

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

WALTER SCOTT GARRETT,

APPELLANT

APPELLATE CASE NO 2015-001526

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL
2) SESSIONS
3 COUNTY OF CHARLESTON) CASE NO. 2014-GS-10-03549
2014-GS-10-03550

4 STATE OF SOUTH)
5 CAROLINA,)
6 Plaintiff,) Transcript of Record
7 vs.)
8 WALTER SCOTT GARRETT,) Date: July 6, 2015
9 Defendant.) July 8, 2015

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13 B E F O R E:
14 The Honorable DEADRA JEFFERSON

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Denise J. Lauder, RPR
Ninth Judicial Circuit
Circuit Court

1 The following proceedings were held
2 July 6, 2015, Charleston County Circuit Court,
3 11:59 a.m.

4 THE COURT: Is the State ready to
5 proceed?

6 MS. HERRING-LASH: Yes.

7 THE COURT: How many Indictments is the
8 State going forward on? I have two, which is
9 2014-GS-3549, which is CSC with a minor, first, and
10 2014-3550, which is CSC with a minor, first. Are
11 you going forward on both of them?

12 MS. HERRING-LASH: Yes, Your Honor.

13 THE COURT: Are they the same victims?

14 MS. HERRING-LASH: Yes, Your Honor.

15 THE COURT: Same victim, I'm sorry.

16 Minor ?

17 MS. HERRING-LASH: Yes.

18 THE COURT: Okay. There's a motion to
19 sequester witnesses. I assume you-all can agree on
20 that, with the exception of the victim and the case
21 agent; is that correct?

22 MS. HERRING-LASH: Yes, Your Honor.

23 THE COURT: Bear with me, my stuff is
24 all kind of turned backwards.

25 Bring the panel up now.

1 we can determine how we will be proceeding for the
2 remainder of the day. I suspect we're going to
3 break for lunch, since it's about 5 until 1, and
4 then resume after lunch with opening instruction
5 and opening argument.

6 During this break, please do not
7 discuss this case amongst yourselves, please don't
8 speculate about what you think it may or could be
9 about. We should be out very briefly. We
10 appreciate your patience. Go with the bailiff.

11 (Jury panel out, 12:56 p.m.)

12 THE COURT: I meant to ask this
13 question earlier. Is there any record that the
14 State would be seeking to impeach the Defendant's
15 credibility if he testifies?

16 MS. HERRING-LASH: Not within the last
17 ten years.

18 THE COURT: So that's moot as well.

19 MS. HERRING-LASH: Yes.

20 THE COURT: When is the last act of
21 malfeasance alleged to have taken place in this
22 case?

23 MS. HERRING-LASH: January of 1990,
24 Your Honor.

25 THE COURT: When was it first reported

1 to the State?

2 MS. HERRING-LASH: January of 1990,
3 warrants were taken out at that time.

4 THE COURT: And what happened?

5 MS. HERRING-LASH: They were unable to
6 locate the defendant. Officers went to his home on
7 two occasions, DSS went to his home. The wife told
8 the officers that he had left and -- this was a
9 case where the warrant was taken out at that time
10 and filed, but it was not entered into NCIC.

11 The sheriff's department did an
12 internal audit in 2013, and found numerous warrants
13 that had not been entered, this was one of them,
14 and then law enforcement got the -- located the
15 victim and located the defendant and served the
16 warrants. And we have the law enforcement file
17 from back in 1990. I don't know if you want me to
18 go --

19 THE COURT: No. I was just -- was he
20 living in South Carolina all this time?

21 MS. HERRING-LASH: No, Your Honor.

22 THE COURT: Where was he living?

23 MS. HERRING-LASH: Georgia. Well, I
24 don't know about all this time. I know when he was
25 arrested he was living in Georgia. And there were

1 several arrests throughout the years that were in
2 Georgia, if I'm not mistaken.

