?
3 A. Not until later on, like after we'd been here a
4 while.
5 Q. And do you remember when you back to Virginia?
6 A. No, sir.
7 Q. How many times did you go back to Virginia?
8 A. Whenever we had the money and the time.
9 Q. Okay. So you don't recall how many times?
10 A. No, sir.
11 Q. After you moved down here and went back to
12 Virginia, who went back to Virginia when you did go?
13 A. Sometimes it would be me and my mom, and then
14 every once in a while, Joey would go with us.
15 Q. Do you remember how many times Joey went up there
16 with you?
17 A. Two or three.
18 Q. Pardon me?
19 A. Two or three.
20 Q. Okay. And do you know over what amount of time
21 that two or there was?
22 A. No, sir.
23 Q. Okay. Now, did Joey ever spend the night at the
24 Comfort Inn?
25 A. No, sir.

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1 Q. And you say when you came here in '06 or '07, do
2 you remember which year it was?

3 A. It was '06 because I was starting the '06-07
4 school year.

5 Q. Okay. Where did you go to school, by the way?

6 A. Where?

7 Q. Here.

8 A. In

9 Q. Okay. All right. And how long did you go to
10 school there?

11 A. My fifth and sixth grade year.

12 Q. Pardon me?

13 A. My fifth and sixth grade year.

14 Q. Okay. That was two years?

15 A. Yes, sir.

16 Q. Okay. And then you say at some point after you
17 moved down here that Joey was touching you on your
18 boobs and your butt; right?

19 A. Between my legs.

20 Q. Between your legs. I see. Okay. Now, if I
21 understood you when you initially was answering Mr.
22 Richardson's question, you said that would happen when
23 you were cooking or doing the laundry; correct?

24 A. When mom was cooking and doing the laundry.

25 Q. Oh, when mom was cooking and doing the laundry.

- 1 Well, how big of a house was it that you lived in?
- 2 A. It was two bedrooms, but it was long.
- 3 Q. Okay. And where was your bedroom in relationship
- 4 to the kitchen, how far away?
- 5 A. On the other side of the house.
- 6 Q. Okay. And the other -- well, how many bedrooms
- 7 were there?
- 8 A. Two.
- 9 Q. You had your own bedroom?
- 10 A. Yes, sir.
- 11 Q. Did you have a TV in your bedroom?
- 12 A. Yes, sir.
- 13 Q. And where was the other bedroom?
- 14 A. It was, like you had to go through this little
- 15 walk-way kind of thing, and you had to go through the
- 16 den and it was off the den.
- 17 Q. Okay. How far was that from the kitchen?
- 18 A. There was the dining room in between.
- 19 Q. Okay. So you have the kitchen, the laundry room
- 20 and then the other bedroom. And that would be the
- 21 bedroom that wasn't yours; right?
- 22 A. Yes.
- 23 Q. So the bedroom that wasn't yours was right next to
- 24 the laundry room; right?
- 25 A. No. Like if this was the whole house, this would

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1 be like the kitchen and a laundry room, and then this
2 would be like the dining room. And this would be the
3 den and the bedroom would be right there. And then you
4 had to go around like this, and then my room was off of
5 the living room in the front of the house.

6 Q. So your room was further away from the kitchen and
7 the laundry room than Joey and your Mom's bedroom;
8 correct?

9 A. Yes, sir.

10 Q. Do you remember when that was time-wise? Months,
11 days, ---

12 A. When what was?

13 Q. When you say this started?

14 A. Which part?

15 Q. The touching of the boobs and the butt?

16 A. When I moved down there.

17 Q. Okay. And when do you say you reported that to
18 your mother?

19 A. It was after we had had sex.

20 Q. Okay. As I understand it, when you reported it to
21 your mother, you reported the touching of the boobs and
22 the butt, to you use your words; right?

23 A. Yes, sir.

24 Q. And when you say you reported this, was there
25 anything else going on between you and your mother at

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1 that point in time?

2 A. No, sir.

3 Q. No controversy over a friend or a boyfriend?

4 A. No, sir.

5 Q. All right. All right. Going back to the Comfort
6 Inn a little bit. So it's your -- what you're telling
7 us is that your mom would be in the room while Joey was
8 doing these things to you?

9 A. Yes, sir.

10 Q. And there were times, as I understand it, on one
11 or more occasion, that she was under the covers with
12 you and Joey while he was doing this?

13 A. Yes, sir.

14 MR. DEJONG: One moment, please, Your Honor.

15 THE COURT: Yes, sir.

16 MR. DEJONG: The witness is with your, Mr.
17 Robinson.

18 MR. ROBINSON: Thank you. Please the Court?

19 THE COURT: Yes, sir.

20 CROSS EXAMINATION

21 BY MR. ROBINSON:

22 Q. Good morning. How are you?

23 A. Good.

24 Q. Complainant let me ask you something. I'm Scott

25 Robinson. I represent your mom and so forth. Let me

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1 ask you, I want to just kind of follow up on what Mr.
2 DeJong's questions. When these things were happening
3 with Joey, Mr. Sanders, and so forth, your mother you
4 said -- I think you testified that she was in the
5 bathroom at one point taking a shower; is that right?

6 A. Yes.

7 Q. That's what she did, took a shower?

8 A. Yes.

9 Q. And then she was the house, at this house that
10 Joey had, that she was either in the back, in the
11 laundry or something like that; correct?

12 A. Yes, sir.

13 Q. You're not saying that she ever took part in
14 anything or ---

15 A. No, sir.

16 Q. --- or anything like that; right? In fact, I
17 think -- and let me make sure of what you're saying.
18 As far as at the motel -- I think it was the Comfort
19 Inn; right, in Easley?

20 A. Yes, sir.

21 Q. You're not saying she knew anything about that at
22 the time; right?

23 A. Do what?

24 Q. When these things happened with Joey at the
25 Comfort Inn, where she would -- where he was doing

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1 these things allegedly to you, she didn't know about
2 this at the time; did she?

3 A. No, sir.

4 Q. In terms of when he was at the house with you, at
5 this house that you were in with Joey, he would do
6 these things when she was either in the bathroom or the
7 laundry room or cooking; is that right?

8 A. Yes, sir.

9 Q. Okay. Thank you very much.

10 MR. RICHARDSON: No redirect.

11 MR. DEJONG: Nothing further.

12 THE COURT: Thank you. You may step down,
13 ma'am.

14 MR. RICHARDSON: Your Honor, the State -- in
15 regards to the 404(b), that will be all the witnesses
16 the State's calling.

17 THE COURT: All right. Mr. DeJong, Mr.
18 Robinson wants to address me on this issue. I guess it
19 applied more than your client, but I'll be glad to hear
20 from you as to why I should not allow the evidence in
21 under 404(b).

22 MR. DEJONG: Your Honor, number one, I think
23 under the rules you have to find that the probative
24 value of the prior bad acts, if you will, under rule
25 404(b), that the probative value outweighs any

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1 prejudicial effect to Mr. Sanders. I submit to you,
2 Your Honor, that these -- what the State shows as --
3 would attempt to show as prior bad acts has nothing to
4 do with the alleged act that we're here trying today.

5 The alleged act as I understand that we are trying
6 today is the sexual intercourse that this young lady
7 says occurred sometime -- again, we are not sure. But
8 according to the indictment, sometime between January
9 the 1st of 2008 and June the 1st of 2008.

10 So I submit, Your Honor, that the State is trying
11 to use this as nothing more than character evidence,
12 propensity to commit a crime. And certainly it is
13 highly, highly prejudicial to Mr. Sanders. So under
14 the first test, Your Honor, I would submit that the
15 prejudicial effect far outweighs any probative value
16 whatsoever as to what we're trying under these
17 indictments today.

18 Secondly, Your Honor, you have to determine
19 whether or not, by clear and convincing evidence --
20 that you are convinced by clear and convincing evidence
21 that these incidents occurred. And when I say these
22 incidents, I'm speaking of the incidents that allegedly
23 occurred at Comfort Inn in 2005.

24 If you will -- you have obviously heard the young
25 person's testimony, Your Honor, some of which I would

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1 submit to the Court, with all due respect, would
2 absolutely stretch the credibility of any human being,
3 much less those of us who are in this courtroom.

4 The third prong, Your Honor, is this, and that is
5 under *State versus Wallace*. I believe that is the most
6 recent case with regard to 404(b). But before I get
7 into that, looking at the rule 404(b), that is a matter
8 where the State can, under that rule, use prior bad
9 acts because even that rule 404(b) acknowledges that
10 that is character evidence. They can only use that
11 character evidence to show, I believe it's motive,
12 intent, lack of mistake. There's a couple more in
13 there. And then the big one, the kind of catch-all
14 that we always hear about in these cases is the common
15 scheme or plan.

16 Now, when you get down to the motive, intent,
17 identity and all of that, I don't think there's any
18 question about that. I don't think the State has to
19 bring in 404(b) to try to show who Joey Sanders was,
20 who Anita Gearhart is, because obviously that's her
21 mother. She knew Joey. I don't think there's any
22 allegations of, at this point in time, of mistake or
23 lack of intent. We don't admit that the acts occurred,
24 but certainly there is no issue there.

25 So now, Your Honor, we get into basically, as I

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1 understand it, the common scheme and plan. I am
2 mystified, quite candidly, as I read the cases on
3 404(b), which springs out of *State versus Lyle*. I am
4 very mystified as to how the Court of Appeals and the
5 South Carolina Supreme Court has arrived at some of the
6 decisions they have made with common scheme or plan.
7 And obviously, they have made those decisions. I mean
8 no disrespect to the Justices of either court. But
9 it's difficult to understand.

10 And if we go back and look at *Lyle*, Your Honor,
11 those were -- that was a forgery case in which the
12 Defendant Lyles had forged checks, some checks in one
13 city at more than one bank. I forget if that -- I
14 believe that was in Aiken. And then he went to another
15 bank in Georgia. Well, the common scheme or plan that
16 -- under *Lyle* that was allowed was, as I recall it,
17 there were certain checks that were forged on the same
18 day at different banks. And, again, I believe that was
19 in Aiken, Your Honor. And the Court disallowed what
20 happened in Georgia, as memory serves me.

21 Now, we have come -- as the Court has interpreted
22 common scheme and plan, that just about anything comes
23 in under common scheme or plan. What we have here, and
24 coming back a little bit to *Wallace* now, is what the
25 court finally said in *Wallace* is that the court must

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1 look at the similarities and dissimilarities of the
2 allegations of the alleged prior bad acts.

3 In this case, Your Honor, I would submit what the
4 State has presented, there are more dissimilarities
5 than there are similarities. Now, if you want to say,
6 well, a sexual battery occurred. Well, then I don't
7 think you would ever be looking at similarities or
8 dissimilarities, because obviously for a common scheme
9 or plan, you're going to have somebody alleging a
10 sexual battery.

11 But what you have here, and going back to Lyle a
12 little bit, we have allegations that supposedly took
13 place in 2005. Then there is a time lapse of some
14 period of time, we are not sure how much, but some
15 period of time between '05 and somewhere in '06 that
16 the alleged intercourse took place.

17 Now, I think that's where you get into the
18 similarities and the dissimilarities. And I would
19 contend there are more dissimilarities than there are
20 similarities. And every allegation, with the exception
21 -- and, again, I think when you're looking at the
22 dissimilarities and the similarities, you have to look
23 at what we're trying, and the alleged prior bad acts.

24 In the alleged prior bad acts in this case, that
25 being the Comfort Inn, and as I understood the

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1 Solicitor before we started this hearing, that that was
2 basically the prior bad acts they were talking about,
3 every one of those alleged bad acts happened in a motel
4 room, not in a house. The allegations we are trying in
5 this case happened in a home. The allegations in the
6 motel room, in every one of those allegations the
7 statement is made that the mother was present, under
8 the covers, having sexual intercourse with my client,
9 Mr. Sanders, in all of those cases.

10 Now, there are some allegations, I guess, that
11 mother may have been home, but certainly not with
12 regard to this sexual intercourse was mother home.
13 There was no testimony that mother was home. Indeed,
14 quite the opposite. I think the testimony was, for
15 purposes of this hearing, that the mother was gone and
16 that my client had come -- excuse me. The witness had
17 come home from school, my client had come home early,
18 and the -- then there was the sexual intercourse.

19 So I cannot see, Your Honor, how there are any
20 similarity other than allegations of a sexual batter.
21 In deed, if you looked at the similarities and the
22 dissimilarities, all of the allegations in the '05 in
23 the motel room was digital penetration. There was
24 never any, any allegations of any type of penile
25 penetration of the alleged victim in this case in the

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1 hotel.

2 So, again, unless you lump them all together, Your
3 Honor, saying, well, sexual battery occurred, then,
4 yes, there is a similarity, if you're convinced by
5 clear and convincing evidence that it occurred. But if
6 you start looking at those differences, and I think
7 that's what the Court said in *Wallace*, that you had to
8 look at those dissimilarities and the similarities, and
9 I think the Court in *Wallace* said that if the
10 similarities are greater than the dissimilarities, then
11 it is admissible. Well, by logic if the
12 dissimilarities are greater than the similarities, then
13 it is not admissible as prior bad act or coming down a
14 little further on that, as common scheme or plan. It
15 is just not admissible.

16 In *Wallace* they do set out some elements. They do
17 not say that is the -- there's no bright line as to
18 what the similarities in the crime charged. The
19 relationship between the victims when the abuse
20 occurred, I am now read from *Wallace*. And that, Madam
21 Court Reporter, is 384 SC 428, 683 SE2d at 275. And
22 that is for Your Honor's benefit as well. I'm sure you
23 have it. They talk about the relationship. Well, in
24 this situation, obviously the relationship hasn't
25 changed. So I'm not sure that you could even look at

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1 that as being a similarity. And Wallace dealt very
2 candidly with where there were alleged victims, more
3 than one alleged victim. And in this case, I believe,
4 Wallace, they allowed a sister to testify as to prior
5 bad acts. The relationship between the victims and the
6 perpetrator, again, that's reading from Wallace. And
7 this is what I find fascinating, the location where the
8 abuse occurred, the use of coercion or threats. In
9 neither case did I hear that there was use of coercion
10 or threats. But I think, again, by logic the witness
11 testifies that her mother was actually present in a
12 motel room when those things -- when those allegations
13 occurred. The manner of the occurrence for the
14 example, the type of the sexual battery. And I think
15 that goes to the very heart of the argument I am making
16 to Your Honor, that we have two totally different types
17 of sexual battery that is alleged in this case as far
18 as what happened in Comfort Inn in '05, and what
19 happened in the home on Liberty Drive.

20 I, therefore, respectfully submit, Your Honor,
21 that the dissimilarities outweigh any similarities in
22 this case and, as a result, Your Honor should not allow
23 the State to bring in what they consider prior bad acts
24 for a common scheme or plan in the presence of the
25 jury.

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1 Thank you, Your Honor. I defer to you, Mr.

2 Robinson.

3 MR. ROBINSON: May it please the Court?

4 THE COURT: Yes, sir, Mr. Robinson.

5 MR. ROBINSON: Your Honor, obviously, I
6 represent a different Defendant, a co-defendant in this
7 matter. I believe that the State has not established,
8 in my case, in Ms. Gearhart's case, any reason why or
9 why this information would come in, as far as to Ms.
10 Gearhart. Not Mr. Sanders, Ms. Gearhart. Because we
11 believe that the -- obviously the dissimilarities far
12 outweigh the similarities in this case. And, also as
13 well, that the prejudicial value far outweighs any
14 probative value.

15 Because in this case -- the only similarities were
16 that the mother was either -- as to the house in
17 Easley, that she was cooking or in the kitchen, doing
18 laundry. And when she was at the Comfort Inn she was
19 either in the -- either out or in the bathroom taking a
20 shower. That's the only similarities that we see. The
21 child has testified that her mother was either in the
22 shower or she was doing laundry or she was at work.
23 She worked until six thirty. Mr. Sanders would be home
24 prior to that. That's the only, that's the only
25 testimony that came out from this particular witness.

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1 So as to Ms. Gearhart, we don't believe that any
2 of the testimony as to Ms. Gearhart from this
3 particular witness, from the daughter, should be
4 admissible in this case. And if the court sees fit, we
5 would ask that the witness not be permitted to testify
6 regarding anything regarding her mother because it's
7 just a different situation, because it doesn't sound
8 really relevant to Mr. Sanders in this case and to her
9 case. Thank you.

10 THE COURT: Mr. Richardson, I'll be glad to
11 hear from you, sir.

12 MR. RICHARDSON: Thank you, Your Honor,
13 please the Court. Your Honor, first just start
14 regarding Wallace. I'm going to refer to another case
15 that's actually newer than Wallace. Wallace dealt with
16 two separate victims. Those two victims testified to
17 actually different types of acts that took place
18 against them by the perpetrator. So we had two
19 separate victims and the acts are not very similar in
20 that case, yet that Court upheld that prior bad act.
21 However, what I am focusing on, Your Honor, is we have
22 one victim. And in the State v. Clasby, which was
23 actually a case decided here in Pickens County or heard
24 here in Pickens County, and ultimately, I believe that
25 was decided in August 2009. In that particular case it

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1 had ---

2 THE COURT: That's when *Wallace* was decided,
3 too.

4 MR. RICHARDSON: *Wallace* also.

5 THE COURT: Same Day. August.

6 MR. RICHARDSON: Was it August, also?

7 THE COURT: Both of them came out at the same
8 day.

9 MR. RICHARDSON: Okay. Well, I stand
10 corrected.

11 THE COURT: All right.

12 MR. RICHARDSON: It's the same exact time.
13 Which may go the point even more so. You have two
14 cases which are somewhat distinguishable. Now, I
15 believe under *Wallace* that we still have common scheme
16 or plan in this particular case. But I also do, more
17 so even with *Clasby*, in *Clasby*, the victim in that case
18 -- the Defendant was actually the mother of the victim.
19 And in that case the victim would come on -- she didn't
20 have custody, but would come on visitations. And
21 ultimately what the mother did was rub and touch and as
22 the case states that happened at three separate
23 locations. One being her father's house, one being the
24 mother's -- the defendant mother's father's house and I
25 believe another one may have been her in-law's house.

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1 And, in fact, that rubbing and touching took place in a
2 bathtub at one point in time, and then on the floor at
3 one point in time.

4 But I think the essence of that case, Your Honor,
5 is that those culminated, those acts culminated
6 ultimately into a digital penetration, and that's
7 exactly what we have here. And I will also say in that
8 case there's also an extended period of time, and the
9 Court states that in there, that they recognize there's
10 an extended -- it was after an extended absence. So
11 there was touching, there was an extended absence and
12 then there was touching again. And the Court in
13 allowing those prior bad acts in stated that there was
14 a culmination of these events, which ultimately led to
15 the final act, in this particular case -- in that
16 particular case, it was digital penetration. In this
17 particular case, the final act being penal penetration.

18 You can always find dissimilarities, small amounts
19 of dissimilarities. I don't think that's what the
20 Court's trying to ascertain. And they're trying
21 ascertain, is this a scheme and was this scheme
22 ultimately to the culmination of the final act. The
23 mother was present in the hotel room. And the only
24 dissimilarity I see in that fact is that we have a
25 hotel, and then in the house, also. But there were

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1 several acts in the hotel room, several acts in the
2 house and ultimately the final act in the house, of
3 which took place in the bed. Just like it did in the
4 hotel room.

5 So the scheme being is that there was a
6 culmination and a touching. And ultimately when mom's
7 gone, when mom's out of the house, when mom's working,
8 then it gets much worse. Not to say that that's not
9 bad anyway, but then it gets much worse to the final
10 act.

11 So, Your Honor, I disagree. I believe that these
12 -- the acts are similar, that the actors are similar
13 and that we have to look at it as the scheme ultimate
14 culminating into that final event. And that's what the
15 Court did in *Clasby*. Your Honor, that's all I have.

16 THE COURT: All right. Thank you, sir.

17 MR. DEJONG: Your Honor, may I inquire -- can
18 you give me the case name and the cite on that case
19 you're referring to?

20 THE COURT: Yes, sir. It's *State v. Clasby*,
21 C-1-a-s-b-y. It's reported in 385 S.C. 148.

22 MR. DEJONG: I thought that was the case he
23 was citing. I'm rather familiar with that case.

24 THE COURT: Excuse me. 385, 148.

25 MR. DEJONG: I'm sorry. I didn't mean to

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1 interrupt, Your Honor. I'm rather familiar with that
2 case. I tried it. I believe the -- I could be wrong,
3 but is that a Court of Appeals Opinion or is that a
4 South Carolina Supreme ---

5 THE COURT: That's the Supreme Court.

6 MR. DEJONG: So both the Supreme ---

7 THE COURT: Justice Beatty issued that
8 opinion. Justice Burnett issued the Wallace opinion.

9 MR. DEJONG: And when we get into 404(b), if
10 you start looking back at the history of 404(b) and
11 prior bad acts, I mean no disrespect to Your Honor, but
12 if you can reconcile all of those cases, I would be
13 more than happy to give Your Honor a week to reconcile
14 all the cases that have been heard on 404(b).

15 But I still believe, Your Honor, that under
16 Wallace there has to be a showing of similarity. And,
17 again, I think you have to go back to the very seminal
18 case when we start looking at 404(b), and that is look
19 at Lyle. And I can't -- Clasby, I can't reconcile
20 under Lyle.

21 I don't think, and I mean no disrespect to the
22 Supreme Court, but I don't think that's reconcilable
23 under Lyle, under what they said under Lyle. And I
24 think that's where we're coming. I don't agree with

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1 Wallace, but that's not for me to agree or disagree
2 with. But I think that still under Wallace requires a
3 similarity -- an analysis by the Court of the
4 similarities and dissimilarities.

5 THE COURT: Well, sometimes it is difficult
6 to understand the analysis. As I say, I think I'm not
7 misreading these. Both cases were decided August the
8 17th, 2009. Acting Justice Vernon issued the Wallace
9 opinion, in which Justice Beatty concurred in the
10 result only. Justice Pleicones dissenting. And
11 Justice Beatty wrote the opinion in Clasby, in which
12 Justice Pleicones concurred in the opinion, a unanimous
13 opinion there, both in the Supreme Court.

14 I've read both cases and -- plus the other cases
15 that are predecessors of the Wallace and Clasby
16 analysis. And I think the that the courts are unified
17 in stating that the analysis that the trial judge must
18 make is, first of all, is beginning with Rule 401; is
19 it relevant? Certainly, the evidence would be relevant
20 to the particular charge that we have before us today.

21 After looking at 401, then we go to 404(b) and as
22 Mr. DeJong correctly points out the similarities and
23 the dissimilarities must be analyzed. While certainly
24 there was a time lapse, you bring up the
25 dissimilarities. I tried to make notes. I hope I

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1 didn't miss any of those, Mr. DeJong, but there was a
2 time lapse. We're dealing with 2005, 2006, 2008. That
3 was certainly present in the other cases.

4 I think Wallace -- Mr. Richardson hit the nail on
5 the head with those two. I think Wallace dealt with
6 the prior bad acts of a different victim, and that
7 gives us good guidance in those cases where that comes
8 up. Clasby was only the same victim rather than the
9 other which you need, at least, and I'll try to give my
10 analysis not only for the benefit of the lawyers here,
11 but for the Appellate Court if it were to get there. I
12 think the five factors that they say is not a complete
13 list. I think by and large those do overlap some. The
14 Court was looking at the dual victims in this case,
15 talking about the comparison of the coercion or threats
16 and so forth or whether there was -- really that could
17 be the same for one victim, I guess.

18 But I think certainly factors they mention about
19 the age and the relationship and a new romance going on
20 with a -- during that time period that did culminate
21 into the living arrangements that they made. As I
22 heard the testimony, each time that this happened the
23 -- while the proximity of the mother might have been in
24 the bathroom or in the further end of the house or even
25 away, I think that that would not be a significant

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1 dissimilarity in my judgment. And like in Clasby, I
2 think the escalation is an important factor to consider
3 here as well.

4 Based upon the cases and the language in the
5 cases, I find that the similarities do outweigh the
6 dissimilarities, that it did create an ongoing pattern,
7 starting with the rubbing and ultimately, according to
8 the testimony -- again, and I must judge that by clear
9 and convincing evidence, and I think that it does
10 properly establish a common scheme and plan, the intent
11 of what was going on, that under 404(b) that they would
12 be admissible under that rule for being allowed into
13 evidence under all the factors set forth that I've
14 analyzed. Location, the age, the activity that was
15 taking place and the escalation thereof. The family,
16 although not married, the family environment that was
17 present in the motel and in the home.

18 Even finding under 404(b) that -- by clear and
19 convincing evidence that there is sufficient similarity
20 to connect the two, I obviously must evaluate rule 403,
21 that you stepped on or address first, Mr. DeJong.
22 That's obviously an important rule to of the
23 prejudicial effect of allowing such testimony in.
24 Obviously, it's prejudicial to the defendants to allow
25 this in. Even Wallace said the connection wasn't -- it

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1 might have been overstated on the analysis. But I
2 think under 403 that the -- weighing 403 as I must, I
3 find that the probative value of the evidence falling
4 within 404(b) exceptions substantially outweighs the
5 danger of any unfair prejudice to the defendants, and I
6 will allow the evidence in. And, obviously, your
7 objections to that is noted for both defendants.

8 MR. DEJONG: Your Honor, I rise not to argue
9 with Your Honor's ruling ---

10 THE COURT: Yes, sir.

11 MR. DEJONG: -- but a point of clarification
12 on the record. This is a 404(b) hearing, not a motion
13 in limine. Just so I am clear I guess I'm asking for
14 some guidance from the Court. Hopefully, we'll never
15 have to appeal this case, but I think since it's a
16 404(b), at the time of the of the introduction of the
17 evidence, I do not have to object to preserve my
18 exception on the record, Your Honor.

19 THE COURT: You can do whatever you feel you
20 need to do. I'm a trial judge. If you want it noted
21 for the record, you do whichever way you want to at
22 that stage.

23 MR. DEJONG: Well, then an ounce of
24 prevention being worth ten pounds of cure, I will
25 certainly have to object again.

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1 THE COURT: All right, sir. And that
2 objection then will run throughout the testimony.

3 MR. DEJONG: Yes, sir. I will only
4 anticipate objecting once.

5 THE COURT: Yes, sir.

6 MR. DEJONG: Now, that would cover -- so
7 we're clear and I don't have to appear more litigious
8 than I normally do ---

9 THE COURT: For me, that will cover it.

10 MR. DEJONG: It's going to cover everything
11 from Comfort Inn to whatever happened up until Your
12 Honor, I believe, portrays as culmination.

13 THE COURT: Yes, sir. That will cover it for
14 my purposes. Yes, sir.

15 MR. DEJONG: Very good. Thank you.

16 THE COURT: All right. The Defense objects
17 to sequestration, did I understand that for both sides.

18 MR. DEJONG: We did, Your Honor.

19 THE COURT: Okay.

20 MR. ROBINSON: Your Honor.

21 THE COURT: Yes, sir.

22 MR. ROBINSON: If I can go back to the ---

23 THE COURT: Yes, sir.

24 MR. ROBINSON: I want to make sure. So, what
25 you're -- I understand as to Mr. Sanders. I understand

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1 that as far as similarities outweighing the
2 dissimilarities. Are you also ruling that the evidence
3 is -- all the information regarding her being in the
4 bathroom or her being in the kitchen is all going to
5 come in, too?

6 THE COURT: I'm thinking the similarity is
7 there. Again, she's in the bathroom at the motel.
8 She's in the kitchen, or either she's away. That was a
9 dissimilarity, if the evidence is that she was away on
10 the ultimate offense that we're here for today. But I
11 think that the fact that she was, most of the time, in
12 the locale, she was either in the home, sometimes, I
13 think it was testified to she might have still been at
14 work. But I think that it's applicable to your client
15 as well.

16 MR. ROBINSON: The only objection I have to
17 that, Your Honor, is because she is being charged with
18 one count in April 15 of 2008 where, as far as his
19 brushing up against her, whatever it was, and she said
20 something to him. What I'm concerned about is, as I
21 made that severance motion a long time ago and so
22 forth, the problem that I'm having is that the
23 omissions that she made back at that time period, being
24 in the bathroom or being in the house, that's going to
25 -- when you put the two of them together, Sanders and

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1 Ms. Gearhart together, the jury is going to believe
2 that if she was there in the hotel in the bathroom
3 taking a shower while this was going on, he knew she
4 was in the kitchen wherever it was when he did this,
5 allegedly did this at the house, they're going to start
6 thinking, well, wait a second then, she must have known
7 about this. I think the prejudices far outweigh any
8 sort of ---

9 THE COURT: I believe you'll be able to,
10 based upon the questions you asked of the witness
11 earlier, that you'll be able to establish that --
12 you'll have clarity of that. I think the witness
13 earlier testified that she didn't ever tell her mother,
14 and that ---

15 MR. ROBINSON: That's my biggest concern. As
16 I say, I was concerned about ---

17 THE COURT: I'll certainly allow you strong
18 leeway in your examination of the witness.

19 Yes, sir.

20 MR. DEJONG: I'm through with that, Your
21 Honor. Yesterday, I raised two issues by way of
22 motion. One was the allegation -- excuse me -- as to
23 the sufficiency of the indictment, as to being put on
24 notice, what acts we are actually defending here. I
25 don't want to miss a window of opportunity. I don't

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1 know if Your Honor is ready to rule on that at this
2 point in time or not. However, I want to bring that
3 up.

4 The other motion I raised that was somewhat
5 deferred, and that was a motion in limine as to certain
6 allegations made that have been furnished to me in
7 discovery about certain physical acts of violence, for
8 want of a better term, according to the alleged victim,
9 directed at the mother and the alleged victim by my
10 client, Mr. Sanders. You've now heard the basic
11 testimony of the alleged victim. I renew that motion,
12 Your Honor. There are certainly no allegations of
13 coercion, physical force or threats or anything else.
14 And I would submit that the witness not be allowed to
15 testify to that. I think that is purely character
16 witness -- character testimony at this point in time,
17 Your Honor.

18 THE COURT: Mr. Richardson?

19 MR. RICHARDSON: Your Honor, I didn't address
20 that because it was a 404(b) hearing.

21 THE COURT: I realize. But is there going to
22 be any claim of force or coercion?

23 MR. RICHARDSON: There's going to be -- I
24 believe the witness will testify that there was no
25 force or coercion towards her, but that she was scared

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1 of him, and that would be a reason why she would be
2 scared of him.

3 THE COURT: As far as reporting?

4 MR. RICHARDSON: Yes. I'm not sure exactly
5 how she'll testify to that, Your Honor.

6 THE COURT: All right. You make your
7 objections at the time, and we'll see where we need to
8 go on that, Mr. DeJong. As far as the indictment, are
9 you aware now the -- I think yesterday you were talking
10 about whether it was 2005, 2006, 2008. I understand
11 from what her testimony was that it was only one
12 incident in 2008 that she testified as to what the
13 indictment is. Or is it different? Is there one in
14 particular -- what are you ---

15 MR. RICHARDSON: Her testimony is that the
16 penal penetration happened in the beginning of 2008.

17 THE COURT: And the other charge of lewd acts
18 were in that time frame as well, or is it the same ---

19 MR. RICHARDSON: That's right.

20 THE COURT: -- act on the lewd act?

21 MR. RICHARDSON: It's in the same -- well,
22 it's in the same ---

23 THE COURT: I mean, what are you intending to
24 show on the lewd act charge? That incident or another
25 incident so that the defense will know where you're

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1 heading on that.

2 MR. RICHARDSON: Yes, Your Honor. I mean, a
3 lewd act being charged is during the period of time
4 that she was living there, that being before and after.

5 THE COURT: Between January and June of 2008?

6 MR. RICHARDSON: Yes, Your Honor. The
7 testimony is going to be is that some of the prior bad
8 acts, as I understand it, took place in the house. But
9 the lewd act charge is between January and February and
10 June of 2008, because of the touching and everything
11 that happened up to the CSC charge. Maybe I'm not
12 making myself clear. But there was touching in January
13 or February of 2008. Touching of her, rubbing of her,
14 ultimately that led to the penal penetration.

15 THE COURT: All right. I believe the
16 indictment properly notifies you, Mr. DeJong, of what
17 the charges are based upon what the Solicitor said his
18 emphasis on the testimony would be on that offense.

19 At this time, Mr. Richardson, I am denying your
20 motion for the sequestration. I don't say that I might
21 not revisit that on my own if I see that there's abuse
22 of the witnesses or testimony of witnesses. At the
23 present time, I'm going to deny the motion. That will
24 apply to both sides. Of course, any of the State's
25 witnesses can remain here as well, since the defense

1 did not seek any sequestration.

2 Anything else we need to take care of before we
3 have the jury come in?

4 MR. RICHARDSON: Can I have five minutes?

5 MR. DEJONG: I was going to ask for fifteen.

6 THE COURT: Let's have a ten minute break.

7 (WHEREUPON, the Court stood at recess for a short
8 break.)

9 THE COURT: Are you ready to proceed?

10 MR. RICHARDSON: The State's ready.

11 (WHEREUPON, the jury entered the open court at
12 approximately 11:18 a.m.)

13 THE COURT: Thank you, ladies and gentlemen,
14 for being patient with us. I committed to you that I'm
15 going to do everything I can to minimize your downtime.
16 I haven't been totally successful today. We've been
17 hearing some legal matters that needed to be heard
18 today.

19 So that you will know, one of the jurors developed
20 a conflict, so Ms. Cannizzaro is now a full member of
21 the jury. Ms. Bradish still will be the alternate. We
22 will operate with only one alternate now. I believe
23 that will be sufficient anyhow.

24 As I told you we'd be ready to start the case at
25 ten-thirty, and we're not ready at ten-thirty. I also

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1 have -- and we have some more matters we need to take
2 care of. I found out - I didn't know earlier - there's
3 going to be a function here at one o'clock, a luncheon
4 that will be utilizing part of this area here. And I
5 apologize that I didn't know about that.

6 But we need to finish up the matters that we need
7 to take care of. And rather than you just sitting back
8 there in your jury room, I'm going to let you take an
9 early lunch, an extended lunch. We're going to be
10 working, but there's no need for you to sit back there.
11 If you'll be back at two o'clock, I've been assured
12 that we'll be ready to proceed at that time.

13 Again, let me remind you again not to discuss the
14 case with anyone. Don't let anyone discuss the case
15 with you. I apologize for the inconvenience of having
16 you here this morning, but we'll be ready to proceed at
17 two o'clock.

18 You're excused at this time, ladies and gentlemen.
19 (WHEREUPON, the jury exited the open court at
20 approximately 11:21 a.m.)

21 THE COURT: All right. We'll be at ease
22 until two o'clock.

23 MR. DEJONG: May I approach, Your Honor.

24 THE COURT: Yes, sir.

25 MR. DEJONG: I'm sorry.

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1 THE COURT: If I could see the attorneys
2 here.

3 (WHEREUPON, Mr. Richardson, Mr. DeJong and Mr.
4 Robinson approached the bar.)

5 MR. DEJONG: Thank you, Your Honor.

6 (WHEREUPON, the court stood at recess for a lunch
7 break.)

8 THE COURT: All right. Are we ready to
9 proceed, gentlemen?

10 MR. RICHARDSON: The State's ready. Yes,
11 sir.

12 MR. DEJONG: Ready for Mr. Sanders, Your
13 Honor.

14 MR. ROBINSON: Yes, Your Honor.

15 THE COURT: All right. We'll have the jury
16 come in and have the clerk administer the oath to
17 them.

18 (WHEREUPON, the jury entered the open court at
19 approximately 2:11 p.m.)

20 THE COURT: Ladies and gentlemen, we're now
21 ready to proceed with the trial of the case. I need to
22 ask one question that I failed to ask yesterday. I
23 asked you a lot about potential witnesses that you may
24 know. And I'll just ask you now to respond by
25 uplifting your hand. One name I omitted at the time

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1 was an individual named Judy Chapman, who lives between
2 Pickens and Easley. Does anybody on the panel know a
3 Judy Chapman?

4 You know her?

5 JUROR: Yes, sir.

6 THE COURT: All right. She may be a
7 potential witness. If she were to be called upon to
8 testify, if she gave testimony of whatever nature,
9 would the fact that you know her interfere with your
10 ability to be a fair juror in this case?

11 JUROR: No, sir.

12 THE COURT: You could listen to her testimony
13 and weigh it with all other testimony and render a
14 verdict that would speak the truth?

15 JUROR: Yes, sir.

16 THE COURT: All right. Thank you very much.
17 All right. At this time, I'll ask the clerk if he
18 would administer an oath to you, after which the
19 attorneys will have an opportunity to make their
20 opening statements.

21 I told you yesterday that what the attorneys say
22 to you is not evidence. You're going to hear the
23 evidence in just a few moments. Nevertheless, I urge
24 you to listen carefully as the attorneys address you.
25 They'll give you some valuable insights, I'm confident,

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1 as to things that you need to be alerted to as the case
2 progresses. Mr. Welborn.

3 MISTER CLERK: If you would, please stand.

4 Again, after the oath is administered, please
5 answer by saying I will. Please raise your right hand.
6 You shall well and truly try the issues joined in this
7 case in the State versus Joseph Pettigrew Sanders, IV,
8 and also the State versus Anita Jordan Gearhart, and a
9 true verdict render according to the law and evidence,
10 so help you God.

11 (WHEREUPON, the jury was duly sworn.)

12 THE COURT: Madam alternate, if you would
13 like to move over, you may. You can seat in either
14 seat you pick.

15 JUROR: I'll just sit here.

16 THE COURT: Okay. Thank you. Solicitor, you
17 may address the jury.

18 MR. RICHARDSON: Thank you, Your Honor. May
19 it please the Court, Mr. DeJong and Mr. Robinson.

20 **OPENING STATEMENT**

21 **BY MR. RICHARDSON:**

22 Good afternoon, ladies and gentlemen. I'll
23 reintroduce myself. I'm Doug Richardson. I work for
24 the Thirteenth Circuit Solicitor's Office. It's my
25 duty and job to represent the people of Pickens County

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1 in the prosecution of the cases that come up in the
2 various law enforcement agencies in this county.

3 Now, ladies and gentlemen, this week you're going
4 delve into a crime that is known as a secret crime.
5 This is a crime that's done behind closed doors. It is
6 a crime that is done without witnesses. It is a crime
7 that is done to those folks who are least likely to
8 report it. And that's criminal sexual conduct.

9 The evidence will show you, ladies and gentlemen,
10 that Complainant , at nine years of age, was living in
11 Virginia. She lived up there with her grandmother and
12 she also lived up there with her mother. And that's
13 Ms. Gearhart that sits here. While up there, her
14 mother got on the computer and started meeting people
15 on that computer. Subsequently, she met through some
16 type of chat, some type of on-line, Defendant Sanders,
17 who sits next to her.

18 Defendant Gearhart begins to come to South
19 Carolina to meet with the Defendant Sanders. On
20 occasions she's uproots her child, puts her child in
21 the car with her -- that's Complainant , age nine years
22 of age -- and brings her to South Carolina to be with
23 this man and herself in hotel rooms in Easley. This
24 happens on several different occasions.

25 The evidence will show you that subsequently the

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1 Defendant Gearhart moved to the State of South
2 Carolina, and moved in with the Defendant Sanders in
3 Liberty, South Carolina. However, at that time,
4 Complainant the nine year old, stayed in Virginia.

5 Now, prior to her mother moving down here, Complainant.
6 was brought to Easley, South Carolina and stayed in
7 this hotel room, the evidence will show that the
8 Defendant Sanders molested her on three different
9 occasions. He touched her between her legs. He used
10 his finger. He also touched her in her chest area.
11 After moving to South Carolina, Complainant moved down,
12 also, some six or seven months later, and moved into
13 Sanders' house where Gearhart and Sanders were living
14 together. Those are the only three people in that
15 house. Evidence will show he started doing it again
16 and began to touch her and to rub her, and that this
17 continued on. The evidence will you that this
18 culminated into an even worse act. It got to the point
19 where he actually penetrated her with his penis.

20 Now, ladies and gentlemen, that's the evidence
21 that you're going to hear from this stand from Complainant.

22 She's fourteen years of age now. At the time
23 these acts were committed, she was nine and twelve
24 years old.

25 And my name is Doug Richardson, as I said before,

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1 and I work here in the Thirteenth Circuit to bring
2 these cases before juries for your decision. You,
3 ladies and gentlemen, are the triers of fact. The
4 Judge tries the law. He tells you what the law is in
5 the case. You are the triers of the fact and you're
6 the one that's going to decide what happened. And by
7 virtue of that, you weigh the credibility of the
8 witnesses and you look at things like who has something
9 to lose and who has nothing to lose. You can look at
10 the witness's testimony and you can believe part of it
11 or none of it. You can look at a witness's testimony
12 and believe absolute all of it. That's totally up to
13 you as a jury. You are the triers of fact. You're
14 actually the judges on the facts. You're the twelve
15 judges.

16 Criminal sexual conduct in the second degree is
17 where a sexual battery is committed on a minor, under
18 the age of fourteen, but at least eleven years of age.
19 What is a sexual batter? A sexual battery is
20 penetration of an orifice in a body, however slight.
21 It can be by finger. It can be by penis. It can be by
22 an instrument. Defendant Sanders is charged with that.

23 Defendant Sanders is also charged with lewd act on
24 a minor. Lewd act on a minor is a crime that says it
25 is unlawful for someone to touch the body lewdly and

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1 lasciviously of a minor under the age of sixteen
2 years. Those two charges are separate and distinct
3 charges. They pertain to this Defendant Sanders.
4 Defendant Gearhart is charged with unlawful conduct of
5 a child. Evidence will show you that Complainant, told her
6 that the Defendant Sanders was touching her between the
7 legs and touching her on her chest. Unlawful conduct
8 of a child says it's unlawful to make unreasonable risk
9 of harm to a minor such that it affects the life,
10 mental, and health and safety of that child. That can
11 also be by omission, a parent not doing something that
12 puts the child in that circumstance. The evidence will
13 show that she did not go to authorities, that she did
14 nothing to protect her child, that she left her child
15 in that house with the Defendant Sanders.

16 At the end of this trial, ladies and gentlemen,
17 I'll be back up to sum up everything in closing
18 arguments. This trial is going to last a couple of
19 days. I simply ask that you pay attention to all of
20 the testimony that comes in. When I get back up here,
21 I will put the testimony together for your benefit, for
22 your sake of argument when you go back into the jury
23 room. Until then, I thank you for your time and
24 attention. Thank you.

25 THE COURT: Mr. DeJong, you may address the

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1 jury.

2 MR. DEJONG: Thank you, Your Honor. May it
3 please the court, Mr. Prosecutor and Mr. Robinson.

4 **OPENING STATEMENT**

5 **BY MR. DEJONG:**

6 Ladies and gentlemen, you just took an oath to
7 well and truly try this case on the facts as they are
8 presented to you in the courtroom. We're starting a
9 little late, but we're getting started. And so now as
10 they are presented to you, I am not going to spend any
11 time at this point in time discussing with you what the
12 facts may or may not show. We will have an opportunity
13 to re-meet, and I use the term somewhat loosely, you
14 will have the opportunity to listen to me again at the
15 end of the case, and I'm going to talk about the facts.

16 There are a couple of things that I would like to
17 share with you now. And basically those -- that is
18 some law that applies to this case. I think His Honor
19 may have shared some of it with you yesterday, but I
20 think it certainly bears repeating.

21 In this case, ladies and gentlemen, Mr. Sanders
22 has nothing to come before you today and prove. And
23 you could well say, well, he was arrested. And you
24 would be right saying, yeah, he was arrested. But you
25 see, ladies and gentlemen, the fact that he was

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1 arrested is no proof whatsoever as to Mr. Sanders'
2 either innocence or guilt. He was simply arrested. It
3 is not proof. That is merely allegations.