3 THE COURT: Not related to this.

4 MS. HERRING-LASH: Right.

5 THE COURT: Okay. How long will it
6 take to argue your motion to dismiss, Mr. Kozelski?
7 Keeping in mind that I don't expect you to read the
8 memorandum; I can read it by myself.

9 MR. KOZELSKI: I understand, Your
10 Honor. I'm not exactly sure. I don't know if
11 the --

12 THE COURT: I would think ten minutes
13 would be sufficient.

14 MR. KOZELSKI: I don't -- probably,
15 Your Honor. I don't know if the State intends to
16 profer any evidence or put up any testimony.

17 THE COURT: Why would they be required
18 to? There's no statute of limitations on any crime
19 in South Carolina.

20 MR. KOZELSKI: I understand, Your
21 Honor, but just as far as their justification for
22 the delay --

23 THE COURT: I think she just told me
24 the justification. That's why I asked those
25 questions very specifically.

1 MR. KOZELSKI: Yes, Your Honor. And so
2 I don't think that it would take more than ten
3 minutes. I think you're right on that.

4 THE COURT: How long is it going to
5 take the State to respond?

6 MS. HERRING-LASH: I would think,
7 depending on his argument, not more than ten
8 minutes.

9 THE COURT: Did you file anything in
10 response to his motion? Not that you had to. I'm
11 just trying to make sure I didn't miss anything.

12 MS. HERRING-LASH: No, Your Honor.

13 THE COURT: Okay. You may proceed,
14 Mr. Kozelski.

15 MR. KOZELSKI: Thank you, Your Honor.

16 THE COURT: Uh-huh.

17 MR. KOZELSKI: As to the motion to
18 dismiss, Your Honor, we have cited extensively in
19 our brief a number of cases that --

20 THE COURT: Are those cases similar to
21 this case?

22 MR. KOZELSKI: -- we are relying upon.
23 Yes, Your Honor.

24 THE COURT: How are they?

25 MR. KOZELSKI: The one case that I

1 think is directly on point is the case of State V.
2 Lee, which was decided by the supreme court back in
3 2007. I do have a copy if you would like one. But
4 here the court of appeals vacated the defendant's
5 conviction based on a 12-year-preindictment delay.
6 They said that the indictment -- the delay of the
7 indictment violated his due process rights and that
8 there was no justification by the State for
9 delaying this 12 years --

10 THE COURT: What indication do you have
11 that even if they had put it in NCIC, that they
12 would have found your client and this would have
13 gone forward any quicker than it did?

14 MR. KOZELSKI: Well, Your Honor, I
15 think had they correctly put this into the FBI
16 database, which is the nationwide clearinghouse,
17 then he would have been flagged when he was
18 arrested on several occasions for numerous driving
19 offences, and also he spent six months on a simple
20 assault charge in Georgia in Clayton County. I
21 think that --

22 THE COURT: Unfortunately, it's been my
23 experience that even when that's done, they still
24 don't flag people and they don't hold them and they
25 still never get returned here or -- and, vice

1 versa, we still do the same thing to other states
2 in terms of reciprocity.

3 MR. KOZELSKI: Well, Your Honor, I
4 don't know if there was any valid attempt to serve
5 this on him. I think the testimony that I derived
6 from the Rule 5, is that they went to the house,
7 they asked if he was there, and the wife told them
8 that they were separated and he was no longer
9 there. That seems --

10 THE COURT: He wasn't in South
11 Carolina, was he?

12 MR. KOZELSKI: He was not in South
13 Carolina, and he is a --

14 THE COURT: So even if they had
15 exercised due diligence, how would they have found
16 him if he wasn't here?

17 MR. KOZELSKI: Your Honor, he just went
18 back home. Had they just searched any of his
19 family members or had they attempted to go --

20 THE COURT: Do you think the family
21 members would have been cooperative with the police
22 to try to locate him, especially with the acrimony
23 that probably existed between him and his wife?

24 MR. KOZELSKI: I believe so, Your
25 Honor.

1 THE COURT: Really? You think a family
2 member would have told the police where their
3 family member was so they could arrest him?

4 MR. KOZELSKI: I do believe that. I
5 believe --

6 THE COURT: Do you have independent
7 corroborative proof of that?

8 MR. KOZELSKI: I do not, Your Honor.
9 That is one of our prejudices that we think is
10 apparent in this case, is that one of the -- my
11 client's mother, who was involved in many of these
12 DSS actions in Georgia, she was very close with the
13 complainant in this case, she has actually -- they
14 actually talked after these charges were filed and
15 brought down in the '90s at some point.

16 I don't think that even the complainant
17 in this case knew that a warrant was taken out.

18 THE COURT: I'm sorry, repeat that.

19 MR. KOZELSKI: I don't believe
20 Ms. Minor knew that a warrant was taken out on
21 Mr. Garrett. Ms. Herring-Lash has expressed to me
22 that she had been searching for him, but she did
23 not know any law enforcement agency to contact
24 because she didn't know a warrant was out on him.

25 I think the same could be said for

1 Mr. Garrett. He wouldn't have known necessarily
2 all this time that a warrant was out on him, and I
3 don't believe that had any law enforcement
4 attempted to go to his place of residence -- I
5 think there's a clear history that he has been
6 established in Clayton County, Georgia for --

7 THE COURT: Let's say they got in touch
8 with him in 1990. What difference does it make?

9 MR. KOZELSKI: Well, Your Honor, I
10 think that we would be in a much different position
11 than we are today.

12 THE COURT: How?

13 MR. KOZELSKI: I think we have been
14 prejudiced not only due to the 24 years, obviously,
15 it's --

16 THE COURT: You can't just tell me the
17 word prejudiced. You need to define and quantify
18 that for me. I need to know appreciably what would
19 be different if we were trying this case in 1990
20 versus trying it now. If it doesn't make a
21 difference, then the delay doesn't make a
22 difference. I'm just trying to figure out what is
23 the difference between 1990 and 2015.

24 MR. KOZELSKI: There's a few examples
25 that we specifically addressed in our brief, the

1 first of which is the destruction of the
2 contemporaneous DSS records that took place here in
3 1990 --

4 THE COURT: Why wouldn't the records
5 still exist?

6 MR. KOZELSKI: They don't exist, Your
7 Honor.

8 THE COURT: Why don't they?

9 MR. KOZELSKI: They have been
10 destroyed. We received a letter -- or
11 Ms. Herring-Lash received a letter from the
12 Department of Social Services saying that due to
13 their retention they were not saved.

14 THE COURT: Due to their what?

15 MR. KOZELSKI: Their retention policy
16 and how long they keep their files. This was a big
17 concern to the Court in State V. Lee, that there
18 was no contemporaneous DSS files and they were
19 destroyed --

20 THE COURT: But how would any of it
21 have been admissible?

22 MR. KOZELSKI: We're not sure, Your
23 Honor.

24 THE COURT: Well, I'm sure; it would
25 all be hearsay. You need to tell me how any of it

1 would have been admissible.

2 MR. KOZELSKI: Well, it certainly would
3 have been admissible for impeachment purposes, had
4 the child said anything different from what she
5 stated to officers back on January --

6 THE COURT: Do you have any indication
7 that she did? If she did, I doubt they would have
8 filed charges, would they? But it would still be
9 in the police officer's file. They would have a
10 contemporaneous statement from her.

11 MR. KOZELSKI: I think we do have some
12 evidence to suggest that she had switched her story
13 around to some degree.