4 And then you could well say, well, yesterday
5 before we were seated in this jury box, the judge read
6 us an indictment, which if you understand the system,
7 that was an indictment handed down by the Pickens
8 County Grand Jury. Yes, he was. But that, ladies and
9 gentlemen, is absolutely like a warrant. It is a piece
10 of paper that contains allegations. It is not proof of
11 any kind, any sort, any manner, whatsoever. And
12 indeed, but for the fact that we, I guess, are still
13 keeping a paper trail. A lot of times now it's more of
14 a computer trail, but a paper trail nonetheless. But
15 for that, we could tear the indictment up. That
16 indictment is simply a paper that brings this case to
17 court. So I would ask you to divorce yourself from any
18 idea, any thought whatsoever that the fact that the
19 defendant, Joey Sanders, was arrested in this case
20 and/or indicted by the Pickens County Grand Jury is any
21 proof against him, because it is not. It's not because
22 I say so. It's what the law says. It is not proof
23 against him. So I beg you, forget that. Start this
24 trial now.

25 We live in a day and time that we are bombarded

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1 with molestation cases. And I think, ladies and
2 gentlemen of the jury, it would be very easy, having
3 heard what Mr. Sanders is charged with, to close your
4 mind. Say, I've heard enough. I don't need to hear
5 anymore. Well, not only as a practical matter, ladies
6 and gentlemen, would that be wrong, but as a legal
7 matter that would be wrong under the oath that you have
8 agreed -- that you just took, to well and truly try
9 this case on its facts and its merits, without
10 prejudice -- excuse me -- without passion, and we'll
11 talk about that again at the end of the case. But
12 those are not to come into your deliberation. A legal
13 principal, and sometimes in the courtroom lawyers --
14 you hear about lawyer talk and all that stuff.

15 His Honor shared a legal principal with you
16 yesterday that is not lawyer talk. It is not legal
17 mumbo jumbo. It is not something lawyers talk about
18 while they're having a glass of tea. It is a
19 fundamental principal of our law, of our system, that
20 anybody charged with a crime is presumed to be
21 innocent. That is not theory. It is legal fact.

22 So I can ask you to look at Mr. Sanders as he sits
23 at the counsel table and the clothing he is wearing,
24 but he is wearing something more than that you can see,
25 and that is that he is wearing what's called the

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1 presumption of innocence. That presumption of
2 innocence, ladies and gentlemen, does not leave him
3 after the first witness testifies or after the last
4 witness testifies. That presumption of innocence does
5 not leave him when you all go back -- well, after you
6 hear the Judge's charge on the law. Indeed, that
7 presumption of innocence follows him back into the jury
8 room when you begin your deliberations. And that
9 presumption of innocence remains. As I shared with you
10 a moment ago, Mr. Sanders has nothing to come to you
11 today and prove. And, again, I can say that without
12 hesitation because that's what the law says.

13 Not only does Mr. Sanders not have anything to
14 prove. The burden of proof on this case, what we call
15 the burden of -- excuse me, the burden of proof is on
16 the State to prove guilt beyond a reasonable doubt. I
17 am not going to belabor the point at this point in time
18 on what a reasonable doubt is. Ultimately, you will
19 get a charge from His Honor during the law as to what
20 reasonable doubt is, and we can talk -- I will talk
21 about that again when I get to talk with you again at
22 the end of the case.

23 You have been more than patient up to this point
24 in time. And I appreciate your patience. Mr. Sanders
25 appreciates your patience. Over the last day and a

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1 half so far, there's probably a thousand and one
2 places you would rather be than the Pickens County
3 Courthouse. And that is certainly understandable.

4 But ladies and gentlemen, the function you serve,
5 the rights that you protect by sitting in this jury can
6 only be done by you. You are the triers of the facts
7 in this case. Without you, under our current system of
8 law, juris prudence, without y'all sitting in the box
9 there would be no reason for me to be here. There
10 would be no reason for Mr. Richardson to be here, Mr.
11 Robinson. Meaning no disrespect to the Judge, there
12 would be reason for the Judge to be here. Because you
13 are the sole triers of the facts in this case. And I
14 again, appreciate your being here. The function you
15 are serving, words cannot describe it.

16 Perhaps maybe -- the great Winston Churchill one
17 time said that jury service is the greatest service a
18 citizen can render to their country in peace time. I
19 think we could all turn the television on and within
20 five minutes agree we are not at peace time, but
21 perhaps we could agree that it is still the greatest
22 service you can render your community, your state, your
23 country, as a non-combatant, because it is so crucially
24 important.

25 The main thing I would ask you to do as we go

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1 through this trial, keep your mind open and listen.
2 Listen to all of the testimony from wherever it may
3 come from before you make the decision. And that is,
4 in part, what you're charged with under your Oath. So,
5 again, as I said earlier, it would be very easy to
6 close your mind, to shut everything out and think about
7 all those places you would rather be than sitting in
8 this jury box. But as conscientious, honest citizens
9 of Pickens County, I would ask you to keep an open
10 mind, remember that oath that you took, and when this
11 case is over, bring verdicts back of not guilty on Mr.
12 Sanders.

13 Thank you so much for your time and your patience.

14 THE COURT: Mr. Robinson.

15 MR. ROBINSON: May it please the Court.

16 THE COURT: You may address the jury.

17 MR. ROBINSON: Thank you, Your Honor.

18 **OPENING STATEMENT**

19 **BY MR. ROBINSON:**

20 You know, I was just thinking when Mr. DeJong said
21 I think you have a thousand places to be rather than
22 here. And I think I came up with a thousand and one
23 places I'd like to be other than here. Mr. DeJong gave
24 a very eloquent opening statement. I don't have a lot
25 to add. But I do represent Anita Gearhart, who was

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1 seated to my left at the counsel table.

2 Let me tell you a little bit about Anita just so
3 you know a little about her. Anita is a nurse. She
4 works in Easley at a practice near the hospital. She
5 moved from Virginia to South Carolina to find work.
6 And this was her adopted home. When I listened to Mr.
7 Richardson a few seconds ago, it was like it was a --
8 kind of a step down, I guess, to come to South
9 Carolina. I don't believe that. I believe this is a
10 great State. And she came here because she wanted a
11 job to support her family.

12 Her daughter is the alleged victim in this case,
13 Complainant This is her third child. Yesterday, you sat
14 in Court, you sat in the panel over here waiting for
15 the -- waiting for people to pick you and so forth, and
16 there was a comment that was made by one of the
17 proposed or potential jurors and so forth. And I think
18 that comment was, hang them all.

19 Now, we don't live in that kind of country. We
20 don't live in Iran. We don't live in Iraq. We don't
21 live in some sort of authoritarian society like that.
22 As Mr. DeJong stated a few moments ago, it's not a hang
23 them all philosophy that sits in this courtroom.
24 Everyone, the people of Pickens County, y'all all
25 deserve the same treatment. When you're accused of a

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1 crime, you have the right to defend yourself and to
2 present evidence and you have to be proven guilty
3 beyond a reasonable doubt. If there's any hesitation,
4 then you're not guilty.

5 Now, some of you may have served in the past maybe
6 on other juries, maybe in civil court where there's a
7 preponderance of evidence. It's a different standard
8 in this case. In this case the State has to prove
9 their case beyond a reasonable doubt. It doesn't mean,
10 yeah, maybe, possibly. If you say, maybe, possibly,
11 might be, that's not beyond a reasonable doubt. You
12 have to be sure of what you're deciding. When that
13 person yesterday yelled out that insensitive comment,
14 that's befitting maybe a country that's an
15 authoritarian society, not South Carolina, not the
16 United States.

17 The citizens of this country are presumed innocent
18 when they come to a court of law. And I think Mr.
19 DeJong eloquently said that a few moments ago, but it's
20 true. It applies to all of us, not just the two people
21 in court today, but also everyone. So think about
22 that. Think about the standard that you will be
23 applying in this case. Think about what you're looking
24 at in this matter, because you see, neither of us --
25 neither Mr. DeJong nor myself believe that you checked

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1 your common sense at the door when you came to court.

2 When you came to the court yesterday to sit here
3 and wait to see whether you would be chosen as a juror
4 or not, you didn't just check your common sense at the
5 door, you bring your common sense, your life
6 experiences, your family, friends, and so forth, you
7 bring that to the court room.

8 So don't leave your common sense out at the door.
9 Think about these things. Think about motives. Think
10 about agendas. Think about -- you can look at the
11 person on the stand to see if they seem credible to you
12 or not. But keep an open mind as Mr. DeJong says, and
13 use your common sense and use that standard that I just
14 spoke about a few moments ago, the standard of beyond a
15 reasonable doubt.

16 And Mr. Richardson said a moment ago, when he
17 first started his presentation, that he represents the
18 Pickens County people, the people of Pickens County.
19 Mr. DeJong and I represent the concept that people are
20 presumed, all people in Pickens County, are presumed
21 innocent beyond a reasonable doubt, that they are
22 presumed innocent and the State must prove their case
23 beyond a reasonable doubt. That's all the people of
24 Pickens County.

25 But I ask you to look at all of these things when

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1 you view the witnesses in this case, in the presented
2 testimony, you look at evidence. And I think if you do
3 that, I would submit to you that there could be only
4 one result in this case and that is that Ms. Gearhart,
5 Anita as they call her, is not guilty of these charges,
6 or the charge. Thank you.

7 THE COURT: Solicitor, you may call your
8 first witness.

9 MR. RICHARDSON: Thank you. The State calls
10 Complainant. to the stand, please.

11 MISTER CLERK: Place your left hand on the
12 bible and raise your right hand. Do you solemnly swear
13 or affirm the testimony you're about to give in this
14 case to be the truth, the whole truth and nothing but
15 the truth, so help you God?

16 Complainant: Yes, I do.

17 MISTER CLERK: If you would have a seat and
18 state your name for the record.

19 Complainant: Complainant.

20 Complainant

21 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION

23 BY MR. RICHARDSON:

24 Q. Complainant if you will, just move up just a little

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1 bit to the mike. Complainant. how old are you?

2 A. Fourteen.

3 Q. And what's your birthday?

4 A.

5 Q. All right. And where do you presently live?

6 A. In Murdoc, North Carolina.

7 Q. Okay. And who do you live with?

8 A. My dad.

9 Q. All right. Do you have any brothers or sisters?

10 A. I have two brothers and a sister.

11 Q. Okay. Do they live with you?

12 A. No, sir.

13 Q. Okay. Well, how old are they?

14 A. My sister's twenty-one. One of my brothers is

15 thirty, and the other is thirty-three.

16 Q. Okay. What grade are you in?

17 A. I'm going into the ninth.

18 Q. Okay. You just finished the eighth grade then?

19 A. Yes, sir.

20 Q. Okay. And what school are you going to be going
21 into?

22 A.

23 Q. Okay. And will you be a freshman in high school?

24 A. Yes, sir.

25 Q. Okay. Now, Complainant let me ask you, do you know

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1 the defendants?

2 A. Yes, sir.

3 Q. And how do you know them?

4 A. Anita is my mom, and Joey is her boyfriend at the
5 time.

6 Q. Okay. And that's Anita Gearhart and Joey
7 Sanders?

8 A. Yes, sir.

9 Q. Okay. Now, let me take your memory back to 2005,
10 okay? Did you come to meet Joey Sanders in 2005?

11 A. Yes, sir.

12 Q. Okay. Where were you living in 2005?

13 A. With my grandma in Roanoke, Virginia.

14 Q. Okay. And who else lived with your grandma, was
15 it just you two or anybody else?

16 A. It was me, my grandfather, my grandma and my mom.

17 Q. Now, was the house all one compartment or did
18 y'all all live in the same area, or how did that work?

19 A. There was like the main house, and you have to go
20 outside to get to where me and my mom stayed.

21 Q. Okay. Was there a separate entrance to your
22 mother and your place?

23 A. Yes, sir.

24 Q. Okay. Now, did your mother have a computer?

25 A. Yes, sir.

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1 Q. Okay. What, if anything, did she do on that
2 computer that you know about?

3 A. She stayed on it a lot.

4 Q. All right. Was she working at the time?

5 A. Yes, sir.

6 Q. Okay. What time would she get home?

7 A. Between five and six-thirty.

8 Q. Okay. That would be five to six-thirty p.m.?

9 A. Yes, sir.

10 Q. And when would she get on the computer?

11 A. She would spend a few minutes or about an hour
12 with me and my grandma in the kitchen, and then she
13 would go and get on the computer.

14 Q. Okay. And how long would she stay on it?

15 A. Until dinner.

16 Q. Did she ever meet anybody on that computer?

17 A. Joey.

18 Q. Okay. And how do you know that?

19 A. Because she talked about meeting a guy named Ryan.
20 And eventually she told us that his name was Joey.

21 Q. Okay. Now, at some point in time, did your mother
22 get married?

23 A. Yes, sir.

24 Q. Okay. Who did she marry?

25 A. Steve Gearhart.

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- 1 Q. All right. And where did they live?
- 2 A. We -- when we moved in with him, we lived in
- 3 Lynchburg, Virginia.
- 4 Q. Okay. Do you remember the year that they were
- 5 married?
- 6 A. May 21st, no -- yeah. May 21st, 2005.
- 7 Q. Okay. So May 21st 2005, was that the day that you
- 8 actually moved in?
- 9 A. That was the day my mama and Steve got married.
- 10 Q. Okay. And did y'all move to Lynchburg on that
- 11 day?
- 12 A. They spent a week in California and then when they
- 13 came back we moved in with him.
- 14 Q. Okay. Now, at some point in time, did you and
- 15 your mother leave Virginia to come to South Carolina?
- 16 A. Yes, sir.
- 17 Q. Do you remember the first time that was?
- 18 A. It was a few months after they had first got
- 19 married.
- 20 Q. Okay. And did her husband come with you?
- 21 A. No, sir.
- 22 Q. Okay. Who came with you?
- 23 A. It was just me and my mom.
- 24 Q. All right. What did she tell your (sic) husband
- 25 about where you were going?

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1 A. That -- the first time was that my Aunt Cindy was
2 sick and that we were going to go and help take care of
3 her and stuff.

4 Q. Okay. Now, where does your Aunt Cindy -- is that
5 correct?

6 A. Yes, sir.

7 Q. Where does your Aunt Cindy live?

8 A. In Rock Hill.

9 Q. Okay. Did you go to Aunt Cindy's house?

10 A. No, sir.

11 Q. All right. When did you find out you were not
12 going to Aunt Cindy's house?

13 A. We got a couple of hours down the road and my mom
14 told me that we were going to see Ryan instead of Aunt
15 Cindy.

16 Q. Okay. Now, where did you go then?

17 A. After that, when we left we went to the Marriott
18 in Spartanburg.

19 Q. Now, did you ever meet a Ryan?

20 A. No, sir. She told me that his name was Joey.

21 Q. Okay. And did you ever meet the Defendant
22 Sanders?

23 A. Yes, sir.

24 Q. Okay. And where was that?

25 A. At the Spartanburg Marriott.

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State of South Carolina -vs- Anita Gearhart (2009-GS-39-335)

Complainant - *Direct Examination by Mr. Richardson*

1 Q. Okay. And was that when you found out his real
2 name?

3 A. Yes, sir.

4 Q. After you met at the Spartanburg Marriott, did you
5 stay there?

6 A. No, sir.

7 Q. Where ---

8 A. We went to Easley, the Comfort Inn in Easley.

9 Q. Okay. Now, I may have asked you this, can you
10 recall -- you said it was the year 2005, but can you
11 recall the month?

12 A. All I remember it was a few months after they'd
13 gotten married, Steve and my mom.

14 Q. Okay. Now, when you -- did you drive separate
15 cars or the same car to the Comfort Inn in Easley?

16 A. Separate cars.

17 Q. All right. What happened when you got to the
18 Comfort Inn in Easley?

19 A. My mom and Joey started talking for a few minutes,
20 and then they got in the bed and started having sex.

21 Q. Okay. Now, prior to that, who rented the room?

22 A. Joey.

23 Q. Okay. And how do you know that?

24 A. Because he went in and he had his credit card out
25 and stuff.

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State of South Carolina -vs- Anita Gearhart (2009-GS-39-355)

Complainant - Direct Examination by Mr. Richardson

1 Q. Okay. And then after he went in the room, where

2 did y'all go?

3 A. We went to that room.

4 Q. Okay. And did you do anything outside of the

5 room?

6 A. No, sir.

7 Q. Okay. And what, what happened in the room?

8 A. After my mom and Joey talked for a few minutes,

9 they started -- they got in the bed and took their

10 clothes off and started having sex.

11 Q. Okay. Now, where were you?

12 A. I was in the floor.

13 Q. Okay. And what were you doing in the floor?

14 A. I was watching TV.

15 Q. Okay. What made you believe that they were having

16 sex?

17 A. Their clothes were in the floor and they were like

18 -- their bodies were moving and you could hear them.

19 Q. Okay. Hear them what?

20 A. Moaning.

21 Q. Okay. Now, at some point in time did they quit?

22 A. Yes.

23 Q. Okay. Where were you when they quit?

24 A. I was still laying in the floor.

25 Q. And what happened then?

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Complainant -- Direct Examination by Mr. Richardson

- 1 A. My mom had got her clothes and she went to take
- 2 her shower. And when she did that, she told me that I
- 3 could lay down in the bed.
- 4 Q. Okay. And did you lay in the bed?
- 5 A. Yes, sir.
- 6 Q. Okay. And what did you have on?
- 7 A. I had on my pajamas.
- 8 Q. All right. And was anybody in the bed, also?
- 9 A. Joey.
- 10 Q. Okay. And what was he wearing?
- 11 A. Nothing.
- 12 Q. And when you got in the bed, did you -- where did
- 13 you get? Did you get on top of the covers, under the
- 14 covers?
- 15 A. Under the covers.
- 16 Q. All right. What happened when you got in the bed?
- 17 A. Joey started touching me on my breast and in
- 18 between my legs.
- 19 Q. Okay. What was he touching you with?
- 20 A. His hand.
- 21 Q. Okay. And what was he doing with his hand?
- 22 A. He was rubbing me.
- 23 Q. Okay. And was it on top of your clothes or under
- 24 your clothes?
- 25 A. Both.

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State of South Carolina -vs- Anita Gearhart (2009-GS-39-355)

Complainant - Direct Examination by Mr. Richardson

1 Q. What, if anything, did he do with his fingers?

2 A. He was rubbing my -- he was rubbing me with his
3 fingers, and he put his finger inside me.

4 Q. Okay. Did he say anything to you?

5 A. No, sir.

6 Q. Okay. And how old you were at this time?

7 A. Nine.

8 Q. At the time that he was touching you that way,
9 where was your mother?

10 A. She was in the shower, but eventually she came
11 out.

12 Q. Okay. When she came out, what happened?

13 A. She laid down in the bed and Joey had stopped.

14 And then he got up, put his clothes on and gave mom a
15 kiss and left.

16 Q. Okay. Now, did he stay the night?

17 A. No, sir.

18 Q. Did he come back that night?

19 A. No, sir.

20 Q. Okay. Was it nighttime?

21 A. Yes, sir.

22 Q. Did you see Joey at any other -- Defendant Sanders
23 at any other time?

24 A. The next day.

25 Q. You saw him the next day. What did you do the

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1 next day?

2 A. We -- him and mama talked and then we went out to
3 eat.

4 Q. Okay. Do you remember where you went?

5 A. No, sir.

6 Q. And after they talked and you went out to eat,
7 what did you do?

8 A. We came back to the hotel and we got our stuff and
9 then we left.

10 Q. Okay. When you say we left -- well, who went back
11 to the hotel?

12 A. Me, mom and Joey.

13 Q. Okay. And when you say we left, what do you mean?

14 A. Me and mama went back to Virginia.

15 Q. Now, did you -- where did you go back in Virginia?

16 A. To Lynchburg to -- back to our house where Steve
17 was living.

18 Q. Okay. Now, was there another time that you met
19 Defendant Sanders?

20 A. About two or three weeks later.

21 Q. Okay. What happened that time?

22 A. We met him at the Comfort Inn.

23 Q. Before we go there, are you still living with
24 Steve?

25 A. Yes, sir.

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State of South Carolina -vs- Anita Gearhart (2009-GS-39-355)

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Complainant - Direct Examination by Mr. Richardson

1 Q. Okay. They're still married and living together?

2 A. Yes, sir.

3 Q. Okay. What, if anything, did she tell Steve about
4 where you were going?

5 A. That we were going to visit Aunt Cindy.

6 Q. Okay. And did you go to visit Aunt Cindy?

7 A. No, sir.

8 Q. Okay. When did you find out you were not going to
9 visit Aunt Cindy the second time?

10 A. When we were a few hours down the road.

11 Q. Okay. And what, if anything, did she tell you
12 about where you were going?

13 A. She just said we were going to see Joey.

14 Q. Okay. And where did you go?

15 A. We went to the Comfort Inn in Easley.

16 Q. Okay. Did you see the Defendant Sanders then?

17 A. Yes, sir.

18 Q. All right. And did he meet y'all there or how did
19 that ---

20 A. He met us at the hotel.

21 Q. Okay. How did he know y'all were going to be
22 there?

23 A. Mama had called him and told him that we were
24 close.

25 Q. Okay. Does your mother own a cell phone?

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Complainant - Direct Examination by Mr. Richardson

- 1 A. Yes, sir.
- 2 Q. Who paid for the hotel room?
- 3 A. Joey.
- 4 Q. How do you know?
- 5 A. Because he had his credit card and he went inside.
- 6 Q. Okay. After he paid for the hotel room, where did
- 7 you go?
- 8 A. We went to a hotel room and we -- like they
- 9 started talking again and then they got in bed and
- 10 started having sex.
- 11 Q. Okay. Did he give her anything prior to that?
- 12 A. He gave her a robe.
- 13 Q. Okay. Now, this second time, where were you in
- 14 the hotel room?
- 15 A. At first I was in the chair and then I was in the
- 16 floor.
- 17 Q. Okay. When you were in the chair, could you see
- 18 anything?
- 19 A. Yes, sir.
- 20 Q. And what could you see?
- 21 A. I saw like their clothes on the floor, and you
- 22 could see them moving.
- 23 Q. Okay. And did you hear anything?
- 24 A. I heard them moaning.
- 25 Q. All right. Now, were they on top of the covers or

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1 below the covers?

2 A. Under.

3 Q. Okay. And you said you were where when that was
4 taking place?

5 A. On the chair and in the floor.

6 Q. Okay. And when you were on the floor, what were
7 you doing?

8 A. Watching TV.

9 Q. Okay. What, if anything, happened after that?

10 A. Mama had gotten her clothes and went to take a
11 shower.

12 Q. Okay. And where was the Defendant Sanders?

13 A. Laying in the bed.

14 Q. Okay. And what, if anything, happened then?

15 A. He started rubbing me on my breast and between my
16 legs.

17 Q. Okay. Well, where were you when he did that?

18 A. I was under the covers.

19 Q. Okay. How did you come to get in bed?

20 A. Because I'd fallen asleep and they told me that I
21 could lay down.

22 Q. And when you say they, who are you talking about?

23 A. My mom and Joey.

24 Q. And you laid in the bed?

25 A. Yes, sir.

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Complainant - Direct Examination by Mr. Richardson

1 Q. Okay. Were you on top of the covers or below the
2 covers?

3 A. Under them.

4 Q. Do you remember what you were wearing?

5 A. My pajamas.

6 Q. Okay. What, if anything, happened then?

7 A. He started rubbing me and touching me between my
8 legs and on my breasts.

9 Q. Okay. And what was he touching you with?

10 A. His hand.

11 Q. All right. And were your clothes still on?

12 A. Well, at first they were and then he took them
13 off.

14 Q. Okay. And did he use -- what was he doing with
15 his hand?

16 A. He was rubbing me.

17 Q. Okay. And what, if anything, was he doing with
18 his fingers?

19 A. He put his finger inside me.

20 Q. Okay. Did he say anything to you?

21 A. No, sir.

22 Q. And this was a couple weeks later. You're still
23 nine years old?

24 A. Yes, sir.

25 Q. All right. When did he stop doing that?

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1 A. After mom had been out of the bathroom for a few
2 minutes.

3 Q. Okay. And where did your mother go?

4 A. She sat in the chair and then she laid down.

5 Q. Where did she lay?

6 A. In the bed.

7 Q. Okay. So where was she and where were you and
8 where was Defendant Sanders?

9 A. Joey was closest to the door. It was Joey, me and
10 mom.

11 Q. You were in between?

12 A. Yes, sir.

13 Q. Okay. Do you know how long y'all laid in the bed
14 like that?

15 A. Not long. For a few minutes.

16 Q. Okay. Now, while she was in bed, was he doing
17 anything with you?

18 A. He was rubbing me.

19 Q. Okay. Was she laying on top of the covers or
20 below the covers?

21 A. Under them.

22 Q. Okay. What happened then?

23 A. He had gotten up and put his clothes on and gave
24 mom a kiss goodbye.

25 Q. Okay. And what time of day was this, if you

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- 1 remember?
- 2 A. Towards the night.
- 3 Q. Now, did you see him again that night?
- 4 A. No, sir.
- 5 Q. Okay. Did you see him again at any other time?
- 6 A. Later that next day.
- 7 Q. Okay. And what did you do the next day?
- 8 A. We went out to eat and went shopping.
- 9 Q. Okay. And was that here in Easley or Greenville?
- 10 A. It was in Greenville.
- 11 Q. Okay. All right. Did you come back to the hotel
- 12 room?
- 13 A. Only to get our stuff.
- 14 Q. All right. And where did you go?
- 15 A. After we'd gotten our stuff, me and mom went back
- 16 to Virginia.
- 17 Q. And where did you go in Virginia?
- 18 A. In -- to Lynchburg.
- 19 Q. Okay. And where -- did you go back to Steve's
- 20 house?
- 21 A. Yes, sir.
- 22 Q. Now, was there another occasion during this time
- 23 period that you came to meet the Defendant Sanders?
- 24 A. That next month.
- 25 Q. Okay. And how did that come to be?

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Complainant - Direct Examination by Mr. Richardson

1 A. Mom once again told everybody that we were going
2 to see Aunt Cindy and we came down here instead of
3 going to her house.

4 Q. Okay. And where did you go?

5 A. We went to the Comfort Inn in Easley.

6 Q. Okay. And was Joey Sanders there?

7 A. Yes, sir.

8 Q. Okay. And who paid for the room?

9 A. Joey.

10 Q. All right. And then what happened on this
11 occasion?

12 A. They started talking and then we went out to eat.
13 We went shopping again. And then when we went back to
14 the hotel room, they talked for a couple of minutes and
15 then they got in the bed and started having sex.

16 Q. Okay. And where were you when that happened?

17 A. I was laying in the floor.

18 Q. And how do you know they were having sex?

19 A. Because their clothes were on the floor, they were
20 moving, and you could hear them moving.

21 Q. Okay. What happened after that?

22 A. When they finished, mom took her shower and she
23 went to the bathroom. And then they told me that I
24 could lay down in the bed and -- because I was tired.

25 Q. And did you lay down in the bed?

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- 1 A. Yes, sir.
- 2 Q. Okay. Did anything happen?
- 3 A. Joey started touching me again.
- 4 Q. With what?
- 5 A. His hands.
- 6 Q. And anything else?
- 7 A. He just started touching me with his hands and his
- 8 fingers and stuff.
- 9 Q. Okay. Now, was it daytime or nighttime when that
- 10 happened?
- 11 A. Daytime -- it was nighttime.
- 12 Q. Okay. Now, did he stop at some point in time?
- 13 A. When mama came out of the bathroom.
- 14 Q. Okay. And what happened then?
- 15 A. He'd gotten up and he put on his clothes. He told
- 16 mama good night and left.
- 17 Q. Okay. Did you see him again that night?
- 18 A. No, sir.
- 19 Q. When did you see him next?
- 20 A. That next day.
- 21 Q. Okay. And what did y'all do then?
- 22 A. Him and mom just told each other bye and then me
- 23 and mom got our stuff and left.
- 24 Q. Okay. And you went back to Steve's house?
- 25 A. Yes, sir.

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Complainant - Direct Examination by Mr. Richardson

- 1 Q. Okay. Now, were there other times than those
2 three instances that you just told the jury that you
3 came to Easley?
4 A. Yes, sir. We came down twice after that.
5 Q. Okay. And on those occasions, did anything
6 happen?
7 A. No, sir.
8 Q. Do you remember what you did on those occasions?
9 A. We just like hung out and went shopping and stuff
10 like that.
11 Q. Okay. Now, at some point in time, did you stop
12 coming to South Carolina?
13 A. Yes, sir.
14 Q. Or to the hotel rooms?
15 A. Yes, sir.
16 Q. What, if anything, did your mother do?
17 A. She told us that she was moving in with Joey.
18 Q. Okay. Did she tell that to Steve?
19 A. Yes, sir.
20 Q. Okay. And was she still living in the house when
21 she told Steve that?
22 A. Yes, sir.
23 Q. Where -- did she move?
24 A. To Liberty in Joey's house.
25 Q. Okay. She did move?

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- 1 A. Yes, sir.
- 2 Q. Do you remember when it was?
- 3 A. Towards the beginning of 2006.
- 4 Q. Okay. And in -- so we're clear. In 2006, how old
- 5 were you?
- 6 A. Ten.
- 7 Q. And were you still in school at that time?
- 8 A. Yes, sir.
- 9 Q. What school was that?
- 10 A. When we were living with Steve, I went to
- 11 And then when mom moved in with
- 12 Joey, I moved in with my grandma to get back to
- 13
- 14 Q. Okay. So when your mother moved, you moved back
- 15 in with your grandmother?
- 16 A. Yes, sir.
- 17 Q. Okay. Now, at some point in time, did you move to
- 18 South Carolina?
- 19 A. Yes, sir.
- 20 Q. And do you remember when that was?
- 21 A. It was the -- it was like the end of July,
- 22 beginning of August.
- 23 Q. And where did you move?
- 24 A. I moved in with my mom and Joey.
- 25 Q. Did anybody else live in the house?

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1 A. No, sir.

2 Q. How long did you live in that house?

3 A. For two years.

4 Q. And did anybody, during that two years, live there
5 other than you three?

6 A. No, sir.

7 Q. Now, what, if anything, happened when you moved
8 into the -- into Defendant Sanders' house?

9 A. He started touching me.

10 Q. Okay. And where?

11 A. On my boobs and in between my legs.

12 Q. Okay. And how would he do that?

13 A. He would use his hand.

14 Q. And would he use his fingers?

15 A. No.

16 Q. All right. And where in the house would he do
17 that?

18 A. In his bedroom.

19 Q. Okay. Where was your mother?

20 A. She was either in the kitchen cooking or she was
21 in the laundry room in the back.

22 Q. Okay. At that point -- at that time, was your
23 mother working?

24 A. No, sir.

25 Q. And was the defendant working?

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1 A. Yes, sir.

2 Q. All right. Now, do you know how many times he did
3 that?

4 A. Whenever he got the chance.

5 Q. Was it more times than you could count?

6 A. Yes, sir.

7 Q. Now, at some point in time -- well, let me ask you
8 this. You started school down in South Carolina; is
9 that correct?

10 A. Yes, sir.

11 Q. Where did you go?

12 A. To

13 Q. Okay. And at did you ride the bus
14 or how did you get to school?

15 A. In the mornings, my mom took me. And in the
16 afternoons, I rode the bus.

17 Q. Okay. Now, at some point in time, did your mother
18 get a job?

19 A. Yes, sir.

20 Q. And where did she go to work?

21 A. At Easley Pediatrics in Easley.

22 Q. Okay. And do you know the hours of that job?

23 A. She would drop me off at school and then she'd go
24 to work, and then she'd get home about six thirty.

25 Q. Did you know when it was that she started working,

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1 about?

2 A. At the beginning of 2008.

3 Q. The beginning of 2008. How old were you in 2008?

4 A. Twelve.

5 Q. Okay. When you got home from school, would your
6 mother be there?

7 A. No, sir.

8 Q. Okay. Would anybody be there?

9 A. Some days I would be there by myself until Joey
10 got home or I'd be there -- or Joey would be home when
11 I got home.

12 Q. Okay. Now, did anything unusual happen at the
13 beginning of 2008 between you and Joey?

14 A. Joey told me to go get him a drink. And when I
15 did, I came back to give it to him, he took the drink
16 and then like pulled me by my arm and like sat me down
17 on the bed. And he started kissing me and touching me.

18 Q. Okay. When he was touching you this time, was he
19 using your hand -- his hand?

20 A. Yes, sir.

21 Q. Okay. Where was he touching you?

22 A. On my breast and in between my legs.

23 Q. Okay. Did he say anything to you?

24 A. Well, towards the beginning or the middle of it,
25 he told me that I couldn't tell anybody.

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1 Q. Okay. And what else happened besides the
2 touching, if anything?

3 A. He told me -- well, he said that I couldn't tell
4 anybody about this, and he started taking my clothes
5 off. And after that, he put his penis inside me.

6 Q. Okay. Now, where were you when that happened?

7 A. In his bedroom on his bed.

8 Q. Did it hurt?

9 A. A little bit.

10 Q. Where was he in relation to you?

11 A. He was my mom's boyfriend.

12 Q. No. I mean, where was he -- what position was he
13 in, and where were you?

14 A. I was laying on the bed and he was on top of me.

15 Q. Okay. At some point in time, did he get off of
16 you?

17 A. Yes, sir.

18 Q. And what did he do when he got off of you?

19 A. He had taken his hand and he had start -- he
20 started like touching himself, and like he started
21 masturbating. And then I got my clothes and went to
22 take a shower.

23 Q. Okay. Did your mother come home that night?

24 A. Yes, sir.

25 Q. Did you mention anything to your mother that

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1 night?

2 A. No, sir.

3 Q. Why not?

4 A. Because Joey could get violent and I was scared he
5 was going to ---

6 MR. DEJONG: Objection, Your Honor, as
7 previously stated.

8 THE COURT: All right. Your objection is
9 noted.

10 Q. Go ahead.

11 A. He would get violent and then he would -- I was
12 afraid he was going to do something to me and my mom.

13 Q. Had you witnessed him being violent before?

14 A. Yes, sir.

15 Q. Now, at some point in time, you did tell your
16 mother something, did you not?

17 A. Yes, sir.

18 Q. What did you tell your mother?

19 A. I told her that he was touching me.

20 Q. Okay. Tell the jury how that came up?

21 A. She -- it was one morning when all three of us
22 were up, and, you know, we were -- I was going back
23 into the kitchen and my mom said, go give Joey a hug
24 before you go to school and he goes to work. And after
25 that, I told her that I didn't want to. And she asked

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1 me why? And when we went to the car, I told her that

2 he'd been touching me.

3 Q. And what did your mother do, if anything?

4 A. I guess she talked to him because when I got home,

5 her stuff was like packed up, or some of it, and she

6 said that we were leaving on Sunday.

7 Q. Did you ever leave?

8 A. No, sir.

9 Q. Did any police officers ever come to your house?

10 A. Not until they took me out.

11 Q. At that time when they told your mother, did any

12 police officers come to your house?

13 A. No, sir.

14 Q. Now, at some point in time -- do you know who Judy

15 Chapman is?

16 A. Yes, ma'am. Yes, sir.

17 Q. Okay. She's a guardian; is that correct?

18 A. Yes, sir.

19 Q. At some point in time did you tell her that none

20 of this happened?

21 A. Yes, sir.

22 Q. Why did you tell her that?

23 A. Because I didn't want my mom to go to jail.

24 Q. Okay. And where were you when you told her that?

25 A. I was in foster care.

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Complainant *- Direct Examination by Mr. Richardson*

1 Q. Okay. And who were your foster parents?

2 A. Barbara Freeman and Wayne Freeman.

3 Q. Okay. And where was the location that you told
4 her that? In other words, where were you and her at
5 the time?

6 A. We were sitting on the back porch.

7 Q. Okay. And after she left, did you have a
8 conversation with your foster parents?

9 A. I told Barbara that what I had told Judy about
10 nothing ever happening was a lie.

11 Q. Now, do you remember -- and what was the reason
12 for that?

13 A. The reason for what?

14 Q. What was the reason that you told Judy that
15 nothing ever happened?

16 A. Because I didn't want my mom to go to jail.

17 Q. Okay. Now, do you know this lady right -- sitting
18 right here?

19 A. Yes, sir.

20 Q. That's Rita Burgess?

21 A. Yes, sir.

22 Q. Do you remember meeting her?

23 A. Yes, sir.

24 Q. Do you remember when it was you met her?

25 A. June 13th, 2008.

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State of South Carolina -vs- Anita Gearhart (2009-GS-39-355)

Complainant - Direct Examination by Mr. Richardson

1 Q. On June 13th, 2008, how did you come to meet

2 Detective Burgess?

3 A. She came to the house and I was there by myself

4 and we sat on the porch and she asked me questions.

5 Q. Okay. Now, did you call Detective Burgess to your

6 house?

7 A. No, sir.

8 Q. Did you know she was coming?

9 A. Yes, sir.

10 Q. Okay. How did you know she was coming?

11 A. I'd been talking to Michelle and my nana and my

12 grandpa.

13 Q. Okay. Now, did you tell her what you told us

14 today about what happened?

15 A. Yes, sir.

16 Q. Do you remember how long the conversation was

17 between you and Detective Burgess?

18 A. A couple of hours.

19 Q. Okay. And what happened after that?

20 A. I had my duffle bag packed because I knew that I

21 wasn't going to stay there. So I got my bag and then

22 we went back to the police station..

23 Q. Okay. And at the police station, did you continue

24 to talk to Ms. Burgess?

25 A. I sat in her office for a few minutes -- well, for

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Complainant - Direct Examination by Mr. Richardson

1 a couple of hours. And then Laura Hammond came in
2 there and I talked to her.

3 Q. Okay. At some point in time, did your mother
4 come?

5 A. Yes, sir.

6 Q. And do you remember where you were when your
7 mother came?

8 A. I was sitting in Detective Burgess' office.

9 Q. Okay. And what did she do and say when she first
10 saw you?

11 A. She was crying. And she asked me if what I had
12 said about Joey was true. And I said, yes. And then
13 she asked me if -- she asked me if I had my phone, and
14 I told her yes, and she took it.

15 Q. Did she say anything about why she was taking your
16 phone?

17 A. No, sir.

18 Q. Now, do you recall being in foster care -- or
19 excuse me. Do you recall being -- knowing Greg Davis
20 and Amanda Davis?

21 A. Yes, sir.

22 Q. Okay. Who are they?

23 A. Well, when I was living down here, I had a
24 boyfriend named Josh Davis and these were his parents.

25 Q. Okay. Did you spend time with them?

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Complainant - Direct Examination by Mr. Richardson

- 1 A. Yes, sir.
- 2 Q. Okay. And in spending time with them, what would
- 3 you do?
- 4 A. We went to church.
- 5 Q. Anything else?
- 6 A. Well, we had -- we hung out on occasions and like
- 7 -- stuff like that.
- 8 Q. Did you talk to them about Virginia and going back
- 9 to Virginia?
- 10 A. I only told them that I did not want to go back to
- 11 Virginia, because it was like drama up there and stuff
- 12 like that.
- 13 Q. And when you say drama up there, you're referring
- 14 to your family up there?
- 15 A. Yes, sir.
- 16 Q. Now, did you ever go back to Defendant Sanders'
- 17 house?
- 18 A. Yes, sir.
- 19 Q. When did you go back there?
- 20 A. After church and stuff like that.
- 21 Q. Okay. But did you ever go back there after you
- 22 met Ms. Burgess?
- 23 A. No, sir.
- 24 Q. Okay. You did go to a foster home?
- 25 A. Yes, sir.

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Complainant - Direct Examination by Mr. Richardson

1 Q. Okay. And were they strangers?

2 A. To me, yes.

3 MR. RICHARDSON: Beg the Court's indulgence.

4 Q. Okay. Let me ask you, the person that touched you

5 between the legs, rubbed you between the legs, rubbed

6 your breasts, and penetrated you with his finger and

7 his penis, is he in this court room?

8 MR. DEJONG: Your Honor, I object to the form

9 of the question.

10 THE COURT: Rephrase your question if you

11 would, Mr. Richardson.

12 Q. Is the person who penetrated you with his penis in

13 this courtroom?

14 A. Yes, sir.

15 Q. Is the person who penetrated you with his finger

16 in this courtroom?

17 A. Yes, sir.

18 Q. Is the person who rubbed you with his hand in this

19 courtroom?

20 A. Yes, sir.

21 Q. Is the person that rubbed your breast in this

22 courtroom?

23 A. Yes, sir.

24 Q. Can you please point him out?

25 A. He's sitting right there.

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State of South Carolina -vs- Anita Gearhart (2009-GS-39-355)

Complainant - Cross Examination by Mr. DeJong

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1 Q. What color tie has he got on?

2 A. A blue one.

3 Q. And is the person who you told that Defendant

4 Sanders was touching you in this courtroom?

5 MR. ROBINSON: Objection.

6 A. Yes, sir.

7 MR. ROBINSON: Objection, Your Honor. In

8 this case as far as it calls for speculation.

9 THE COURT: I overrule your objection.

10 Q. Is the person who you told that Defendant Sanders

11 was touching you and rubbing you, ---

12 A. Yes, sir.

13 Q. -- is she in this courtroom?

14 A. Yes, sir.

15 Q. Where is she?

16 A. She's right there.

17 Q. Thank you. That's all the questions I have. You

18 need to answer any questions they have for you, okay?

19 THE COURT: Mr. DeJong, you may cross-examine

20 the witness.

21 MR. DEJONG: Your Honor, may it please the

22 court.

23 **CROSS EXAMINATION**

24 **BY MR. DEJONG:**

25 Q. So Complainant, before you or your mother ever met

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Complainant - Cross Examination by Mr. DeJong

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- 1 Mr. Sanders, y'all lived in Virginia?
- 2 A. Yes, sir.
- 3 Q. Did your mother work in Virginia?
- 4 A. Yes, sir.
- 5 Q. And you and your mother lived with your grandma?
- 6 A. Yes, sir.
- 7 Q. That would have been your mother's mother;
- 8 correct?
- 9 A. Yes, sir.
- 10 Q. All right. And did you spend a lot of time with
- 11 your grandma?
- 12 A. Yes, sir.
- 13 Q. Were you and she close?
- 14 A. Yes, sir.
- 15 Q. You confide in her?
- 16 A. Yes, sir.
- 17 Q. You could tell your grandmother things you
- 18 couldn't tell anybody else; couldn't you?
- 19 A. Yes, sir.
- 20 Q. Now, your grandmother, she is no longer -- your
- 21 mother's mother, your grandmother, the one you lived
- 22 with, she's no longer living; right?
- 23 A. Yes, sir.
- 24 Q. Do you remember when she died?
- 25 A. June the 6th, 2008.

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Complainant - Cross Examination by Mr. DeLong

- 1 Q. All right. Now, let's back up a little bit.
- 2 We'll come back to that. So your mother -- you say
- 3 your mother and you would drive from Virginia to
- 4 Easley; is that correct?
- 5 A. Yes, sir.
- 6 Q. How long of a drive was that?
- 7 A. About six hours.
- 8 Q. One way?
- 9 A. Yes, sir.
- 10 Q. Did you and your mother have a good relationship
- 11 at that point in time?
- 12 A. For the most part.
- 13 Q. Okay. She was the mother and you were the
- 14 daughter; right?
- 15 A. Yes, sir.
- 16 Q. And there were certainly times you did things that
- 17 she didn't agree with; right?
- 18 A. Yes, sir.
- 19 Q. Okay. But you would confide in your mother, would
- 20 you not?
- 21 A. Yes, sir.
- 22 Q. You would share things with her? And you would
- 23 share important things with her, would you not?
- 24 A. Yes, sir.
- 25 Q. All right. So how many times now, before you

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Complainant - Cross Examination by Mr. DeJong

1 moved down here, do you say that you came to Greenville

2 with your mother?