14 THE COURT: I believe that's in the law
15 enforcement record and you can use it to impeach
16 her, correct?

17 MR. KOZELSKI: Well, it's in one of
18 their DSS caseworker's record; however, we don't
19 have any of the files to corroborate --

20 THE COURT: That's a little confusing
21 to me. What do you mean it's in one of the DSS
22 records?

23 MR. KOZELSKI: They have -- they have
24 -- one of the witnesses they're prepared to call is
25 William Cramer who used to work for Department of

1 Social Services. I'm not sure if he's still
2 employed there. He was Minor 's third
3 caseworker in South Carolina. She'd had Miss Alice
4 Brown and she had a Miss Patty Christenson. Both
5 of those witnesses we have been unable to locate,
6 and in the letter from DSS to Ms. Herring-Lash,
7 they stated that because they switched their
8 database system, they have no idea if they were
9 employed there or any records on those two
10 caseworkers before.

11 These were obviously -- Miss
12 Christenson was obviously there during the
13 interview conducted by Detective Reed, and I'm not
14 entirely sure what Miss Brown's role was, other
15 than to be a caseworker. We do have caseworker
16 files from Georgia that are from the Clayton County
17 Department of Family and Child Needs. I think
18 through some of those, even though they are prior
19 bad acts, I think that we can see statements made
20 by the child. And whether they adhere to what she
21 is saying, they could be used for --

22 THE COURT: You're kind of going in
23 circles and you haven't answered my question. My
24 question is, what indication do you have that there
25 was something inconsistent said in the South

1 Carolina records that would not be reflected in law
2 enforcement's records? If anything DSS had would
3 have come from law enforcement, they would not have
4 interviewed the child. A caseworker would not have
5 interviewed the child; the child would have been
6 interviewed at LCC.

7 A caseworker would have been strictly
8 prohibited from having any factual discussion about
9 the case with the child. The caseworker would have
10 relied on the statements from Lowcountry Children's
11 Center and from the statements that the child would
12 have made to the police, and then they would have
13 gone forward with a treatment plan and an
14 intervention plan for the child.

15 So it is unlikely that the child would
16 have made any spontaneous statements to a
17 caseworker about the facts and circumstances of
18 this case.

19 MR. KOZELSKI: Well, I think in this
20 case we do have particular evidence that she did
21 make a statement.

22 THE COURT: What is that evidence?

23 MR. KOZELSKI: The one statement in
24 particular is to William Cramer in which he
25 states --

1 THE COURT: You have him available to
2 testify, correct?

3 MR. KOZELSKI: Yes, we do, Your Honor.

4 THE COURT: Sir, can I help you?

5 UNIDENTIFIED PERSON: I was told to
6 come here to this courtroom.

7 THE COURT: Tell me your name.

8 UNIDENTIFIED PERSON: (Inaudible)
9 Garrett.

10 THE COURT: Are you a witness in the
11 case?

12 UNIDENTIFIED PERSON: No, I'm his
13 brother.

14 THE COURT: Are you going to call him
15 as a witness?

16 MR. KOZELSKI: No, Your Honor.

17 THE COURT: Sir, you can come in. I
18 just needed to make sure that you weren't a witness
19 because witnesses are sequestered.

20 If you have a statement, how are you
21 prejudiced? Because you can use it to impeach her.

22 MR. KOZELSKI: Your Honor, it's just
23 one of potentially many --

24 THE COURT: Well, I can't deal with
25 potential. I need to deal with what is concrete.

1 I need to know what prejudice -- if you're telling
2 me you're prejudiced because statements don't exist
3 and you aren't able to use them for impeachment,
4 but then you tell me you have a witness present who
5 can testify to something that is impeachable, it's
6 sort of circular.

7 MR. KOZELSKI: That it's one of many
8 statements, Your Honor. We were actually provided
9 with an MUSC termination letter, which we've also
10 provided in our brief, and that comes from Dr. Jane
11 Kublick. And contained within this report, they
12 talk about 21 sessions that they had with Ms. Min
13 or
14 at the Crime Victim's Research and Treatment
15 Center, and she does talk about her initial
16 session: Minor appeared to be having auditory
17 and visual hallucinations.

18 She goes on, today she appeared to be
19 unaware of the emotion of others and the impact of
20 their behaviors on other individuals.

21 THE COURT: And I assume you can have
22 somebody testify about that.

23 MR. KOZELSKI: I don't know who we
24 could, Your Honor.

25 THE COURT: I don't know why not. You
have a doctor who has treated her. She's an

1 expert. She can testify about anything that child
2 said in any of those sessions if you can't locate
3 that witness.

4 MR. KOZELSKI: Your Honor, I don't have
5 an expert. Actually, when I got this --

6 THE COURT: Dr. Schuh is an expert.

7 MR. KOZELSKI: I understand that, Your
8 Honor.

9 THE COURT: And those are her records,
10 aren't they?

11 MR. KOZELSKI: These are not her
12 records. These are --

13 THE COURT: Those are the records kept
14 in the ordinary course of business at MUSC which
15 are her medical records.

16 MR. KOZELSKI: I don't believe she has
17 ever viewed these or I have -- I have not got any
18 indication that --

19 THE COURT: Give her the opportunity to
20 review them and if there's something that was said
21 that was inconsistent, she can certainly testify
22 about it.

23 MR. KOZELSKI: I understand, Your
24 Honor. And I actually asked the Court for a
25 continuance --

1 THE COURT: Or you can get a custodian
2 from MUSC whoever is in charge of that department
3 now.

4 MR. KOZELSKI: Your Honor -- and I
5 actually asked the Court for a continuance and --

6 THE COURT: And Judge Harrington denied
7 it, and I'm not going back behind her --

8 MR. KOZELSKI: And I understand that,
9 but, Your Honor, just for the record purposes, I
10 did ask time to consult with my own expert. I was
11 given this on June 18th, I believe --

12 THE COURT: That's sufficient time.

13 MR. KOZELSKI: -- of last month, and so
14 we had basically two weeks before trial. I called
15 up an expert, I got an expert to say that she would
16 look over the file and review some of the findings;
17 however, she couldn't do it because she was on
18 vacation last week.

19 THE COURT: Have you made contact with
20 her to see if she's available? It doesn't take
21 them that long to review the records.

22 MR. KOZELSKI: I have made contact with
23 her. She sort of indicated to me that I don't
24 think she was going to have enough time before
25 Monday.

1 THE COURT: Well, it's unlikely you're
2 going to get to it before Wednesday or Thursday.

3 MR. KOZELSKI: Well, Your Honor, I
4 think there are only six witnesses in this trial.

5 THE COURT: Yeah, but I don't know how
6 long they are. I have nine witnesses listed.

7 MS. HERRING-LASH: We may not be
8 calling all of the witnesses, Your Honor.

9 MR. KOZELSKI: So I think the testimony
10 would be relatively brief in that regards, but I
11 don't -- I'm unaware of whether Dr. Sallis --

12 THE COURT: I think you should contact
13 her and ask her if she can make an assessment.
14 Doesn't sound like it's a great breadth of record,
15 and either she's going to be able to say what you
16 need her to say or she's not going to be able to
17 say what you want her to say.

18 MR. KOZELSKI: And these are also the
19 records that we are --

20 THE COURT: I'm not going to replot the
21 ground on the continuance. Judge Harrington is the
22 current authority and she's denied the motion. I
23 can't go behind her and --

24 MR. KOZELSKI: And I understand that,
25 Your Honor, we are not asking you to do that, but

1 we are saying that this termination summary in and
2 of itself indicates another 21 sessions. We did
3 file a specific Brady motion in order to get any
4 notes or any materials from those sessions; those
5 have been destroyed.