3 A. About five.

4 Q. Okay. About five. So the first time you came,

5 you said you met at the Marriott in Spartanburg; is

6 that correct?

7 A. Yes, sir.

8 Q. And then if I understood you, you said you left

9 the Marriott and came to Easley?

10 A. Yes, sir.

11 Q. Did you ever spend the night at Easley?

12 A. We stayed at the Comfort Inn in Easley overnight.

13 Q. And the Marriott, did you ever spend the night?

14 A. No, sir.

15 Q. All right. In talking with Ms. Burgess back in

16 June of 2008, do you remember telling her that you met

17 at the Marriott and nothing happened?

18 A. Yes, sir

19 Q. All right. So that's a little different than what

20 you're telling us today; right?

21 A. Well, after we met at the Marriott, and we went to

22 the Comfort Inn, and then ---

23 Q. But as I recall, what you shared with Ms. Burgess

24 was that when you -- the first time you met was at the

25 Marriott in Spartanburg, and you said nothing happened

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Complainant -- Cross Examination by Mr. DeJong

1 that time?

2 A. Nothing happened there at the Spartanburg
3 Marriott.

4 Q. I see. Okay. So you then came to Easley from
5 Spartanburg?

6 A. Yes, sir.

7 Q. Okay. Now, that was the first time you had met
8 Joey?

9 A. Yes, sir.

10 Q. To your knowledge had your mother met Joey
11 before?

12 A. Not to my knowledge.

13 Q. So they talked for a couple of minutes and started
14 having sex?

15 A. Yes, sir.

16 Q. Now what time of the day was this?

17 A. It was towards like the evening.

18 Q. I beg your pardon?

19 A. Towards the evening.

20 Q. Towards the evening. So what time do you say that

21 -- well, let me ask you this. What day of the week
22 would you come from Virginia, as you put it, to meet
23 Joey at the Comfort Inn?

24 A. Some days we would leave late Friday. And then
25 others we would leave on Sunday -- or Saturday.

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Complainant - Cross Examination by Mr. DeJong

- 1 Q. Okay. Well, on this particular day do you
- 2 remember whether you came down on Friday or Saturday?
- 3 A. Saturday.
- 4 Q. So what time did you get here on Saturday?
- 5 A. Between twelve noon and five p.m.
- 6 Q. Well, is that when you got the Marriott in
- 7 Spartanburg or is that when you say you got to the
- 8 Comfort Inn in Easley?
- 9 A. I don't remember.
- 10 Q. Okay. But do you remember if it was still
- 11 daylight outside?
- 12 A. Yes, sir. It was still daylight.
- 13 Q. And, according to you, was it still daylight when
- 14 you say Joey and your mom are having sex?
- 15 A. Yes, sir.
- 16 Q. And you were in your pajamas?
- 17 A. Yes, sir.
- 18 Q. Okay. Had you eaten your evening meal yet?
- 19 A. Yes, sir.
- 20 Q. Okay. Did y'all go out to eat?
- 21 A. Yes, sir.
- 22 Q. Do you remember where you went to eat?
- 23 A. No, sir.
- 24 Q. Do you remember what you had to eat?
- 25 A. No, sir.

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Complainant - Cross Examination by Mr. DeJong

1 Q. So basically you would tell us that y'all got down
2 here and -- well, I think Mr. Richardson asked you and
3 I have a hard time hearing sometimes, so I apologize
4 for that. But as you tell us when you left the
5 Marriott in Spartanburg and came to Easley, you came in
6 two different cars. Is that correct?

7 A. Yes, sir.

8 Q. And you rode with your mother, I guess.

9 A. Yes, sir.

10 Q. Okay. So do you -- you get to the motel in Easley
11 and do you immediately go to the room?

12 A. We took our stuff.

13 Q. Pardon me?

14 A. We took our stuff in there.

15 Q. Okay. Well, did you stop between Spartanburg and
16 Easley to eat?

17 A. Yes, sir.

18 Q. Okay. But you don't remember where?

19 A. No, sir.

20 Q. All right. Do you remember how long it took from
21 where you got to eat to get to the -- to Easley?

22 A. No, sir.

23 Q. And then once you got your stuff in the room,
24 within a couple of minutes, you're telling us, that
25 Joey and your mom were having sex?

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Complainant - Cross Examination by Mr. DeJong

1 A. Yes, sir.

2 Q. And was there a -- well, let me ask you a little
3 bit about the motel room. How many beds were in the
4 motel room?

5 A. One.

6 Q. So it would be what we would consider to be a
7 pretty small motel room, would it not?

8 A. Yes, sir.

9 Q. Okay. The shower would be very close to where the
10 bed is, would it not?

11 A. Yes, sir.

12 Q. You'd have to be careful so you don't bump your
13 shins on something when you walked around; right?

14 A. Yes, sir.

15 Q. Okay. So you get in the room, it's still light.
16 So coming back to you for just a little bit, so within
17 just a couple of minutes of you getting into the motel
18 room, you change into your pajamas?

19 A. Yes, sir.

20 Q. Now, you didn't travel from Virginia in your
21 pajamas; did you?

22 A. No, sir.

23 Q. Okay. And you remember it was still light
24 outside?

25 A. Yes, sir.

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Complainant - Cross Examination by Mr. DeJong

- 1 Q. Okay. So then you say that this transpired with
- 2 Joey. Now, the next day you saw Joey again; right?
- 3 A. Yes, sir.
- 4 Q. Okay. By the way, did you ever meet Joey's
- 5 parents?
- 6 A. No, sir.
- 7 Q. You don't Mr. Joe and Ms. Gail Sanders?
- 8 A. I do, but I never met them until I moved in.
- 9 Q. Okay. But you know them?
- 10 A. Yes, sir.
- 11 Q. Sometime after the fact, but not at this point in
- 12 time?
- 13 A. Yes, sir.
- 14 Q. Okay. All right. So you see Joey the next day;
- 15 right?
- 16 A. Yes, sir.
- 17 Q. And then y'all pack up, leave and go drive six
- 18 hours back to Virginia?
- 19 A. Yes, sir.
- 20 Q. Do you and your mother talk on your way back to
- 21 Virginia?
- 22 A. No, sir.
- 23 Q. No talk at all?
- 24 A. We talked, but I don't remember what we were
- 25 talking about.

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Complainant --- Cross Examination by Mr. DeJong

1 Q. Okay. And for six hours you're in a car with your
2 mother?

3 A. Yes, sir.

4 Q. Now, you get back to Virginia, and now you're
5 still living with your grandmother; right?

6 A. Yes, sir.

7 Q. Did you ever say anything to your grandmother?

8 A. No, sir.

9 Q. And then you come down again, and again you say
10 it's the Comfort Inn; right?

11 A. Yes, sir.

12 Q. And do you remember the second time you came down,
13 was that on a Friday or a Saturday?

14 A. I don't remember.

15 Q. But you're sure you were at the Comfort Inn?

16 A. Yes, sir.

17 Q. And at the same type of room?

18 A. Yes, sir.

19 Q. One bed?

20 A. Yes, sir.

21 Q. Okay. And when you got to the room, was it still
22 daylight outside?

23 A. Yes, sir.

24 Q. Okay. Had you been out to eat at that point in
25 time?

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Complainant - Cross Examination by Mr. DeJong

- 1 A. No, sir.
- 2 Q. So you got to the room and within a couple of
- 3 minutes, what you're telling us ---
- 4 A. Yes, sir.
- 5 Q. -- Joey and your mama were having sex?
- 6 A. Yes, sir.
- 7 Q. Was there any doubt that you were in the room?
- 8 A. What do you mean?
- 9 Q. I mean, you were visible; right?
- 10 A. Yes, sir.
- 11 Q. Well, you're probably a little bigger now than you
- 12 were back in 2005; right?
- 13 A. Yes, sir.
- 14 Q. But you were a human being in the room; right?
- 15 A. Yes, sir.
- 16 Q. Okay. And where were you the second time, when
- 17 you say that Joey and your mom were having sex?
- 18 A. I was -- first I was sitting up in the chair, and
- 19 then I laid down in the floor.
- 20 Q. Oka. And so I'm clear, you get to the motel, you
- 21 get your stuff in, and within two minutes, mom and Joey
- 22 are having sex?
- 23 A. Yes, sir.
- 24 Q. And, again, the second time you were there, are
- 25 you in your pajamas?

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Complainant - Cross Examination by Mr. DeJong

1 A. Yes, sir.

2 Q. Now, the second time you haven't been out to eat
3 yet; have you?

4 A. No, sir.

5 Q. Yeah. Well, I gather again it took about six
6 hours to get down here; didn't it?

7 A. Yes, sir.

8 Q. And then you saw Joey the next day?

9 A. Yes, sir.

10 Q. Okay. Well, let me ask you this. The second time
11 you were down here, and you say this happened, did
12 y'all ever go out to eat?

13 A. After my mom and Joey -- well, after Joey had
14 left.

15 Q. Okay. So then you had to change out of your
16 pajamas and put your clothes back on and then you and
17 your mom went to eat?

18 A. Yes, sir.

19 Q. Okay. And then there was a third time you say;
20 right?

21 A. Yes, sir.

22 Q. And basically you're telling us the same thing,
23 this happened the same way every time; right?

24 A. Yes, sir.

25 Q. No difference? Everything was just that way?

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1 A. Yes, sir.

2 Q. I see. Now, and each time that you left -- each
3 time you were with your mother; right?

4 A. Yes, sir.

5 Q. And each time you left you had to drive six hours
6 back to Virginia; right?

7 A. Yes, sir.

8 Q. And each time you got back to Virginia, you were
9 still living with your grandmother; right?

10 A. Not each time.

11 Q. Okay. Well, how many times?

12 A. The first time.

13 Q. Okay. Well, after you didn't live with your
14 grandmother, did you still see your grandmother?

15 A. A few times.

16 Q. And was your relationship the same with your
17 grandmother?

18 A. Yes, sir.

19 Q. Very close?

20 A. Yes, sir.

21 Q. And you were quite upset when your grandmother
22 died; weren't you?

23 A. Yes, sir.

24 Q. And you and -- well, let me back up. Now, you say
25 on those trips -- well, a total of five times and you

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Complainant - Cross Examination by Mr. DeJong

- 1 say three times, what -- you have described what you
- 2 say happened. And then there were two times that
- 3 nothing happened; right?
- 4 A. Yes, sir.
- 5 Q. Okay. Were you at the Comfort Inn?
- 6 A. Yes, sir.
- 7 Q. Okay. Was your mom there?
- 8 A. Yes, sir.
- 9 Q. Was Joey there?
- 10 A. Yes, sir.
- 11 Q. Was anybody else there?
- 12 A. No, sir.
- 13 Q. And these times you would come to the Comfort Inn,
- 14 you went shopping?
- 15 A. Yes, sir.
- 16 Q. You went bowling?
- 17 A. Yes, sir.
- 18 Q. Went to the movies?
- 19 A. Yes, sir.
- 20 Q. Did all of these things?
- 21 A. Yes, sir.
- 22 Q. Would this be what you were telling us that you
- 23 would do these things, you would go bowling, you would
- 24 go shopping, you would go to the movies, would this be
- 25 before or after you say Joey did these things to you?

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Complainant - Cross Examination by Mr. DeJong

1 A. We came down the first three times that he had did
2 this, and then he stopped, and then the last two times,
3 he did.

4 Q. I'm sorry. I couldn't hear you.

5 A. Like the first three times that me and my mom came
6 down there, we -- he didn't do anything, but the last
7 two times he did.

8 Q. But what I am asking you, did you go shopping
9 every time you came down here?

10 A. For the most part.

11 Q. Okay. Did you go bowling when you -- every time
12 you came down here?

13 A. No, sir.

14 Q. How many times did you go bowling?

15 A. A couple.

16 Q. How many times did you go to the movies?

17 A. Once or twice.

18 Q. Well, when you went bowling and you went to the
19 movies, would that be on the night you got here or on
20 Sunday or when would it be?

21 A. Sometimes it would be the day of, and then
22 sometimes it would be the day after.

23 Q. Okay. So sometimes on the day you got here, if I
24 understand you correctly, is what you've described for
25 us, you would get to the motel, get your baggage in

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Complainant - Cross Examination by Mr. DeJong

1 there, in a couple of minutes mom and dad would be --
2 mom and Joey would be having sex. You were in your
3 pajamas. And then later on you would go out in the
4 night; right?

5 A. Half-way. The first couple of times like they
6 would do stuff and after that we wouldn't go anywhere.
7 And then like we would -- like mom and Joey would like
8 have sex and stuff and then after he left, one time me
9 and mom went to get something to eat. And then other
10 times we went before they did anything.

11 Q. Okay. Well, when your mom moved down here, do you
12 remember what year it was your mom moved down here?

13 A. At the beginning of 2006.

14 Q. 2006. So that would have -- would that have been
15 early in the year 2006?

16 A. Yes, sir.

17 Q. Okay. January, February, somewhere in there?

18 A. Yes, sir.

19 Q. So you were still in school?

20 A. Yes, sir.

21 Q. Now, in January or February of '06, you went back
22 to live with your grandmother. Is that correct?

23 A. Yes, sir.

24 Q. And when you went back to live with your
25 grandmother, it was at that point in time -- at that

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- 1 point in time, it was just you, grandma and step-
2 grandfather, I think you said?
3 A. Yes, sir.
4 Q. Those were the only people that were living in the
5 house; right?
6 A. No, sir.
7 Q. Who else was living there?
8 A. My cousin. My step-grandpa's son's son.
9 Q. All right. But you certainly shared a lot of time
10 with your grandmother; did you not?
11 A. Yes, sir.
12 Q. And on a daily basis?
13 A. Yes, sir.
14 Q. Or -- well, from sometime in January or February,
15 until the end of that school year in '06; correct?
16 A. Yes, sir.
17 Q. Now, were there times after you moved down here
18 that you went to Virginia?
19 A. Yes, sir.
20 Q. Do you recall how many times?
21 A. A few, but not many.
22 Q. All right. Now, when you would go to Virginia,
23 after you had moved down here, did you see your
24 grandma?
25 A. Yes, sir.

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Complainant -- - Cross Examination by Mr. DeJong

1 Q. And was your relationship still the same with your
2 grandma?

3 A. Yes, sir.

4 Q. And when you lived with your grandmother, after
5 your mom moved down here, was your relationship the
6 same with her then?

7 A. Yes, sir.

8 Q. Very close?

9 A. Yes, sir.

10 Q. A person you could confide everything; correct?

11 A. Yes, sir.

12 Q. All right. And in -- you don't remember what
13 month you came in '06?

14 A. I think it was the end of July, beginning of
15 August.

16 Q. Now, you say when you moved down here, what you're
17 sharing with us, that Joey did some things to you;
18 correct?

19 A. Yes, sir.

20 Q. And so that I'm clear, after that started, did you
21 go back to Virginia and see your grandmother?

22 A. Yes, sir.

23 Q. Would Joey go with you on those trips?

24 A. He did a couple of times.

25 Q. But there were times he did not?

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1 A. Yes, sir.

2 Q. And there was times that you went back to Virginia
3 and Joey wasn't with you. Was it just you and your
4 mom?

5 A. Yes, sir.

6 Q. And, again, did you have a fairly close
7 relationship with your mother?

8 A. Fairly close.

9 Q. Okay. So basically at that point in your life,
10 Complainant, it was basically your grandmother and your
11 mother; was it not?

12 A. Yes, sir.

13 Q. That was pretty much your family; right?

14 A. Yes, sir.

15 Q. And now you say sometime in April, I believe, of
16 2008, you told your mom that Joey was grabbing, I think
17 your words were, your breast or your boobs and your
18 behind; right?

19 A. Between my legs.

20 Q. Okay. So -- Okay. So that was in April of 2008?

21 A. I'm not sure.

22 Q. Okay. Well, do you remember in 2008, do you
23 remember Memorial Day in 2008?

24 A. Yes, sir.

25 Q. Did y'all go see your grandma?

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Complainant - Cross Examination by Mr. DeJong

1 A. Yes, sir.

2 Q. Had you, according to you, had you reported this
3 to your mother before Memorial Day that year?

4 A. Yes, sir.

5 Q. Okay. And did Joey go with you when y'all went up
6 Memorial Day?

7 A. Yes, sir.

8 Q. And did you stay at your Grandma's house?

9 A. Yes, sir.

10 Q. Where did Joey stay?

11 A. Him and my mom went to a hotel.

12 Q. Okay. So did you have time alone with your
13 grandmother during all of that?

14 A. Yeah. Well, there was other people around, but

15 ...

16 Q. But you had some one-on-one time with your
17 grandmother; did you not?

18 A. Yes, sir.

19 Q. Okay. And then you say it was -- was it after you
20 say you reported to your mom this incident, where you
21 say Joey had sex with you?

22 A. It was after. After Joey had sex with me, I told
23 my mom that he was touching me.

24 Q. All right. So you don't remember how long before
25 Memorial Day in 2008 you reported to your mother;

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1 right?

2 A. No, sir

3 Q. Okay. Well, do you remember in March or April
4 your mother and you having, to some extent Joey being
5 involved, having a falling-out over a boyfriend?

6 A. Yes, sir.

7 Q. And your mother was very upset with you because of
8 some text messages, I believe. Is that correct?

9 A. Yes, sir.

10 Q. All right. And Joey had some involvement in that;
11 did he not?

12 A. Yes, sir.

13 Q. And that upset you; didn't it?

14 A. Yes, sir.

15 Q. It made you very angry; didn't it?

16 A. Yes, sir.

17 Q. Okay. And then -- well, let me ask you this.

18 Once you moved down here, then did you meet Joey's mom
19 and dad?

20 A. Yes, sir.

21 Q. And when you got off from -- well, what was your
22 relationship with them? As you lived here for a while,
23 how did you see Mr. Joe and Ms. Gail?

24 A. Like, I'd go up there and help them with like
25 cleaning their house and stuff. And like we'd just

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1 spend time together.

2 Q. Did you spend a lot of time together?

3 A. Kind of.

4 Q. Well, where was -- Joey worked; right?

5 A. Yes, sir.

6 Q. Where did he work?

7 A. For the Miss South Carolina Organization.

8 Q. Where was his office?

9 A. In Liberty.

10 Q. Okay. Did he work out of the same office as Mr.

11 Joe and Ms. Gail?

12 A. Yes, sir.

13 Q. And would you go there after school sometime?

14 A. Sometimes.

15 Q. Do your homework?

16 A. Yes, sir.

17 Q. And when you went to do your homework at the

18 office in Liberty, would Mr. Joe and Ms. Gail be there?

19 A. Yes, sir.

20 Q. What did you call them, by the way?

21 A. Ms. Gail and Papa Joe.

22 Q. Okay. Kind of like your grandparents; right?

23 A. Yes, sir.

24 Q. And when you went to the office to do homework or

25 whatever you did there, would they be there?

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- 1 A. Yes, sir.
- 2 Q. Okay. Would Joey be there?
- 3 A. Yes, sir.
- 4 Q. Were there some times that Joey might be there and
- 5 they not be there?
- 6 A. Sometimes.
- 7 Q. Okay. But you say nothing -- everything that
- 8 happened, according to you, happened at the motel or at
- 9 this house in Liberty; correct?
- 10 A. Yes, sir.
- 11 Q. All right. So you certainly -- once you moved
- 12 down here, your family was basically you and your mom,
- 13 that is, what we sometimes call your immediate family;
- 14 right?
- 15 A. Yes, sir.
- 16 Q. Did you have any other relatives that lived in
- 17 this area?
- 18 A. Not in this area, but in South Carolina.
- 19 Q. What was your nearest relative that lived in South
- 20 Carolina?
- 21 A. In Rock Hill.
- 22 Q. Did you ever drive from Liberty to Rock Hill?
- 23 A. No, sir.
- 24 Q. Okay. So you don't know how far that was?
- 25 A. No, sir.

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- 1 Q. Okay. And who was that person?
- 2 A. That lived in Rock Hill?
- 3 Q. Yes, ma'am.
- 4 A. My Aunt Cindy.
- 5 Q. Okay. So how many days a week would you say you
- 6 went to Joey's office?
- 7 A. During my fifth grade year, I went there pretty
- 8 much every day.
- 9 Q. Okay. And when you went there everyday, did you
- 10 go there directly from school?
- 11 A. Yes, sir.
- 12 Q. Now, when you went from school to the office,
- 13 would you take the bus or how did you get there?
- 14 A. I would walk.
- 15 Q. You would walk. And about how far was that?
- 16 A. About a block.
- 17 Q. Okay. So in the afternoon when you were in the
- 18 fifth grade, I believe you said.
- 19 A. Yes, sir.
- 20 Q. Just every afternoon you went to the office?
- 21 A. Yes, sir.
- 22 Q. So that would have been in, what, the fall of '06?
- 23 A. Yes, sir.
- 24 Q. And the spring of '07; right?
- 25 A. Yes, sir.

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- 1 Q. All right. And then during the summer, would you
2 go to the office and spend time?
- 3 A. Sometimes.
- 4 Q. Well, let me back up again, just a little bit.
5 Before your mom met Joey, and y'all lived up in
6 Virginia, now where did you live, Roanoke, or
7 Lynchburg, or where did you live?
- 8 A. Both.
- 9 Q. Both, okay. When you were coming to see Joey,
10 where were you living then?
- 11 A. We were living in Roanoke and Lynchburg.
- 12 Q. Okay. Now, even at that point in time when you
13 were living up in Virginia, again, basically your
14 immediate family was you and your mother; right?
- 15 A. And my grandma and my brothers and ---
- 16 Q. Right. Okay. But you spent a lot of time with
17 your grandmother?
- 18 A. Yes, sir.
- 19 Q. And your mother worked?
- 20 A. Yes, sir.
- 21 Q. And when your mother wasn't working, she did
22 things with you; did she not?
- 23 A. Yes, sir.
- 24 Q. And y'all went to your school, extracurricular
25 activities?

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Complainant - Cross Examination by Mr. DeJong

- 1 A. Softball.
- 2 Q. You like softball, I think; is that correct?
- 3 A. Yes, sir.
- 4 Q. And basketball, I think, as well?
- 5 A. I played softball and basketball for two years,
- 6 but I don't play anymore.
- 7 Q. Now, once -- well, when your mom wasn't working,
- 8 would you say that she gave you most of her time when
- 9 she wasn't working?
- 10 A. Yes, sir.
- 11 Q. Okay. Now, once Joey came into the picture, she
- 12 didn't spend as much time with you; did she?
- 13 A. Yes, sir.
- 14 Q. As a matter of fact, she had spent quite -- or had
- 15 to -- she just didn't spend as much time with you; did
- 16 she?
- 17 A. No, sir.
- 18 Q. And that bothered you?
- 19 A. Yes, sir.
- 20 Q. And now, you say that when you were in the house
- 21 in Liberty, and you say Joey did these things, your mom
- 22 was home?
- 23 A. Not -- well, for some of it. When he was touching
- 24 me, some days she was.
- 25 Q. Okay. How big was the house that you lived in in

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- 1 Liberty?
- 2 A. It was long.
- 3 Q. And how many bedrooms?
- 4 A. Two.
- 5 Q. How many bathrooms?
- 6 A. One.
- 7 Q. Kitchen?
- 8 A. Yes, sir.
- 9 Q. Laundry room?
- 10 A. Yes, sir.
- 11 Q. Den?
- 12 A. Yes, sir.
- 13 Q. Okay. And is that pretty much it?
- 14 A. There was a living room and a dining room.
- 15 Q. Okay. Were the living room, dining room and den
- 16 all together or were they actually separate rooms?
- 17 A. When you went into the dining room, you had to go
- 18 like in this hallway kind of thing. And then the --
- 19 here's -- like this is the den. The dining room would
- 20 be like right off of it.
- 21 Q. Okay. Well, how far from the kitchen was your
- 22 bedroom?
- 23 A. You had to go through the dining room and the den.
- 24 Q. Okay. And you did have your own bedroom?
- 25 A. Yes, sir.

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Complainant - Cross Examination by Mr. DeJong

1 Q. There would have -- well, and I'll ask you this.

2 Did your mom and Joey share a bedroom?

3 A. Yes, sir.

4 Q. And there was certainly no reason that you would
5 have had to have been in Joey's bedroom, was there, or
6 your mom's bedroom?

7 A. No, sir.

8 Q. And when your mom was there when you say this was
9 happening, she was moving around the house; wasn't she?

10 A. Yes, sir.

11 Q. Doing laundry, putting up laundry and that of
12 thing?

13 A. Yes, sir.

14 Q. All right. So now you went to Virginia Memorial
15 Day of 2008; correct?

16 A. Yes, sir.

17 Q. Then within basically a few days of Memorial Day
18 of 2008, your grandmother died?

19 A. Yes, sir.

20 Q. And y'all went back to Virginia; right?

21 A. Yes, sir.

22 Q. And you went for the funeral?

23 A. Yes, sir.

24 Q. Let me back up just a little bit. Before your
25 grandmother died, right around this Memorial Day trip,

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1 either shortly before or shortly after, I'm not sure,
2 but do you remember you and your mother being in
3 Spartanburg getting ready -- or getting ready for a
4 pageant or something like that?

5 A. Yes, sir.

6 Q. And do you remember during the course of that,
7 that your mother and Joey had a little bit of an
8 argument?

9 A. No, sir.

10 Q. You don't remember that? You don't remember
11 saying that you would do whatever it took to get back
12 at Joey Sanders?

13 A. I never said that.

14 Q. Okay. All right. Now, let's go on up to the
15 funeral. You go to Virginia, you're at the funeral.
16 At that point in time, did you ask your mother to stay
17 in Virginia?

18 A. Yes, sir.

19 Q. And what was her response?

20 A. No.

21 Q. Did that upset you?

22 A. Yes, sir.

23 Q. Did you talk to your friends about that?

24 A. I talked to people there about it.

25 Q. And who did you talk to there about it?

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- 1 A. My brother, his wife, my grandpa and Michelle.
- 2 Q. All right. And who's Michelle?
- 3 A. She's a very close family friend.
- 4 Q. Very what?
- 5 A. Close family friend.
- 6 Q. Okay. Is she your age?
- 7 A. No, sir.
- 8 Q. All right. So your mother said no, and that upset
- 9 you?
- 10 A Yes, sir.
- 11 Q. And you talked to certain family members about
- 12 that?
- 13 A. Yes, sir.
- 14 Q. Okay. Now, let's go talk about when you were
- 15 talking to Ms. Judy Chapman. You were at the Freeman's
- 16 house; is that correct?
- 17 A. Yes, sir.
- 18 Q. And do you remember exactly what date that was?
- 19 A. No, sir.
- 20 Q. Okay. When you shared this with Ms. Chapman, that
- 21 you had lied ---
- 22 A. Yes, sir.
- 23 Q. -- did she ask you any questions?
- 24 A. She just ---
- 25 Q. Well, I'm sorry. I didn't mean to interrupt you.

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- 1 I apologize for that, but my question wasn't a good
- 2 question, okay? Before you shared this with Ms.
- 3 Chapman, had she been asking you questions about what
- 4 had happened or gone on?
- 5 A. She did on previous visits.
- 6 Q. Okay. On this particular ---
- 7 A. No, sir.
- 8 Q. Okay. And were you crying when you told her that
- 9 you had lied?
- 10 A. No, sir.
- 11 Q. And did you share with Ms. Chapman as to why you
- 12 had lied?
- 13 A. All I told her was that the stuff I had said that
- 14 happened really didn't happen.
- 15 Q. Okay. And did you share with Ms. Chapman -- do
- 16 you remember sharing with Ms. Chapman that the reason
- 17 you lied was because you wanted to go to Virginia?
- 18 A. No, sir.
- 19 Q. You don't remember that?
- 20 A. No, sir.
- 21 Q. Do you remember sharing with Ms. Chapman that --
- 22 before you ever talked to Ms. Burgess, do you remember
- 23 sharing with Ms. Chapman that when you talked to these
- 24 people in Virginia about staying there, that you told
- 25 Ms. Chapman they told you what to do so you could go to

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1 Virginia?

2 A. No, sir.

3 Q. You don't remember that? Okay. And in talking
4 with Ms. Chapman, did you share with her that Joey
5 treated you like a father?

6 A. Yes, sir.

7 Q. And the closest thing you had ever had to a
8 father, I think is what you shared with her; right?

9 A. Yes, sir.

10 Q. And that Joey's parents, Papa Joe and Ms. Gail,
11 were like grandparents to you?

12 A. Yes, sir.

13 Q. Okay. Now you only had the one conversation with
14 Ms. Chapman when you said it was a lie?

15 A. Yes, sir.

16 Q. Do you remember telling Ms. Chapman that the worst
17 Joey had ever done to your, or the only thing he'd ever
18 done to you is flipped you on the butt?

19 A. I did tell her that.

20 Q. Okay. Well, let's -- see, and I'm not trying to
21 upset you, young lady. I just need to make sure I know
22 what you're saying. Did you tell her the only thing he
23 ever did to you was flip you on the butt?

24 A. Yes, sir.

25 Q. Okay.

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Complainant - Cross Examination by Mr. DeJong

- 1 MR. DEJONG: One moment, please, if I may,
- 2 Your Honor.
- 3 Q. I believe you shared with me, Complainant, that when
- 4 you went to school your mother would drive you?
- 5 A. Yes, sir.
- 6 Q. Was it just you and your mother?
- 7 A. Yes, sir.
- 8 Q. Would Joey ever drive you?
- 9 A. No, sir.
- 10 Q. Did Joey ever pick you up from school?
- 11 A. Sometimes.
- 12 Q. Did Papa Joe ever pick you up from school?
- 13 A. Sometimes.
- 14 Q. And when that happened, where did you go with
- 15 them?
- 16 A. I don't remember.
- 17 Q. Okay. But you don't know if you went home or to
- 18 the office or where you went?
- 19 A. We usually had to go somewhere.
- 20 Q. Pardon me?
- 21 A. Usually, we had to go somewhere.
- 22 Q. Okay. Do you recall sharing with Ms. Chapman that
- 23 you feared that if you told somebody you lied, that you
- 24 would go to jail?
- 25 A. Yes, sir.

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Complainant -- - Cross Examination by Mr. Robinson

1 MR. DEJONG: The witness is with you, Mr.

2 Robinson.

3 THE COURT: You need to take a break? Doing
4 all right. Okay. Let's begin cross examination, Mr.

5 Robinson.

6 MR. ROBINSON: May it please the court.

7 THE COURT: All right. Mr. Robinson.

8 MR. ROBINSON: Thank you.

9 CROSS EXAMINATION

10 BY MR. ROBINSON:

11 Q. How are you doing today, Complainant

12 A. I'm fine.

13 Q. Have you heard of that new Twilight movie that's
14 coming out?

15 A. Yes, sir.

16 Q. Are you excited?

17 A. Yes, sir.

18 Q. Okay. Complainant let me ask you something. I was
19 listening to your testimony out here. As far as the
20 times at the Comfort Inn when you guys would go to the
21 Comfort Inn, your mother wasn't -- didn't know anything
22 was going on; did she, at the Comfort Inn?

23 A. Well, ---

24 Q. She wasn't there when all this stuff was going on;
25 was she?

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Complainant - Cross Examination by Mr. Robinson

1 A. Part of it.

2 Q. But you never told her anything was going on at
3 that time; did you?

4 A. No, sir.

5 Q. Now, this was back in 2006, I believe; isn't that
6 right?

7 A. 2005.

8 Q. 2005? Now, at some point, specifically April of
9 2008, at that time you said you told your mother that
10 Joey had been touching you, I believe; is that right?

11 A. Yes, sir.

12 Q. And she kind of flipped out; didn't she?

13 A. A little bit.

14 Q. And she wanted to pack the clothes -- she'd
15 already told you to pack your clothes and get the car
16 ready; is that correct?

17 A. Yes, sir.

18 Q. And isn't it true that nothing ever happened after
19 that point, between you and Joey; did it?

20 A. He only kept touching me a little bit.

21 Q. But after that time, there was no sort of -- you
22 never told her anything after that time that anything
23 happened; isn't that correct?

24 A. Yes, sir.

25 Q. Just the one time; correct?

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Complainant - Cross Examination by Mr. Robinson

1 A. Yes, sir.

2 Q. And at that point what she did, she just got -- as

3 I said before -- as you said before, she packed her

4 bags and said, we're going back to Virginia. Isn't

5 that right?

6 A. She said that we were going to move, but we

7 weren't going back to Virginia.

8 Q. And she was not very happy; was she?

9 A. No.

10 Q. Okay. Now, and you were doing this -- you were

11 keeping this from your mom before that because you were

12 -- you didn't want your mom to know about this. Isn't

13 that correct? Because you were scared. Is that what

14 you said?

15 A. Yes, sir.

16 Q. Okay. Now, you had a boyfriend at this time;

17 didn't you?

18 A. Yes, sir.

19 Q. And you had a -- you actually -- this was -- he

20 was a little older; wasn't he?

21 A. Not by much.

22 Q. Wasn't he sixteen?

23 A. No, sir.

24 Q. He wasn't sixteen?

25 A. No, sir.

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1 Q. Didn't your mother, at some point, confiscate your
2 cell phone because you had done something or you'd
3 gotten into a little trouble or something. Is that
4 what you're telling me?

5 A. That's when I had my phone taken away a lot.

6 Q. You had your phone taken away a lot?

7 A. Yes, sir.

8 Q. Now, isn't it true that you would send kind of
9 provocative text or emails to that boy?

10 MR. RICHARDSON: Judge, objection. Can I
11 approach?

12 THE COURT: Yes, sir.

13 (WHEREUPON, Mr. Richardson, Mr. DeJong, and Mr.
14 Robinson approached the bar.)

15 MR. ROBINSON: One second, please. That's
16 all the questions I have. Thank you.

17 THE COURT: Any redirect?

18 MR. RICHARDSON: Nothing on redirect.

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

20 MR. DEJONG: Your Honor, may we approach?

21 THE COURT: Yes, sir.

22 (WHEREUPON, Mr. Richardson, Mr. DeJong, and Mr.
23 Robinson approached the bar.)

24 THE COURT: Madam forelady, ladies and
25 gentlemen, this would be a good time for us to take a

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1 break. I'll ask you to go back to your jury room.

2 Don't discuss the case in any way. We'll take about a
3 ten or fifteen minute break and call you back in just a
4 few minutes.

5 (WHEREUPON, the jury exited the open court at
6 approximately 4:00 p.m.)

7 THE COURT: All right. We'll take a short
8 break.

9 MR. DEJONG: Your Honor, if I may, before we
10 do that, since the jury has now been sworn, we might as
11 well take up this issue of Mr. Sanders' continuing on
12 bond. I'm going to ask you to continue him. He has
13 been to my office every time I've asked him to be
14 there, Your Honor. He has been in this courtroom.

15 THE COURT: For now, through the break we
16 will. We may address that at the end of the day, okay?

17 MR. DEJONG: All right. Thank you, Your
18 Honor.

19 (WHEREUPON, the court stood at recess for a short
20 break.)

21 THE COURT: We've got several visitors in the
22 courtroom, I've noticed, and even the jurors have
23 commented to the bailiffs that there's way too much
24 movement going on. If you need to get up, well,
25 obviously you need to and the bailiffs will instruct

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Complainant -- Cross Examination by Mr. Robinson

1 you as to when you can't leave, when charges are going
2 on and so forth. But if you leave, I'll ask that you
3 just stay outside until there's a break with another
4 witness, and the bailiff will then let you back in. If
5 you have to go out for any reason then we're certainly
6 not going to tell you you've got to stay in here. But
7 once you go out, then you'll need to stay out until we
8 have a break. I don't want the jury to be distracted
9 in any way from what -- their hearing direct
10 examination and cross examination both. So bear that
11 in mind.

12 Also, please bear in mind that when the jury is
13 dismissed everybody else needs to remain in their seats
14 until they're out of the courtroom. Are you ready to
15 proceed, Solicitor?

16 MR. RICHARDSON: The State's ready, Your
17 honor.

18 THE COURT: Is the Defense ready?

19 MR. DEJONG: Ready for the Defense, Your
20 Honor.

21 (WHEREUPON, the jury entered the open court at
22 approximately 4:43 p.m.)

23 THE COURT: Solicitor, you may call your next
24 witness.

25 MR. RICHARDSON: The State calls Greg Davis.

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1 MISTER CLERK: Place your left hand on the
2 bible and raise your right hand. Do you solemnly swear
3 or affirm the testimony you're about to give in this
4 case to be the truth, the whole truth and nothing but
5 the truth, so help you God?

6 MR. DAVIS: I do.

7 MISTER CLERK: If you would have a seat and
8 state your name for the record.

9 MR. DAVIS: Greg Davis.

10 GREG DAVIS,

11 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MR. RICHARDSON:

14 Q. Okay. Mr. Davis, it's a really bad courtroom to
15 hear in so if you could speak up a little bit, I'd
16 appreciate it. Now, you said you're Greg Davis?

17 A. Yes, sir.

18 Q. Okay. How old are you, Mr. Davis?

19 A. I'm forty-two.

20 Q. All right. And where do you reside?

21 A. I live in Liberty.

22 Q. Okay. Scoot up just a little bit to that
23 microphone.

24 A. Okay.

25 Q. So this last witness (sic) can hear you.

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- 1 A. I live in Liberty.
- 2 Q. Okay. Are you married?
- 3 A. Yes, sir.
- 4 Q. Okay. And do you have any children?
- 5 A. I have two boys.
- 6 Q. All right. And how old are your boys?
- 7 A. They're fifteen and twenty.
- 8 Q. Okay, sir. And do you know Complainant. .?
- 9 A. Yes, I do.
- 10 Q. How do you know her?
- 11 A. A few years ago, her and my youngest son, Josh,
- 12 became friends in school, and they developed a
- 13 friendship.
- 14 Q. Okay, sir. And do you also know the defendants?
- 15 A. Yes, I do.
- 16 Q. Okay. And how do you know them?
- 17 A. Just through Complainant I did not know them before I
- 18 met Complainant.
- 19 Q. I'm sorry. I didn't hear you.
- 20 A. I had not knowed Joey before I met Complainant
- 21 Q. Okay. You knew them through Complainant. Is that what
- 22 you're stated?
- 23 A. Yes, sir.
- 24 Q. Now, did you spend a lot of time with Complainant
- 25 A. I think, yes, sir. I spent a lot of time with

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1 Complainant.

2 Q. Okay. Well, how much on a weekly basis would you
3 say you spent with Complainant

4 A. Three days out of the week.

5 Q. Okay. And why were you spending that time with
6 her?

7 A. I didn't, I didn't hear you, sir.

8 Q. Why were you -- why was she spending time with
9 you?

10 A. We took her to church, basically. We picked her
11 up on Wednesdays. She went to church with my family.

12 Sunday morning she went to church with our family.

13 Sunday afternoon she went to church with our family.

14 We would see her on Saturdays.

15 Q. Okay. Now, these times that you're seeing her are
16 either of the defendants with her? Are any of the
17 defendants with Complainant at the times that you -- she's
18 with you?

19 A. When we would pick her up occasionally they would
20 be there. We would pick her up sometime and they
21 wasn't there.

22 Q. Okay. And were you -- in that situation, were you
23 the one that was driving Complainant -- picking Complainant up
24 and dropping her off at home?

25 A. We done it as a family.

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1 Q. Okay. When you say as a family, ---

2 A. My wife and my son.

3 Q. Okay. Now, did she ever, during the time that you
4 knew her -- and let me ask you that. How long did you
5 know her?

6 A. I think between six or nine months.

7 Q. Okay. And during that time, did she ever have any
8 conversations with you and your wife about Virginia?

9 MR. DEJONG: I'm going to have to object.
10 Number one, he's asking for hearsay. I don't
11 specifically know what he is asking. We're getting
12 into an area where -- him asking for the hearsay. I
13 have no idea what this witness's response is going to
14 be, but I think there are certain limitations if he's
15 going where I think he's going.

16 THE COURT: Well, what about -- how is this
17 not hearsay, Mr. Richardson.

18 MR. RICHARDSON: The child has testified that
19 she had a conversation with him about Virginia, and
20 what that is.

21 THE COURT: She testified about her
22 conversation with this gentlemen?

23 MR. RICHARDSON: That's correct. And on
24 cross examination an issue was brought up about
25 Virginia by Mr. DeJong.

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1 MR. DEJONG: It may have been brought up, but
2 I don't -- I'm not sure of the context that he's saying
3 I brought it up. It sounds to me like he's trying to
4 bolster the witness' testimony.

5 THE COURT: All right. State your question
6 again, Mr. Richardson.

7 Q. Did you have -- did Complainant have a conversation
8 with you and your wife about Virginia?

9 A. Yes.

10 Q. Okay. And what was that conversation?

11 MR. DEJONG: And that's what I object to,
12 Your Honor.

13 THE COURT: Ladies and gentlemen, I need to
14 ask you to go outside -- back to your jury room just
15 for a moment so I can rule on this matter. Don't
16 discuss the case.

17 (WHEREUPON, the jury exited the open court at
18 approximately 4:49 p.m.)

19 THE COURT: All right. Ask your question
20 again and I'll let the witness answer the question, for
21 purposes of this hearing.

22 Q. What was the conversation that Complainant had with
23 y'all about Virginia?

24 A. I think it was on Wednesday night we was coming
25 home from church. My wife was just talking, as we did

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1 to get to know Complainant. You know, we made her feel
2 welcome in the family, just talking with her about
3 different things at different times. My wife had asked
4 her about her siblings, did she have any. What her
5 thoughts was, you know, on her family. And then my
6 wife said, would you ever want to move back to
7 Virginia. And she said, no.

8 MR. RICHARDSON: And that's the context of
9 it, Your Honor. What's happened here is he's made an
10 issue of that.

11 THE COURT: Yes, sir.

12 MR. DEJONG: Your Honor, there's no issue.
13 She admitted she said she wanted to go back to
14 Virginia, and she got angry at her mother. That's no
15 issue. I didn't raise an issue that they can now come
16 back and try to rehabilitate and bolster their own
17 witness' testimony. That was her testimony. I'm as
18 bound by her testimony as the State is bound by her
19 testimony. And it's also basically getting into the
20 area of character. They're saying she said that. Now
21 they want to say she didn't say that. I submit under
22 any of those theories that is not admissible testimony,
23 Your Honor. I can't, I can't understand under what
24 theory it would be admissible.

25 THE COURT: All right. Tell me, Mr.

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1 Richardson, how is it admissible under hearsay rules?

2 MR. RICHARDSON: Well, Your Honor, she
3 testified that she had the conversation. The testimony
4 I heard, she had conversation with this gentleman
5 involving her wanting to go back to Virginia. I asked
6 her that. When Mr. DeJong got up there, he questioned
7 her about wanting to go to Virginia. Their whole --
8 the basis of it is that she's made this up to go to
9 Virginia. And that's certainly relevant to that.

10 THE COURT: Mr. DeJong, you say her testimony
11 was only that she did not want to go to Virginia?

12 MR. DEJONG: No, Your Honor. If that's what
13 Your Honor heard me say, that's not what I was saying.
14 I questioned her that when she was at her grandmother's
15 funeral in June of 2008, that she discussed with her
16 mother that she wanted to stay in Virginia. She said
17 she had that discussion, that she wanted to stay with
18 her mother. I asked her what her mother's response
19 was. Her mother said, no. I said, did that make you
20 angry? Yes, that made me angry. You wanted to stay in
21 Virginia? Yes, I wanted to stay in Virginia. And if
22 this boils down to every time one of my witnesses makes
23 a statement on the witness stand I don't like, that I
24 can call somebody in to refute it, we're going to be
25 here a long time, Your Honor.

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1 MR. RICHARDSON: You know, Your Honor, I --
2 the context I got it in is -- and I think we're talking
3 about the timing.

4 THE COURT: Well, and I agree. But, I mean,
5 your witness testified that she did not want to go to
6 Virginia because there was too much drama up there, I
7 believe was the word she said; right?