6 The State has also contacted the
7 supervising doctor, Dr. Julie Kaposki, and she
8 indicated she does not remember anything about the
9 case. So those are another instance of where the
10 records that could be potentially exculpatory in
11 the sense --

12 THE COURT: I need something more than
13 they could be. They also could be completely
14 corroborative with what she said --

15 MR. KOZELSKI: Your Honor.

16 THE COURT: -- or hasn't said, but you
17 already have some indication of the change in the
18 story; do you not?

19 MR. KOZELSKI: We do have some --

20 THE COURT: Which is not unusual in
21 these type of cases. People fluctuate; they say
22 one thing one day, say something else another day.
23 And if you have a witness who can corroborate that,
24 then you have, I believe, what would be sufficient
25 to impeach the witness's credibility. These are

1 always he said/she said, you said/I said,
2 especially where you don't have any DNA. And I
3 don't think the State has listed a DNA expert,
4 unless I missed something.

5 MS. HERRING-LASH: No, Your Honor.

6 MR. KOZELSKI: Well, Your Honor, this
7 is going back to State V. Lee. And we support
8 that, you know, because he -- because my client
9 never had access to these records, it's admittedly
10 difficult for him to accurately identify specific
11 pieces of evidence that would have exonerated him.

12 He never had access -- potentially
13 access to the medical records, and had this warrant
14 been served timely and had its -- run its due
15 course back in 1990s, I think those records would
16 have still been available. The same goes for the
17 DSS records.

18 Also, I did briefly allude to the
19 contact that Minor also had with my
20 client's mother. My client indicates that he was
21 there during the conversation in which Minor

22 said that she was accusing him because he
23 took her mother away. So that's potentially
24 another reason --

25 THE COURT: You should be able to call

1 his mother to say that.

2 MR. KOZELSKI: I would, Your Honor, had
3 she not passed away in 1999.

4 THE COURT: Oh, I'm sorry to hear that.

5 MR. KOZELSKI: So that is another
6 prejudice that --

7 THE COURT: He was present during the
8 conversation. I mean, he doesn't have any burden
9 of proof and he doesn't have to testify, and that
10 burden doesn't have to shift, but if he was there
11 present, he certainly can testify about it because
12 he heard it, and it's a statement against interest.

13 MR. KOZELSKI: I mean, I do think to a
14 certain degree --

15 THE COURT: If you wanted to call him
16 as a witness. I don't know if you want to.
17 Certainly, he doesn't have to testify.

18 MR. KOZELSKI: I do think that to a
19 certain extent, it does shift the burden back on
20 us to --

21 THE COURT: I didn't say the burden
22 should be shifted. I gave it to you as a bone in
23 case you wanted to call your client as a witness
24 and that's not going to be taken into consideration
25 in assessing whether you want him to testify.

1 MR. KOZELSKI: And we --

2 THE COURT: He certainly doesn't have
3 to testify. He doesn't have any burden of proof.

4 MR. KOZELSKI: And we have -- I have
5 discussed at length the possibility of him
6 testifying at this trial. I don't --

7 THE COURT: But there's nothing that
8 stops you from asking her point blank, didn't you
9 tell his mother --

10 MR. KOZELSKI: I do understand that,
11 but, you know, for impeachment purposes, obviously
12 it would be ideal to call the mother up to testify
13 exactly as to what happened. So we do have an
14 unavailable witness. We have multiple records that
15 no longer exist that could be exculpatory. We
16 don't know because these were never made available
17 to him.

18 I've also tried to locate his family
19 court attorney back in 1987, when the --

20 THE COURT: In South Carolina or
21 Georgia?

22 MR. KOZELSKI: It was in Georgia, Your
23 Honor. I have -- the attorney's name is John
24 Johnson. I have looked up the name on the Georgia
25 Bar Association. There's about eight John

1 Johnsons. I've been able to eliminate a number of
2 them just due to date of admittance. The ones that
3 were -- could have been, I did e-mail, if there was
4 an e-mail. I did get some response back from one
5 saying he wasn't the attorney. The others -- I
6 tried calling one; the number was disconnected. So
7 I've been unable to locate his family court
8 attorney back in 1987.

9 THE COURT: What difference would that
10 have made?

11 MR. KOZELSKI: I'm not sure, Your
12 Honor, and that's the whole problem with the
13 24-year delay.

14 THE COURT: You have to be more
15 definitive. You're saying, well, I don't know.
16 You may have located him and he didn't say what you
17 wanted him to say. I need something more concrete.