8 MR. RICHARDSON: Yes, that's correct.

9 THE COURT: And on cross examination she said
10 that she -- after her grandmother died she wanted to
11 stay in Virginia?

12 MR. RICHARDSON: After her grandmother died.

13 THE COURT: After her grandmother died?

14 MR. RICHARDSON: Yes.

15 THE COURT: So how does this, how does this
16 overcome hearsay, what he's saying?

17 MR. RICHARDSON: Well, she's testified to it.

18 THE COURT: She's testified at one time --
19 one time she said she did not want to go to Virginia,
20 and the other time she said she did. But how does this
21 witness -- how is it not hearsay, rather than just
22 asking her if she changed? I sustain the objection. I
23 don't see how this is admissible under the hearsay
24 rule.

25 MR. RICHARDSON: Yes, sir.

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1 MR. DEJONG: Thank you, Your Honor.

2 THE COURT: Any other questions now for this
3 witness ---

4 MR. RICHARDSON: Yes.

5 THE COURT: -- before the jury?

6 MR. RICHARDSON: No, I don't have any, I
7 don't have any before the jury. I'm leaving that
8 issue, and I've got ---

9 THE COURT: Yeah. But you've got other
10 questions of him in front of the jury?

11 MR. RICHARDSON: Yes, sir. I do.

12 THE COURT: All right. Let's have our jury
13 come back in.

14 (WHEREUPON, the jury entered the open court at
15 approximately 4:55 p.m.)

16 THE COURT: All right, Mr. Richardson, you
17 may continue your examination of the witness.

18 MR. RICHARDSON: Thank you, sir.

19 Q. In your driving her home, what, if any -- what, if
20 any, -- strike that. Did she ever give you any idea of
21 whether she wanted to go back home when you were with
22 her?

23 MR. DEJONG: And Your Honor, again I object
24 because now he's calling for speculation.

25 THE COURT: When you say back home, what --

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1 which home are you talking about?

2 Q. Did she ever inform you -- the home that she lives
3 in with Joey Sanders, do you remember that?

4 A. Yes, sir.

5 Q. Okay. Did you ever -- during that time would you
6 take her to church and events?

7 A. At times when we would carry Complainant ---

8 MR. DEJONG: And Your Honor, I object to
9 that. May we approach?

10 THE COURT: Yes, sir.

11 (WHEREUPON, Mr. Richardson, Mr. DeJong, and Mr.

12 Robinson approached the bar.)

13 Q. Was there a reluctance by Complainant to go home?

14 MR. DEJONG: Objection. He's leading, Your
15 Honor.

16 THE COURT: Rephrase your question.

17 Sustained.

18 Q. What, if anything, did she tell you about going
19 home to Joey Sanders?

20 A. A lot of times when we would carry Complainant home,
21 she didn't want to go home. If -- her opinion was, if
22 Joey was home ---

23 MR. DEJONG: Objection about what her opinion
24 was.

25 THE COURT: Sustain the objection.

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1 Q. Just tell me what she told you.

2 A. She said that if Joey's not home ---

3 MR. DEJONG: Objection to what she said, Your
4 Honor.

5 THE COURT: Rephrase your question as to what
6 he did based upon the conversation, Mr. Richardson.

7 MR. RICHARDSON: Okay.

8 Q. Based upon your conversation with Complainant about
9 going home, did you have further conversations with
10 her?

11 A. When we would carry her home from church, she
12 would -- did not want to go home. She would want to
13 stay as long as she could. And when she -- you know,
14 we would carry her home, you could see the expression
15 on her face like she didn't want to be there.

16 Q. Okay. Did you ever witness her demeanor around
17 Joey Sanders?

18 A. I would say around Joey, Complainant, felt threatened.

19 Q. Okay.

20 A. Just by her appearance. The way she would look.
21 At times when we would pick her up and carry her
22 somewhere, you could tell she was ---

23 MR. ROBINSON: Your Honor, I'm going to
24 object to this ---

25 THE COURT: What's your objection?

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1 MR. ROBINSON: Speculation, Your Honor.

2 THE COURT: I overrule your objection.

3 Q. Were you finished with your answer?

4 A. Yes, sir.

5 MR. RICHARDSON: That's all the questions I
6 have for this witness. Please answer any questions Mr.
7 DeJong or Mr. Robinson has for me.

8 THE COURT: You may cross examine, Mr.
9 DeJong.

10 **CROSS EXAMINATION**

11 **BY MR. DEJONG:**

12 Q. You said you knew Complainant for six to nine months?

13 A. I would estimate between six and nine months, yes,
14 sir.

15 Q. Okay. So that was the length of the relationship?

16 A. Basically, we met her when school started.

17 Q. What year?

18 A. I'd say '05, '06.

19 Q. Okay.

20 A. Which would have probably been about two years ago
21 since I saw Complainant roughly.

22 Q. Well, if it was '05 or '06, it would have been
23 more like five to four ---

24 A. '06.

25 Q. -- four to five years ---

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1 A. Okay.

2 Q. -- ago; right?

3 A. I would say six -- probably around -- where would

4 that put it. It's been two years since I've saw

5 Complainant.

6 Q. Okay.

7 A. So let's say nine months prior to that.

8 Q. Okay. So you saw her -- last saw her some time in

9 '08?

10 A. Yes, sir.

11 Q. And ---

12 A. It was softball, baseball season.

13 Q. Okay.

14 A. Because my son, my son played baseball and Complainant

15 played softball.

16 Q. And one of your sons was fifteen?

17 A. He's fourteen. He turned -- just have turned

18 fifteen.

19 Q. Okay. Well, how old was he during this nine-month

20 span of time?

21 A. He would probably have been twelve.

22 Q. Okay. About the same age as Complainant

23 A. Yes, sir.

24 Q. Were they good friends?

25 A. Yes, sir.

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1 Q. Liked to spend time with each other?

2 A. Yes, sir.

3 Q. Had a good time together?

4 A. I would say yes, for the most part.

5 Q. Did they play sports together?

6 A. No, sir. Softball and baseball.

7 Q. Pardon me?

8 A. They both -- one played softball, the other played

9 baseball.

10 Q. Okay. All right. But as much as twelve-year-olds

11 can be, were they boyfriend/girlfriend?

12 A. They probably thought they was.

13 Q. Well, that's what I'm saying ---

14 A. I mean as far as a twelve -- yes, sir.

15 Q. Yes, sir. And certainly, in light of that they

16 wanted to spend as much time together as they could;

17 right?

18 A. Yes, sir.

19 MR. DEJONG: One moment, please, Your Honor.

20 The witness is with you, Mr. Robinson.

21 MR. ROBINSON: I have no questions, Your

22 Honor.

23 THE COURT: Any redirect?

24 MR. RICHARDSON: Nothing further, Your Honor.

25 THE COURT: All right. Thank you, sir. You

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1 may step down, Mr. Davis.

2 MR. RICHARDSON: Your Honor, may this witness
3 be excused?

4 MR. DEJONG: No objection on the part of Mr.
5 Sanders, Your Honor.

6 MR. ROBINSON: No objection on behalf of Ms.
7 Gearhart.

8 THE COURT: Without objection, the witness
9 may be excused.

10 MR. RICHARDSON: The State calls Will Bryant
11 to the stand.

12 MISTER CLERK: Place your left hand on the
13 bible and raise your right hand. Do you solemnly swear
14 or affirm the testimony you're about to give in this
15 case to be the truth, the whole truth and nothing but
16 the truth, so help you God?

17 MR. BRYANT: I do.

18 MISTER CLERK: If you would have a seat and
19 state your name for the record.

20 MR. BRYANT: Will Bryant.

21 WILL BRYANT,

22 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MR. RICHARDSON:

25 Q. Mr. Bryant, where are you employed?

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- 1 A. Comfort Inn, Easley.
- 2 Q. All right. Is that Comfort Inn on Highway 123
- 3 Pickens County?
- 4 A. Yes, sir.
- 5 Q. Okay, sir. And in what capacity are you employed
- 6 there?
- 7 A. General manager.
- 8 Q. Okay, sir. And as the general manager, do you
- 9 have in your possession and control the records of
- 10 regularly conducted activity that come through that
- 11 Comfort Inn?
- 12 A. Yes, sir.
- 13 Q. Okay. And are those records credit card receipts
- 14 and cash payments when people purchase rooms at your
- 15 hotel?
- 16 A. I'm not sure I understand your question.
- 17 Q. Okay, sir. Do y'all keep records of people who
- 18 pay to rent rooms in your hotel?
- 19 A. Yes, we do.
- 20 Q. Okay. And what kind of records are those?
- 21 A. Credit card transactions, cash transactions and
- 22 check transactions.
- 23 Q. Okay. And do you have -- you keep those? Those
- 24 are in your custody?
- 25 A. Yes, sir.

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1 Q. Okay. And do you have with you any records that
2 pertain to Joseph Sanders?

3 A. Yes, sir, I do.

4 Q. Okay. And can I see those, please, sir?

5 MR. DEJONG: May we approach, Your Honor?

6 THE COURT: Yes, sir.

7 (WHEREUPON, Mr. Richardson, Mr. DeJong, and Mr.
8 Robinson approached the bar.)

9 (WHEREUPON, State Exhibit Numbers 1, 2, 3 and
10 4 were marked for identification.)

11 Q. I'm going to hand you what's now been marked as
12 State's Exhibit 1. Those records, what are those?
13 What are those records?

14 A. This is a hotel journal detail report, which
15 lists the credit card, cash, check, direct bill
16 transactions for December the 5th, 2005. And also,
17 there's a guest refund listed on here.

18 Q. Okay. And the documents behind it, are those also
19 the same for December? And you're still -- we're still
20 referring to State's Exhibit 1.

21 A. The hotel journal detail report is for December
22 the 5th. It's a folio which list three nights' stay,
23 is for December the 9th. So the dates do not match.

24 Q. Okay, sir. But who are those for? Who is the
25 registered ---

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1 A. The name on the folio is Joseph Sanders.

2 Q. Okay. And is that the only day you have in
3 December?

4 A. Well, in this folio, we have December the 9th,
5 10th, and 11th. And we also have December the 27th.

6 Q. Okay. Now, are those records kept when payment is
7 made?

8 A. Yes, sir.

9 Q. And a room is rented?

10 A. Yes, sir.

11 Q. Okay.

12 MR. RICHARDSON: At this time I would like to
13 move State's 1 into evidence.

14 THE COURT: Any objection.

15 MR. DEJONG: May I see them one more time,
16 please, Your Honor? With regard to what's been marked
17 State's Exhibit Number 1, without objection, on behalf
18 of Mr. Sanders. Do you want to see them, Mr.
19 Robinson?

20 THE COURT: Show them to Mr. Robinson,
21 please.

22 MR. RICHARDSON: My apologies.

23 MR. ROBINSON: I have no objection.

24 THE COURT: Without objection. State's
25 Exhibit Number 1 is into evidence.

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1 (WHEREUPON, State Exhibit Number 1 was admitted
2 into evidence.)

3 Q. Okay. Sir, from that can you tell me how many
4 days Joseph Sanders paid for a room at the Comfort Inn
5 in Easley?

6 A. On December the 12th an American Express card was
7 charged for a three-night stay, December the 9th, 10th,
8 and 11th. December the 28th, a Visa payment was made
9 for a one-night stay on December the 27th.

10 Q. Okay, sir.

11 A. There's also -- I don't have the folio that goes
12 with it, but according to the hotel journal detail, a
13 cash payment was made by Joseph Sanders on December the
14 5th. And typically, cash payments are made when you
15 check in, not when you check out.

16 Q. I see.

17 A. And credit card payments are made when you check
18 out.

19 Q. Okay, sir. And let me hand you what's now been
20 marked for identification purposes, State's Exhibit 2.
21 What is that?

22 A. Well, this is a telephone list which records
23 telephone calls made from a particular room on a
24 certain date. There are folios and registration cards
25 for various days -- on various days.

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1 Q. Okay. Well, let's -- about the telephone record,
2 does that indicate it -- any indication that a Joseph
3 Sanders made a telephone call?

4 A. Well, what the telephone records show is that room
5 106 made a call on October the 2nd, and that the person
6 registered in that room was Joey Sanders.

7 Q. I see. Okay. What -- were there any days on --
8 during that month that he registered to stay other than
9 that?

10 A. Well, on the telephone list, it shows the arrival
11 date and departure date. The arrival date was October
12 the 2nd, and the departure date was October the 3rd of
13 2005.

14 Q. Okay. Are there any other days in October?

15 A. And there's also a folio to back that up, October
16 the 2nd to October the 3rd.

17 Q. By folio what do you mean, exactly?

18 A. Folio is a bill from the hotel for your room to
19 stay.

20 Q. Okay.

21 A. I'll just use the word bill, instead of folio,
22 instead of hotel language.

23 Q. Okay.

24 A. But the bill was for October the 2nd, the night of
25 October the 2nd, with a VISA payment on October the

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1 3rd.

2 Q. Okay. Any other nights?

3 A. October the 6th, check-out on the 7th with a VISA
4 payment.

5 Q. Okay.

6 A. October the 10th. Once again, with a VISA payment
7 for one night. October the 13th for one night, with a
8 VISA payment. October the 15th for one night, VISA
9 payment. October the -- and all of these are 2005.
10 October 21st, 22nd, and 23rd, check-out on the 24th.

11 So this was for three nights. Once again a VISA
12 payment. And all of these rooms -- well, you didn't
13 ask the question. I won't answer it. And October the
14 24th for one night. Once again a VISA payment.

15 October the 25th for one night, a VISA payment.

16 October the 30th for one night, a VISA payment.

17 Q. Okay. And all of those payments that you're
18 referring to, who is the person making payment?

19 A. Joseph Sanders.

20 MR. RICHARDSON: At this time, we will move
21 State's Exhibit 2 into evidence.

22 THE COURT: Any objection to Exhibit 2?

23 MR. DEJONG: May I see them again, please,

24 Mr. Richardson? Without objection on behalf of Mr.

25 Sanders, Your Honor.

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1 MR. ROBINSON: No objection, as to entering
2 it as State's Exhibit 2.

3 THE COURT: Without objection. State's
4 Exhibit Number 2 is admitted into evidence.

5 (WHEREUPON, State Exhibit Number 2 was admitted
6 into evidence.)

7 Q. As to -- I'm referring to State's Exhibit 3 marked
8 for identification purposes, so what is that?

9 A. This is bills for September 2005.

10 Q. Okay. And who is the person making payment?

11 A. Joseph Sanders.

12 Q. Okay. And what days were those payments made?

13 A. The stay was on September the 22nd, with payment
14 on the 23rd. Also, a stay on the 23rd with a payment
15 on the 24th, and a stay on September the 30th, with a
16 payment on October the 1st.

17 Q. Okay, sir.

18 MR. RICHARDSON: At this time I would move
19 State's Exhibit 3 for identification into evidence.

20 THE COURT: Have they had an opportunity to
21 review the documents?

22 MR. RICHARDSON: Yes. I gave it to them
23 before I ---

24 THE COURT: Any objection to Exhibit 3?

25 MR. DEJONG: Number 3. No objection on

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1 behalf of Mr. Sanders, Your Honor.

2 MR. ROBINSON: If I could see it one more
3 time. No objection to State's Exhibit 3.

4 THE COURT: Without objection, Exhibit 3 is
5 admitted into evidence.

6 (WHEREUPON, State Exhibit Number 3 was admitted
7 into evidence.)

8 Q. And, sir, I now hand you lastly, State's Exhibit
9 4, marked for identification purposes. Sir, what is
10 that?

11 A. Once, again, it's one sheet, a hotel journal
12 detail and several bills for stays.

13 Q. Okay, sir. And who are those bills to? Who made
14 the payments?

15 A. Joseph, Joseph Sanders.

16 Q. Okay, sir. And what days did he stay then? Or
17 excuse me, what days did he rent a room in that one?

18 A. November the 2nd, a cash payment. November the
19 3rd, a VISA payment, November the 6th, VISA payment.
20 November the 8th, VISA payment. On November the 22nd a
21 cash payment, and November 25th, 26th, 27th, and 28th,
22 American Express payment on the 29th, 2005.

23 MR. RICHARDSON: Now, at this time, the State
24 would move State's Exhibit for identification purposes
25 Number 4, into evidence. I'm showing it Mr. Robinson.

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1 MR. ROBINSON: No objection.

2 THE COURT: Without objection, Exhibit 4 is
3 admitted into evidence.

4 (WHEREUPON, State Exhibit Number 4 was admitted
5 into evidence.)

6 MR. RICHARDSON: That's all the questions I
7 have for this witness.

8 Please answer any questions that Defense counsel
9 may have for you.

10 THE COURT: Mr. DeJong.

11 MR. DEJONG: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MR. DEJONG:

14 Q. Mr. Bryant, how long have you been manager at the
15 Comfort Inn in Easley?

16 A. Right at three, three years.

17 Q. So these are all records that took place before
18 you ever got to Comfort Inn, I guess; right?

19 A. Sir, that's correct.

20 Q. All right, sir. And realizing you were asked to
21 bring the records, but did you ever check any of these
22 dates against the days of the week to see what days of
23 the week they were on?

24 A. No, sir. I did not.

25 Q. All right, sir. And is there anything in those

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1 records to indicate who actually stayed in the room?

2 A. No, sir. There's no way I could tell that.

3 Q. Okay. And the same thing with the phone call.

4 Even though a room is registered in someone's name, a

5 phone call generated from that room would not

6 necessarily be the person that rented the room;

7 correct?

8 A. Correct.

9 Q. And some of those days are fairly successive days,

10 like they would have -- I think there were some in

11 there were for four days; right?

12 A. I believe so.

13 Q. Like four days in a row?

14 A. I believe you're correct.

15 Q. So that would certainly be more than a Saturday or

16 Sunday or even a Friday and a Saturday; right?

17 A. Pardon me?

18 Q. For you to have four days, you would have to --

19 it's almost a five-day span?

20 A. It'd be more than a weekend, that's correct.

21 Q. Yes, sir. All right. Now, I note on some of

22 these things -- thank you, sir. Now, what I want to

23 find one I probably won't be able to find it. But here

24 we go right here. This is -- I'm looking at one, two

25 -- as they're in order, they're not numbered. It's a

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1 collective exhibit, but I'm looking at, I believe, the
2 fourth or the fifth page of what's been marked State's
3 Exhibit Number 4. And if you look down at the lower
4 right-hand corner, it says something to the effect of
5 payment by credit card. I agree to pay the above total
6 charge amount according to the card issue agreement.

7 And it says, on file. What does that mean?

8 A. In some hotels we will put the on file there if we
9 have what is called a credit card authorization,
10 authorizing us to use that credit card for payment by a
11 third party. In other words, if I stayed at a Comfort
12 Inn and I was using your credit card.

13 Q. Yes, sir.

14 A. The Comfort Inn would have to have written
15 authorization from you for me to use your credit card.

16 Q. So where it says on file, that could mean somebody
17 else was staying there under Joey Sanders' name, but
18 you have authorization for that person to use that
19 credit card. Am I clear on that?

20 A. You're clear in that that could be a possibility.
21 There's no way I could say whether that's the case or
22 not.

23 Q. Yes, sir. But generally, when you see on file,
24 that's what that would mean; right?

25 A. Yes, sir.

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1 Q. Well, and so we're clear, when it says on file,
2 what other meaning could that have, other than what you
3 have just explained to us?

4 A. I can't think of another meaning, sir.

5 Q. All right. So those that say on file, then we can
6 only -- I hate to use the word assume -- but we can
7 only assume that those that say on file are that
8 situation you have just described to this jury?

9 A. That's the situation that I conduct business on.
10 Whether that was used at the time, prior to me, in
11 2005, I cannot speak to.

12 Q. And since you've come on board, you're not aware
13 of any policy changes in that regard; are you?

14 A. Yes, sir, I am.

15 Q. And what would that be?

16 A. It was strictly enforced that we would receive a
17 credit card authorization in writing prior to check-
18 in.

19 Q. Okay. So that did away with this on file thing is
20 what you're telling me; right?

21 A. Yes, sir.

22 MR. DEJONG: Your witness, Mr. Robinson.

23 MR. ROBINSON: I have no questions.

24 THE COURT: Any redirect?

25 MR. RICHARDSON: Nothing from the State

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1 further.

2 MR. DEJONG: No objection to this witness
3 being excused, Your Honor.

4 THE COURT: Thank you, Mr. Bryant, you may
5 step down.

6 MR. BRYANT: Thank you, Your Honor.

7 THE COURT: Madam forelady, ladies and
8 gentlemen, we've probably reached a good time to break
9 for the evening, rather than trying to get another
10 witness in. I thank you for your patience with us
11 today. We had a delayed start.

12 Let me remind you again what I told you yesterday
13 about the Supreme Court's Order and the Order from this
14 Court about not communicating with anyone, and not
15 letting anyone communicate with you, and avoiding any
16 media -- notices about the case or -- you need to
17 fulfill the obligation you made to these parties, the
18 State and to the Defendants in this case, maintain that
19 impartiality. So refrain from any view of any media
20 reports, refrain from discussing it. You'll, as I've
21 said, have an opportunity to discuss it with your
22 family and friends when the case is over. But while
23 it's going on is not the time to do that.

24 We'll start back at nine o'clock in the morning.
25 I think we'll be ready for our first witness then. You

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1 have a good evening. Be back in the morning at nine
2 o'clock.

3 (WHEREUPON, the jury exited the open court at
4 approximately 5:26 p.m.)

5 THE COURT: All right. Is there anything we
6 need to take care of this evening before we ---

7 MR. DEJONG: Yes, Your Honor, I believe there
8 is. I raised it before the last break.

9 THE COURT: All right.

10 MR. DEJONG: You said we would visit it
11 before we shut down for the day.

12 THE COURT: This is about the ---

13 MR. DEJONG: I'm going to ask you -- I didn't
14 mean to interrupt Your Honor. I'm going to ask you not
15 to take this gentleman into custody. He's done
16 everything that has been required of him and asked of
17 him. He has never missed a court date, never missed an
18 appointment. These charges are now some two years old.
19 I would certainly respectfully submit to the Court, if
20 he weren't going to show up, he wouldn't have showed up
21 long before now, Your Honor. He understands that if he
22 doesn't show up, the trial goes on without him. So I
23 would respectfully request that you leave him out, Your
24 Honor.

25 THE COURT: Well, Ms. Gearhart and Mr.

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1 Sanders, you both understand we've started the trial in
2 this case now. Your bond is now over as far as any
3 bondsman requiring you to be here. I want both of you
4 to understand that while you could be taken into
5 custody tonight, I'm going to allow you to be out for
6 this evening. You can talk to your attorneys, if you
7 need to, during the course of the evening. But this
8 trial is proceeding tomorrow. I'd certainly urge you
9 to be here. If you're not here, you have adequate
10 warning that we're going to continue. So be sure that
11 you're here before nine o'clock in the morning. We'll
12 continue with the trial at that time. All right.
13 We'll be at ease until nine o'clock in the morning.

14 MR. RICHARDSON: Thank you, Your Honor.

15 MR. DEJONG: Thank you, Your Honor.

16 (WHEREUPON, the court stood adjourned for the
17 day.)

18 JUNE 23, 2010

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

21 THE COURT: Are you ready to proceed?

22 MR. RICHARDSON: The State's ready, Your
23 Honor.

24 MR. DEJONG: Ready for the Defense, Your
25 Honor.

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1 (WHEREUPON, the jury panel entered the open court
2 at approximately 9:16 a.m.)

3 THE COURT: Good morning, ladies and
4 gentlemen. We're now ready to proceed with the trial
5 of the case. You may call your next witness,
6 Solicitor.

7 MR. RICHARDSON: Thank you, Your Honor, we'd
8 call Rita Burgess.

9 MISTER CLERK: Place your left hand on the
10 bible and raise your right hand. Do you solemnly swear
11 or affirm the testimony you're about to give in this
12 case to be the truth, the whole truth and nothing but
13 the truth, so help you God?

14 MS. BURGESS: I do.

15 MISTER CLERK: If you would have a seat and
16 state your name for the record.

17 MS. BURGESS: Rita Burgess.

18 RITA BURGESS,

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. RICHARDSON:

22 Q. Ms. Burgess, where are you employed?

23 A. The Pickens County Sheriff's Office.

24 Q. And in what capacity are you employed with the
25 Pickens County Sheriff's Office?

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1 A. I am a Detective in the Juvenile Division.

2 Q. Okay. And how long have you been in law
3 enforcement?

4 A. Nineteen and a half years.

5 Q. Okay. And how long have you been a detective in
6 the Juvenile Division?

7 A. About five years.

8 Q. Okay. And as a detective in the Juvenile
9 Division, what exactly are your duties?

10 A. I investigate any case that comes in involving
11 child abuse and neglect, and sexual abuse against
12 children, and internet crimes against children.

13 Q. Okay. Now, back in 2008, and more specifically in
14 June of 2008, did you investigate a case involving the
15 Defendant Anita Gearhart and Defendant Joseph Sanders?

16 A. Yes, I did.

17 Q. Okay. How did you come to do that?

18 A. I received a referral from DSS stating that there
19 was possible sexual abuse and child neglect.

20 Q. After receiving such referral, what did you do?

21 A. I wrote a -- the initial report and responded to
22 Sanders Road in Liberty to speak with the victim and
23 her mother.

24 Q. Okay. And do you recall what day it was that you
25 went to that house?

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1 A. June the 13th.

2 Q. And when you went there, was anybody home?

3 A. Complainant, was home alone.

4 Q. Okay. And what did you do once you made contact
5 with Complainant

6 A. I told her who I was and why I was at her house,
7 and I told her I needed to speak with her and asked her
8 where she would -- you know, where she felt the most
9 comfortable talking to me.

10 Q. Okay. And what was the reason you told her that
11 you were at the house?

12 A. I told her that I had received information from
13 the Department of Social Services of possible sexual
14 abuse that she was the alleged victim.

15 Q. Okay. And how old was Complainant, at this time?

16 A. Twelve years old.

17 Q. Okay. Now, did you talk to her at that time?

18 A. Yes, I did.

19 Q. Okay. And did you make any attempt to contact her
20 parent?

21 A. I did. She gave me the cell phone number for her
22 mother and said that her mother was in Blacksburg
23 paying some traffic tickets, and ---

24 MR. DEJONG: Your Honor, I'm going to object
25 to these conversations that -- with the alleged victim.

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1 It's purely hearsay.

2 THE COURT: I'll overrule your objection. I
3 believe this goes to her investigation as to the ---

4 MR. DEJONG: The question I have, and I'm not
5 trying to be argumentative with Your Honor, but are
6 they putting it in for the truth of the matter
7 asserted? And if they are, then I object.

8 MR. RICHARDSON: Your Honor, I'm simply
9 explaining to the jury why she was talking to the child
10 at that time, and where her mother was.

11 THE COURT: Was this the exhibit that was
12 going to be admitted ---

13 MR. DEJONG: I beg your pardon, Your Honor.

14 THE COURT: I think there was an agreement to
15 admit an exhibit. Is this the one, or was it another
16 one? I'll allow this question and you can make your
17 objections as you need to. I'll allow it. It's some
18 hearsay for the purpose of the investigation.

19 MR. DEJONG: Well, just so the record is
20 clear, I have a running objection, Your Honor.

21 THE COURT: Yes, sir.

22 MR. DEJONG: Thank you.

23 Q. Well, Ms. Burgess, her mother was not home?

24 A. No, she was not.

25 Q. Okay. Did you make an attempt to call her?

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1 A. I did. I left her a voice mail to please call me
2 back.

3 Q. Okay. And did you tell her why she needed to call
4 you back?

5 A. I don't recall if I left that on the voice mail,
6 but I did leave her a message and asked her to return
7 my call concerning Complainant

8 Q. Okay. Now, eventually, did she ever call you
9 back?

10 A. Yes, she did.

11 Q. Okay. But prior to her calling you back, did you
12 have a conversation with Complainant

13 A. Yes, I did.

14 Q. Okay. And where was that?

15 A. On the front porch of their home in Liberty.

16 Q. Okay. Now, I don't want you to tell me what she
17 said, but did she give you -- did she tell you what had
18 happened to her, between her and Joey Sanders and Ms.
19 Gearhart?

20 A. Yes, she did.

21 Q. Okay. Now, did she tell you, at that time on the
22 porch, where the instances took place?

23 A. Yes, she did.

24 Q. Where was that?

25 A. Originally?

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1 Q. Yes.

2 A. At the Comfort Inn in Easley.

3 Q. Okay. Did she tell you any other place that the
4 instances too place?

5 A. At her home on Sanders Road in Liberty.

6 Q. Okay. Did she also tell you when?

7 A. Yes, she did.

8 Q. And when was that?

9 A. She stated it originally began in 2005 when she
10 was still living in Virginia. She and her mother would
11 come here to visit Joey, and that it also occurred in
12 January or February of 2008.

13 Q. Okay. And based upon that and all the other
14 information that you obtained, what did you do?

15 A. I felt like it was in her best interest, based on
16 what she had told me, that she was possibly in danger
17 if I left her in the home. And I took her into
18 Emergency Protective Custody.

19 Q. Okay. And what, exactly, is Emergency Protective
20 Custody?

21 A. Where we make a decision as to whether or not the
22 child may be in imminent danger if left in the home,
23 and we remove them. For their own protection, we
24 remove them from the home until the investigation can
25 be completed.

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1 Q. Okay. And where did you take Complainant at that
2 time?

3 A. I escorted her to my office where DSS was called
4 to meet me.

5 Q. Okay. And at your office, did you have a
6 conversation again with Complainant about what happened?

7 A. Yes, I did.

8 Q. Okay. And at that time, did she tell you the date
9 and the time that you've previously testified to?

10 A. Yes, she did.

11 Q. Okay. Now, at some point in time, did her mother
12 get in touch with you?

13 A. Yes. She returned my call and I asked her to meet
14 me at the Sheriff's Office concerning the allegations
15 that had been made.

16 Q. Okay. And did she, in fact, meet you at the
17 Sheriff's Office?

18 A. Yes, she did.

19 Q. Okay. Where was Complainant

20 A. Complainant was in my office.

21 Q. And where did you meet with the Defendant
22 Gearhart?

23 A. In the conference room at the Sheriff's Office.

24 Q. Okay. Now, did you read to her or tell her
25 anything before you started talking to her?

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1 A. I did. I gave her a Miranda warning.

2 Q. Okay. And why did you do that?

3 A. Based on the statement that Complainant had made to me,
4 that she had told her mother about Joey touching her, I
5 felt like it was in her best interest that I read her
6 the Miranda warning before speaking with her.

7 Q. Okay. Now, when you do that, do you use a form?

8 A. Yes, sir. I do.

9 Q. Okay.

10 (WHEREUPON, State Exhibit Numbers 5 and 6 were
11 marked for identification.)

12 MR. ROBINSON: That's without objection.

13 THE COURT: Could I see the attorneys here
14 just for a minute before you present that.

15 (WHEREUPON, Mr. Richardson, Mr. DeJong, and Mr.
16 Robinson approached the bar.)

17 THE COURT: Are you ready to proceed, Mr.
18 Richardson?

19 MR. RICHARDSON: Your Honor, at this time, I
20 would move what's been marked State's Exhibit Number 5
21 for identification purposes into evidence.

22 THE COURT: Without objection. Exhibit 5 is
23 into evidence.

24 (WHEREUPON, State Exhibit Number 5 was admitted
25 into evidence.)

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1 Q. Detective Burgess, I will hand you what's now been
2 marked as Exhibit 5, State's Exhibit 5. What is that?

3 A. This is the Miranda warning that I gave to Ms.
4 Gearhart.

5 Q. Okay. And can you read to the jury what those
6 Miranda warnings are?

7 A. Yes, sir. It states, before we ask you any
8 questions, you must understand your rights. You have
9 the right to remain silent. Anything you say can be
10 used against you in Court. You have the right to talk
11 to a lawyer for advice before we ask you any questions,
12 to have him or her with you during questioning. If you
13 have no money to pay a lawyer's fee, the court will
14 appoint one to represent you without cost if you wish.
15 If you decide to answer questions without a lawyer
16 present, you still have the right to stop answering at
17 any time. You also have the right to stop answering at
18 any time until you talk to a lawyer.

19 Q. Okay. Now, are there initials on that form?

20 A. Yes, sir.

21 Q. Whose initials are on it?

22 A. Ms. Gearhart.

23 Q. And what's the purpose of those initials?

24 A. Once I read the rights to them, I mark each
25 section of it and then I have the person I'm reading

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1 them to, to initial it. Read back over it and initial

2 it, stating that they understand.

3 Q. Okay. And do you also denote the date and time on

4 here?

5 A. Yes. It was June the 13th, 2008 at one twenty-

6 four p.m.

7 Q. Okay, ma'am. Now, does this form also have a

8 waiver of those rights?

9 A. Yes, sir. It does.

10 Q. Okay. Did you read that to the Defendant

11 Gearhart?

12 A. Yes, I did.

13 Q. And what was -- well, just -- can you read it to

14 the jury?

15 A. Yes, sir. It states, I have read the statement of

16 my rights. I understand what my rights are. I am

17 willing to make a statement and answer questions. I do

18 not want a lawyer at this time. I understand and know

19 what I am doing. No promises or threats have been made

20 to me and no pressure or coercion of any kind has been

21 used against me.

22 Q. Okay. And did, in fact, she waive her rights?

23 A. Yes, she did.

24 Q. Okay. And how do you know that?

25 A. She initialed each line and she also signed the

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1 waiver.

2 Q. Okay. Now, did she, in fact, talk to you about
3 the incidents?

4 A. Yes, she did.

5 Q. Okay. And did she give you a written statement or
6 an oral statement?

7 A. An oral statement.

8 Q. In her oral statement, did she speak to you about
9 Complainant telling her anything about the incidents?

10 A. Yes, she did.

11 Q. What did she say?

12 A. She said that Complainant had advised her that Joey had
13 been grabbing at her boobs, and that she confronted
14 Joey and he denied it, and that was basically all that
15 was -- all that took place.

16 Q. Did she state that she did anything else?

17 A. No.

18 Q. Okay. What else did she state to you? Just give
19 her statement to the jury.

20 A. Okay. Let me refer back to my notes so I don't
21 misquote anything. She said that she had met Joey on-
22 line, and that she originally would come here to meet
23 with him without Complainant and they would meet at the
24 Marriott in Spartanburg or the Comfort Inn in Easley.
25 She did make a statement that Joey has always been very

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1 loving to Complainant. And she said that Complainant chose to
2 run through the house naked and they'd have to tell her
3 to put clothes on. She said that Complainant wants to do a
4 lot of things with her boyfriend, such as going to
5 church. Anita said she knows -- she's known Joey for
6 about five years. That they met on-line when she lived
7 in Virginia. She also said that over time their
8 relationship grew and he came to visit her a few times
9 and she would come to visit him. They would stay in
10 hotels and they would go to dinner. They had gone to
11 his house, and then back to the hotel. She said she
12 moved here during the middle of the school year, in
13 January of 2006, while Complainant stayed in Virginia until
14 the summer of 2006. She said she would stay in the
15 hotel, usually the Comfort Inn in Easley. Joey would
16 come visit, but they did not have sexual intercourse
17 and he did not stay overnight. Anita said she does not
18 believe the allegations made against Joey because he's
19 impotent due to numerous medical problems. I did ask
20 her if he had any medication such as Viagra or Cialis
21 prescribed to him to assist him with his impotency, and
22 she stated no, that he did not have a prescription, but
23 he had been given samples by the doctor that he never
24 used. She said Joey's had this problem for the past
25 three years and that he and she have only been intimate

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1 about three times since she's known him. She said that
2 Complainant has not discussed intercourse with her at all.
3 She said that Complainant wants to live in Virginia and she
4 won't allow it, and Complainant can be hell to live with,
5 stating that she stomps around the house and slams
6 doors, among other things. She also said about a year
7 ago Complainant stayed with her maternal grandmother in
8 Virginia for a couple of weeks and wanted to live there
9 with her grandmother and Anita would not allow her to
10 move. She said Complainant likes to wear inappropriate
11 clothing, short shorts, low-cut tops, swim wear that
12 were bought by an Aunt in Virginia Beach. She said --
13 she again went back to talking about the hotel. And
14 she said that Joey would lay on the bed -- she and Joey
15 would lay on the bed together and watch TV and
16 sometimes Complainant would get in bed with them and watch
17 TV. She said she never saw Joey touch Complainant
18 inappropriately, and Complainant never told her of him
19 touching her inappropriately. She then said that --
20 she was talking about Complainant dad, that he was more of
21 a buddy to her than a father. And she also said that
22 he was not involved in her school activities. And she
23 also discussed child support. Mr. Hurt -- she said Mr.
24 Hurt lived in Virginia. Complainant talks to -- she said
25 Complainant talks to her father every couple of months. And

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1 then she went on to say that Complainant talks

2 inappropriately to boys on the cell phone and through

3 text messaging. That she does not believe Complainant is

4 sexually active, but believes Complainant is all talk, and

5 hanging around with the wrong children.

6 Q. Okay. In her statement did she ever refer to the

7 boyfriend that she had and going to church?

8 A. Other than they went to church together, I don't

9 believe she did. There was a little bit more of her

10 statement here, if you would like ---

11 Q. Okay. Go ahead.

12 A. Okay. She said she does not believe Complainant is

13 sexually active, but believes Complainant is all talk and

14 hanging around with the wrong children. She said, and

15 I quote, I feel like I'm damned if I do, and damned if

16 I don't. She said she can't explain why Complainant is

17 making these allegations. She said she questioned

18 Complainant as to why does she talk about sex to her

19 friends? And went on to say that Complainant was talking to

20 a black male, fifteen to sixteen years old concerning

21 sex and that she thought she had intervened and stopped

22 that type of talk. I did ask her if she thought Complainant

23 was sexually active. And she stated no. She did ask

24 to see Complainant at that point, and I told her I would

25 allow that. And I went to my office where Complainant was

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1 waiting and brought her over to the conference room to
2 see her mother. And when we walked into the room,
3 Anita held her hand out to Complainant and said, quote, give
4 me your cell phone. I'm having it disconnected.
5 Complainant gave her the phone. And then she asked Complainant
6 do you know what's going on here? They're taking you
7 away from me.

8 MR. DEJONG: And, Your Honor, anything after
9 that, I am going to object to. This is a statement of
10 Ms. Gearhart. Not any statements of the alleged victim
11 in this case. So any response by the alleged victim, I
12 object to as hearsay, Your Honor.

13 THE COURT: All right.

14 Q. Okay. And so the first thing she did when she
15 went -- saw Complainant was what?

16 A. The first thing she did when Complainant came into the
17 room?

18 Q. Yes.

19 A. She held her hand out and told her she wanted her
20 cell phone, she was having it disconnected.

21 Q. Okay. Now, at that point in time, did you offer
22 to give her a written statement -- allow her to give a
23 written statement?

24 A. Ms. Gearhart was pretty upset at that point. The
25 Department of Social Services left with Complainant and Ms.

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1 Gearhart was upset and left as well before a written
2 statement was obtained.

3 Q. Okay. Now, at some point in time, did you get a
4 phone call from Ms. Gearhart?

5 A. Yes, I did.

6 Q. Okay. Was that -- when was that?

7 A. It was on June the 13th at around four forty-five
8 p.m.

9 Q. Okay. And was that the same day?

10 A. Yes, sir.

11 Q. Okay. And what was the substance of that
12 telephone call?

13 A. She stated that Joseph Sanders wished to come to
14 my office and speak with me concerning the allegations,
15 and I advised her I would wait for him to arrive.

16 Q. Okay. And did, in fact, the Defendant Sanders
17 come to your office?

18 A. He did.

19 Q. And what time was that?

20 A. It was around five fifteen p.m.

21 Q. Okay. When he arrived at your office, what did
22 you do?

23 A. I gave him his Miranda warning.

24 Q. Okay.

25 MR. RICHARDSON: I beg the Court's

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1 indulgence.

2 MR. DEJONG: Without objection, Your Honor.

3 MR. RICHARDSON: At this time, Your Honor,
4 the State would enter into evidence what's previously
5 been marked as State's Exhibit Number 6.

6 THE COURT: Without objection, Exhibit Number
7 6 is into evidence.

8 (WHEREUPON, State Exhibit Number 6 was admitted
9 into evidence.)

10 Q. Detective, is that a *Miranda* Rights and Waiver of
11 Joseph Sanders?

12 A. Yes, it is.

13 Q. Okay, ma'am. Can you read to the jury what you
14 told him?

15 A. Yes, sir. It states, before we ask you any
16 questions, you must understand your rights. You have
17 the right to remain silent. Anything you say can be
18 used against you in Court. You have the right to talk
19 to a lawyer for advice before I ask you any questions,
20 and to have him or her with you during questioning. If
21 you have no money to pay a lawyer's fee, the court will
22 appoint one to represent you without cost, if you wish.
23 If you decide to answer questions without a lawyer
24 present, you still have the right to stop answering at
25 any time. You also have the right to stop answering at

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1 any time until you talk to a lawyer.

2 Q. Okay. And likewise, are there initials on that
3 form?

4 A. Yes, sir.

5 Q. Whose initials are those?

6 A. Mr. Sanders.

7 Q. Okay. And when -- is there a date and time on
8 that form?

9 A. Yes. June 13th, 2008 at five fourteen p.m.

10 Q. And is there also a waiver of those rights located
11 on that form?

12 A. Yes, sir.

13 Q. And did you read those to the Defendant Sanders?

14 A. Yes, sir. I did.

15 Q. And can you read those to jury?

16 A. Yes, sir. I have read this statement of my rights
17 and I understand what my rights are. I'm willing to
18 make a statement and answer questions. I do not want a
19 lawyer at this time. I understand and know what I'm
20 doing. No promises or threats have been made to me,
21 and no pressure or coercion of any kind has been used
22 against me.

23 Q. And was that initialed by Mr. Sanders?

24 A. It was. And he also signed it.

25 Q. Okay. Did he give you any type of statement?

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1 A. An oral statement, yes.

2 Q. Okay. And can you tell the jury what he said to
3 you?

4 A. Yes, sir. Mr. Sanders stated that he met Anita
5 Gearhart on-line about five years earlier, and they had
6 a friendship that later developed into a relationship.
7 He said that Anita would drive down from Virginia and
8 would either stay at the Marriott hotel in Spartanburg
9 or the Comfort Inn in Easley, depending on where he was
10 and what his schedule consisted of. He said when Anita
11 first came to visit, she would come here alone and
12 after a few months began bringing Complainant with her. He
13 said he and Complainant hit it off well, and they always did
14 family oriented activities so that Complainant would always
15 be included. He said that in November of 2005, Anita
16 began talking about moving here and found employment
17 that would begin in January of 2006, which is when she
18 moved to South Carolina. He said Complainant stayed with
19 her grandmother, her Grandma Jordan until the summer of
20 2006. He said, in his opinion, Complainant has, quote,
21 never looked back, and is involved in activities such
22 as basketball and softball, and goes to church
23 regularly with her boyfriend and his family. He said
24 Complainant did much better in school down here in South
25 Carolina until around October or November of 2007, when

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1 she began an interracial relationship. He said her
2 attitude then changed and she stopped doing her chores,
3 and her grades had dropped. He said since they stopped
4 her from talking to this young man, her grades had
5 improved, and that Complainant is, quote, indecisive from
6 day to day. He said, you never know if she'll be
7 loving or hateful. He said her father, Michael, had
8 only come to visit once since Complainant had moved here
9 three summers ago. Mr. Sanders denies any sexual
10 intercourse with Complainant, advising me, quote, my plumbing
11 doesn't work. He stated that he could bring medical
12 documentation that would prove he could not have done
13 the things that Complainant had accused him of doing. He
14 said -- he stated that Anita had asked him once if he
15 had touched Complainant and he told her no. He said,
16 Complainant is not a touching person. That she doesn't put
17 her arms around you when she hugs. She only puts her
18 arm around the back and then quickly moves it away.
19 Mr. Sanders had denied all allegations that Complainant had
20 made against him.