18 MR. KOZELSKI: He did represent them in
19 the action --

20 THE COURT: But you've gotten the DSS
21 records from Georgia. I don't know that that even
22 matters, does it?

23 MR. KOZELSKI: I've gotten most of
24 them. I'm not sure if we have all of them.
25 Certainly, those records don't exist anymore, other

1 than what they have pertaining to this case right
2 here. But --

3 THE COURT: What do you mean to this
4 case right here?

5 MR. KOZELSKI: As far as I -- I take it
6 it's the information that was in the case file in
7 regards to this that was originally asked for by
8 Detective Reed. I don't know if that was extended
9 beyond 1990, if they had any further contact with
10 her.

11 The attorney in question that I was
12 attempting to locate was the family court attorney
13 back in 1987, when the Department of Family and
14 Child Needs gave the child back after putting her
15 in foster care for two years. I think there could
16 be something in there that is exculpatory that is
17 not in the documents that were provided to me.

18 THE COURT: Why? They give children
19 back all the time that have been molested. It
20 doesn't have anything to do with -- it's usually
21 part of the treatment plan to reunite the family
22 after there's been significant counselling or
23 intervention. I don't know whether they were
24 living together when they gave the child back; I
25 have no idea.

1 MR. KOZELSKI: I believe they were,
2 Your Honor. I just don't know, and I can't -- he
3 did represent both Cathy Garrett and Mr. Garrett in
4 his case.

5 THE COURT: That's not unusual they
6 would reunify the family. They wouldn't keep a
7 family apart indefinitely. The goal of DSS is
8 reunification, to rehabilitate and put the family
9 back together.

10 MR. KOZELSKI: Well, I understand, Your
11 Honor, but these are the same hindrances, the same
12 obstacles that the defendant in Lee had to
13 overcome. And the Court said that the
14 12-year-delayed-indictment for no real justified
15 reason inevitably prejudiced his case to where it
16 was almost impossible for him to defend against
17 these charges, to properly cross-examine the
18 witnesses. There were just too many things, too
19 many obstacles to overcome, and too many documents
20 had been destroyed for him to use as exculpatory
21 evidence.

22 THE COURT: Anything further?

23 MR. KOZELSKI: Beg the Court's
24 indulgence? No, Your Honor.

25 THE COURT: Would the State like to

1 respond?

2 MS. HERRING-LASH: Yes, Your Honor.
3 First of all, I can distinguish this case from
4 State v. Lee in that what was missing in the Lee
5 case was the DSS records where DSS made the
6 decision to return the child. Those are the DSS
7 records that the defendant in this case was
8 provided.

9 What happened in 1990, the Charleston
10 County Department of Social Services requested the
11 entire Georgia file. They were provided with the
12 file from Georgia and that -- because they got it
13 in 1990, it was in the police file, has been
14 provided to the defense.

15 So the file regarding when the child
16 was returned is the file he has, which is very
17 distinguishable from Lee. He also has the
18 Charleston County Family Court file which was not
19 destroyed. Within that is the affidavit that the
20 DSS worker filed and all of the treatment plans
21 that the DSS filed throughout the family court. As
22 far as --

23 THE COURT: What year does that span?

24 MS. HERRING-LASH: Until she was
25 adopted.

1 THE COURT: Well, that's not my
2 question. When did it start and when did --

3 MS. HERRING-LASH: 1990 is when it
4 started --

5 THE COURT: So he has the entire DSS
6 file from 1990 through --

7 MS. HERRING-LASH: Through '94, from
8 South Carolina.

9 THE COURT: So that was not, in fact,
10 destroyed.

11 MS. HERRING-LASH: No. The DSS file
12 was, but everything they filed in the court was
13 preserved.

14 THE COURT: So you're talking about
15 caseworker notes and all that kind of stuff was
16 destroyed.

17 MS. HERRING-LASH: Was destroyed. The
18 affidavit from the placement is there as well as
19 the treatment plans were there. And one of the
20 authors of the treatment plan is going to be
21 testifying.