21 Q. Okay. Was a -- was he offered a written
22 statement?

23 A. Yes.

24 Q. And did he give you a written statement?

25 A. No, sir.

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1 Q. Did he state why not?

2 A. No, sir. He did not.

3 Q. Now the Comfort Inn that has been referred to,
4 where is that located?

5 A. It's located in the City Limits of Easley on
6 Highway Number 123.

7 Q. Okay. And where is Sanders' house located?

8 A. On Sanders Road in Liberty.

9 Q. Okay. Do you know approximately how far his house
10 is from that hotel?

11 A. I've never measured it, but I would say probably
12 ten miles or less.

13 Q. Okay. Now, at some point did you seek warrants
14 for criminal sexual conduct and lewd act against
15 Defendant Sanders?

16 A. Yes, I did.

17 Q. And did you also get warrants on Ms. Gearhart for
18 unlawful conduct of a child?

19 A. Yes, I did.

20 MR. DEJONG: Your Honor, I object to the
21 warrant testimony to a degree. I don't mind this
22 witness testifying that warrants were obtained, but I
23 would ask for an instruction to the jury that the fact
24 that warrants were obtained is no evidence in this case
25 of the defendants' guilt.

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1 MR. RICHARDSON: I'm just trying to let the
2 jury know everything that happened, Your Honor.

3 THE COURT: I'll instruct them on that. And
4 I've already told them that, and I'll tell them again. You
5 can proceed with your ground work, Mr. Richardson.

6 MR. RICHARDSON: That's all the questions I
7 have at this time, Your Honor.

8 Please answer any questions Defense Counsels may
9 have for you.

10 THE COURT: All right. You may cross examine
11 the witness, Mr. Dejong.

12 MR. DEJONG: Thank you, Your Honor. May it
13 please the court?

14 **CROSS EXAMINATION**

15 **BY MR. DEJONG:**

16 Q. So, Ms. Burgess, you have been a detective with
17 the Pickens County Sheriff's Office how long?

18 A. In the Detective Division about five years.

19 Q. All right, ma'am. And prior to that you worked
20 for the Sheriff's Office?

21 A. Yes. I've been employed there for nineteen and a
22 half years.

23 Q. All right, ma'am. Now, with regard to these
24 allegations, do you -- I understand you said you got a
25 referral from DSS. Do you know where the allegations

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1 actually originated?

2 A. No, sir. When they send us a referral, they do
3 not send us the information as to where they got their
4 information.

5 Q. During the course of your investigation, did you
6 learn where these allegations originated from?

7 A. I learned that they came from the Department of
8 Social Services out of Virginia.

9 Q. All right, ma'am. Now, so based on that
10 investigation, there were no allegations or reporting
11 initially in South Carolina?

12 A. That's correct.

13 Q. Now, realizing you're in South Carolina and
14 Virginia is a good ways away, did you ever contact law
15 enforcement in Virginia?

16 A. Law enforcement, no, sir.

17 Q. All right. Did you ever investigate or do any
18 investigation surrounding the allegations or what
19 happened in Virginia?

20 A. Well, there were no allegations that had been
21 reported to me for me to contact law enforcement in
22 Virginia.

23 Q. Okay. But as far as the reporting itself that
24 came from Virginia, did you do any investigation on
25 that?

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1 A. I know that Complainant. -- Complainant told me that she had
2 contacted a friend in Virginia and told the friend and
3 the friend then told her mother:

4 Q. So then on June the 12th or 13th you went out to
5 speak to Complainant

6 A. The 13th. June 13th.

7 Q. The 13th. All right. Now, when you go there only
8 Complainant was present?

9 A. That's right.

10 Q. And how old was Complainant at the time?

11 A. Twelve years old.

12 Q. Did -- prior to talking to Complainant did you attempt
13 to find the mother?

14 A. When I got there and her mother was not there,
15 Complainant gave me a cell phone number, and that's when I
16 tried to call her mother.

17 Q. So before you actually started talking to Complainant
18 you did attempt to contact the mother?

19 A. Yes. I did ask when I got there where her mother
20 was.

21 Q. How many times did you talk to Complainant

22 A. I talked to Complainant there at the house on Sanders
23 Road, and again when we got the Sheriff's Office.

24 Q. Okay. Have you talked to her since then? And by
25 since then, I mean, have you talked to her since the

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1 last time you talked to her at the Sheriff's Office

2 until today or yesterday?

3 A. No, sir. I have not.

4 Q. Okay. The initial allegation that you said Complainant.

5 brought up came from the Comfort Inn; correct?

6 A. Yes.

7 Q. And I think as part of your investigation, you

8 retrieved some records from the Comfort Inn, did you

9 not?

10 A. No, sir. I did not.

11 Q. You did not do that?

12 A. No, sir.

13 Q. Okay. Who did that, if you know?

14 A. When she told me about the incidents occurring at

15 the Comfort Inn, I notified Easley Police Department,

16 due to that being their jurisdiction, and I believe

17 they are the ones who contacted the Comfort Inn.

18 Q. Now, other than the first time you met Complainant at

19 the address there on Sanders Road in Liberty, did you

20 ever go back out to the home?

21 A. No, I did not.

22 Q. Did you ever attempt to get a search warrant for

23 the home?

24 A. No, sir.

25 Q. Did you ever confiscate anything from the home?

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1 A. No, sir. I did not.

2 Q. So when you contacted Easley with regard to the
3 Comfort Inn, did you provide them a copy of your case
4 file at that point in time?

5 A. I'm sure I probably faxed them a copy of my
6 report.

7 Q. Okay. And were you involved at all in the Easley
8 investigation?

9 A. No, sir, other than just notifying them of what
10 had come to my attention.

11 Q. Okay. Did you ever have occasion to look at the
12 motel records that were introduced here yesterday?

13 A. I have not looked at them, no, sir.

14 Q. So basically, if I understand you, you were
15 looking at what allegedly happened in Liberty; right?

16 A. That's correct.

17 Q. And as part of that, you talked to Joey Sanders
18 one time?

19 A. Yes, sir.

20 Q. Did he ever bring in documentation as to his
21 medical condition?

22 A. He did bring me a letter from his doctor, yes,
23 sir.

24 Q. Did you ever follow-up on that with the doctor?

25 A. I did not get his doctor's records, no, sir.

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1 Q. I beg your pardon?

2 A. I only had the letter that he brought to me.

3 Q. Yes, ma'am.

4 A. I have not talked to this doctor, no, sir.

5 Q. Okay. Well, as part of your investigation, of
6 course, I understand about the Comfort Inn, but did you
7 ever attempt to get any records from the Marriott in
8 Spartanburg?

9 A. No, sir. I did not.

10 Q. And -- so basically, your investigation, what you
11 did personally, you interviewed the child twice?

12 A. Yes, sir.

13 Q. Talked to Ms. Gearhart once?

14 A. Yes, sir.

15 Q. And talked to Mr. Sanders once?

16 A. Yes, sir.

17 Q. Okay. And you then proceeded to get warrants?

18 A. Yes, sir.

19 Q. Okay. Let's go a little bit to these statements
20 that you said you took. Both of these statements were
21 taken at the Pickens County Law Enforcement Center;
22 correct?

23 A. Yes, sir.

24 Q. And both of the -- well, and both of the
25 statements were taken in 2008?

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- 1 A. Yes, sir.
- 2 Q. Did Pickens County Sheriff have taping capability?
- 3 I'm talking about tape recorders that you could tape
- 4 conversations with?
- 5 A. Sure.
- 6 Q. Did you tape these conversations?
- 7 A. No, sir. I did not.
- 8 Q. When did -- I noticed you were referring to
- 9 something when you were answering Mr. Richardson's
- 10 questions and asking about -- he was asking about these
- 11 statements. You were referring to certain notes, I
- 12 gather; were you not?
- 13 A. It's the police report.
- 14 Q. Yes, ma'am. Now, you took those statements on
- 15 June the 13th of 2008; correct?
- 16 A. Yes, sir.
- 17 Q. And when did you reduce those to writing?
- 18 A. I put them in writing in a Word program on June
- 19 the 13th. They were actually posted into the report on
- 20 June the 18th.
- 21 Q. Did you take handwritten notes?
- 22 A. I did.
- 23 Q. Do you have your handwritten notes?
- 24 A. I do.
- 25 Q. Are they with you?

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1 A. Yes, sir.

2 Q. May I see them, please?

3 A. Yes, sir.

4 MR. DEJONG: May I have one moment, please,
5 Your Honor.

6 THE COURT: Yes, sir.

7 Q. And so it was from these handwritten notes then
8 that you entered that into the Word program on the
9 computer?

10 A. Yes, sir.

11 Q. All right. And your testimony today is from those
12 notes?

13 A. It's from the report, the police report where I
14 entered the ---

15 Q. Yes, ma'am.

16 A. -- information into the computer.

17 Q. Yes, ma'am.

18 A. Yes, sir.

19 Q. And as such, you had to go back and refresh your
20 memory with regard to those statements today; correct?

21 A. Yes, sir. It's been two years.

22 Q. Yes, ma'am. I understand that. Now, when Ms.
23 Gearhart came in she said they actually stayed at the
24 Marriott?

25 A. Let me go back and look. She said they actually

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1 stayed at the Comfort Inn.

2 Q. All right. Okay. Did she say that they stayed at
3 the Comfort Inn every time they came?

4 A. She actually said they usually stayed at the
5 Comfort Inn.

6 Q. All right. Did you investigate as for any other
7 hotels or motels?

8 A. No, sir. The only other motel that had been
9 mentioned was the Marriott in Spartanburg.

10 Q. All right. Now, did she share with, she being Ms.
11 Gearhart, did she share with you how many times Complainant
12 was here with her at the Comfort Inn?

13 A. No, sir, she did not.

14 Q. But she did indicate that Joey never spent the
15 night there; correct?

16 A. Yes, she did.

17 Q. And she stated that they would sometimes lay on
18 the bed and watch television?

19 A. Yes, sir.

20 Q. Was there any indication or anything in her
21 statement about she and Joey having sexual intercourse
22 at the Comfort Inn in Easley?

23 A. I believe she said they did not have a sexual
24 relationship.

25 Q. All right. Now, when she said that they would

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1 sometimes lay in the bed in the Comfort Inn, would she

2 indicate whether they were clothed or unclothed?

3 A. She did not indicate.

4 Q. Did you follow up on that?

5 A. No, sir. She just said that they would lay on the

6 bed and watch TV, and that Complainant would sometimes lay

7 on the bed with them.

8 Q. Okay. When Ms. Gearhart met with -- at the end of

9 this statement, when Ms. Gearhart held out her hand and

10 asked for the text phone -- I mean the cell phone --

11 did Complainant give her the cell phone?

12 A. Yes, she did.

13 Q. Did you ever take the cell phone?

14 A. No, sir, I did not.

15 Q. All right. And did you think that would not be

16 possibly evidence as far as this case is concerned?

17 A. Not at that point, no, sir, I did not.

18 Q. Did you ever go back and attempt to get the cell

19 phone?

20 A. No, sir.

21 Q. Did you later believe that it might be evidence in

22 this case?

23 A. The only thing that had been indicated to me

24 concerning the cell phone was that she had, at some

25 point, had notified her friend in Virginia of the

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1 allegations, and that that friend notified her mother.

2 Q. All right. So as to that text message you, as a
3 detective, you didn't think that was important?

4 A. I'm not sure if it's a text message or a phone
5 call. I was just notified that she contacted a friend
6 in Virginia.

7 Q. Now, so that I'm clear then, later that same
8 afternoon/evening, Mr. Sanders came to your office?

9 A. Yes, sir, he did.

10 Q. And he came to your office at his request:

11 A. Yes, sir.

12 Q. But that -- not that you asked him or told him you
13 needed to talk to him, he came in voluntarily?

14 A. He did. I had told Ms. Gearhart that I would need
15 to speak with him, and he did come see me. Yes, sir.

16 Q. Okay. And did he tell you what time he would
17 there?

18 A. When she called me at four forty-five, she said
19 they were on their way from Liberty, and I told her I
20 would wait. I don't think they gave a specific time.

21 Q. How long did it take them to get there, do you
22 recall?

23 A. He arrived around five, between five-ten and five-
24 fifteen.

25 Q. Well, what time did Ms. Gearhart leave your

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1 office?

2 A. It was probably well after two, or maybe even

3 close to three.

4 Q. All right. And then when Joey came in, you went
5 over his rights with him?

6 A. Yes, sir.

7 Q. Was he even in custody at that point in time?

8 A. No, sir. At that point, I was just trying to
9 gather information.

10 Q. Yes, ma'am. And -- but nonetheless, you went
11 ahead and gave him his rights?

12 A. Yes, sir.

13 Q. Okay. Did he indicate he understood his rights?

14 A. Yes, sir, he did.

15 Q. Was there any doubt in your mind that he
16 understood his rights?

17 A. No, sir.

18 Q. Okay. So then he proceeded to talk with you;
19 right?

20 A. Yes, sir.

21 Q. And the bottom line is that he absolutely denied
22 any kind of wrongdoing, inappropriate touching or
23 anything else with regard to any sexual allegations
24 regarding Complainant :?

25 A. Yes, sir. That's correct.

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1 Q. All right. As far as the time allegations, Ms.

2 Burgess, were you ever able to get anything more than

3 between January the 1st and June the 1st of 2008?

4 A. For the sexual intercourse?

5 Q. Yes, ma'am.

6 A. Complainant told me between January -- it was either

7 January or February of 2008.

8 Q. All right, ma'am. As part of your investigation,

9 did you ever investigate beyond the statement of Ms.

10 Gearhart, Joey and Complainant did you ever do any

11 investigation with regard to the family dynamics in

12 this case?

13 A. Complainant -- well, they all told me, all three of

14 them told me that they were the only three living in

15 the home.

16 Q. Okay.

17 A. And Mr. Sanders said that he and Complainant had a good

18 relationship, that they'd always gotten along real

19 well.

20 Q. Okay. All right. But that was the extent of your

21 investigation into that; correct?

22 A. I did check into the relationship that she had

23 with her father in Virginia. Ms. Gearhart and Mr.

24 Sanders both indicated that she had little contact with

25 him. But I believe everyone indicated that her

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1 maternal grandmother, she had a really good
2 relationship with her, but she had passed the week
3 before.

4 Q. Okay. And so obviously you -- well, let me
5 follow up on that just a minute. So the maternal
6 grandmother had passed away a week before you met with
7 'Complainant'

8 A. Yes, sir.

9 Q. Okay. All right. Did you discuss that maternal
10 grandmother's death with Complainant at all?

11 A. No, sir. I did not.

12 Q. When Mr. Sanders came in did you share with Mr.
13 Sanders that there was really no evidence in this case
14 against him, other than Complainant's statement?

15 A. I advised -- I let him know that, you know, there
16 were allegations made and I'm doing nothing but trying
17 to, at that point, trying to figure things out and find
18 out where these allegations were coming from.

19 Q. Okay. My question is, did you advise him that
20 there was no physical evidence at that point?

21 A. I don't think I said no physical evidence, no,
22 sir.

23 Q. All right. So you -- well, actually before
24 talking to Ms. Gearhart, you took Complainant into Emergency
25 Protective Custody?

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1 A. Yes, I did.

2 Q. Did anybody show up that day or that evening in an
3 effort to try to pick Complainant up?

4 A. No, sir. Not at my office.

5 Q. Okay. Are you aware that someone came from
6 Virginia to pick her up that day?

7 A. No, sir. After I took her into Emergency
8 Protective Custody, she's actually turned over to the
9 custody of the Department of Social Services. Now, I
10 can't speak for who may have went there.

11 Q. Yes, ma'am. I understand that. Did you -- you
12 turned the Comfort Inn allegations over to Easley;
13 correct?

14 A. Yes, sir.

15 Q. Did Easley ever send you their case file?

16 A. Not their case file, no, sir.

17 Q. Okay. Did they ever send you any information from
18 what they would indicate was their investigation?

19 A. I did not receive anything from the Easley Police
20 Department, no.

21 Q. That's what I'm asking.

22 A. No, sir.

23 Q. Okay.

24 MR. DEJONG: One moment, please, Your Honor.

25 Q. Correct me if I'm wrong, sometimes I am. So

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1 Complainant said her mother was where when you got there?

2 A. Blacksburg.

3 Q. Did she say why she was there?

4 A. She said she was taking care of some traffic
5 tickets in Blacksburg.

6 Q. Did you ever follow up on that to see if there
7 were speeding tickets or if that's where the mother
8 was?

9 A. No, sir. That was not pertinent to the
10 investigation I was conducting.

11 Q. Okay. Well, my geography is not very good. Do
12 you know where Blacksburg is?

13 A. I have no idea.

14 Q. Okay. Is it in South Carolina as far as you know?

15 A. It is in South Carolina.

16 Q. All right. Do you know how long it takes to get
17 there or from there?

18 A. No, sir, because I have no idea where it's at.

19 Q. Well, once you called -- well, let me back up.

20 What time was it that you went to see Complainant

21 A. I actually took her into protective custody, I
22 believe, at eleven thirty-four a.m. Yes. At eleven
23 thirty-four a.m. And Ms. Gearhart arrived at my office
24 twelve fifty-seven p.m.

25 Q. So you took her into EPC at what time, eleven

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1 thirty?

2 A. Eleven thirty-four.

3 Q. And Ms. Gearhart came in at twelve fifty ---

4 A. Around one o'clock, right at one o'clock.

5 Q. Okay. So roughly an hour and a half later?

6 A. Yes, sir.

7 Q. Okay. Did she return your phone call?

8 A. She did.

9 Q. What time did she return your phone call?

10 A. I don't have that document. It may have even been

11 when we were on our way back from Liberty to the

12 Sheriff's Office.

13 Q. From Liberty, you're talking about the residence

14 on Sanders Road?

15 A. Yes, sir.

16 Q. After you had taken protective custody?

17 A. Yes, sir.

18 Q. Okay. And in Ms. Gearhart's statement she made it

19 pretty clear that Complainant wanted to live in Virginia; is

20 that correct?

21 A. She said Complainant had talked -- Complainant wanted to

22 live in Virginia with her grandmother, and Ms. Gearhart

23 would not allow that.

24 Q. But at this point in time, the maternal

25 grandmother was deceased; correct?

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1 A. That's correct.

2 MR. DEJONG: The witness is with you, Mr.

3 Robinson.

4 MR. ROBINSON: May it please the court?

5 THE COURT: Yes, sir. Cross examination.

6 CROSS EXAMINATION

7 BY MR. ROBINSON:

8 Q. Ma'am, Ms. Burgess, you're telling this jury that

9 your investigation consisted of a statement from

10 Complainant. Isn't that right? Isn't that your

11 investigation?

12 A. No, sir. I spoke with Ms. Gearhart as well as Mr.

13 Sanders.

14 Q. And let me just explain to this jury, though, this

15 is in 2008; right?

16 A. Yes, sir.

17 Q. And you had a tape recorder; right?

18 A. Yes, sir.

19 Q. Didn't use it?

20 A. No, sir.

21 Q. Don't have a video recorder; correct?

22 A. No, sir.

23 Q. Okay. Now, ma'am, in her statement -- I want you

24 to look at the statement again that you say that she

25 gave you, which is not recorded in this case. Let's

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1 just kind of go through some highlights of her
2 statement to you.

3 A. Yes, sir.

4 Q. First, she told you that she had a problem with
5 Complainant sending inappropriate emails to her boyfriend;
6 isn't that correct?

7 A. Text messages, yes, sir.

8 Q. Text messages. Excuse me. Okay. Then she says
9 that Complainant also wants to live in Virginia; correct?

10 A. She said that she wanted to live in Virginia with
11 her grandmother.

12 Q. And then she said that she had a problem with
13 Complainant wearing inappropriate clothing. She had told
14 her she was wearing inappropriate clothing. Isn't that
15 right?

16 A. Yes, sir.

17 Q. And also, she told her that she was concerned
18 about her talking sex with a sixteen year old boy.
19 Isn't that right?

20 A. Yes, sir.

21 Q. And she also told you that Complainant -- she had a
22 problem with Complainant hanging out with inappropriate or
23 the wrong people; isn't that correct?

24 A. I believe she said she was concerned that Complainant
25 may be hanging out with the wrong people.

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1 Q. Right. And she took the phone from Complainant when

2 you were at the station; correct?

3 A. That's correct.

4 Q. She got the cell phone back; correct?

5 A. That's correct.

6 Q. Okay. Now, Mr. DeJong alluded to this a second

7 ago, because what you've said to this jury is that you

8 did or you thought you were doing your job in doing

9 this investigation; right?

10 A. Yes, sir.

11 Q. Okay. But what you haven't shown this jury or

12 shown anyone in this courtroom is besides the statement

13 of Complainant in this case, you haven't got any other

14 corroborating testimony from someone like a doctor who

15 -- you didn't follow up on -- with Mr. Sanders in this

16 case. You didn't follow up with a doctor; did you?

17 A. I have a letter that the doctor wrote to me.

18 Q. And in that statement, that doctor says that Joey

19 is impotent, that he can't have sexual relations or

20 anything of that nature; isn't it? Doesn't he say

21 that?

22 A. I can read you the letter.

23 Q. No, I'm just asking you?

24 MR. RICHARDSON: Your Honor, I'm going to

25 object to anything that letter says as hearsay.

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1 THE COURT: Sustained.

2 Q. But you didn't follow up with that doctor and use
3 that information in this case, in your investigation of
4 this case; did you?

5 A. Other than the letter that he sent to me.

6 Q. Okay. So you have the statement from Complainant.
7 right?

8 A. Yes, sir.

9 Q. And you didn't follow up with the people in
10 Virginia; did you?

11 A. With who in Virginia?

12 Q. About any sort of -- about this statement that she
13 may have made in Virginia and so forth?

14 A. I spoke to her family in Virginia, yes, sir.

15 Q. Okay. And that's the extent of your
16 investigation, talking to Complainant Complainant gives a
17 statement saying this information and so forth. You
18 may have talked to a friend or someone that she said
19 this to in Virginia. And that was your investigation?

20 A. Along with Ms. Gearhart and Mr. Sanders.

21 Q. And both of them, though, both denied that
22 anything like this happened; isn't that correct?

23 A. They denied any sexual contact.

24 Q. Denied it, correct. And that was your
25 investigation?

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1 A. Yes, sir.

2 Q. So if someone comes into the Sheriff's Department,
3 you can base your charge and your warrant on the
4 statement of a person, and that's it. Isn't that
5 right? Isn't that what you're saying?

6 A. In this case, that's all I had to go on.

7 Q. And that's all you needed; correct?

8 A. She was indicating to me that the sexual
9 intercourse occurred in January or February of that
10 year. This was June of that year. I had nothing else
11 to go on.

12 Q. But you had no medical evidence to back this up;
13 did you?

14 A. Concerning Mr. Sanders, Ms. Gearhart, or ---

15 Q. Both. Mr. Sanders and the alleged victim in this
16 case. You had no medical information that would
17 corroborate what you said; did you?

18 A. I had the letter from Mr. Sanders' doctor.

19 Q. That's on Mr. Sanders. That's on him. I'm
20 talking about the alleged victim in this case. Do you
21 have anything? You cannot produce anything to this
22 jury that can corroborate what she says. That she said
23 -- these bald allegations that she made against Mr.
24 Sanders and her mother.

25 A. I do have a medical report.

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1 Q. You have a medical report. Okay.

2 A. Yes, sir.

3 Q. All right. Will you share that with us. Someone
4 will share that with us, obviously. But the medical
5 report does not indicate any sort of -- anything
6 happened; does it?

7 A. I can review the medical report.

8 Q. Uh-huh (affirmative).

9 A. I can read the notes made by the doctor on the
10 medical report if you would like?

11 MR. RICHARDSON: Your Honor, I would object
12 to hearsay on that, however ---

13 MR. ROBINSON: I will withdraw the question.

14 MR. RICHARDSON: -- we will note that's ---

15 MR. ROBINSON: I withdraw the question, Your
16 honor.

17 THE COURT: All right. Question withdrawn.

18 MR. RICHARDSON: Thank you, Your Honor.

19 Q. Ma'am, as far as the -- as far as your
20 investigation that you did in this case, I want to kind
21 of nail you down a little bit on these dates that you
22 talk about with when this alleged -- these alleged
23 incidents happened. And I want to just take your
24 testimony and I want you to make -- I want to make sure
25 I've got this right. You said you testified on cross

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- 1 examination to Mr. DeJong and direct examination to Mr.
2 Richardson, these are the dates that you have told me
3 the child told you; right? You said the child told you
4 that these incidents occurred in January 2008 and
5 February 2008; correct?
- 6 A. No, sir. She said it was January or February of
7 2008.
- 8 Q. Okay. And when else? And these Comfort Inn
9 allegations that you're talking, when did that happen?
- 10 A. That was in 2005.
- 11 Q. 2005. Excuse me. Okay. So your testimony to
12 this jury is that there were no allegations after
13 February of 2008; correct?
- 14 A. No, sir. That's not my testimony.
- 15 Q. Between -- okay. Let me make sure I got this
16 right. You said in 2005 one of the allegations -- one
17 of these incidents took place. And then you said in
18 between January to February 2008 the other incidents
19 took place. Isn't that what you're saying?
- 20 A. She said in 2005 when she would come down here
21 with her mother from Virginia ---
- 22 Q. Okay.
- 23 A. -- to the Comfort Inn in Easley ---
- 24 Q. Okay.
- 25 A. -- that Mr. Sanders was touching her, and that

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1 there was digital penetration at the Comfort Inn in
2 Easley.

3 Q. That's in 2005.

4 A. In 2005. Yes, sir.

5 Q. Okay.

6 A. In January or February of 2008 is when she said
7 there was actual sexual intercourse between she and Mr.
8 Sanders.

9 Q. And that would have been when she was in Easley;
10 correct?

11 A. When she was living in Mr. Sanders' house on
12 Sanders Road in Liberty.

13 Q. And that was between January and February 2008?

14 A. Yes, sir. She could not give me the specific day.

15 Q. Okay. But what you're telling the jury, though,
16 is the incidents occurred in 2005?

17 A. At the Comfort Inn, yes, sir.

18 Q. And between January to February 2008; isn't that
19 correct?

20 A. That's when there was sexual intercourse.

21 Q. As far as the family dynamics in this case, you
22 said that, I think -- did you consider the family
23 dynamics in terms of -- between Complainant and her mother
24 and between Complainant and Mr. Sanders, between the three
25 of them, did you look at the dynamics? Did you

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1 investigate the dynamics?

2 A. Other than just speaking with them in my office.

3 Q. Okay.

4 A. And there were some people, such as Mr. Davis, who
5 was here yesterday ---

6 Q. Okay.

7 A. -- who could give some insight.

8 Q. Okay. But you would admit, though, that there was
9 from -- even from Ms. Gearhart's statement that there
10 was tension in the family between a little girl and her
11 mother regarding Virginia; true?

12 MR. RICHARDSON: Your Honor, I'm going to
13 object to that. He's calling for speculation. I don't
14 know how she can answer that question.

15 THE COURT: I'll overrule the objection. If
16 she can answer it, I'll allow her to.

17 A. I can't say that there was tension. I can say
18 that Ms. Gearhart said that she had to get on to Complainant
19 for wearing some inappropriate clothing and talking to
20 boys. I don't know that that's tension or if it's just
21 mother/daughter disagreements, but she did indicate
22 that, yes.

23 Q. So there were disagreements?

24 A. Yes.

25 Q. Okay. Let me put it this way, the right way.

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1 Maybe you'll answer it this way. You would admit that
2 there -- from -- you gleaned from your conversation
3 with Ms. Gearhart that there were disagreements between
4 Complainant and her mother regarding who she hung out with;
5 true?

6 A. Yes, sir.

7 Q. What her mother thought were inappropriate text
8 messages?

9 A. Yes, sir.

10 Q. With the people that she hung out?

11 A. Yes, sir.

12 Q. Okay. And there was disagreement between her
13 mother and her about her desire to move back to
14 Virginia?

15 A. When her grandmother was still living, yes, sir.

16 Q. Is that correct?

17 A. Yes, sir.

18 Q. So you would agree, you would agree that there
19 were disagreements between the twelve year old girl and
20 her mother?

21 A. Yes, sir.

22 MR. ROBINSON: One second, Your Honor.

23 THE COURT: Yes, sir.

24 Q. Now, going back to your investigation, I think you
25 may have touched on this with Mr. DeJong, in terms of

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1 this cell phone that was taken from Complainant at the
2 police station. Do you remember that Mr. DeJong asked
3 you about that on cross examination?

4 A. Yes, sir. I remember.

5 Q. Now, you had been told by Ms. Gearhart that there
6 were -- the reason that she took the cell phone and
7 wanted the cell phone is because there were
8 inappropriate emails or text messages on the cell phone
9 between her and either her friends or her boyfriend;
10 correct?

11 A. It was my understanding that the inappropriate
12 text messaging was in October or November of 2007.

13 Q. So, so, let's, let's just get this, let's just get
14 this straight. So, so, you're saying that that day
15 when she came into your office on the -- in June of
16 2008, that she asked for her cell phone, and this was
17 concerning messages from 2005?

18 A. I can't say what it was concerning. She only told
19 Complainant to give her the cell phone. She was having it
20 disconnected.

21 Q. And in your investigation in this case, as you
22 told the jury you wanted to -- your job is to do an
23 investigation, you didn't find it appropriate though to
24 get the cell phone that could maybe give you a little
25 light as far as this family disagreement or dynamic?

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1 A. The only thing that was told to me was that she
2 had talked to a friend in Virginia, and told her friend
3 that she was being sexually abused here. I can't say
4 that it was from her cell phone, a home phone. I was
5 just told that she contacted a friend in Virginia.

6 Q. But you didn't think, though, in your
7 investigation that that may be something would help you
8 in making -- seeing whether or not this child was being
9 truthful, whether or not she was doing what Ms.
10 Gearhart said she was doing? You didn't think that was
11 appropriate to get that cell phone when you had her
12 right there in the police station. You didn't think
13 that that was appropriate to get that cell phone?

14 MR. RICHARDSON: Your Honor, this has been
15 asked and answered about the third time.

16 THE COURT: I'll overrule your objection.

17 A. The inappropriate text messaging was indicated to
18 me that it was from October and November of 2007, which
19 was about eight months prior to me taking her into
20 protective custody. I don't believe the text message
21 would have been on her phone at that point.

22 Q. But isn't it your obligation as an officer of the
23 law to investigate these things?

24 A. I did investigate it.

25 Q. But you didn't the phone, did you?

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1 A. I had no reason to take her phone..

2 Q. Like you had no reason to turn on the tape
3 recorded, when you had a tape recorder sitting in the
4 ---

5 MR. RICHARDSON: Your Honor, objection.
6 That's argumentative.

7 THE COURT: Sustain the objection.

8 MR. ROBINSON: I withdraw the question.

9 Thank you, ma'am.

10 THE COURT: Redirect.

11 **REDIRECT EXAMINATION**

12 **BY MR. RICHARDSON:**

13 Q. Ms. Burgess, first, the things that were being
14 disclosed to you, were they after you informed Ms.
15 Gearhart of the allegations that were being made?

16 A. Yes, sir.

17 Q. Everything she stated was after she was told what
18 the allegations were being made?

19 A. Yes, sir.

20 Q. Okay. And likewise with Defendant Sanders?

21 A. Yes, sir.

22 Q. And, in fact, Ms. Gearhart, did she come with
23 Sanders to the station?

24 A. I can't recall if she came or not. If she did,
25 she either waited in the lobby or in the car, because

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1 she was not present in the room where we were speaking.

2 Q. You didn't see her?

3 A. I don't recall seeing her.

4 Q. She's the one that made the phone call to make the
5 appointment?

6 A. Yes, sir.

7 Q. Okay. Do you know this lady sitting back here?

8 A. The third one to the left?

9 Q. Yes.

10 A. Yes, I do.

11 Q. Who is that?

12 A. Shauna Galloway-Williams.

13 Q. Did you speak to her about this case?

14 A. I did not speak to her initially about this case.

15 Q. Okay. Did you speak to her before the warrants?

16 A. Yes, I did.

17 Q. Okay. And she had interviewed Complainant is that
18 right?

19 MR. DEJONG: Your Honor, I'm going to object
20 to this. Could we have a bench conference?

21 THE COURT: Yes, sir.

22 (WHEREUPON, Mr. Richardson, Mr. DeJong, and Mr.
23 Robinson approached the bar.)

24 Q. You were aware that -- were you aware that Complainant
25 had been sent to Ms. Williams for a forensic interview?

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1 MR. DEJONG: And, Your Honor, I object to any
2 of that line of questioning.

3 THE COURT: All right. I overrule your
4 objection as to that question.

5 A. Yes, sir. I am aware.

6 Q. Okay. And prior to you -- your applying for the
7 warrants, did you have conversations with Ms. Shauna
8 Galloway-Williams?

9 A. Yes.

10 Q. And did you have conversations about the ---

11 MR. DEJONG: And, Your Honor, again, I'm
12 going to object. It's an on-going objection.

13 THE COURT: I sustain the -- your objection
14 to this question.

15 Q. Did you ever receive a forensic report?

16 MR. DEJONG: And, again, I object, Your
17 Honor.

18 THE COURT: Overruled.

19 A. Yes, I did.

20 Q. Okay. And did that forensic report come from Ms.
21 Galloway-Williams?

22 A. Yes, it did.

23 Q. And was that prior to your seeking the warrants?

24 A. Yes, it was.

25 Q. And did you review that report?

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1 A. Yes, I did.

2 Q. And was that report part of your investigation in
3 this case?

4 A. Yes.

5 MR. RICHARDSON: That's all the questions I
6 have at this time.

7 THE COURT: All right. Thank you. You may
8 step down, Ms. Burgess. May I see the attorneys for
9 just a minute.

10 (WHEREUPON, Mr. Richardson, Mr. DeJong, and Mr.
11 Robinson approached the bar.)

12 THE COURT: Madam forelady, ladies and
13 gentlemen, I think that it would probably be a good
14 time for us to take a break at this time before the
15 next witness is called. I'll ask you to go back to
16 your jury room, and remind you again not to discuss the
17 case. I'll call you back in just a few moments.

18 (WHEREUPON, the jury exited the open court at
19 approximately 10:28 a.m.)

20 THE COURT: Let's take a short break, a ten
21 minute break.

22 (WHEREUPON, the court stood at recess for a short
23 break.)

24 THE COURT: Are you ready to proceed,
25 Solicitor?

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1 MR. RICHARDSON: Yes, Your Honor.

2 THE COURT: All right. Have the jury come
3 in.

4 (WHEREUPON, the jury entered the open court at
5 approximately 11:08 a.m.)

6 THE COURT: Solicitor, you may call your next
7 witness.

8 MR. RICHARDSON: Thank you, Your Honor. We
9 would call Dr. Mary Fran Crosswell.

10 MISTER CLERK: Place your left hand on the
11 bible and raise your right hand. Do you solemnly swear
12 or affirm the testimony you're about to give in this
13 case to be the truth, the whole truth and nothing but
14 the truth, so help you God?

15 DR. CROSSWELL: I do.

16 MISTER CLERK: If you would have a seat and
17 state your name for the record.

18 DR. CROSSWELL: Mary Fran Crosswell.

19 MARY FRAN CROSSWELL, M.D.,

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. RICHARDSON:

23 Q. Doctor, where are you employed?

24 A. I'm employed at the Children's Hospital of the
25 Greenville Hospital System, University Medical Center

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1 in Greenville, South Carolina.

2 Q. Okay. And how long have you been employed there?

3 A. Since 2006.

4 Q. Okay. And in what capacity are you employed with
5 them?

6 A. I'm a pediatrician in the Division of Forensic
7 Pediatrics, Child Abuse and Neglect.

8 Q. Okay. And can you just tell us a little bit about
9 your education, your background as far as your
10 education, starting with college?

11 A. I graduated from Wake Forest University and then
12 did four years of medical school, graduating from the
13 University of Louisville, with a medical degree, then
14 did a three year pediatric residency at the Greenville
15 Hospital System.

16 Q. Okay. And was it -- after completion of your
17 residence, did you obtain any type of licensure?

18 A. Yes. I was certified by the American Board of
19 Pediatrics in General Pediatrics. And I obtained
20 licensure in the State of South Carolina, and also in
21 the State of Georgia.

22 Q. Okay. And do you have any certifications?

23 A. In the American Board of Pediatrics.

24 Q. Okay.

25 A. In general pediatrics.

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1 Q. I'm sorry. You may have testified to that. I

2 apologize for that.

3 MR. DEJONG: Your Honor, I apologize to Mr.
4 Richardson. I've got this fan back here blowing in my
5 ear and I can hardly hear him. I can hear the witness
6 fine. I can hardly hear Mr. Richardson.

7 THE COURT: If you'd just make sure you
8 elevate your voice.

9 MR. RICHARDSON: Yes, sir.

10 Q. Now, what kind of training have you had in
11 forensic pediatrics?

12 A. I have done numerous local, national and
13 international medical trainings in the field of child
14 -- physical and sexual abuse.

15 Q. Okay. And does your employment and your training
16 involve the examination of children who are suspected
17 of being sexually abused?

18 A. Yes, it does.

19 Q. Okay. And have you done those type of
20 examinations?

21 A. Yes, I have.

22 Q. How many examinations have you done of that
23 nature?

24 A. I do anywhere from three to nine exams a week,
25 purely sexual abuse exams.

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1 Q. Three to nine a week. And for how long have you
2 been doing that?

3 A. Since 2006.

4 Q. Okay. And have you ever been qualified as an
5 expert in courts in South Carolina?

6 A. I have been qualified as an expert in Family
7 Court.

8 Q. Okay.

9 MR. RICHARDSON: Your Honor, at this time we
10 would offer the doctor as an expert in forensic
11 pediatrics. And more specifically as an expert in
12 child sexual abuse.

13 THE COURT: Any Voir Dire or any objections
14 from either legal counsel?

15 MR. DEJONG: No Voir Dire on behalf of Mr.
16 Sanders, Your Honor.

17 THE COURT: Mr. Robinson?

18 MR. ROBINSON: No Voir Dire.

19 THE COURT: At this time, Madam Forelady and
20 ladies and gentlemen, just let me briefly explain to
21 you. Normally, a person in a trial can't give opinions
22 about the testimony. They can testify to what they saw
23 or heard or experienced by one of their senses.

24 There is an exception, however, when the person is
25 qualified because of education and experience, they're

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1 permitted to give a reason for an opinion. They can
2 state what that opinion is. This witness being
3 qualified in forensic pediatric medicine of child abuse
4 will be allowed to give her opinion. That doesn't mean
5 you must accept the opinion. It is evidence that you
6 are to consider as other evidence in the case. Use it
7 any way you see fit.

8 All right, sir. You may continue your
9 examination.

10 BY MR RICHARDSON: Thank you, Your honor.

11 Q. Now, doctor, did you have an occasion to do an
12 examination on Complainant :?

13 A. Yes, I did.

14 Q. And what type of examination did you do on Complainant,
15 .?

16 A. Our evaluation consists of getting an extensive
17 past medical history from first the caretaker who
18 brings them to the appointment. Then I take a history
19 directly from my patient, and in this case, Complainant
20 about what had happened to her. And any associated
21 symptoms or other findings with that. My physical exam
22 consists of a head to toe physical exam, which includes
23 a genital exam using a culpascope.

24 Q. Okay. Now, you testified that you did a -- I
25 believe you said a historical; is that correct?

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- 1 A. I obtain a history of the patient, yes.
- 2 Q. And that would -- so you obtained a history from
- 3 Complainant, ?
- 4 A. Yes, I did.
- 5 Q. Now, did she tell you what happened to her?
- 6 A. Yes, she did.
- 7 Q. Okay. Now, is it necessary to ascertain what
- 8 happened to her for your examination?
- 9 A. Yes, it does.
- 10 Q. Why?
- 11 A. It's important for me to know what needs to be
- 12 included in my evaluation. As part of my evaluation, I
- 13 do certain laboratory testing if the patient is at risk
- 14 of contracting a sexually transmitted infection.
- 15 Q. Okay. And did Complainant in fact, disclose to you
- 16 what happened to her?
- 17 A. Yes, she did.
- 18 Q. Did she tell you the place that it happened?
- 19 A. Yes, she did.
- 20 Q. And where was that?
- 21 A. She mentioned that it happened at the Comfort Inn
- 22 and that it also happened at her house.
- 23 Q. Okay. And did you get dates of when that happened
- 24 or when she said it happened?
- 25 A. She said that the occasion at her house occurred

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1 the beginning of the year was her terms, and then she

2 qualified that that was around January of 2008.

3 Q. Okay. And did she give you the times on --

4 regarding the motel?

5 A. She said it was prior to her moving, moving to

6 South Carolina.

7 Q. Okay. Now, so that we're clear, when are you --

8 at this point in time, where are you having or doing

9 the exam on Complainant What is the date?

10 A. I evaluated her on July 9th, 2008.

11 Q. Okay. And did she inform you -- do you need to

12 know any information regarding whether she was

13 penetrated or not to do your diagnosis?

14 A. Yes.

15 Q. Okay. And what did she tell you about that?

16 A. She said that he had put his penis in her.

17 Q. Okay. Now, you mentioned a -- and I'm terrible

18 with medical terms. So you mentioned some type of

19 scope. Okay. What's that term again?

20 A. The culpascope is, for my purposes, is a

21 magnification system so it has magnifying glasses. It

22 has a bright light source. And it has the ability to

23 document the exam with digital photographs.

24 Q. Okay. And where is this exam performed?

25 A. Where? Excuse me?

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1 Q. Where is the exam performed?

2 A. I performed my exam at the Greenville Rape Crisis
3 and Child Abuse Center, is where our outpatient office
4 is located.

5 Q. Okay. Okay. Now in your exam what, if anything,
6 did you find?

7 A. She had some lesions, some papular lesions in her
8 genital area that I was concerned about the possibility
9 of genital warts. She also had -- did not see any
10 vaginal discharge, but she did have a notch in her
11 hymenal tissue.

12 Q. Okay. Now, first, regarding the warts. Based
13 upon your seeing those lesions, what did you do?

14 A. Because I suspected warts, but it wasn't
15 definitively conclusive that they were warts, I
16 referred her to a pediatric gynecologist for further
17 evaluation and assessment of those lesions.

18 Q. Okay. And who was that?

19 A. Dr. Benjie Mills.

20 Q. Okay. Now, and was that just to -- for the
21 evaluation of the genital warts?

22 A. Yes.

23 Q. Okay. Now, have any -- were genital warts found?

24 A. No. Dr. Mills felt like it was a ---

25 MR. DEJONG: Objection, Your Honor.

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1 THE COURT: I sustain the objection.

2 Q. Don't tell me what the doctor said or felt. Just
3 answer my question.

4 A. Okay.

5 Q. Were there genital warts found?

6 A. No.

7 Q. Okay. Now, you mentioned a notch in the hymen; is
8 that correct?

9 A. Yes.

10 Q. Can you kind of -- would it -- could you go into
11 detail about that. And if you need to draw something
12 for the jury, that would be okay. But I would like for
13 you to explain that terminology to the jury and show
14 them where it was found.

15 A. Okay. Can I draw that ---

16 MR. RICHARDSON: Your Honor, may the witness
17 come down?

18 THE COURT: If you'll just make sure your
19 voice is elevated so everyone can hear you as you
20 testify. You won't have the microphone there, doctor.

21 MR. DEJONG: Due to the fact she's off the
22 stand, Your Honor, can I ask to stand over here in the
23 corner.

24 THE COURT: Yes, sir. You may move over.
25 Mr. Robinson, if you wish, you may move over.

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1 A. Okay.

2 Q. If you could explain to them, if you could show
3 the vaginal area. Show them where you're talking about
4 and kind of explain it to the jury.

5 A. Okay. So when you're looking at the genital area
6 of the female, the first two layers of tissue are the
7 labia majora, which is kind of a -- the fatty surface
8 layer of the genital area. The next layer you come to
9 is the labia minora. Interiorly, or in front, you have
10 the opening for the urine which is the urethra, and
11 posteriorly or in back of, you have the anus, where a
12 bowel movement is excreted. Between those, you have
13 the vagina. Covering the vagina is a layer of tissue
14 called the hymen. For a child who has gone through
15 puberty, this tissue becomes thicker and becomes
16 elastic. It can, it can allow stretching. In Complainant
17 case, there was a -- we look or describe the hymenal
18 opening, or the vaginal opening, as a clock position.
19 So if you were imagining a twelve o'clock here, six
20 o'clock here, three o'clock here, and nine o'clock
21 here, At the four o'clock position, there was a -- just
22 a notch right there in the hymen and that's the finding
23 that I described.

24 Q. Now, doctor does that conclusively in your mind
25 mean that this child had been penetrated?

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1 A. No.

2 Q. Okay. Based upon what you found and based upon
3 your expert opinion, what is it that you can tell the
4 jury about that notch in her hymen?

5 A. I think -- it's not a definitive finding of
6 penetration, as I said, but in light of the history
7 that was provided to me by my patient, this finding was
8 concerning for sexual abuse and vaginal penetration.

9 Q. Okay. Now, you said you've done numerous
10 examinations and you've been trained in this area?

11 A. Yes.

12 Q. Is it common for children not to show any signs of
13 trauma after a sexual assault?

14 A. It is very common. Different studies have looked
15 at this fact to see how many legally confirmed cases of
16 sexual abuse actually have physical findings in
17 children. The numbers range from ten to fifteen
18 percent have conclusive evidence of sexual abuse, but
19 the majority of times, it is a normal exam.

20 Q. Okay. And does delay between the time of the
21 assault and the examination have anything to do with
22 it?

23 A. It is definitely a contributing factor. The --
24 this area is mucosal tissue, and so it's very vascular.
25 I mean, it has a good blood supply to the area. So any

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1 trauma to this area usually heals very rapidly, within
2 days.

3 Q. Okay. Now, you said it was common. Do you know
4 if there's a -- do you have a -- any personal knowledge
5 of a percentage of children who've gone through sexual
6 assault who don't show signs?

7 A. Like I said, the studies vary. But usually,
8 eighty-five percent of children who have been sexually
9 abused do not have physical findings on their medical
10 exam.

11 Q. Now, with Complainant was this -- this was the one
12 physical finding that you did find, the one and only?

13 A. Right. The other concerning finding, I referred
14 on for further evaluation.

15 Q. Okay. Thank you, Doctor. That's all the
16 questions I have. Please answer any questions defense
17 counsel may have for you.

18 THE COURT: Mr. DeJong.

19 MR. DEJONG: Thank you, Your honor. May it
20 please the Court.

21 CROSS EXAMINATION

22 BY MR. DEJONG:

23 Q. Dr. Crosswell.

24 A. Yes.

25 Q. Am I pronouncing your last name correct?

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1 A. Yes, sir.

2 Q. Thank you, ma'am. So you have been at the

3 Children's Hospital in Greenville since 2006?

4 A. Yes.

5 Q. Did you do your residency there?

6 A. I did. It was prior to 2006.

7 Q. Okay. You were anticipating my question. Okay.

8 So you did your residency there and then you actually

9 -- and doctors and lawyers are strange. I guess we

10 never do it, we just practice, okay. So you started

11 practicing in '06; right?

12 A. No. Actually, in the interim, I finished

13 residency in 2003. I moved to Atlanta and worked for

14 Children's Health Care of Atlanta as a general

15 pediatrician for two years prior to moving back to

16 Greenville.

17 Q. So that three years in Atlanta, you were a general

18 pediatrician?

19 A. Right.

20 Q. Had you had any training in forensic pediatrics at

21 that point in time?

22 A. I had done -- I had attended one course already at

23 that point in time.

24 Q. Okay. Is -- Forensic Pediatrics, is that a board

25 certified area of medicine?

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- 1 A. As of November of 2009 they offered the first
2 certification exam for the sub-speciality.
- 3 Q. Now, you have done three to nine abuse, sexual
4 abuse cases a week ---
- 5 A. Right.
- 6 Q. -- since 2006?
- 7 A. Uh-huh (affirmative).
- 8 Q. Of course, you were the examining physician. In
9 your experience as an examining physician, do children
10 sometimes not tell the truth?
- 11 A. I mean, I, I have no reason -- I mean, from my
12 history, I have no reason to ...
- 13 Q. Okay. So the point of that is, somebody comes in
14 and makes -- well, somebody -- in this case, a young
15 person comes in, makes allegations of abuse and you
16 just accept that at face value?
- 17 A. That's my job, is to take my history ---
- 18 Q. Yes, ma'am.
- 19 A. -- and then to use that to perform the rest of my
20 evaluation.
- 21 Q. Yes, ma'am. And then part of your job is to look
22 at and confirm that there has been sexual abuse?
- 23 A. Right.
- 24 Q. Okay. Now, when this history was taken -- well,
25 let me back up. You refer to this, that you did the

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1 exam at the Rape Crisis Center; right?

2 A. (Affirmative nod.)

3 Q. Correct?

4 A. Correct.

5 Q. Okay. I'm sorry, ma'am. You've got to answer

6 verbally ---

7 A. Okay. I'm sorry.

8 Q. -- so this lady can get it down, okay? Is that

9 the office over there on Whitehorse Road?

10 A. Yes, it is.

11 Q. Okay. Now, Rape Crisis as it is called, that is

12 the office that deals with people who are alleged

13 victims; is that correct?

14 A. Well, the Child Advocacy Center -- it's an

15 umbrella organization and the Child Advocacy Center,

16 which is where I'm employed, is part of that umbrella

17 organization.

18 Q. Okay. So you are actually employed by the Child

19 Advocacy Center?

20 A. No, I'm not.

21 Q. Okay.

22 A. The hospital pays rent for the space that I use to

23 perform my exams.

24 Q. Well, now I'm a little confused. So you work at

25 the hospital.

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1 A. I'm employed by the hospital.

2 Q. Okay. Well, I'm trying to figure out where your,
3 for want of a better term, where your practice is
4 located. Is your practiced located in the Children's
5 Advocacy Center?

6 A. I do in-patient exams. I do out-patient exams at
7 the Child Advocacy Center in Greenville.

8 Q. Okay. We're not communicating. Let me see if I
9 can be a little mores specific here. When you're not
10 doing an exam and you're in your office, is that on
11 Whitehorse Road or is that in a hospital?

12 A. I, I serve multiple locations. I go to a
13 children's shelter. I go to the Child Advocacy Center
14 and I go to the hospital. So I'm at three different
15 places during the week.

16 Q. All right. Well, on this particular case when you
17 said this was -- you did your exam on July the 9th;
18 correct? That was almost a month after the initial
19 allegations; correct?

20 A. Correct. I don't have that information about when
21 the allegations were made.

22 Q. Well, if the initial allegations were brought to
23 law enforcement's attention on June the 13, July the
24 9th was almost a month later; correct?

25 A. Right. Correct.

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1 Q. All right. And you say you obtain a history, and

2 I believe you mentioned a care giver; is that correct?

3 A. Right.

4 Q. In this case when you took this history, was there

5 someone present with this young person when the history

6 was taken?

7 A. Yes. That history was obtained from her case

8 worker from the Department of Social Services.

9 Q. All right. So that individual was present when

10 this young person was telling you what had allegedly

11 happened?

12 A. No, she was not.

13 Q. She was not?

14 A. No. I obtain a history first from the care taker,

15 as much as they're able to give, and then ask the care

16 taker to leave the room and obtain my history from the

17 patient by herself.

18 Q. Well, in this case did you gather any information

19 as to the allegations from the care taker?

20 A. I had received a copy of the police report, which

21 I reviewed.

22 Q. And when you say copy, -- I'm sorry, I didn't mean

23 to cut you off, doctor. Were you finished?

24 A. Yes.

25 Q. Oh, okay. When you say you received a copy of the

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1 police report, was that police report from Pickens

2 County, Easley or both?

3 A. Pickens County.

4 Q. All right. That would have been Ms. Burgess'

5 report?

6 A. Yes.

7 Q. All right. So you review that before you ever

8 start talking to the young person?

9 A. Right.

10 Q. And when you talk to the young person, and having

11 reviewed that, do you question them about what you have

12 reviewed?

13 A. No, I do not.

14 Q. Okay. How do you go about asking them those

15 questions?

16 A. I ask them open-ended questions. Those questions

17 are usually, has anyone ever hurt you or touched you in

18 a way that you didn't like before? And then they ---

19 Q. Okay. All right, ma'am. Now, in this case --

20 well, let's back up. These are difficult things to

21 talk about in the courtroom. I understand that. But

22 we've got to. And you're a doctor, obviously. I'm

23 not. The hymen, are all females born with a hymen?

24 A. Yes, they are.

25 Q. Okay. And you said that in eight-five percent of

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1 abuse cases, I believe; correct, that there were no
2 physical findings?

3 A. Correct.

4 Q. Now, but you say that in eighty -- are you telling
5 us, rather, in eighty-five percent of the cases where
6 there are allegations of full penal penetration, that
7 there are no indications or no physical findings as to
8 physical abuse?

9 A. Yes. Because they -- the -- first of all, there
10 have been studies looking at pregnant teenagers,
11 whether they have a smooth, uninterrupted hymen. So
12 there's obviously been penetration with no evidence of
13 interruption of the hymenal tissue. The hymenal
14 tissue, like any other tissue, can heal. So even if
15 there is an interruption, it can repair without signs
16 of scarring.

17 Q. Well, at some point in time, though, a female will
18 lose that hymenal tissue?

19 A. Not necessarily.

20 Q. Well, what percentage of women in the United
21 States who are adults and sexually active would have a
22 hymen?

23 A. I don't know those numbers.

24 Q. You would agree with me, would you not, doctor,
25 that it would be more the norm after full physical

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1 penal sexual intercourse, that the hymen would be

2 interrupted.

3 A. Not -- from my experience, not necessarily.

4 Q. Well, I understand not necessarily. I'm asking
5 more here for a number. In most instances, with full
6 penile penetration, there would be a disruption of the
7 hymen.

8 A. I don't know those numbers. I can't, I can't
9 answer that question.

10 Q. All right. Now, in this case you did not -- you
11 found this notch at four o'clock. Now, if a female
12 comes to you and you do an exam and there are no
13 allegations of sexual abuse, you could still find a
14 notch at four o'clock?

15 A. You could.

16 Q. Right. There are many things that could cause a
17 notch at four o'clock.

18 A. It would be some type of genital trauma.

19 Q. Yes, ma'am. And -- well, we'll come back to that.
20 But simply because there is a notch (in the hymen at
21 four o'clock does not mean there was sexual abuse?

22 A. Correct.

23 Q. Now, these trauma -- well, let me ask you this.

24 Again, these are difficult things to talk about. Had
25 this young person started her menstrual cycle?

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1 A. She had.

2 Q. Okay. And do you know what kind of female
3 products she used during her menstrual cycle?

4 A. No.

5 Q. Did you question her about it?

6 A. No.

7 Q. Improper, I guess is the word I'm looking at,
8 insertion of a tampon, could that notch four o'clock?

9 A. No.

10 Q. Could a sports injury notch four o'clock?

11 A. If there were an impalement of her vaginal area,
12 but not a, just a run-of-the-mill sports injury.

13 Q. And that impalement, would that be more likely for
14 somebody that played basketball or softball than
15 somebody that was not -- did not participate in
16 sports?

17 A. It would just depend on what the description of
18 the injury was, whether that would be consistent or
19 not.

20 Q. Now, as to the history you took, if I understood
21 you correctly, the young person told you certain
22 allegations about a motel. Is that correct?

23 A. Correct.

24 Q. But the only time frame she gave you on that was
25 before she moved to South Carolina?

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1 A. Right.

2 Q. Now, you have done both general children's
3 medicine and you have done forensic pediatric medicine;
4 right?

5 A. Correct.

6 Q. Have you, as part of your residency or your
7 medical training, have you worked with adults?

8 A. In medical school.

9 Q. Okay. And in your report, as I understand your
10 report, you were fairly adamant that there were genital
11 warts here?

12 A. I said there was suspected genital warts.

13 Q. Well, I think actually you said, they're
14 consistent with; did you not?

15 A. In one area I said consistent with. And then I
16 referred due to suspected condyloma acuminatum, which
17 is the medical term for genital warts.

18 Q. And genital warts is a fairly common problem in
19 our society now; is it not?

20 A. In adults it's a very common ---

21 Q. Yes, ma'am. And it's a diagnosis fairly obvious
22 when you see it; right?

23 A. What -- I'm not sure ---

24 Q. Well, when you see genital warts, you see genital
25 warts; right?

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1 A. Right. But there are other conditions that can be
2 confused with genital warts.

3 Q. Yes, ma'am. And in this case, you erred in that
4 diagnosis; didn't you?

5 A. I did. I don't think I erred in the diagnosis. I
6 wanted confirmatory diagnosis by a specialists in that
7 area.

8 Q. Did you notice any swelling or redness or anything
9 else of the vaginal area?

10 A. No, I did not.

11 Q. And what you found in this particular case, so I
12 understand the bottom line, is you found a notched
13 cleft in the hymen at four o'clock. And you found what
14 you believed to be genital warts?

15 A. Correct.

16 Q. How are genital warts -- how do you get them?

17 A. They can -- depending on the age, it can either be
18 acquired by birth or sexually transmitted.

19 Q. Is one more common than the other?

20 A. It just depends on the age of the child. In a
21 younger child, it would be much more common for it to
22 be transmitted perinatally than in an older child or
23 adolescent.

24 Q. In a child where there are allegations of child
25 sexual abuse, an error in genital warts or the

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1 diagnosis of genital warts would be a pretty big error;

2 wouldn't it?

3 A. If I had not referred her on for confirmatory.

4 Q. Yes, ma'am. By the way, is doctor -- what's her

5 name, his name? Who did you refer her to?

6 A. Dr. Benjie Mills.

7 Q. Is that doctor here today?

8 A. No.

9 MR. DEJONG: The witness is with you, Mr.

10 Robinson.

11 MR. ROBINSON: May it please the Court?

12 THE COURT: Yes, sir.

13 CROSS EXAMINATION

14 BY MR. ROBINSON:

15 Q. Doctor, do you read many books?

16 A. Yes.

17 Q. You do? Now, let me ask this as far as do you

18 read books that have like an opening and then they end;

19 is that right? They have like a conclusion in the end,

20 in the end of a book. Is that right?

21 A. Yes.

22 Q. Now, normally, when you open a book to read a

23 book, you start from the beginning and then you get to

24 the conclusion in the end. Isn't that how it usually

25 works?

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1 A. Yes.

2 Q. Is that true?

3 A. Yes.

4 Q. And your medical books that you've read, which it
5 sounds like you've had a -- at Louisville and at Wake
6 Forest, you would have chapters, a beginning chapter
7 and you have a conclusion based on those chapters;
8 right?

9 A. Yes.

10 Q. Is that right?

11 A. Yes.

12 Q. Okay. And wouldn't you agree, wouldn't you agree
13 in this case that this was kind of a flip-around a
14 little bit in terms of how this case proceeded because
15 you were given a conclusion in the beginning, and then
16 you went backwards after that to support the
17 conclusion. Isn't that true?

18 A. I disagree with you.

19 Q. Really? Okay. But initially, you got a
20 conclusion and then you went backwards to support that;
21 isn't that right?

22 A. Could you explain that further? I don't
23 understand.

24 Q. Well, you testified on cross examination with Mr.
25 DeJong that, that you accept at face value, and then

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1 you say you have to confirm sex abuse. Isn't that what

2 you said?

3 A. I take a history from my patient, and then I do my
4 medical evaluation.

5 Q. But, again, the conclusion to this, what you're
6 going to find in your opinion, is in the beginning.

7 That's your conclusion; right?

8 A. Well, in the history of any type of illness that
9 we see -- in the history of a headache, I take a
10 history about the headache that my patient has, and
11 then I do my medical evaluation accordingly. And it's
12 the same with this. I take the history from my
13 patient, and then do my medical evaluation accordingly.

14 Q. Well, ma'am, wouldn't you agree, though, that it's
15 better when you read a book as -- like in this case,
16 isn't it better to read the chapters and do the
17 examination first before you reach that conclusion?

18 A. No. Because I needed to know what type of medical
19 testing I needed to do during my evaluations. So I
20 needed to have the history of what had happened to my
21 patient.

22 Q. Okay. Thank you.

23 MR. ROBINSON: That's all I have.

24 THE COURT: Any redirect?

25 MR. RICHARDSON: None, Your Honor.

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1 MR. DEJONG: No objection to this witness
2 being excused, Your Honor.

3 THE COURT: Any objection?

4 MR. ROBINSON: No objection.

5 THE COURT: Without objection, this witness
6 may be excused. You may step down. Dr. Crosswell,
7 thank you.

8 MR. RICHARDSON: Your Honor, may we approach?

9 THE COURT: Yes, sir.

10 (WHEREUPON, Mr. Richardson, Mr. DeJong, and Mr.
11 Robinson approached the bar.)

12 THE COURT: Madam forelady, ladies and
13 gentlemen, we need to take care of a legal matter. I
14 don't think it will take very long. I'll certainly not
15 keep you tied up back there longer than we need to, but
16 we need to resolve this legal matter. If you'll go
17 back to your jury room and just take a break for a few
18 moments. We'll work through this. Don't discuss the
19 case while you're back there.

20 (WHEREUPON, the jury exited the open court at
21 approximately 11:46 a.m.)

22 THE COURT: All right. Solicitor.

23 MR. RICHARDSON: Your Honor, what I was --
24 we've just had a bench conference with Mr. DeJong and
25 Mr. Robinson present. I initially, at a separate

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1 conference, had stated a prior -- I could possibly get
2 in, through prior consistent statements, a report that
3 was made by the forensic analyst in this case. I did a
4 little bit of research.

5 MR. DEJONG: I'm -- Mr. Richardson, I can't
6 hear you. And I apologize.

7 MR. RICHARDSON: I'll stand back here. I did
8 a little bit of research on that. I would concede on
9 that, that based upon the cross examination of both
10 attorneys, that I do not think that that would fall
11 under that rule. So I'm withdrawing on that end. The
12 second end is Mr. Robinson opened the door, made the
13 argument and he opened the door, which would allow me
14 to get in the forensic report, the factual scenario,
15 the forensic report that was told to Ms. Galloway-
16 Williams. At this point in time, in the -- more in the
17 err of caution, I don't seek to necessarily do that and
18 bring in the entire report and put into evidence. What
19 I would seek to do is to have her state that she gave a
20 forensic interview, that the child told her the factual
21 scenario of what happened, where it happened and the
22 time it happened. And then go on -- I have other
23 testimony that would pertain more of her -- more as
24 kind of a blind expert, but that would be the gist of
25 it.

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1 Now, if the Court so wishes, we can proffer what
2 I'm going to do. However, I did not want, and the
3 reason I'm bringing this to the attention of everybody,
4 is I did not want us to send the jury out for three
5 hours when we weren't going to need that much proffer
6 testimony. I'll leave it up to the discretion of the
7 Court.

8 THE COURT: All right. Any objection to the
9 witness being called to testify with those limitations,
10 Mr. Robinson or Mr. DeJong.

11 MR. DEJONG: I do have an objection, Your
12 Honor. I think we're back to the very argument --
13 basically, what Mr. Richardson wants to do, as I
14 understand it, is a reporting function. If it's a
15 reporting -- if it's the reporting that he is trying to
16 get in, then it is my understanding under either the
17 rule, a statute or case law, and I don't have the
18 numbers on any of those for Your Honor, but that is
19 limited to time and place, possibly a third, but time
20 and place are the only two I can think of right now. I
21 don't have an objection as to that.

22 I do have an objection to him going into this
23 forensic interview business. For him to go into that,
24 I think it's still in a bolstering posture. Even
25 though she is not going to say, I presume, what the

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1 forensic interview was. Now, Mr. Richardson -- I think
2 he is abandoning the argument, but I want to touch on
3 that any way. Part of where that came in was on cross
4 examination of Detective Burgess. Well, that cross
5 examination with regard to Detective Burgess was for
6 the obtaining of the warrants. And with the obtaining
7 of the warrants, evidence is much different than it
8 would be actual physical, factual, whatever you want to
9 call it, evidence before a jury.

10 So simply because that was brought up as part of
11 the, as Detective Burgess said, for getting a warrant,
12 and she testified to that and said she reviewed it and
13 then she got the warrant. We stopped there.

14 But I think in terms of that, in terms of getting
15 the warrant for coming in here and this forensic
16 interviewer to say, yes, the alleged victim shared with
17 me what happened. Well, when you say, shared with me
18 what happened, obviously, Ms. Galloway-Williams didn't
19 poo-poo what she said. She agreed with it. She
20 believed it or we wouldn't be here today, in all
21 probability, or certainly not in a posture we're in
22 today, I would submit. So I would simply share with
23 the court that it's a back door way of bolstering the
24 victim's -- the alleged victim in this case, her
25 testimony, by letting Ms. Galloway-Williams testify to

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1 that.

2 I have no objection to the time and place element.

3 I have no objection if he wants to put it up for that
4 reason. The blind expert, I'm not going to stand here
5 and give Mr. Richardson carte blanche. I don't really
6 have a front-end objection. Certainly, there may be
7 objections as we go through it. But as to her
8 testifying to anything other than time and place, I
9 take exception to and I object to, Your Honor.

10 THE COURT: Tell me again, Mr. Richardson,
11 what other testimony you're seeking to elicit from Ms.
12 Galloway-Williams?

13 MR. RICHARDSON: Your Honor, I would have her
14 testify that she did an interview. I will have her
15 explain that it's a forensic interview and what a
16 forensic interview is. That was testified -- when they
17 got in, so into it about my officer not doing work, and
18 then she testified, yes, I based part of my opinion on
19 the forensic interview. At this point in time, now the
20 jury needs to hear what a forensic interview is. And I
21 have to seek to have Ms. Galloway explain it, explain
22 what she does. Tell if she did one on Complainant. And
23 that, in fact, told her facts, time and place and --
24 and I'm not seeking to put it into evidence, the actual
25 interview or the videotape.

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1 But certainly, at this point in time, because of
2 what they did, I have a right to explain that to the
3 jury. And there's nothing in the case, in the law,
4 statutory law -- the statutory law keeps the video out,
5 but there's nothing in there saying that I cannot bring
6 in testimony about there being an interview and time
7 and place. And since it -- she's a forensic examiner,
8 I think the jury needs to hear that. Judge, just for
9 the record, there's no hearsay. It's not hearsay.

10 THE COURT: You're not intending to offer Ms.
11 Galloway-Williams as an expert?

12 MR. RICHARDSON: I am, on other issues.

13 THE COURT: Well, what opinions do you
14 propose that she offer?

15 MR. RICHARDSON: I'm going to have her give
16 opinions as to -- well, let me think a second, Your
17 Honor.

18 THE COURT: In other words, I'm trying to --
19 the Douglas case ---

20 MR. RICHARDSON: I'm going to have -- she is
21 going to be discussing things such as delay in
22 reporting. Are we, are we segmenting this? Are we
23 talking about the same issue?

24 THE COURT: Well, I -- you know, based on the
25 Douglas decision, that I'm sure you both are familiar

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1 with, you know, there is the offering of an expert the
2 Court basically said didn't even need to be qualified
3 as an expert. The person could testify to their
4 observation and so forth. I ---

5 MR. RICHARDSON: She's going to be giving
6 expert testimony on other things.

7 THE COURT: On what things?

8 MR. RICHARDSON: Such as delay in reporting
9 and things of that nature.

10 THE COURT: Do you have an objection to that,
11 Mr. DeJong?

12 MR. DEJONG: I'm not really sure I
13 understand. He says that experts testify on things.
14 You asked him what things, and I didn't hear what he
15 ---

16 THE COURT: He said delayed reporting. For
17 instance, on her expertise on delayed reporting of
18 abuse. Do you have an objection to that?

19 MR. DEJONG: Specifically this case, or in
20 general?

21 MR. RICHARDSON: Both, both.

22 THE COURT: In general. We'll start with in
23 general.

24 MR. RICHARDSON: They kind of go hand-in-
25 hand.

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1 MR. DEJONG: Well, looking at Rule 702,
2 scientific, technical and other specialized
3 knowledgeable to assist the trier, -- well, I left out
4 the if. Let me start out. If scientific, technical,
5 or other specialized knowledge will assist the trier of
6 fact to understand the evidence, or to determine a fact
7 in issue, a witness qualified as an expert by
8 knowledge, skilled experience, training or education
9 may testify thereto in the form of opinion or
10 otherwise. I'm not sure what the fact in issue is, or
11 what will help the jury understand the evidence by her
12 testifying.

13 THE COURT: Well, certainly I have -- and
14 from what I've heard on the evidence, there's a dispute
15 as to when it was reported and why the delay and
16 whether she was intimidated or what was going on. Why
17 would you not think that could help a jury, to hear it
18 from an expert as to why sometimes children delay
19 reporting abuse?

20 MR. DEJONG: That probably ---

21 THE COURT: At least hear that person's
22 opinion.

23 MR. DEJONG: That probably, generally, I
24 would not have an objection. Yet -- Your Honor threw
25 one in, though, that threw me a little bit. He threw

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1 in the intimidation.

2 THE COURT: Well, I was just saying that was
3 a factual dispute. I think that I've heard from the
4 testimony, the witness said he was violent sometimes,
5 or whatever. And I don't know whether that -- this
6 witness is going to be testifying as to that as being a
7 criteria or not. But just those things in general.
8 I'm sure she can testify to those better than I can
9 speculate what her testimony would be.

10 MR. DEJONG: Well, in generally, she probably
11 can. Again, I'm not going to stand here and give her
12 carte blanche, but ---

13 THE COURT: I believe under 702, it would be
14 helpful for the jury to know the dynamics that has been
15 mentioned on these cases. Certainly, I think Mr.
16 Richardson is well aware that other than time and
17 place, we're not getting into anything that the victim
18 told her. You understand that, don't you, Solicitor?

19 MR. RICHARDSON: Yes, I -- in fact, I
20 conceded that.

21 THE COURT: And I just want to make sure Ms.
22 Galloway-Williams knows that too. Her testimony would
23 be limited to her expertise in the field, that this
24 person came to her, the child came to her,
25 substantiated the time and place and then that's her

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1 testimony.

2 MR. RICHARDSON: Okay.

3 MR. DEJONG: And with that ruling -- and
4 thank you, Your Honor, because I think that clarifies
5 it. We're not going to get into the forensic
6 interview.

7 THE COURT: Well, I believe the jury is
8 entitled to know a little bit about what she does, how
9 she came to be called upon, but not this interview.
10 Generally, you're talking ---

11 MR. DEJONG: Yes, sir. Generally, that she
12 generally does forensic interviews, ---

13 THE COURT: Right.

14 MR. DEJONG: -- but not that a forensic
15 interview was done in this case.

16 MR. RICHARDSON: Yes. Because that was what
17 was -- that's exactly the way they opened the door.

18 THE COURT: Well, I think -- isn't that
19 already in through Officer Burgess' testimony?

20 MR. RICHARDSON: Yeah.

21 MR. DEJONG: Well, if it's already in, then
22 at this point in time, there's nothing to show
23 otherwise. Then to go beyond what she said is only
24 bolstering her testimony, Your Honor.

25 THE COURT: That she did a forensic

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1 interview?

2 MR. DEJONG: No -- yeah.

3 THE COURT: Not the result of it, but that
4 she did an interview?

5 MR. DEJONG: Right. Detective Burgess
6 testified that she reviewed the forensic interview.

7 THE COURT: Okay.

8 MR. DEJONG: That's what she testified to.

9 THE COURT: I don't believe the statement
10 that she did a forensic interview in this case could be
11 that prejudicial to -- you're objecting to even that
12 she did one in this case?

13 MR. DEJONG: Yes, sir. And I think beyond
14 that, it's going to call for speculation on the part of
15 the jury when they start deliberating on this case. We
16 get into that there was a forensic interview done here,
17 and I think that speculation is highly prejudicial to
18 my client.

19 THE COURT: I'll allow her to testify that
20 she did an interview. But, again, you understand the
21 limitations of how much further she can go?

22 MR. RICHARDSON: Yes, sir. I concede that,
23 Judge.

24 MR. DEJONG: In light of that, Your Honor,
25 are you going to allow him to get into what a forensic

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1 interview is and what she does in a forensic interview?

2 THE COURT: Yes. I'll let her explain her
3 field of expertise.

4 MR. DEJONG: All right.

5 THE COURT: You can make your objections as
6 you feel necessary on her expertise or -- but I believe
7 the fact that she was involved in the case, I think the
8 jury is entitled to know, based upon what's been done
9 so far and the evidence that's been presented that
10 they're entitled to know why she did the interview,
11 time and place and the general nature of what she does
12 as an interviewer.

13 MR. DEJONG: She's your next witness?

14 MR. RICHARDSON: Yes.

15 MR. DEJONG: So that I don't have to object
16 again, and she is being the next witness, Your Honor,
17 for the record, with all due respect, I do object, take
18 exception with Your Honor's ruling, for the record. I
19 think since she is going to testify next I do not need
20 to object when she starts her testimony.

21 THE COURT: Again, for my purposes, you would
22 not need to again object. I presume that -- are you
23 objecting to her being qualified as an expert or to her
24 testimony?

25 MR. DEJONG: The part I am objecting to is

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1 any part of the forensic interview with regard to this
2 case.

3 THE COURT: All right. Mr. Richardson, you
4 understand that we're not getting into the details of
5 this forensic interview?

6 MR. RICHARDSON: Yes, sir.

7 THE COURT: Time and place only?

8 MR. RICHARDSON: Yes, sir.

9 THE COURT: I think it will be obvious that
10 the child was there, that she did an interview with the
11 child, is the reason she's here. So I'll -- your
12 objection is noted, Mr. Dejong.

13 MR. DEJONG: Thank you, Your Honor.

14 THE COURT: Are y'all ready to proceed with
15 that witness now or do y'all need a break.

16 MR. DEJONG: I'd like a little break if we
17 could, Your Honor.

18 THE COURT: That's what I thought. All
19 right. We'll take a five minute break.

20 (WHEREUPON, the court stood at recess for a short
21 break.)

22 THE COURT: All right. Is everybody ready to
23 proceed?

24 MR. RICHARDSON: The State's ready, Your
25 Honor.

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1 MR. DEJONG: Ready for the Defense, Your
2 Honor.

3 THE COURT: For the benefit of the record,
4 the ruling I previously made on Ms. Shauna Galloway-
5 Williams, based on the *Douglas* case that I mentioned
6 earlier, and along with the *Russell* analysis that our
7 Court has done of that, particular in the *Russell* -- or
8 the *Douglas* case, excuse me. All right. Let's have
9 our jury come in.

10 (WHEREUPON, the jury entered the open court at
11 approximately 12:25 p.m.)

12 THE COURT: Thank you very much, ladies and
13 gentlemen. I trust that the Clerk's been able to do
14 something about the temperature for you. We certainly
15 can try that. That's one thing that I don't have
16 control over. We'll see if we can't accommodate you
17 better on the temperature here.

18 Solicitor, you may call your next witness.

19 MR. RICHARDSON: Thank you, Your Honor. The
20 State would call Shauna Galloway-Williams.

21 MISTER CLERK: Place your left hand on the
22 bible and raise your right hand. Do you solemnly swear
23 or affirm the testimony you're about to give in this
24 case to be the truth, the whole truth and nothing but
25 the truth, so help you God?

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1 MS. GALLOWAY-WILLIAMS: I do.

2 MISTER CLERK: If you would have a seat and
3 state your name for the record.

4 MS. GALLOWAY-WILLIAMS: Shaune Galloway
5 Williams.

6 **SHAUNA GALLOWAY-WILLIAMS,**

7 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

8 **DIRECT EXAMINATION**

9 **BY MR. RICHARDSON:**

10 Q. Is it okay if I refer to you as Ms. Williams?

11 A. Ms. Galloway?

12 Q. Ms. Galloway, okay. Thank you. Ma'am, where are
13 you employed?

14 A. I am the Executive Director of the Greenville Rape
15 Crisis and Child Abuse Center.

16 Q. Okay. And as part of that employment, what are
17 your general duties?

18 A. Well, in addition to being the primary
19 administrator as Executive Director, I also hold
20 clinical responsibilities. I conduct forensic
21 interviews. I support the clinical staff, which are
22 the counselors and the other forensic interviewers and
23 assist with supervision with those staff members.

24 Q. Okay. And just in general, this agency you work
25 for, what is its purpose?

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1 A. Well, the mission of the Greenville Rape Crisis
2 and Child Abuse Center is to address the issues of
3 child abuse and sexual assault in both Greenville and
4 Pickens Counties, and we do that through prevention and
5 education, intervention, investigation and treatment.
6 We have three primary programs. One is the rape crisis
7 program. That's a twenty-four hour crisis intervention
8 service for anyone who's been impacted by interpersonal
9 violence. We also have a prevention education program
10 to address issues before they occur, offering parent
11 support and education groups and going into the schools
12 doing primary prevention and education. And then we
13 have a Children's Advocacy Center, and the primary
14 purpose of that is to assist in investigations and
15 treatment where there are allegations of physical
16 abuse, sexual abuse, neglect or all of those.

17 Q. Okay. And you state you're the Director of that
18 entity?

19 A. I'm the Executive Director, yes.

20 Q. Executive Director. How long have you been the
21 Executive Director?

22 A. I've been Executive Director for a little over a
23 year. I've been employed in some way or another,
24 either as a consultant or as a staff member for almost
25 six years.

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1 Q. Okay. Now, let me ask you about your formal
2 education. Can you tell the jury where you've been
3 educated and in what?

4 A. Well, I have a Bachelor's Degree in Psychology
5 from Winthrop University, and I have a Master's Degree
6 in Counseling from Clemson University. I'm also a
7 Licensed Professional Counselor in the State of South
8 Carolina.

9 Q. Okay. And have you had any training in the area
10 of child sexual abuse?

11 A. Yes. I've had extensive training in the area of
12 child sexual abuse, specifically in the area of
13 forensic interviewing and assessment of children, where
14 there may be allegations of sexual abuse. So I have
15 more than a hundred clinical hours or continuing
16 education hours in that area, specifically.

17 Q. Okay. And in part of your duties, do you do
18 interviews of children who have been -- where there's
19 been suspected sexual abuse?

20 A. Yes. I conduct interviews where there are
21 allegations of abuse or neglect.

22 Q. Okay. And how many of those have you done?

23 A. I've done more than six hundred forensic
24 interviews since I started conducting them.

25 Q. Have you ever testified in Courts of the State of

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1 South Carolina?

2 A. I have. I've testified eight times in General
3 Sessions. That's been in Greenville or Pickens County.
4 And more than twenty-five or thirty times in Family
5 Court, ---

6 Q. Okay.

7 A. -- both in Greenville and Pickens Counties.

8 Q. Okay. I'm sorry. I cut you off. And have you,
9 in those testimonies, have you been qualified as an
10 expert witness in the Courts of the State of South
11 Carolina?

12 A. Yes.

13 Q. Do you know how many times?

14 A. Well, each of those times that I testified, I've
15 been qualified.

16 Q. Okay.

17 MR. RICHARDSON: Your Honor, at this time, we
18 would move Ms. Williams -- excuse me -- Ms. Galloway to
19 be declared an expert as a Licensed Professional
20 Counselor in the area of sexually abused children,
21 specifically.

22 MR. DEJONG: No Voir Dire on behalf of Mr.
23 Sanders, Your Honor.

24 MR. ROBINSON: No Voir Dire.

25 THE COURT: All right. She will be qualified

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1 as an expert in the field.

2 Again, ladies and gentlemen, I've explained to you
3 about expert witnesses and their testimony. You may
4 proceed.

5 MR. RICHARDSON: Thank you, Your Honor.

6 Q. Now, Ms. Galloway, do you -- is there -- what's a
7 forensic interview?

8 A. Basically, a forensic interview is a fact-finding
9 interview that's conducted with a child. The purpose
10 of it is to gather information from children without
11 leading or suggesting them. It requires special
12 training. There are two nationally recognized training
13 protocols or methods of conducting forensic interviews
14 and I've been trained in both of those. Those methods
15 are research based and scientifically -- well, they're
16 considered scientific because they're researched based
17 and evidence based. But basically, we follow these
18 protocols and work to ask questions in a way that
19 doesn't lead or suggest to a child. Listen to, elicit
20 information as a fact-finder. And the interviews are
21 conducted at our center. They're videotaped. And
22 again, we follow very specific protocols or methods of
23 conducting those interviews.

24 Q. Okay. And did you have an occasion to interview
25 Complainant .?

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1 A. Yes.

2 Q. Can you tell the jury when that was?

3 A. I conducted interviews with Complainant, on June
4 24th, 2008 and July 7th, 2008.

5 Q. Okay. And did you, did you follow the protocols
6 in that interview?

7 A. I did. And the two protocols that I follow are
8 the National Children's Advocacy Center and Child
9 First. But I did follow those protocols when
10 interviewing her.

11 Q. Okay. And did she tell you what happened to her?

12 A. She provided detailed information to me.

13 MR. DEJONG: Your Honor, I'm going to object
14 to this. We're getting out of the field.

15 THE COURT: Limit your questioning to the
16 rules, if you would, Mr. Richardson.

17 MR. RICHARDSON: Yes, sir, Your Honor.

18 Q. Now, Ms. Galloway, did she, in the interview, tell
19 you where the incident happened?

20 A. Yes.

21 Q. And where was that?

22 A. She named two incident locations.

23 Q. Okay.

24 A. The Comfort Inn in Easley and the residence where
25 she was living with her mother and Mr. Sanders.

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1 Q. Okay. And did she tell you a time that that took
2 place, those incidents?

3 A. Yes.

4 Q. And when was that?

5 A. 2005 and 2008.

6 Q. Okay. And in your interview with her, do you look
7 for factors that involve bolstering or leading or
8 anything of that nature?

9 MR. DEJONG: Your Honor, again, I object. I
10 hate to keep objecting.

11 THE COURT: And I sustain the objection ---

12 MR. DEJONG: Thank you.

13 THE COURT: -- to the way the question was
14 asked.

15 Q. Well, is part of forensic interviews, is it for
16 you to ascertain if children are being coached or
17 prompted?

18 A. Well, there are some things that we look for when
19 we're conducting a forensic interview. First, the
20 first thing that we do whenever we conduct forensic
21 interviews, is gather background information, and
22 that's part of what we have to use when we are looking
23 to see if the child has been coached or bolstered. So
24 we got our background information from the referral
25 sources that send them to our center. That's usually

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1 DSS or law enforcement. And then we also gather
2 background information from whoever it is that's
3 brought them to the appointment, their primary care
4 giver. And then with older children, we also gather
5 background information from them. And as part of the
6 protocol, we meet with the child first and gather a
7 rapport, which means that we're just asking the child
8 general questions about who they live with, where they
9 go to school, what they like to do? And while I'm
10 doing that, I'm assessing how they communicate, how
11 they answer questions. Do they give me a lot of
12 details, a few details? And then moving from that, we
13 go into more specifics and ask the child, you know,
14 maybe why they're there to talk to me. And during that
15 questioning, of course, using open-ended questions as
16 much as possible, and as part of that asking them
17 questions about, you know, factors that may have
18 influenced why they told or didn't tell, why they would
19 have waited to tell at a certain point. And so part of
20 that is related to assessing, any bolstering or
21 coaching or sort of if there's any agenda behind the
22 statement that's being made or the allegations that's
23 been made.

24 Q. Now, did you have a contact with Detective Burgess
25 regarding Complainant in your interview with her?

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1 A. Yes.

2 Q. Okay. And did you send her anything?

3 A. She got a copy of the report.

4 Q. Now, I want to ask you a little bit about delay in
5 disclosure by children who have been sexually abused.

6 Is there -- is it common for a child to fail to

7 disclose immediately upon the abuse?

8 A. Yes. It's very -- more common for a child to
9 delay disclosure than to tell right away. In a lot of

10 cases, a lot of the research that's been done, if you

11 talk to adults who may never have disclosed as

12 children, and the numbers can be as high as, you know,

13 thirty percent, never disclose as children. And so

14 what we look at is factors that would influence that.

15 You know, why would a child delay disclosure? And

16 there are a lot of factors that contribute to that.

17 Q. Can you tell the jury some of those factors?

18 A. Sure. In most cases of child abuse, whether it's

19 physical abuse or sexual abuse, the child's being

20 abused by someone that they know, they love, and they

21 trust. And that makes it extremely difficult for a

22 child to disclose or to tell that something's happened

23 to them. The fact that a child is being abused or may

24 be abused by an adult, just in and of itself, is sort

25 of threatening, because children are told to do what

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1 adults tell them to do. We raise our children to do
2 what adults tell them to do. And they trust that
3 whatever it is we're having them do or what we're doing
4 with them is safe and okay. And so just the fact that
5 they are a child and this is happening with an adult
6 can impair their ability to disclose right away. Some
7 children don't know that what's going on is wrong. You
8 know, particularly with younger children, if they're
9 being abused or something's being done to them and they
10 have no frame of reference for that, they've never had
11 any experience with sexual activity or anything like
12 that, they may not really know that that's not okay.
13 And so if you add that to the fact that it's being done
14 by someone that they know and they love and they trust,
15 and this person's an adult, then that can contribute to
16 delayed disclosure. Threats can be a reason for
17 delayed disclosure. And threats can be both direct and
18 indirect. Again, just being an adult, in that child's
19 world, can be threatening. An adult doesn't
20 necessarily have to say something to a child to be
21 threatening. A child may have seen an adult do
22 something to someone else, or behaved in a certain way
23 that makes that adult scary or threatening to them.
24 Threats may be direct. I mean, a child may be told, if
25 you tell this, that something's going to happen to you,

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1 or something's going to happen to someone that you
2 love, or something's going to happen to me. And those
3 can be seen as threats. A lot of times, too, with
4 older children or the older a child is, the more aware
5 they become of the ramifications for them telling. So,
6 for instance, a child who is a little bit older, maybe
7 an early teen or tween or a teenager, may realize the
8 impact of what's going to happen if they tell. They
9 may, you know, know that if I tell this person might go
10 to jail. Or if I tell, my mom might be unhappy because
11 my mom loves this person. Or we may suffer financially
12 if the primary breadwinner in this, you know, in our
13 household has to leave. Or I may be taken from my
14 home. And the older the child is, the more likely they
15 are to know that that's what happens in these type of
16 scenarios, and so that may impact whether a child
17 discloses or not. There are a lot of reasons for
18 delayed disclosure. And more times than not, children
19 are not telling right after it occurs.

20 Q. Well, let me ask you a hypothetical. If a child
21 visually sees violence by the perpetrator, even upon
22 another person, would that be a factor?

23 A. That could impact. That's one of those sort of
24 indirect threats. You know, if a child sees that this
25 person has hurt someone else, and then they're doing

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1 something to them, then they may fear that that could
2 happen to them.

3 Q. Okay. Have you, in your experience, seen
4 situations where children have disclosed and nothing's
5 done and they don't disclose after that?

6 A. Let me make sure I understand the question. Where
7 a child has disclosed?

8 Q. Yes. Has disclosed to an adult and nothing's been
9 done. Have you ever seen that type of situation?

10 A. Yes.

11 MR. ROBINSON: Your Honor, I'm going to
12 object. That calls for speculation, and it's outside
13 the -- what the parameters ---

14 THE COURT: I'll overrule your objection. I
15 think there should be -- if she can answer the
16 question, I'll allow her to answer it.

17 A. Yes. I've seen cases where a child's disclosed
18 and there's been no -- nothing's been done about it,
19 initially.

20 Q. Okay.

21 A. Obviously, if the case comes to me then at some
22 point something's been done.

23 Q. Sure.

24 A. But maybe initially -- or there was not something
25 else done about it.

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1 Q. It's part of the history that you obtain?

2 A. Correct.

3 Q. Okay. And would that be a factor in failing to
4 further disclose?

5 A. Yes. The response that a child receives when
6 they disclose can significantly impact what happens
7 next, whether they would disclose again or whether they
8 would, you know, tell someone else. That's really one
9 of the keys to, you know, if a child has a negative
10 response to their disclosure, there is a higher
11 likelihood that they may not disclose again or that
12 they may retract or change their statement, something
13 to that effect.

14 Q. Okay. Now, is it or is it not common for children
15 who have been sexually abused to recant their
16 statement?

17 A. In the research that's been done, the estimate's
18 that about twenty to twenty-two percent of children who
19 do disclose abuse recant their statements.

20 Q. Okay. And in your experience, have you personally
21 witnessed that?

22 A. I have.

23 Q. Okay. And what are reasons behind a child doing
24 that?

25 A. Some of those reasons are the same as the reasons

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1 why a child wouldn't disclose in the first place. You
2 know, the relationship that they had to the person that
3 has done this can have a significant impact. The
4 response that they had when they tell. If a child
5 discloses abuse and they have a negative response, and
6 what I mean by that is, if they're not believed and not
7 supported, particularly if it's their primary care
8 giver that's not supporting them. So, for example, if
9 a child discloses and the person that they're
10 disclosing the abuse about is one of the primary care
11 givers, if the other primary care giver is not
12 supporting, believing them, then that's a risk factor
13 for recantation. And when we're doing our interviews
14 and when we're gathering history, we're looking at
15 those kind of things. We're looking to see if there
16 are any risk factors or indicators that might make this
17 child or put this child at risk for recantation.
18 Again, with the response, you know, if the child
19 discloses and nothing happens at all, that puts them at
20 high risk for recantation. There can be direct
21 influences. You know, if someone actually tells this
22 child, you know, if you tell this that this is going to
23 happen, that can influence a child and make them want
24 to retract their statement. If they actually see what
25 happens, you know, sometimes in cases children are

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1 removed from their homes, or these things that they
2 feared would happen really do happen. You know, they
3 lose their financial support, they lose their place to
4 live, and those things can impact whether a child
5 recants, that they just want things to go back to
6 normal, and so they take that statement back. One of
7 the other things that they -- the research shows us, is
8 that there can even been a media influence around
9 whether a child recants or not. So if there's a lot of
10 attention paid to this case or if it's a high profile
11 sort of case where a lot of people are aware of what's
12 going on, that puts a child at higher risk of
13 recantation, as well. And all of those things, again,
14 are a part of the research that's been done around how
15 children disclose and the dynamics of sexual abuse.
16 Q. Okay. How about the threat that the perpetrator
17 is going to go to jail?
18 A. Yes. Again, that's one of those that would be
19 included in those threats. You know, either the
20 perpetrator is going to go to jail or, you know --
21 which the other threat might be that the child's going
22 to get in trouble, you know, that they're going to
23 experience some sort of harm or that someone's going to
24 be in trouble. And kids don't like to be in trouble.
25 And don't like for other people to get in trouble

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1 either.

2 MR. RICHARDSON: I beg the court's
3 indulgence.

4 THE COURT: Yes, sir.

5 Q. Thank you, Ms. Galloway. Would you please answer
6 any questions Defense Counsel has for you.

7 THE COURT: Mr. DeJong, you may cross examine
8 the witness.

9 MR. DEJONG: Thank you, Your Honor. May it
10 please the Court?

11 CROSS EXAMINATION

12 BY MR. DEJONG:

13 Q. So you have worked in what you call the area of
14 child abuse for how many years?

15 A. I've been working with children and adolescents as
16 a counselor for nine years. And during that time my
17 specialization has been in working with children who
18 have been abused, primarily sexually abused.

19 Q. And this organization that you are the Executive
20 Director of, is the Greenville Rape Crisis Child Abuse
21 Center.

22 A. The Greenville Rape Crisis and Child Abuse Center.

23 Q. I got it right.

24 A. Big name.

25 Q. And as a branch of that is the Child Advocacy

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1 Center; right?

2 A. That's one of our programs under the umbrella.

3 Q. And that is tied in with the, that part of your
4 title or your organization's title that goes as to
5 child abuse, right?

6 A. Correct. That's specifically services for
7 children.

8 Q. So your organization is an advocate for children?

9 A. Well, the Children's Advocacy Center has that in
10 its name. However, the model that we follow is one
11 where we are sort of a neutral liaison to the
12 investigation of abuse allegations, meaning that we are
13 part of that multi-disciplinary team that includes law
14 enforcement, DSS, in investigating cases.

15 Q. Yes, ma'am. And that would be agencies from which
16 allegations would have initially been made, basically;
17 right?

18 A. Yeah. Generally, our referrals come from law
19 enforcement or DSS when an allegation has been made.

20 Q. Yes, ma'am. So you never -- and I'm speaking
21 generally now, okay? You're never really looking at a
22 case cold when it walks in your door?

23 A. Can you explain that a little bit?

24 Q. Sure. You gather information from DSS if it's a
25 DSS case and/or from the law enforcement agencies that

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1 are involved; correct, before you ever see the young
2 person who made any allegations; right?

3 A. Right. We receive referral information to gather
4 history.

5 Q. And so there is -- in looking at that, there is
6 some notion -- well, it's more than a notion. The
7 allegations are glaringly before you, before you ever
8 speak to the young person; right?

9 A. The allegations are there.

10 Q. Yes, ma'am.

11 A. But we've not formulated a conclusion or rendered
12 an opinion at that point.

13 Q. Now, just one question as to what you say was your
14 interview with the -- Complainant, in this case. You said
15 she indicated abuse in 2005 and 2008; correct?

16 A. Those are years she specified, yes.

17 Q. And that was it. No months, no dates, no nothing?

18 A. Not months or dates, but events or time frames
19 that would connect to other months or dates. When
20 children disclose time frames, they don't always tell
21 me the exact date or time, but they might be able to
22 tell me, well, this was at the beginning of the school
23 year, this time when I was this age. So there were
24 those kind of indicators.

25 Q. Well, I've got to now ask you one more question,

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1 okay. A specific question. How old was Complainant when
2 you talked to her?

3 A. When I met with her, she was twelve.

4 Q. All right. Now, as part of gathering your
5 information, you said you talked sometimes to the
6 person making the allegations; right? You have the
7 background information from whoever's making the
8 allegation?

9 A. I get the background information from the referral
10 source ---

11 Q. Right.

12 A. -- which in this case was DSS and law enforcement.
13 And then I also get background information from the
14 primary care giver and that's whoever brings the child
15 to the appointment. So sometimes the primary care
16 giver is an alternate care giver if the child's been
17 removed from the home. It sometimes may be a DSS
18 worker, a foster parent. Again, whoever it is that
19 brings them to that appointment that date.

20 Q. But did you get any background information on this
21 case directly from Complainant?

22 A. Yes.

23 Q. Okay. And from DSS and from law enforcement?

24 A. Yes.

25 Q. One or two law enforcement agencies?

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1 A. There were two law enforcement agencies involved.

2 Q. All right. Now, let's go back to general here.

3 Not every allegation of sexual abuse is true; is it?

4 A. Right.

5 Q. And indeed the research that you have indicated,

6 there has been research as to false allegations;

7 haven't there?

8 A. There is research into false allegations. The

9 research shows that somewhere between one and four

10 percent of abuse allegations turn out to be fabricated,

11 completely fabricated.

12 Q. And an allegation of sexual abuse is a serious

13 allegation; is it not?

14 A. Yes, it is. For both parties involved.

15 Q. Yes, ma'am, absolutely. Now, this failure to

16 disclose, you talk about relationships. I think that

17 was the first one you mentioned?

18 A. Right.

19 Q. And you talked about relationship with someone

20 that they maybe loved or whatever, that there may be a

21 failure to disclose. Would it make a difference, based

22 on your experience, whether the child or the young

23 person who lived with that person on a daily basis or

24 lived elsewhere, didn't disclose? That question was

25 not clear at all.

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1 A. So would it make a difference whether the child
2 lived in the same household or not?

3 Q. Yes, ma'am. That's basically what I'm asking.

4 A. Not necessarily, because it's really more about
5 the relationship. You know, if we're gong to -- if --
6 a child can have a very loving, trusting relationship
7 with a school teacher or some church member or a family
8 friend, and that could be as close a bond or closer
9 than someone they live in the household with.

10 Q. You would agree with me, wouldn't you, Ms.
11 Galloway-Williams, that relationships take a while to
12 develop?

13 A. Relationships, they can take a while to develop,
14 yes.

15 Q. Okay. Well, given a young person that has never
16 met someone -- a hypothetical. A young person that has
17 never met someone who says -- would allege on the first
18 meeting that that person abused her, it would be pretty
19 hard to stretch that into a relationship for a failure
20 to report; wouldn't it?

21 A. That's not the only reason why children don't
22 report.

23 Q. I understand.

24 A. That could be one of the reasons why children
25 don't report.

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1 Q. Yes, ma'am. I understand. I'm talking about
2 relationships now, okay? That would be almost
3 impossible for somebody to have a relationship; would
4 it not?

5 A. Well, we also have to look at the other
6 relationships that that person has with the child, and
7 in their world. So, you know, why was the child even
8 with this person to begin with? How did that
9 relationship connect? So it's not just the one
10 relationship. So, you know, if, for instance, this
11 child was introduced to this person through their mom,
12 and this is a friend of mom's, then we have to look at
13 that piece of it, too. Nothing that we -- none of my
14 conclusions or my opinions when we're dealing with
15 these cases, look at just one piece. There's all these
16 other pieces to the puzzle.

17 Q. And you would have to agree with me, out of the
18 six hundred interviews that you say you've done, there
19 ain't no two kids just alike; are they?

20 A. Oh, no. There are no two of us walking the planet
21 right now that are just alike.

22 Q. And in one sense, let's take worldly knowledge out
23 of the equation for the moment, when it comes to
24 emotions and all of that, kids are basically little
25 adults; aren't they?

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1 A. I don't know that I would say that.

2 Q. Well, let's narrow it down a little bit more.

3 Kids lie?

4 A. Everybody lies, kids and adults.

5 Q. Yes, ma'am. They do.

6 A. Kids are not sophisticated liars, though.

7 Q. But everybody lies, including children?

8 A. Oh, yeah. Children can lie and adults lie.

9 Generally, children lie to get themselves out of
10 trouble. Adults do that, too.

11 Q. And research has indicated that they will lie on
12 sexual abuse allegations?

13 A. Research has shown that children can provide false
14 information. The statistics are actually higher for
15 children to deny abuse when abuse has actually
16 occurred, which could be seen as a lie as well.

17 Statistically, it's higher incidents that a child's
18 going to deny abuse allegation where there might be
19 some evidence that it's occurred. And the incidence of
20 it being a purely fabricated allegation are much lower.

21 Q. Well, one of the factors you said for non-delay --
22 or for delaying is that a child may not feel like
23 they're believed, if I recall that correctly, something
24 along those lines?

25 A. Right.

1 Q. So that becomes an issue with the child; right?

2 A. A lot of times children feel like just because
3 they're a child that nobody is going to believe them.
4 I've even had children come and sit in interviews and
5 tell me that, I didn't tell because I'm a kid. Nobody
6 believes kids.

7 Q. So then part of your job at the Child Advocacy
8 Center or the Child Abuse Center, or whatever, is to
9 believe these children; right?

10 A. No, it's not my job to believe them. It's my job
11 to conduct an investigative interview, to gather
12 information, and to render an opinion based on the
13 information that's been shared with me.

14 Q. Well, let's talk a little bit about recanting. I
15 believe you said that some twenty to twenty-two percent
16 recant, take back their stories, say I lied, whatever?

17 A. Right.

18 Q. Okay. Now, we can't say that all of that twenty
19 to twenty-two percent lied when they recanted; can we?

20 A. We can't necessarily say that. But on the flip
21 side of those twenty-two percent, a good many of those
22 then go back to their original statements.

23 Q. Yes, ma'am.

24 A. And then reevaluating those recantations, you're
25 looking at those factors that I listed that may

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1 influence a recantation. And that then becomes part of
2 their investigation again.

3 Q. Sure. And one reason you -- well, you said
4 basically the reasons for recanting are basically the
5 same factors that you look at for non-disclosure;
6 right?

7 A. Pressure from the perpetrator, pressure from the
8 care givers, pressure from the community, the actual
9 ---

10 Q. So what you're looking at in those factors is to
11 say although this young person recanted, we're not
12 going to believe it because of these factors?

13 A. Well, it's the same, it's the same process that we
14 go through when we're evaluating their initial
15 statement. What are the facts that they've given me?
16 How much information do I have about this? And so
17 you're still evaluating, you know, which pieces of this
18 make sense and what makes it more an internally
19 coherent story or statement. So the child's already
20 given, given me, with great detail, multiple incidents
21 of abuse naming locations and dates and times and how,
22 you know, their experience of that, their contextual
23 factors related to that, and then they retract some
24 piece of that, or say that didn't happen, then we have
25 to go in and look at that and evaluate that again. You

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1 can't be just quick to say that when a child recants
2 that -- take that for face value in the same way that
3 we wouldn't take an allegation just at face value.

4 Q. But you -- the point of that is some kids recant
5 because they lied to begin with.

6 A. And those might be the ones that lie in that one
7 to four percent of fabrication as well. There are some
8 who recant their statements. There are also varying
9 degrees of recantation.

10 Q. Sure. I understand that. But now hypothetically,
11 let's -- given a young person who initially lies about
12 the allegation because they want something, they get
13 what they want, and then recant. Are we saying now
14 we've got to look at all of these factors?

15 A. We are still looking at those factors. I mean,
16 you're looking at -- from the initial allegation,
17 you're looking at what would be -- you're always
18 evaluating, where did this allegation originate? And
19 we do look at are there some reasons why this child
20 would make this statement if it weren't true? And are
21 there reasons why this child would make this statement
22 if it is true? So you're still evaluating it in the
23 same way.

24 Q. But there's no way to get into that child's mind;
25 is there?

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1 A. No way to get into any of our minds, adult or
2 child, ---

3 Q. Exactly right.

4 A. -- to know exactly what's going on.

5 Q. None of us have a built-in polygraph, do we, Ms.
6 Galloway-Williams?

7 A. We sure don't.

8 Q. And the best way -- you can testify generally with
9 regard to children, but each case is case specific?

10 A. Each case is case specific. But, again, the
11 protocols that we use, the methods that I utilize and
12 that the Center uses, are research based and evidence
13 based. And so although each child's experience is
14 different, based on the research there are certain
15 things that we can see that are consistent over time,
16 and so that's what we base what we do on. It's not
17 just going into it blindly and making assumptions.
18 There's really a method to why we do what we do, and
19 how we do it.

20 Q. Children have a conscience; don't they, generally?

21 A. At some age they do learn right from wrong.

22 Q. And you said one of the reasons for not reporting
23 was fear that something may happen to a loved one or
24 something like that; right?

25 A. Correct.

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1 Q. All right. Then we get to the recanting part.

2 And you lost me there a little bit. How does that
3 weigh into recanting, the fear of what may happen to
4 somebody?

5 A. In the same way. That either the perpetrator or
6 another family member may put pressure on the child and
7 say, if you continue with this, then something's going
8 to happen to me or someone else that we love. I'm
9 going to go to jail. You're never going to see me
10 again. We're going to lose our house. Your siblings
11 are going to grow up without me. I mean, again,
12 hypothetical scenarios, but those are the kind of
13 things that I hear all the time.

14 Q. Well, hypothetically, if a young person was told
15 -- not by you, by somebody else -- if you recant, you
16 are going to jail, and they recant anyway, make a
17 difference?

18 A. Again, that would -- you know, we have to look at
19 that, along with all the other pieces of the puzzle.
20 But it certainly would be something that we'd look at.

21 Q. It would have an impact; wouldn't it?

22 A. If a child was told that they would go to jail if
23 they recanted? It could certainly impact that. But
24 we'd also want to look at all the other pieces related
25 to that, as well.

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1 Q. Now, unlike adults, when it comes to children,
2 children are not as aware of the consequences of their
3 actions as an adult might be? And I'm putting that
4 specifically in the arena of sexual abuse.

5 A. Can you explain to me what you're ---

6 Q. Sure. A young person making allegations of sexual
7 abuse may not have a very good understanding of the
8 consequences that can result because of their
9 allegations?

10 A. They may not have an understanding of that.

11 Q. Right.

12 A. They might, though. And, again, that would be
13 dependent on their age and their experience level.

14 Q. And I guess about everything is possible if we
15 want to get out of that, but we're not talking about
16 the grandiose possibilities. As a general rule,
17 children do not have the ability to understanding the
18 consequences of their actions.

19 A. Oh, no. They have the ability to understand the
20 consequences of their actions. They may not understand
21 all the specifics of what will happen if they make a
22 disclosure of sexual abuse. And the reality of cases
23 with sexual abuse with children are that a lot of times
24 they're not even purposeful disclosures. They're
25 accidental disclosures or disclosures where they may

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1 not have even intended to tell someone what was
2 happening. So they may not have put enough forethought
3 into it to know what the consequence was.

4 Q. I understand. What I'm asking you, a child makes
5 an allegation of sexual abuse -- I'll use your words --
6 they may not be aware or consider all of the specifics
7 of their actions; correct?

8 A. When they make an allegation of sexual abuse, they
9 may not be thinking about what's going to happen to
10 everyone else involved. It -- perhaps they are making
11 the allegation of abuse because they want it to stop.

12 Q. Or maybe because they want to move someplace?

13 A. That -- I'd say that that is a possibility in the
14 realm of possibilities. But I would venture to say
15 that most children, if they're going to -- if they want
16 to move someplace, or they want something else to
17 happen, it's probably less likely that they're going to
18 tell someone that they've been having a sexual
19 relationship with someone that they love and trust, to
20 be able to get that. You know, I -- when we talk about
21 children and how much planning and forethought or how
22 much they can anticipate the consequences of their
23 actions or creating lies, when I talk about
24 sophisticated liars and how they're not really
25 sophisticated liars, that's what I mean by that. You

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1 know, the chances of a child deciding that that's what

2 they want to do, that's pretty low on the --

3 statistically low the number of kids that are going to

4 use that to get something that they want.

5 Q. So basically what you're saying, we're always

6 smarter than kids?

7 A. Oh, no. I'm not saying we're always smarter than

8 kids.

9 Q. Can you agree with me that children can be

10 manipulative?

11 A. Children and adults are manipulative, yes.

12 Q. Yes, ma'am. And I realize you say children and

13 adults. I understand about adults. I'm talking about

14 children now. Children can be manipulative?

15 A. Children can be manipulative.

16 Q. Children know how to play off one parent against

17 another parent?

18 A. They can learn to do that.

19 Q. Yes, ma'am. Children by and large do not like

20 discipline; do they?

21 A. Most children would prefer not -- well,

22 realistically, children do need structure. But if you

23 ask a child if they want to be disciplined, no. Most

24 kids don't want ---

25 Q. I'm sorry. I didn't mean to cut you off. As

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1 adults, we know they need structure?

2 A. Right.

3 Q. And we know they need discipline?

4 A. Right.

5 Q. But if you start disciplining a child, they become
6 angry many times?

7 A. Yes. They may not want that consequence or that
8 punishment.

9 Q. Right. Exactly. And they can become angry at the
10 people who are disciplining them?

11 A. Yes.

12 MR. DEJONG: The witness is with you, Mr.
13 Robinson.

14 MR. ROBINSON: May it please the Court?

15 THE COURT: You may cross examine the
16 witness.

17 **CROSS EXAMINATION**

18 **BY MR. ROBINSON:**

19 Q. Ma'am, at the outset when you were being examined
20 by Mr. Richardson, you said that you had testified
21 eight times in General Sessions and twenty-five times
22 in Family Court?

23 A. Yes.

24 Q. And in General Sessions Court you testified for
25 the State each time; isn't that correct?

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1 A. I testified -- I was subpoenaed by the State in
2 each of those cases.

3 Q. The State -- but you testified for the State in
4 those cases; correct?

5 A. That's who subpoenaed me, yes.

6 Q. The State being, the State being Mr. Richardson
7 and this people on this side of the table; correct,
8 each time ---

9 A. That's who subpoenaed me, yes.

10 Q. And you were paid by the State as well; isn't that
11 correct?

12 A. Oh, no.

13 Q. No?

14 A. No, no, no. I'm paid by the Greenville Rape
15 Crisis and Child Abuse Center, and we don't receive any
16 funding from the State. If you're referring to the
17 State as the Solicitor's office, we don't receive any
18 funding from that office.

19 Q. So those eight times you testified for the State
20 in General Sessions Court, you testified as well -- you
21 testified twenty-five times, you were qualified as an
22 expert in Family Court. Isn't that right?

23 A. Yes.

24 Q. And in Family Court you were testifying on behalf
25 of DSS; isn't that right?

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1 A. I've been subpoenaed by DSS, but I've also been
2 subpoenaed by other -- others in cases. You know,
3 whoever subpoenas me is who I appear for.

4 Q. Right. Okay. So out of the twenty-five that you
5 testified in Family Court as an expert, how many would
6 you say you -- what's the percentage you've testified
7 for DSS?

8 A. The majority of those would have been cases where
9 I was subpoenaed by DSS.

10 Q. Okay. So the majority of the cases that you've
11 testified in as an expert have been for the State for
12 eight, eight -- all your General Sessions cases have
13 been for the State; correct?

14 A. Yes.

15 Q. And probably ninety percent, maybe, would have
16 been for the DSS in your Family Court cases?

17 A. I'd say probably ninety percent.

18 Q. About ninety percent, okay. And in this case --
19 this case was referred to you by DSS or the Sheriff's
20 Office; correct?

21 A. Right. That's where most of our referrals come
22 from.

23 Q. Okay. That's all the questions I have for you.

24 THE COURT: Any redirect?

25 MR. RICHARDSON: Briefly, Your Honor.

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REDIRECT EXAMINATION2 **BY MR. RICHARDSON:**

3 Q. Ms. Galloway, Mr. DeJong referred to relationships
4 and failure to disclose. What if a mother overtly
5 shows physical or loving connotations in front of the
6 child to the perpetrator, would that have any type of
7 effect on the child's likelihood to disclose?

8 A. That's what I was referring to as far as the
9 perpetrator's relationship to the primary care giver.
10 That can certainly have an influence on that. You
11 know, if the child sees that the person that's doing
12 this to them is someone that someone else that they
13 love is involved with, then that can impact whether
14 they're going to disclose or not. You know, I've had
15 children tell me that they didn't tell because they
16 didn't want to make their mom or dad unhappy. You
17 know, they knew that they were happy with this other
18 person.

19 Q. Okay. And the age of the child, a nine year old
20 child, would that have any effect on disclosure?

21 A. The age of the child and whether or not they would
22 disclose, or ---

23 Q. Yes.

24 A. -- delayed disclosure or ---

25 Q. Yes. Delayed disclosure?

1 A. Yes. The age of the child can impact that. Most
2 times with younger children, we're seeing accidental
3 disclosures anyway. And a lot of times that's because
4 children don't know that what's happening to them is
5 not okay, and they don't feel like they can tell
6 anyone. And so a lot of times we're seeing disclosures
7 with older children. You know, nine year olds, ten
8 year olds, eleven year olds, where they are starting to
9 have some knowledge and understanding about their
10 bodies and that's about the time when children are
11 starting to learn about touching and inappropriate
12 touching and so they might have more of an awareness
13 that something that's happened to them was not okay.

14 Q. Okay. Thank you.

15 MR. RICHARDSON: That's all the questions, I
16 have.

17 THE COURT: Thank you, Ms. Galloway-Williams.
18 You may step down.

19 MR. DEJONG: No objection to her being
20 excused, Your Honor.

21 THE COURT: Madam forelady, ladies and
22 gentlemen, this will be a good time for us to take a
23 lunch break. I'll ask you if you would to remember the
24 instructions I've given you before, not to discuss the
25 case with each other, with anyone else, during the

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1 course of your lunch. If you'll be back at two-thirty,
2 we'll be ready to start the case back at that time.

3 (Whereupon, the jury exited the open court at
4 approximately 1:14 p.m.)

5 THE COURT: All right. For planning
6 purposes, we might want to be back a little early, two-
7 twenty or so. If there's motions, we might can get
8 those taken care of before then. And we'll have the
9 jury be ready for testimony by about two-thirty. If
10 y'all could maybe be back about two-twenty. Have a
11 good lunch.

12 MR. DEJONG: Thank you, Your Honor.

13 (Whereupon, the court stood at recess for a lunch
14 break.)

15 THE COURT: Are there any other witnesses of
16 the State in the case to present?

17 MR. RICHARDSON: There are none. No more,
18 Your Honor.

19 THE COURT: Okay. So you'll be resting when
20 the jury comes back? Are there any motions from the
21 defense, rather than have them rest and send the jury
22 back out, I'll just take those now, if there are any.

23 MR. DEJONG: On behalf of Mr. Sanders, Your
24 Honor, at this point in time, I would move for a
25 Directed Verdict in this case. Taking a -- taking the

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1 case that has been presented by the State in a light
2 most favorable to the State, which obviously must be
3 done on a Motion for a Directed Verdict, I would
4 submit, Your Honor, that there is no evidence in this
5 case from which a jury could find a verdict of guilt.
6 If a verdict of guilt was found, based on what has been
7 presented in this courtroom today, I would submit to
8 the Court that it would have to be based on
9 speculation, conjecture, passion, caprice, whim, or
10 whatever.

11 The basis for that is, Your Honor, the alleged
12 victim in this case has made these allegations. She
13 has later come back and recanted those allegations and
14 said that nothing has happened, as I recall her
15 testimony. Those were -- that is a State's witness
16 that both testified that the allegations are, what she
17 says are facts, we say are allegations, did happen.
18 And then some short period of time after having made
19 the allegations, she recanted those allegations and
20 said they were not true.

21 So that certainly is something -- I would suspect
22 Your Honor is going to tell me that is something for
23 the jury to consider. However, in the consideration of
24 that, I would simply share it with the Court and as
25 part of my motion that with that testimony being out

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1 there, that the State -- that the jury would have to
2 speculate, or they would have to go on passion or
3 prejudice to arrive at a guilty verdict, a verdict of
4 guilty in this case.

5 The crux of this case, Your Honor, is, as I see
6 it, the alleged victim's testimony. By way of
7 investigation in this case, there was nothing that was
8 particularly revealed in the law enforcement
9 investigation that would indicate sexual abuse, as
10 such. I think the -- Detective Burgess' testimony was
11 that her investigation consisted of talking to Mr.
12 Sanders, Ms. Gearhart, and the alleged victim in this
13 case. A physician did testify. That was the examining
14 physician from Greenville Rape Crisis found the notch
15 at four o'clock. However, even that -- the doctor had
16 to and did, indeed, admit that that notching is not
17 conclusive of any kind of sexual abuse.

18 So when you take a look at all of that, Your
19 Honor, I would simply ask the court to direct the
20 verdict in that there is no substantial credible
21 evidence in this case, at this point in time, from
22 which a jury could find a verdict of guilty.

23 THE COURT: All right. Any motion from the
24 Defendant Gearhart?

25 MR. ROBINSON: Would you like to take care of

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1 that motion first, Your Honor?

2 THE COURT: I would like to take care of --
3 I'd like to hear from the State one time, if I could,
4 so I'd just have ---

5 MR. ROBINSON: Okay.

6 THE COURT: I'd like to hear from you.

7 MR. ROBINSON: Yes. Your Honor, I have the
8 same directed verdict motion, but for a different
9 reason because the standard is going to be whether or
10 not they produce any evidence to speak of that would
11 indicate guilt in this matter. If you listen to the
12 testimony of both Rita Burgess and the child in this
13 case, and listen to my cross examination and so forth
14 in this case, I made sure that I nailed down the time
15 that this all supposedly occurred. And according to
16 Ms. Burgess, it happened in 2005 and between January
17 2008 and February 2008. That's what she testified to.
18 The child testified to that as well. I guess that's
19 what the child told her or something. I'm not sure
20 exactly how that worked, but the child didn't indicate
21 that anything happened after February of 2008, as far
22 as any incidents or anything of that nature.

23 What they charged my client with is not for
24 February or January of 2008 or even 2005. What they
25 charged her with is that on or about April 15, 2008,

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1 while being the legal custodian, basically the unlawful
2 neglect of a child, that she allowed something to
3 happen. But the State's case, by its own admission, is
4 for -- these acts, these acts allegedly by the
5 Defendant Sanders, their own witness, Ms. Burgess, was
6 January -- she wanted to make sure about that. January
7 to February of 2008, and 2005. And that was it. That
8 was the testimony that came forward.

9 As far as the victim went -- as far as the victim
10 goes, it's my understanding that she didn't go past
11 February of 2005 at any time. That's what -- that's
12 kind of what she -- when I listened to her testimony,
13 that's what I got from it, that it didn't go past
14 February of 2005, because I think that's probably what
15 she told Detective Burgess in this case. So if they
16 want to make a case of it, I think they need to have
17 the right date for when this happened. This was April
18 15th of 2008 this allegedly happened, where she told
19 her mother that this happened and her mother didn't do
20 enough, I guess, or report it to law enforcement or
21 something of that nature. But they never -- there was
22 no testimony in this case as to the fact. No one
23 testified to that. And we believe that on that basis,
24 even -- this is not a, this is not a directed verdict
25 motion that has anything to do with, other than the

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1 fact that they've got no evidence that they've
2 presented that anything happened after February 2008.
3 This is their own case, because I made really sure that
4 -- and she argued with me on the stand about when it
5 was. She wanted to make sure it was January to
6 February of 2008, which included February and January
7 2008, not April of 2000. There was no testimony at all
8 presented by the State in this matter on this happening
9 in April of 2008, April 15th, 2008, in this matter.

10 THE COURT: All right. Thank you, Mr.
11 Robinson. Mr. Richardson, I'll be glad to hear from
12 you on both on the motions of Mr. Sanders and Ms.
13 Gearhart.

14 MR. RICHARDSON: I'll address Mr. Robinson's
15 motion first, Your Honor, if it pleases the Court.

16 Of course, we are here and it's the light most
17 favorable to the State. The testimony, I believe, by
18 the child and certainly anything that he has said would
19 go to weight for a jury. But the testimony of the
20 child was that she told her mother after the instances
21 had occurred, and then there was an omission. Nothing
22 was done. Any argument he has in that regard would be
23 simply something for the jury to consider. So in the
24 light most favorable to the State, that case should
25 continue.

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1 Likewise, in Mr. -- in regard to Mr. Joey Sanders,
2 Your Honor, the evidence in the case, and I believe Mr.
3 DeJong's argument was that this would be speculation or
4 something of that nature. Well, Your Honor, as you
5 know, the victim in a case does not have to be
6 corroborated. The law says it does not have to be
7 corroborated. We have testimony from the victim. Now,
8 whether the victim is -- the weight of her testimony
9 would go to the jury. But in addition to that, we have
10 corroboration of her testimony through people
11 corroborating time, place that it happened. We had
12 corroboration medically. Mr. DeJong refers to that.
13 Once again, his reference to that will be certainly an
14 argument he makes in closing, but that goes to weight
15 also. Based upon the evidence that's been presented to
16 this court in the light most favorable to the State,
17 there is no grounds for Directed Verdict in either
18 case.

19 MR. ROBINSON: Yes. Your Honor, could I
20 respond to this?

21 THE COURT: Yes, sir.

22 MR. ROBINSON: Your Honor, their -- the child
23 witness in this case said that her mother wasn't home.
24 And let's take the Easley incident, this Easley thing
25 they said happened. The mother didn't get home until

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1 six-thirty. She said that between four to six-thirty
2 is when this allegedly happened.

3 As far as her ever reporting it to her mother,
4 there was nothing in the State's case from that child
5 witness that on the cases in the Comfort Inn in Easley
6 she ever reported to her mother, ever.

7 MR. RICHARDSON: I'm not trying the Easley
8 case.

9 MR. ROBINSON: I'm talking -- we're talking
10 four instances here. We have three instances at the
11 Comfort Inn and one instance that occurred, allegedly,
12 at Mr. Sanders' home. The three instances in the
13 Comfort Inn she said she didn't tell her mother about.
14 The last incident, which is in Easley -- not only could
15 she not -- not only did she say it did not -- she
16 didn't say anything that this took place after February
17 of 2008. And on top of that, she said that her mother
18 wasn't even home at the time this allegedly occurred at
19 the home in Easley. She said her mother came home at
20 six-thirty, because she worked until six-thirty and he
21 was there between four to six-thirty.

22 And she additionally said that whenever this
23 alleged -- whenever this allegedly occurred, her mother
24 was either in the kitchen or she was in the laundry or
25 something like that, but not one time did she ever say

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1 that any of this happened after February 2008, not one
2 time.

3 And that's why I elicited testimony from her as
4 far as getting her into where it would be and so forth.
5 That's why there's no evidence in this case. And I'm
6 looking at it in the light most favorable to the State,
7 but they have not presented any evidence past February
8 of 2008. If they want to go back and change the
9 indictment to say February of 2008 or January 2008,
10 which is exactly what Ms. Burgess testified to, fine.
11 But this case has to do with April 15th of 2008. And
12 they have not presented one speck of evidence. It
13 doesn't go to weight. It goes to what they've
14 presented in this case, and that's nothing.

15 THE COURT: Mr. Richardson, as I understand
16 the State's case on this is that the victim reported it
17 to her mother on or about April 2008.

18 MR. RICHARDSON: That's correct.

19 THE COURT: And that something was going on
20 and the mother did nothing about it.

21 MR. RICHARDSON: That's correct.

22 THE COURT: And that's basically the State's
23 case?

24 MR. RICHARDSON: That's the State's case.

25 THE COURT: And because she did nothing about

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1 it, that placed the child in risk of harm.

2 MR. RICHARDSON: That's correct.

3 MR. ROBINSON: And I have an argument to
4 follow up, Your Honor.

5 THE COURT: Yes, sir.

6 MR. ROBINSON: And, Your Honor, if that's
7 what they're saying -- if what they're saying in this
8 case is that -- and I am not saying I agree with this,
9 but if they're saying there's not one speck of evidence
10 that she reported this to her mother on April 15th, if
11 there's evidence she reported back in January or
12 February or something like that, but if you look at the
13 statute, the unlawful -- it's Unlawful Neglect of a
14 Child under the Statute, that they put on that date --
15 on that date they put the child in an unreasonable risk
16 of harm, affecting the child's welfare, unlawfully or
17 maliciously do or cause to be done bodily harm to the
18 child and that the life or health of the child was in
19 danger, or likely to be in danger, or three, willfully
20 abandoned the child. We're not dealing with three. As
21 far as the unreasonable risk of harm, if she reported
22 it that day, she reported that day, that's when law
23 enforcement became -- she didn't report it until June,
24 which is when law enforcement became involved with the
25 whole case. That's when she reported. I mean, that's

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1 when the mother was taken to the police station, gave
2 her statement about this case. There was no other --
3 there was no harm that was done at that point, no harm
4 at all.

5 And if you say -- if you take what the State is
6 saying, which is, well, some time in April, she didn't
7 testify to that. She didn't testify that she ever told
8 anybody in April. It was June is when she testified
9 that she said something about it. And at that point,
10 she was already in DSS custody, already taken away from
11 the home. There was no harm presented. There was no
12 chance of any harm, because she was in DSS custody.
13 The statute is not applicable in this case. Not only
14 because the dates are wrong, also because it does not
15 apply to this particular defendant in this case because
16 there's no case. It does not fit under the statute in
17 this case for what they have because they've already
18 taken her out of the home.

19 THE COURT: Is the State relying upon Sub-
20 section 1 only of the statute?

21 MR. RICHARDSON: If it pleases the Court,
22 Your Honor. Your Honor, we are relying on Sub-section
23 B(1) of the Statute.

24 THE COURT: Placing the child in unreasonable
25 risk of harm, affecting the child's life, physical or

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1 mental health or safety?

2 MR. RICHARDSON: Yes.

3 THE COURT: That's all you're relying on?

4 MR. RICHARDSON: That's it, Your Honor. She
5 -- the point being is that -- and date certainly is not
6 an element in that.

7 THE COURT: All right. As to both motions,
8 as to Mr. Sanders, I believe there is sufficient
9 evidence. I certainly am not weighing the evidence. I
10 just need to determine whether there exist any evidence
11 or if there's a total failure of the evidence. I
12 believe this is a jury issue and there's not a total
13 failure of the evidence.

14 As to Ms. Gearhart, Mr. Robinson, I appreciate
15 your argument, but if the reliance is only on Sub-
16 section 1 of the statute, I believe there is sufficient
17 evidence to go to the jury on that as well. So I'll
18 respectfully deny your motion.

19 Anything else we need to take care of before the
20 jury comes back?

21 MR. RICHARDSON: Your Honor, it's my
22 understanding now that Mr. DeJong plans on calling Judy
23 Chapman to the stand. Now, we've had conversations
24 about that and I've objected to that. One of the
25 problems I have is, first, under the Statute she has

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1 come in and she has breached confidentiality.

2 Second, Your Honor, this person was not put on the

3 witness list and was not informed to the jury panel.

4 And, in fact, now we have a juror on the jury who knows

5 her. For those two reasons, Your Honor, I move that

6 she be not -- that she be required not to testify.

7 Alternatively, to limit that testimony that she's not

8 to give any opinions or anything of that nature. Now,

9 I'm not sure exactly what he's doing. The child has

10 admitted that redacted -- or she took back her

11 statement to her. Now, I'm not sure where we're going

12 after that. I guess part of the motion is to relevance

13 of her testimony.

14 THE COURT: Mr. DeJong, I'll be glad to hear

15 from you on the issue of her ability to testify.

16 MR. DEJONG: In terms of not being put on the

17 witness list, Your Honor, or ...

18 THE COURT: Well, I think I've ruled on that

19 and, Mr. Richardson, I'll be glad to -- I know this

20 witness said she knew a Judy Chapman from somewhere

21 between Pickens and Easley. I'm not sure that --

22 whether there's been eye contact, whether this

23 particular Judy Chapman is the one. I'll be glad to

24 re-voir dire that particular juror after the testimony

25 to make sure that she's still -- she's indicated that

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1 she could be fair and impartial.

2 I realize the fact that we may have been
3 jeopardizing your strike, but I think based upon the
4 information that both attorneys shared with me, this
5 was not a situation in which the Defense was
6 sandbagging in any way, but only found out about this
7 witness actually after the trial had begun.

8 So I -- on that basis, I will allow him to call
9 the witness. And, again, if you so desire and let me
10 know, I'll be glad to, after the testimony to privately
11 examine the juror again. As far as the relevance, is
12 the testimony relevant in your opinion, Mr. Dejong?

13 MR. DEJONG: It is, Your Honor, for this
14 reason. Yes, she did, on the witness stand and on
15 direct examination partially recant. However, there
16 were what I consider other prior inconsistent
17 statements. Just to say that she recanted is not all
18 that it was about. Because she testified on the
19 witness stand that she recanted, and the reason she
20 recanted was because she didn't want her mother to go
21 to jail.

22 Your Honor, I asked her about some other things,
23 if she was afraid she was going to jail, if people in
24 Virginia had put her up to this or coached her or
25 whatever. I asked her if she stated -- well, she

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1 denied both of those, Your Honor. I asked her if she
2 said the worst Joey had ever done was flipped her on
3 the butt, I think was my question. She did admit that,
4 Your Honor. However, because her recantation in my
5 opinion was ambivalent, I am entitled to go into those
6 prior inconsistent statements with this witness. I do
7 not anticipate getting into opinion testimony.

8 THE COURT: All right.

9 MR. DEJONG: I'm not sure that I could
10 establish this witness as an expert. But I certainly
11 think under the prior inconsistent statement rule, that
12 I am entitled. I made her aware of what the statements
13 were. To the best of my abilities, at that point in
14 time, I made her aware of the time frame.

15 THE COURT: I'll allow the testimony.

16 MR. RICHARDSON: Your Honor, I've got ---

17 THE COURT: Yes, sir.

18 MR. RICHARDSON: -- and I don't mean to argue
19 with the Court, but my understanding of the scenario is
20 it's got to be -- he's got to specifically ask the
21 question to her and she has to deny it, and then, also,
22 Your Honor, it's my position he's got to inform her.
23 He's got to let her know, isn't it true that you told
24 Judy Chapman something else. And then she's got to
25 deny it. We're opening up a whole new thing.

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1 THE COURT: Well, the problem we have is he
2 did not have the benefit then of reviewing the
3 information.

4 MR. RICHARDSON: I understand, Your Honor;
5 but I'm just going ---

6 THE COURT: I thought the questions that he
7 asked were salient enough, without his having the
8 benefit of reviewing the file, and we've talked about
9 that too, of recalling her to specifically lay that. I
10 think the questions he asked in that context were
11 pertinent to that. You know, the other alternative is
12 to recall the witness just for him to lay that
13 foundation. But as we both -- all know, we were
14 operating under the situation where he did not have the
15 benefit of reviewing the file of the guardian ad litem
16 at the time he was asking the questions.

17 MR. RICHARDSON: He knew about the guardian
18 ad litem.

19 THE COURT: But he did not have the file to
20 know specifically what he laid those things out.

21 MR. RICHARDSON: I guess, and I'm referring
22 to Rule 613(b) where -- it says here, the person -- you
23 must notify the person to whom it was made. None of
24 that was done. He didn't talk about -- to her about
25 Judy Chapman. And she's given the opportunity to

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1 explain or deny it. He knew about Judy Chapman. He
2 never did that.

3 MR. DEJONG: Your Honor, I take issue with
4 that and need to be -- we can get the court reporter to
5 go back and look at the transcript. I believe that I
6 did ask her if she knew Judy Chapman, who Judy Chapman
7 was, recalled having a conversation with Ms. Chapman at
8 the Freeman's house. I asked her specific questions
9 about that. As I recall, she admitted - she said, it
10 was a lie. She admitted -- her statement was, was that
11 she was afraid her mother was going to jail. I
12 specifically asked her if she said anything about her
13 being afraid to go to jail. I specifically asked her
14 about talking to people in Virginia about this case.
15 There was something else I specifically asked her
16 about. And she admitted some and she denied some. But
17 I think under the case law, Your Honor, when you have
18 that situation, I am entitled to go into all the prior
19 inconsistent statements.

20 MR. RICHARDSON: He still has to inform her.
21 He has to say, isn't it true that you made this
22 statement to the guardian, to Judy Chapman. That's the
23 way I read the rule.

24 MR. DEJONG: And I -- my argument is, Your
25 Honor, I did that. I asked her about Judy Chapman.

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1 THE COURT: My recollection of the cross
2 examination is more in line with that of Mr. DeJong.
3 I'm not sure that he asked about each of those, about
4 Virginia. I'm pretty confident that he asked her about
5 the -- part of that. I think the full context of what
6 he asked meets the rule, Mr. Richardson, so I'll -- you
7 certainly have a right on recalling any witnesses, but
8 I believe he has substantially complied with Rule 613
9 by his cross examination of the witness. Certainly in
10 light of the fact that he did not have the benefit of
11 reviewing the report. I'll allow it on that basis.
12 Now, the other issue I think was that -- whether or not
13 she's barred from testifying otherwise?

14 MR. RICHARDSON: Yes, sir.

15 THE COURT: I'll be glad to hear from you on
16 that.

17 MR. RICHARDSON: Well, Your Honor, she was
18 under a duty of confidentiality, which she breached by
19 bringing that information and not doing -- in fact, she
20 signed a confidentiality notice, in which she is not to
21 disclose those type things. The information made
22 available through her investigations to persons not
23 directly involved in the matter constitutes a breach of
24 confidentiality. And there's a statute.
25 Unfortunately, I got the old statute, and which she

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1 violated. I've got the -- it's a 20 Statute, Your
2 Honor, and you know the legislators changed those. But
3 it was 20-7-126.

4 THE COURT: Mr. DeJong, what about that?

5 MR. DEJONG: Your Honor, I haven't looked at
6 20 whatever, whatever.

7 THE COURT: Well, why don't y'all take a
8 minute to look at it and tell me -- are you conceding
9 that she cannot testify because of the statute?

10 MR. DEJONG: Oh heavens, no, Your Honor.

11 THE COURT: Well, then you probably need to
12 tell me what the Statute says in your opinion.

13 MR. DEJONG: 20-7 who?

14 MR. RICHARDSON: Well, the Statute was 20-7-
15 -- 20-7-126.

16 MR. DEJONG: Do you have a copy of 63-7-
17 1990(c)?

18 MR. RICHARDSON: Your Honor, I have that Code
19 Section here, and it also refers to 63-7-1990, which is
20 the -- actually, the actual crime that she committed.

21 MR. DEJONG: Your Honor, in reading those two
22 Code Sections, quite quickly, I don't see that either
23 Code Section bars the testimony. It sets up
24 parameters. It sets up limitations and now the State
25 comes in basically threatening this witness with

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1 criminal prosecution if she testifies. That's where
2 they're coming from, not that the Statute says ---

3 MR. RICHARDSON: I want to make it clear. I
4 have not said one thing to the guardian.

5 THE COURT: Well, I haven't heard that yet,
6 Mr. DeJong.

7 MR. DEJONG: Well, I realize that, Your
8 Honor, but when you look at the old Code Section 20-7-
9 126, it refers you to, to 63. He's raising the old 20
10 Code as the bar to her testifying. I don't read that
11 old 20-7-126, if that is the right Code section as
12 being a bar. It simply talks about the confidentiality
13 of the issues.

14 Now, when he raises that Code Section, you have to
15 read that in conjunction with the 63 Section, I think.
16 63, whatever that section is in 63, does not bar the
17 testimony. 63 is simply criminal penalties for a
18 violation. So I don't think he can say he didn't raise
19 that. But certainly by raising 20-7-126, whatever it
20 is right -- and whatever it is right now, he is
21 certainly raising that issue, Your Honor. Not that she
22 is barred from testifying. I don't see that that
23 Statute says she's barred from testimony. It provides
24 sanctions if she disseminates, but not that she is
25 barred from testifying.

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1 MR. RICHARDSON: And, Your Honor, it's a
2 criminal act. We're asking a guardian to get up here
3 on this stand and commit a criminal act, and that's it.
4 She's -- that's the whole crux of it. We just cannot
5 do that. We cannot call a witness who's going to come
6 up here and testify and commit a criminal act.

7 THE COURT: How about exception under -- have
8 you looked at 1990?

9 MR. RICHARDSON: Yes, sir. I've got it here.

10 THE COURT: 63-7-1990?

11 MR. RICHARDSON: I have 63-7-1990, yes, sir.

12 THE COURT: And how about Number 5, B(5)?
13 And then in light of 11, B(11), as well.

14 MR. RICHARDSON: The statement starting with
15 B. The department is authorized to grant access to
16 records of indicated cases to the following persons and
17 agencies. I take that to mean they're allowed to give
18 it to the guardian ad litem, but that doesn't prevent
19 her -- I mean, she's still prevented from disseminating
20 it. And not only that, she's getting ready to
21 disseminate it to an entire courtroom.

22 MR. DEJONG: If I may, Your Honor, I think my
23 learned colleague is misreading 5. 5 says, it may be
24 disseminated to a person's attorney charged with, as I
25 read it, abuse or neglect.

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1 THE COURT: Let's take a short break and see
2 if we can get this -- you're operating on -- I need to
3 make sure that Title 20, you're talking about has now
4 been codified in Title 63. This is all pretty much
5 Family Court Law that I need to make sure that what
6 you're reading from the old law is what I'm reading in
7 the new law. Let's take a short break. Y'all can meet
8 me in Chambers on that.

9 (WHEREUPON, court stood at recess for a short
10 break.)

11 THE COURT: All right. Let's have the jury
12 come in.

13 (WHEREUPON, the jury entered the open court at
14 approximately 3:28 p.m.)

15 THE COURT: Again, ladies and gentlemen, I
16 apologize for the delay. We've been resolving some
17 other matters that often come up in trials. The State
18 may present its next witness at this time.

19 MR. RICHARDSON: Your Honor, at this time the
20 State rest.

21 THE COURT: The Defense may call it's first
22 witness.

23 MR. DEJONG: Thank you, Your Honor, may it
24 please the Court. The State, the State -- whoa. The
25 Defendant Mr. Sanders would Dr. Collis Barksdale to the

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1 stand.

2 Come around, please, Dr. Barksdale, and be sworn.

3 MISTER CLERK: Place your left hand on the
4 bible and raise your right hand. Do you solemnly swear
5 or affirm the testimony you're about to give in this
6 case to be the truth, the whole truth and nothing but
7 the truth, so help you God?

8 DR. BARKSDALE: I do.

9 MISTER CLERK: If you would have a seat and
10 state your name for the record.

11 DR. BARKSDALE: Collis Barksdale.

12 COLLIS BARKSDALE, M.D.,

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION

15 BY MR. DEJONG:

16 Q. Would you spell your first name for Madam Court
17 Reporter, please, sir?

18 A. C-O-L-L-I-S.

19 Q. And your last name, please.

20 A. Barksdale, B-A-R-K-S-D-A-L-E.

21 Q. Thank you, sir. Dr. Barksdale, what do you do for
22 a living?

23 A. I am a Family Practice Physician.

24 Q. Okay. If you would, please, sir, the acoustics in
25 this courtroom are horrible, just get a little closer

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1 to that microphone. Don't fall off there backwards.

2 Okay. Let's try it again. What do you do for a
3 living?

4 A. I am a Family Practice Physician.

5 Q. All right, sir. Now, let's back up a little bit
6 and talk about your education. You've got an
7 undergraduate degree?

8 A. I do.

9 Q. And where did you get your undergraduate degree?

10 A. I attended Clemson University.

11 Q. And what is your undergraduate degree in?

12 A. I have a degree in biological sciences.

13 Q. Okay. Keep your voice up, please. And you went
14 to Medical School?

15 A. I went to Medical School at Michigan State
16 University.

17 Q. All right, sir. When you came out of Med School
18 did you do a residency?

19 A. I did. I did residency at Spartanburg Regional
20 Hospital.

21 Q. And what was your residency in?

22 A. My residency was in Family Practice.

23 Q. All right. And how long of a residency did you
24 do?

25 A. That is a three-year program.

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1 Q. Okay. After you completed your residency, where
2 did you go?

3 A. I practiced a year in Union County, and then I
4 practiced a year in Oconee County, before coming to my
5 current position here in Easley.

6 Q. And where are you now?

7 A. I'm currently working with Powdersville Medical
8 Park as a part of Baptist Health Care Physicians Group.

9 Q. All right, sir. Let me back up a little bit.
10 After Med School, after your residency, do you get some
11 sort of certification?

12 A. You do, Board Certification.

13 Q. All right. Are you Board Certified?

14 A. I am.

15 Q. And your Board Certified in what?

16 A. In Family Practice.

17 Q. All right, sir.

18 MR. DEJONG: Your Honor, I offer this -- I
19 offer Dr. Barksdale as an expert in the area of Family
20 Practice Medicine.

21 THE COURT: Any objection or any Voir Dire by
22 you other attorneys?

23 MR. RICHARDSON: Without objection or Voir
24 Dire.

25 MR. ROBINSON: No objection.

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- 1 THE COURT: Without objection then this
2 witness will be considered as an expert in the field of
3 Family Practice.
4 Q. Now, share with us a little bit, Dr. Barksdale,
5 what a Family Practice is?
6 A. Family Practice is a Primary Care Specialty,
7 basically treating any number of illnesses, in all age
8 ranges.
9 Q. All right, sir. As a Family Practice Physician,
10 do you make diagnoses?
11 A. We do.
12 Q. Can you prescribe medication?
13 A. We do.
14 Q. So it's -- I guess for an old guy like me, it's
15 kind of like the old country doctor; right?
16 A. Yeah. I guess that's a good analogy.
17 Q. Pretty much you look at every thing and take every
18 thing in that walks in the door; right?
19 A. That's pretty much it.
20 Q. All right, sir. Now, since you have been a
21 physician at the Powdersville Family Practice ---
22 A. Powdersville Medical Park.
23 Q. Okay. Can we just say Powdersville Family
24 Practice?
25 A. Yes.

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1 Q. And you went there in what year?

2 A. I started there in -- approximately seven years
3 ago. I -- actually about eight years ago. So it would
4 have been about 2002.

5 Q. All right. So during the course of your practice
6 of medicine there at Powdersville Family Practice, did
7 you have occasion to have a patient by the name of
8 Joseph Pettigrew Sanders, IV?

9 A. I did.

10 Q. When did you -- when did he become a patient of
11 yours?

12 A. Can I open my records?

13 Q. Surely. You've got -- those are his medical
14 records or your records?

15 A. Yeah. These are a copy of medical records.

16 Q. Yes. If you need to -- those to refresh your
17 memory, you may use them.

18 A. If I'm not mistaken, we started seeing Mr. Sanders
19 in June of 2002, I believe it was.

20 Q. June of 2002?

21 A. Oh, wait, that's -- I believe that's correct.

22 Q. All right, sir. In June of 2002, what did he come
23 to the Powdersville Practice for?

24 A. He was a new patient, establishing for management
25 of his diabetes.

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- 1 Q. For what?
- 2 A. For managing his diabetes. He came to our office
- 3 with a diagnosis of diabetes.
- 4 Q. Diabetes?
- 5 A. Correct.
- 6 Q. Okay. I'm having a hard time hearing you. I
- 7 can't speak for the jurors, but you've got a very soft
- 8 voice.
- 9 A. I'm sorry. I'll try to speak up.
- 10 Q. Okay. So in '02, he came in as a result of having
- 11 diabetes; right?
- 12 A. Correct. Correct.
- 13 Q. Can you describe his diabetes for us?
- 14 A. At his initial presentation, his diabetes was very
- 15 much out of control.
- 16 Q. All right. How did you treat his diabetes?
- 17 A. We started him on medications. I don't know if
- 18 you need to tell which medications he was on. We
- 19 basically started him on a sliding scale with Insulin,
- 20 and we also started him on oral medications.
- 21 Q. All right, sir. Now is that the only thing, the
- 22 diabetes, is that the only thing that he has been
- 23 treated for at Powdersville Family Medical?
- 24 A. That was the only thing at that initial
- 25 presentation that he was treated for.

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1 Q. Okay. Well, has he continued to come back to
2 Powdersville Family Practice over the years?

3 A. He has.

4 Q. All right. And as those visits -- those were
5 recurring visits. Were any other diagnoses or
6 treatments made?

7 A. There were.

8 Q. Okay. And what were those diagnoses, please, sir?

9 A. Starting from 2002, there were several, but the --
10 perhaps the most significant was he developed some
11 peripheral neuropathy. He had some elevated
12 cholesterol. It was some blood pressure, hypertension
13 issues and he also complained of some erectile
14 dysfunction.

15 Q. Do you recall or do your records reflect when he
16 first complained of the erectile dysfunction?

17 A. His first complaint to me regarding erectile
18 dysfunction was in March of '07.

19 Q. All right, sir. Now, up until March of '07,
20 without a complaint, would you have any reason or way
21 of knowing whether or not there was erectile
22 dysfunction?

23 A. I would not.

24 Q. Okay. Well, when the complaint was made in '07,
25 was treatment then -- well, did you do a diagnosis on

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1 that, I guess is what I'm asking?

2 A. The diagnosis was made primarily based on history.

3 Q. Okay. And was there a finding or a diagnosis made
4 of erectile dysfunction?

5 A. There was.

6 Q. Okay. Did you prescribe any medication for that?

7 A. Not at that particular visit, no.

8 Q. Okay. Along with the erectile dysfunction, were
9 there any other issues that went along with that, or
10 closely connected to that?

11 A. I'm not sure.

12 Q. Well, did you ever treat him for low testosterone?

13 A. Absolutely, yeah. That was one of the test that
14 we performed in order to try to determine the cause of
15 erectile dysfunction.

16 Q. And what did you find with regard to the
17 testosterone?

18 A. We determined that he had low testosterone.

19 Q. So myself and this jury understands, are the low
20 testosterone and erectile dysfunction the same thing?

21 A. They're not.

22 Q. Are they related?

23 A. They can be related.

24 Q. But not necessarily?

25 A. But not necessarily.

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1 Q. Okay. Well, going back to the low testosterone,
2 did you provide medication for that?

3 A. We ultimately did, yeah.

4 Q. Okay. When did you start the medication?

5 A. Once we obtained his values, basically at his next
6 visit.

7 Q. You're fading out there, again, Doctor.

8 A. I'm sorry. Once we established his diagnosis at
9 his next visit, which was in August, we started him --
10 actually, we started him in March on testosterone
11 replacement.

12 Q. March of what year?

13 A. March of '07.

14 Q. All right. Now, was testosterone replacement, for
15 want of a better term, will that cure erectile
16 dysfunction?

17 A. It -- not necessarily. It can for a small sub-
18 set, yes.

19 Q. Well, once you started this ---

20 MR. RICHARDSON: I'm sorry, Your Honor, I
21 could not hear the response to that.

22 A. It doesn't cure it, but it can for a small, small
23 sub-set of individuals, but not everybody.

24 Q. Now, the low testosterone levels, did you continue
25 to treat for that?

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1 A. We did.

2 Q. All right. Was Mr. Sanders compliant with that
3 treatment?

4 A. He was.

5 Q. All right. So now, in addition to the
6 testosterone replacement, did you prescribe any other
7 medications for the penile dysfunction?

8 A. We did not.

9 Q. Did there -- to your knowledge, was -- based on
10 your records, your treatment, did -- even though you
11 were doing the testosterone replacement, did the
12 erectile dysfunction continue?

13 A. It continued as far as the information I got from
14 Mr. Sanders.

15 Q. All right, sir. Did you ever -- you got the
16 testosterone replacement, but testosterone replacement
17 is not the same thing as Viagra or similar products or
18 on the market. Is that correct?

19 A. That's correct.

20 Q. All right. But my question is, did you ever
21 prescribe Viagra or any other such product to Mr.
22 Sanders?

23 A. No, we did not.

24 Q. Now, someone with penile erectile dysfunction,
25 would they, in your opinion, Doctor, as a medical

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1 doctor, be able to engage in full penile, vaginal
2 intercourse?

3 A. Not if he has erectile dysfunction.

4 Q. All right. And there's nothing in your records to
5 indicate that he did not have penile ---

6 A. There's nothing to indicate that he did not.

7 Q. Okay. Now, you say the first complaint was made
8 in '07, I believe?

9 A. That's correct.

10 Q. Is penile -- as a medical doctor, can you tell us
11 whether penile erectile dysfunction comes on quickly,
12 is it progressive or ---

13 A. It, in general, is a progressive problem.

14 Sometimes beginning with lack of an ability to maintain
15 an erection, and ultimately the lack of an ability to
16 obtain and maintain ---

17 Q. I'm sorry, I couldn't hear the last ---

18 A. Initially, sometimes it presents with a lack of an
19 ability to maintain an erection. But ultimately, a lot
20 of guys have a difficulty obtaining and maintaining an
21 erection.

22 Q. Are you familiar with genital warts, Dr.
23 Barksdale?

24 A. I am.

25 Q. Do you diagnose genital warts?

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1 A. I do.

2 Q. Is that a hard diagnosis to make, difficult?

3 A. Not very difficult.

4 Q. All right, sir. Did you ever examine Mr. Sanders
5 for genital warts?

6 A. I did.

7 Q. When was that?

8 A. That was actually last week.

9 Q. All right. Did you find genital warts in any way
10 involved with Mr. Sanders?

11 A. I could not find any evidence of genital warts.

12 Q. Were you aware of Mr. Sanders seeing any other
13 physician, other than Powdersville Family?

14 A. Not to my knowledge, no.

15 Q. All right, sir.

16 MR. DEJONG: One moment, please, Your Honor.

17 I'm not sure who's next, Your Honor, but I'll tender
18 him to either one of these gentlemen.

19 THE COURT: Mr. Robinson, you may examine the
20 witness.

21 MR. ROBINSON: I have no direct examination.

22 THE COURT: Solicitor, you may cross examine.

23 MR. RICHARDSON: Thank you, Your Honor.

24 **CROSS EXAMINATION**

25 **BY MR. RICHARDSON:**

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1 Q. Good afternoon, doctor?

2 A. Good afternoon.

3 Q. You stated that in March of 2007, that you started
4 seeing, or you saw Mr. Sanders in your office; is that
5 correct?

6 A. That's correct.

7 Q. And at that time, he complained of erectile
8 dysfunction?

9 A. Correct.

10 Q. Okay. Now, what you do, and I assume -- do you
11 take reports when you people come into your office and
12 you sit down with them, and ---

13 A. When I do see a patient in an office setting, I
14 still do that, yes.

15 Q. Do you take office notes?

16 A. We do, right.

17 Q. Okay. And did you take office notes regarding
18 Joseph Sanders?

19 A. I did.

20 Q. Okay. Did you take those office notes on March
21 the 7th?

22 A. March the 7th, I did.

23 Q. Okay. Do you have a copy -- I don't -- I have
24 some copies, but do you have a copy of that with you?

25 A. Yeah, I do. Yeah.

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1 Q. And may I see them, sir?

2 MR. RICHARDSON: Your Honor, may I approach
3 the witness?

4 THE COURT: Yes, sir. You may.

5 MR. RICHARDSON: Your Honor, I beg the
6 Court's indulgence. I've not seen these.

7 THE COURT: Yes, sir.

8 Q. Okay, sir. Now, and these are your records; is
9 that correct? Let me hand these back. This is not a
10 copy?

11 A. This is a copy, actually.

12 Q. It is a copy?

13 A. It is a copy.

14 Q. May I keep that?

15 A. Yeah. I've got more at the office.

16 Q. Thank you, sir. Okay. Now, when you come in you
17 start talking to the patient, you get a history, so to
18 speak; do you not?

19 A. Yes.

20 Q. Okay. And basically, you're asking the patient
21 why are you here?

22 A. Correct.

23 Q. Okay. And when you do that, do you take notes?

24 A. I do have to dictate a note regarding the visit.

25 Q. Okay, sir. And eventually do those notes go into

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1 an office note that goes into a computer?

2 A. It actually -- we don't have computerized medical
3 records and so ours are actually dictated and
4 transcribed, and they're placed into a chart.

5 Q. Okay. And do you take copious notes?

6 A. I don't exactly take copious notes while I'm
7 talking to people.

8 Q. And will you speak up, just -- I'm sorry. It's
9 hard to hear.

10 A. I'm sorry. Yeah. I -- basically, I don't take a
11 lot of notes. Pretty much I listen to what they're
12 saying and try to basically recall that conversation
13 when I dictate my notes.

14 Q. Okay. And in your notes, do you have a section
15 that says subjective?

16 A. I do.

17 Q. Okay. What is that?

18 A. That's basically the patient's direct statement of
19 what they're actually there for.

20 Q. Okay. So that's what the patient tells you?

21 A. Exactly.

22 Q. It's not what you figure out?

23 A. That's correct.

24 Q. It's what he tells you?

25 A. That's correct.

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1 Q. Or she tells you?

2 A. That's correct.

3 Q. Okay. Now, do you have before you the notes --

4 let's see, you have August the 1st of 2007. Do you

5 have those with you?

6 A. August 1st, I do.

7 Q. Okay, sir. And do you have those in front of you?

8 A. I do.

9 Q. Now, is this, on August the 1st of 2007, is this

10 where the testosterone level was ascertained?

11 A. No, it was actually -- we checked it on March of

12 '07, actually.

13 Q. Okay. And then you started giving him

14 testosterone replacement?

15 A. We did. Uh-huh (affirmative). That was actually

16 started the following -- two weeks later, when we got

17 the results back.

18 Q. Okay. And you just testified that that

19 testosterone is not directly related to any type of

20 erectile dysfunction.

21 A. It can be. That is one of the testing parameters

22 when you're trying to determine etiology of erectile

23 dysfunction.

24 Q. Okay, sir. And by erectile dysfunction, you're

25 not talking impotence; are you?

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1 A. That term is sometimes used synonymously with
2 erectile dysfunction.

3 Q. Well, erectile dysfunction can be a scenario where
4 a male gets an erection part of the time, but other
5 times he cannot?

6 A. That's true.

7 Q. Okay.

8 A. That's correct.

9 Q. And erectile dysfunction could also be where a
10 male gets an erection for a period of time, but cannot
11 maintain that erection?

12 A. That's correct.

13 Q. Okay. And if a male gets an erection for a period
14 of time but cannot maintain that erection, for the time
15 he has an erection, he can have sex; can't he?

16 A. Well, the definition of erectile dysfunction is
17 the inability to obtain an erection in order to have
18 penile -- or vaginal intercourse.

19 Q. Okay. And everything that you're basing is what
20 the defendant's told you?

21 A. Exactly.

22 Q. Okay. But if a male has an erection, as you
23 stated, for a period of time but cannot maintain that,
24 he should be able to have sex for a period of time. Is
25 that not right?

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- 1 A. That's certainly possible.
- 2 Q. Okay. Now, after August the 1st of 2007, when was
- 3 the next time you saw Mr. Sanders?
- 4 A. The next time was November of '07.
- 5 Q. Okay. Do you have those notes in front of you?
- 6 A. I do.
- 7 Q. Now, you in that have a subjective statement in
- 8 there. Is that statement that you got from the history
- 9 or from what the Defendant told you, Mr. Sanders?
- 10 A. It's subjective. It's purely what the patient
- 11 says. Correct.
- 12 Q. Okay, sir. Can you read that to the jury?
- 13 A. The entire subjective?
- 14 Q. Yes, sir.
- 15 A. Patient's here for follow-up with his diabetes.
- 16 He has recently had gastric bypass surgery and has lost
- 17 approximately over, I'm sorry, sixty pounds in the past
- 18 three months. He states that he feels a hundred
- 19 percent better. His energy level is elevated. His
- 20 blood sugars have significantly improved. His blood
- 21 pressure is elevated today, but his wife states that it
- 22 is better. It had been better at home. He is coaching
- 23 a girls soccer team. He states that his mood is
- 24 overall improved as well. He does complain of severe
- 25 pain in his knees. He states that he fell and has

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1 severe pain in the anterior lateral aspect of his knee.

2 He has some swelling. He states that this is getting

3 progressively worse. Otherwise, no other complaints.

4 Q. So he gave you several different complaints in

5 November of 2007; is that correct?

6 A. That's correct.

7 Q. And you stated in there, no other complaints?

8 A. That's correct.

9 Q. And in -- no where in there did he complain at all
10 about any type of erectile dysfunction; did he?

11 A. It didn't come up during that conversation at all.

12 Q. Well, there was no other complaints, right? He
13 did not complain about it?

14 A. No.

15 Q. And once again, you take everything -- when you're
16 making this diagnosis, it's based upon what he's
17 telling you; right?

18 A. That's true, yeah.

19 Q. You're not a urologist; are you?

20 A. No.

21 Q. Okay. And do you know what a urologist does as a
22 doctor?

23 A. I do.

24 Q. And is that somebody that treats erectile
25 dysfunction?

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1 A. They do.

2 Q. And are they kind of a specialist in treating
3 erectile dysfunction?

4 A. They are.

5 Q. Okay. And is it common for family practitioners
6 to refer patients to specialists?

7 A. It is.

8 Q. And isn't it true that you generally refer people
9 to specialists when they're having severe problems with
10 a certain area of that specialist?

11 A. If they have problems that don't respond to
12 treatment that we offer, pretty much then the next step
13 is a referral to a specialist.

14 Q. So if there's no response to treatment, and he
15 complains, you would send him to a urologist?

16 A. That's correct.

17 Q. And once again, there's no way medically you can
18 ascertain the severity of his erectile dysfunction if
19 he has one?

20 A. There's no way that I could, no.

21 Q. Okay. When was the next time you saw Mr. Sanders?

22 A. The next visit was in June of 2008.

23 Q. Would that be June 17th of 2008?

24 A. That's correct.

25 Q. So between -- from your notes, from November 28,

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1 2007 until June 17th of 2008, you did not see him?

2 A. That's correct.

3 Q. You did not deal with any type of erectile
4 dysfunction?

5 A. Did not.

6 Q. On June 17th of 2008, why did he come see you?

7 A. He came primarily for documentation of his
8 previous history with the erectile dysfunction.

9 Q. And he informed you that's because he'd been
10 charged?

11 A. Correct.

12 MR. RICHARDSON: That's all the questions I
13 have.

14 Q. Thank you, sir.

15 THE COURT: Any redirect?

16 REDIRECT EXAMINATION

17 BY MR. DEJONG:

18 Q. Erectile dysfunction does initially -- you cannot
19 get or maintain an erection; correct?

20 A. That's correct.

21 Q. There are no degrees of erectile dysfunction; are
22 there?

23 A. In the truest definition of the word erectile
24 dysfunction means the inability to have vaginal
25 intercourse.

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1 Q. Right. And that was the diagnosis on Mr. Sanders?

2 A. That's correct.

3 Q. All right, sir. Does erectile dysfunction just
4 one day you wake up and it magically disappears?

5 A. That's not typically the case.

6 Q. Thank you, sir.

7 MR. DEJONG: Nothing further.

8 THE COURT: Thank you, sir. You may step
9 down.

10 MR. RICHARDSON: Your Honor, one brief
11 question.

12 THE COURT: Yes, sir. You may follow up.

13 **RECROSS EXAMINATION**

14 **BY MR. RICHARDSON:**

15 Q. He said, your diagnosis. Your diagnosis was based
16 upon the history that the defendant's given?

17 A. Yes. That's true. That's correct.

18 Q. That's right. And he didn't give you any history
19 from November until June when he came in, after he'd
20 been charged with a crime?

21 A. That's true.

22 Q. Okay. Thank you.

23 THE COURT: Thank you, doctor. You may step
24 down.

25 MR. DEJONG: I ask that he be excused, Your

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1 Honor.

2 MR. RICHARDSON: Without objection.

3 THE COURT: Without objection, the doctor may
4 be excused. Could I see the attorneys just for a
5 moment.

6 (WHEREUPON, Mr. Richardson, Mr. DeJong, and Mr.
7 Robinson approached the bar.)

8 THE COURT: You may call your next witness.

9 MR. DEJONG: Thank you, Your Honor. May it
10 please the court. The Defense, Mr. Sanders, would call
11 Ms. Judy Chapman to the stand. If you'd come around
12 and be sworn, please, Ms. Chapman.

13 MISTER CLERK: Place your left hand on the
14 bible and raise your right hand. Do you solemnly swear
15 or affirm the testimony you're about to give in this
16 case to be the truth, the whole truth and nothing but
17 the truth, so help you God?

18 MS. CHAPMAN: I do.

19 MISTER CLERK: If you would have a seat and
20 state your name for the record.

21 MS. CHAPMAN: Judy Chapman.

22 JUDY CHAPMAN,

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MR. DEJONG:

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1 Q. Thank you, ma'am. If you'll stay that close and
2 keep your voice up, we'll all hear you, I think, okay?

3 A. Okay.

4 Q. Ms. Chapman, where do you live?

5 A. I live in Easley.

6 Q. All right, ma'am. Do you work?

7 A. No, sir, I don't.

8 Q. Do you do any kind of volunteer work?

9 A. Yes, sir, I do.

10 Q. What kind of volunteer work do you do?

11 A. I volunteer for the Pickens County guardian ad
12 litem program.

13 Q. Just very briefly, tell us what the guardian ad
14 litem program is, please, ma'am?

15 A. We are appointed by the Courts to be the advocate
16 for the child, in child abuse. We're their voice in
17 Court. We follow through with them on home visits, be
18 by their side all the way, a friend.

19 Q. All right. So when you get appointed, you are
20 appointed as a guardian ad litem, usually, for a young
21 person, if I understand it correctly?

22 A. They go all the way up to, you know, teenagers,
23 yes.

24 Q. All right, ma'am. And this program, the guardian
25 ad litem program, is it affiliated with the Solicitor's

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1 office?

2 A. No, sir.

3 Q. Is it affiliated with the Department of Social
4 Services?

5 A. No, sir.

6 Q. Okay. Law enforcement?

7 A. No, sir.

8 Q. So you are an independent organization, if I
9 understand you correctly?

10 A. Yes, sir.

11 Q. All right. During the course of your -- well, let
12 me ask you this. Do you get paid for this volunteer
13 work?

14 A. No, sir. I do not.

15 Q. No money?

16 A. No money.

17 Q. Are you here today under a subpoena?

18 A. No, sir.

19 Q. Are you getting paid anything for today?

20 A. No, sir.

21 Q. You came voluntarily?

22 A. Yes, sir.

23 Q. All right, ma'am. Now, during the course of your
24 volunteering with the guardian ad litem program, did
25 you get appointed as a guardian ad litem on Complainant

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1 .?

2 A. Yes, sir, I did.

3 Q. And do you recall when that appointment was?

4 A. It was in June -- no, it was around the first of
5 '08, I believe.

6 Q. All right, ma'am. I'm not asking you to go into
7 the allegations, but was it a case of allegations of
8 sexual abuse?

9 A. Yes, sir, it was.

10 Q. And as a guardian ad litem in such a case, do you
11 talk to the young person you're appointed to for
12 guardian ad litem?

13 A. Yes, I do.

14 Q. Do you talk to them just once or more than once or
15 how does that work?

16 A. We have -- all guardians, we meet once a month
17 with the children, sometimes twice a month, each child.

18 Q. So from June forward for some period of time, you
19 met with Complainant at least once a month?

20 A. Yes, sir.

21 Q. Is that my understanding?

22 A. Yes, sir.

23 Q. And, again, I'm not asking you to go into any of
24 those discussions, but you discussed the case and that
25 type of thing; right?

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1 A. No, at first, I get to know the child. We don't
2 ask about the case at first. We normally let them
3 volunteer, tell us, you know, in their own words what
4 happened. But we do not right, right off the bat
5 discuss the case with them.

6 Q. All right. I want to take you -- we'll do a fast
7 forward here, Ms. Chapman, take you to October of 2008,
8 I believe. Do you recall that date?

9 A. In '08. It was the 21st.

10 Q. October the 21st?

11 A. The 21st.

12 Q. Did you have a meeting with Complainant on that date?

13 A. I had a home visit.

14 Q. And where did you do that home visit?

15 A. At the foster parents' home.

16 Q. And who were the foster parents?

17 A. Mr. and Mrs. Wayne Freeman.

18 Q. All right. And when you had this meeting with
19 Complainant were you inside the house, outside the house,
20 where were you?

21 A. We was sitting out on the deck when I went to
22 visit. They were around on the back of the house, on
23 the deck. So we just sat out on the deck.

24 Q. Okay. When you went to visit that day, do you
25 recall whether it was morning, afternoon, evening or

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1 when it was?

2 A. It was about six o'clock in the afternoon.

3 Q. And how long did that visit last, overall?

4 A. About forty-five to an hour, forty-five minutes to
5 an hour.

6 Q. As you were sitting there on October the 21st of
7 '08, in the evening hours, were you questioning Complainant,
8 in any way?

9 A. No, sir, I wasn't.

10 Q. And as you sat there, was -- you could observe her
11 person; right?

12 A. That's correct.

13 Q. Was there light out there on the deck?

14 A. Yes, there was light.

15 Q. And from the time you first started, as the time
16 progressed, did her demeanor or her appearance change
17 in any way?

18 A. Well, her appearance was different when I got
19 there.

20 Q. Okay.

21 A. She wasn't happy-go-lucky like she normally, she
22 normally is.

23 Q. All right, ma'am. And then as it progressed, did
24 it change more?

25 A. Yes. It changed more.

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1 Q. What happened?

2 A. We was just sitting there, and Ms. Freeman went
3 into the house and I just, I asked her, I said, Complainant
4 what's wrong? I said, you don't seem like yourself.
5 And she got real teary-eyed. And I said, well, what's
6 wrong. And she said, I have exaggerated about
7 everything.

8 Q. All right.

9 A. And I just sat there a minute and I said, what do
10 you mean? She said, I've lied about everything.

11 Q. Did she expound on that anymore?

12 A. Yeah. She -- I said, what happened? I mean, why?
13 She said, I wanted to go to Virginia to live for the
14 summer, and said, my mother wouldn't let me go. And my
15 friends in Virginia told me what I had to do for me to
16 get up there.

17 Q. All right.

18 A. And I said, so you're recanting your story? She
19 said, yes. Said, the only thing that Mr. Sanders --
20 well, at the time she called him Joey. All he's ever
21 done was just flip me on the behind.

22 Q. Did she indicate to you whether that was on
23 purpose, accidental, or do you recall?

24 A. She said, probably he didn't even think what he
25 was doing. Said, sometimes he'd walk by, you know, and

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1 maybe just swipe her on the shoulder.

2 Q. All right. So as I understand it, she said she --
3 first said she exaggerated and then she said she lied
4 about everything?

5 A. Yes.

6 Q. Did you ever revisit that or go back to Complainant
7 about that?

8 A. Not after that. After she told me that, I asked
9 her, I said, what, what are we going to do? I said,
10 you know you've got to make this right. She said, I
11 don't want talk to Helena. That's the case worker.

12 MR. RICHARDSON: Your Honor, at this time I'm
13 going to object. That's -- she's going ---

14 THE COURT: I sustain the objection.

15 Q. We're not going any further with that.

16 A. Okay.

17 Q. I do want to digress for just a little bit, okay?
18 Did she ever share with you in that conversation that
19 she was afraid her mother was -- that her mother --
20 yes. Did she ever share with you in that conversation
21 that she was afraid her mother was going to jail?

22 A. No, sir.

23 Q. Did she ever share with you that she was afraid of
24 going to jail?

25 A. Yes, sir.

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1 Q. Okay. What was the nature of that conversation?

2 A. She said to me that the people that she talked to
3 in Virginia told her if she recanted her story, that
4 she'd be in jail until she was eighteen years old.

5 Q. Thank you, ma'am.

6 MR. DEJONG: The witness is with you, Mr.
7 Robinson.

8 THE COURT: Any questions, Mr. Robinson?

9 MR. ROBINSON: I have no questions, Your
10 Honor.

11 THE COURT: Mr. Richardson.

12 CROSS EXAMINATION

13 BY MR. RICHARDSON:

14 Q. Ms. Chapman, as part of your job, do you do
15 reports?

16 A. Yes, I do.

17 Q. And those are -- and are -- in effect, they're
18 called guardian ad litem reports?

19 A. Yes, it is.

20 Q. And are they written?

21 A. They are written. I do them on the computer.

22 Q. And you do that for the sake of the Courts; do you
23 not?

24 A. Yes.

25 Q. You do that for the sake of all of the attorneys

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1 involved in DSS cases; do you not?

2 A. That's correct.

3 Q. And the purpose of that report is to give
4 information from you. Is that not right?

5 A. That's correct.

6 Q. And regarding this case, you've previously been in
7 Court about this case; have you not?

8 A. Yes, I have.

9 Q. And you did guardian ad litem reports when you
10 went to that Court that you handed to that Judge and
11 those attorneys; did you not?

12 A. That's correct.

13 Q. And how many times did you do that after October?

14 A. Twice.

15 Q. Okay. And nowhere in either one of those reports
16 did you ever tell the story that you told this jury
17 today; did you?

18 A. No, sir. I didn't.

19 Q. And you were before a Family Court Judge?

20 A. That's correct.

21 Q. So, in essence, you handed -- and that report was
22 given to the Judge and put into evidence; was it not?

23 A. That's correct.

24 Q. So, in essence, you gave a report to a Family
25 Court Judge in a Court of the State of South Carolina

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1 that had misinformation in it?

2 A. Not misinformation, no.

3 Q. It failed to tell the entire story; did it not?

4 A. Well, I told the story to DSS and once we hand
5 that over to DSS, it's their responsibility to correct
6 whatever needs to be corrected with it. And that's why
7 I did it. I followed protocol.

8 Q. Well, did you -- this thing went into a Family
9 Court Room and a ruling was made by a Judge; is that
10 not right?

11 A. No. It was an agreement. We didn't never have to

12 ---

13 Q. I understand that. I understand that. But a
14 Judge made a finding; did he not?

15 A. In the Merits Hearing.

16 Q. And there was an Order of the Court made; is that
17 not right?

18 A. Yes.

19 Q. And the basis of that Order, your guardian ad
20 litem report, was put in, was considered; was it not?

21 A. Yes, it was.

22 Q. So you did not tell the truth twice in a Court of
23 Law in the State of South Carolina; did you?

24 A. Because Complainant recanted.

25 Q. You can explain it. But you did not tell a Judge

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1 and the attorneys that information; did you?

2 A. I reported it to our guardian ad litem. I talked
3 to DSS about it, and they informed ---

4 Q. Ma'am, that is not my question. My question is,
5 did you tell the Judge?

6 A. No, I didn't.

7 Q. Okay. Did you tell the attorney?

8 A. I talked to -- yes, I talked to our attorney about
9 it.

10 Q. Did you talk to any of the other attorneys of the
11 parties?

12 A. No.

13 Q. And did you ever follow-up on that information
14 with the Freemans? Did you ever talk to the Freemans
15 about it?

16 A. Yes, I did.

17 Q. Okay. When did you talk to them about it?

18 A. I talked to Ms. Freeman the day after.

19 Q. Okay. And a guardian ad litem in a case, through
20 her attorney, can call witnesses; can they not?

21 A. Yes.

22 Q. And did you ever call the Freemans as a witness?

23 A. No.

24 Q. And, in fact, Complainant told you at some point in
25 time that she did not want to go to Virginia, did she

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1 not?

2 A. Not to live with her father.

3 Q. She said she wanted to stay with her step-parents;

4 did she not?

5 A. Who was her step-parents?

6 Q. Excuse me. Her foster parents?

7 A. She said that -- this is what she told me. She

8 said, if I cannot stay with my foster parents, I do not

9 want to go with my father. I'd rather stay with the

10 -- if I can't stay with my mother, I'd rather stay with

11 my foster parents. Yes, she wanted to stay with the

12 foster parents.

13 Q. And you put that in a monthly report; didn't you?

14 A. Yes.

15 Q. Was there a Robin that worked in your office?

16 A. Robin Owens.

17 Q. Robin Owens. Do you recall telling her, do you

18 recall telling her that you believe something really

19 did happen?

20 A. No, I don't.

21 Q. You don't recall sending her an email to that

22 effect?

23 A. It's been over a year ago. I don't have my notes.

24 You know, I've had several cases since then. So, you

25 know, it's not like this has just happened. It's a

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1 possibility because I did keep in touch with Robin.

2 Q. That's right. It has been a long time.

3 A. It has.

4 Q. And it's been a long time since you've had that
5 conversation with Complainant' hasn't it?

6 A. Yes, it has.

7 Q. But you're real confident about that, but you
8 can't remember telling Robin that you ---

9 A. Well, I'm sure ---

10 Q. Hold on. Let me ask you a question. You can't
11 remember telling Robin that you believe something
12 happened?

13 A. No, I don't.

14 Q. What's your email address?

15 A. Judgejudy51@netzero.com.

16 MR. RICHARDSON: Your Honor, may I approach
17 the witness?

18 THE COURT: You may, sir.

19 Q. Is that your email address?

20 A. (No verbal response.)

21 Q. Did you hear my question? Is it your email
22 address?

23 A. Yes, it is. Yes.

24 Q. Does that refresh your memory?

25 A. Yes, it does.

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1 Q. Did you tell Robin, I believe something really did
2 happen?

3 A. Yes, I did.

4 Q. Robin was your supervisor?

5 A. Yes, she was.

6 Q. And that was after you had this conversation with
7 Complainant?

8 A. That's correct.

9 Q. And you certainly weren't there in the Freemans'
10 house after you left to witness the conversation
11 between the Freemans and Complainant at that time; were you?

12 A. No, sir. I wasn't.

13 Q. Are you familiar with your confidentiality
14 agreement?

15 A. Yes, I am.

16 Q. And in that course, do you know that the statutes
17 prohibit you from disseminating this type of
18 information?

19 A. I went by our guardian ad litem office before I
20 came.

21 Q. I don't want to hear what somebody else told you.
22 I'm asking you, did you know that under our Statute you
23 are prohibited to disseminate this type of information.
24 It's confidential. Did you know that?

25 A. No, I didn't.

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- 1 Q. Did you think to check the law before you ---
- 2 A. Well, I thought for once we could ---
- 3 Q. Excuse me, ma'am. Let me finish, okay? Did you
- 4 think to check the law about that before you came up
- 5 here?
- 6 A. No, I did not.
- 7 Q. And who's the first person you told about this?
- 8 A. It would be ---
- 9 Q. Mr. DeJong?
- 10 A. All -- yeah. Well, all y'all was in there.
- 11 Q. Well, you came up here. Did you have a
- 12 conversation with Mr. DeJong?
- 13 A. No. It was -- all of y'all was in there.
- 14 Q. Well, before that. Did you not have a
- 15 conversation with Mr. DeJong or Mr. Robinson?
- 16 A. Yes, I did.
- 17 Q. Okay. That's who you told you first; right?
- 18 A. Yes.
- 19 Q. You breeched your confidentiality agreement by
- 20 telling that; didn't you?
- 21 A. I guess I did.
- 22 Q. And you thought so much about what Complainant said
- 23 that you failed to put it in any report that was handed
- 24 to a Judge in the State of South Carolina? Yes or no?
- 25 Yes or no?

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1 A. Yes.

2 Q. Okay. That's all the questions I have. Thank
3 you.

4 THE COURT: Any redirect.

5 MR. DEJONG: No, Your Honor.

6 THE COURT: Thank you, ma'am. You may step
7 down.

8 MR. DEJONG: And I ask that she be excused,
9 Your Honor.

10 THE COURT: Without objection. The witness
11 may be excused. You may call your next witness.

12 MR. DEJONG: Thank you, Your Honor. The
13 Defense would call Ms. Jacquelyn Lankford to the stand,
14 please?

15 MISTER CLERK: Place your left hand on the
16 bible and raise your right hand. Do you solemnly swear
17 or affirm the testimony you're about to give in this
18 case to be the truth, the whole truth and nothing but
19 the truth, so help you God?

20 MS. LANKFORD: I do.

21 MISTER CLERK: If you would have a seat and
22 state your name for the record.

23 MS. LANKFORD: Jacquelyn Ariail Lankford.

24 JACQUELYN ARIAIL LANKFORD,

25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

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DIRECT EXAMINATION2 **BY MR. DEJONG:**

3 Q. Spell your first name, please, ma'am.

4 A. J-A-C-Q-U-E-L-Y-N.

5 Q. And your middle name, please?

6 A. A-R-I-A-I-L.

7 Q. And your last name, please, ma'am?

8 A. L-A-N-K-F-O-R-D.

9 Q. Now, Ms. Lankford, where do you live?

10 A. Easley.

11 Q. Okay. Are you familiar with Joey Sanders?

12 A. Yes, I am.

13 Q. Are you familiar with his parents?

14 A. Yes, I am.

15 Q. How are you familiar with them?

16 A. I've known them for fifty years.

17 Q. All right. Do you ever have occasion to work or
18 volunteer in any organization they're in?19 A. I'm a volunteer with the Miss South Carolina
20 Organization, yes.

21 Q. And how long have you done that?

22 A. Forty-five years or more.

23 Q. Okay. And what kind of work do you do for the
24 pageant as a volunteer?

25 A. I do the in-kind scholarship.