22 THE COURT: You may continue.

23 MS. HERRING-LASH: The Georgia case
24 spans from 1983 to '89, that he has.

25 THE COURT: And that file has been

1 produced as well?

2 MS. HERRING-LASH: Yes. It was the
3 entire file that Georgia sent to Charleston in
4 1990.

5 THE COURT: So that was preserved then.

6 MS. HERRING-LASH: That was preserved
7 because it was in law enforcement's file. What
8 else he has, Your Honor, is the medical exam that
9 was performed on the child on January 16th of 1990.
10 He has the incident report, he has a taped audio
11 statement that the child gave on January 15th of
12 1990, and the affidavit and the GAL report, the
13 treatment plans and Court orders, some of which
14 talk about her statement.

15 THE COURT: Did she, in fact, ever
16 recant?

17 MS. HERRING-LASH: Not that I know of,
18 Your Honor. The conversation that she had with the
19 grandmother that I had been made aware of, the
20 foster mother took her to DSS and the foster care
21 worker called the grandmother. He and the foster
22 mother listened in to that conversation.
23 Mr. Cramer --

24 THE COURT: So is the foster mother
25 available?

1 MS. HERRING-LASH: Yes, she's here
2 also.

3 THE COURT: So she would be able to
4 testify regarding that conversation.

5 MS. HERRING-LASH: And Mr. Cramer
6 remembers it, too. I cannot tell you that either
7 one of them will say they remember word-for-word
8 everything --

9 THE COURT: They remember the gist of
10 what was said and whether, in fact, if it was
11 recanted.

12 MS. HERRING-LASH: I think they would
13 remember that. They remember the grandmother
14 saying to the child that she didn't believe her.
15 And, in fact, law enforcement did go to the home
16 looking for him. And in January the mother
17 actually showed up --

18 THE COURT: January of what year?

19 MS. HERRING-LASH: 1990. The officer
20 that went to the school was told by school
21 personnel that the parents had been at the school,
22 were told law enforcement was on the way --

23 THE COURT: Is there a reason you're
24 standing up?

25 MR. KOZELSKI: No, Your Honor.

1 MS. HERRING-LASH: -- that law
2 enforcement was informed on January 15th of 1990
3 that the parents had come to the school. They were
4 informed law enforcement was en route and they
5 left.

6 THE COURT: Why again -- is there
7 anything that you need to add? I asked you very
8 specific questions about the delay, and you told me
9 that, if I'm inaccurate please correct me, the
10 warrants were done in January of 1990, at the time
11 of the original allegation, that they attempted to
12 serve the warrant, that the defendant absented
13 himself from the state of South Carolina and they
14 were not able to locate him through an oversight in
15 the sheriff's department, and during an audit in
16 2013, that oversight was discovered, and then they
17 made attempts to locate him in Georgia. Is that an
18 accurate synopsis?

19 MS. HERRING-LASH: Yes, Your Honor.

20 THE COURT: Is there anything that
21 needs to be added factually as to why the service
22 of this Indictment was delayed?

23 MS. HERRING-LASH: That is the only
24 reason they did not locate him.

25 THE COURT: How did they locate him

1 this time? When were the Indictments actually
2 served?

3 MS. HERRING-LASH: They were served
4 January 3rd of 2014. They located him through
5 search engines that law enforcement have at this
6 point in time that wouldn't have been available in
7 1990, but they located him through search engines.

8 THE COURT: And so what, they called
9 him up and said, we have an outstanding warrant?

10 MS. HERRING-LASH: They called Clayton
11 County Sheriff's Department and he was picked up
12 and put in the Clayton County jail, and our
13 extradition team went to pick him up from there.
14 He waived extradition is my understanding.

15 THE COURT: And he's been out on bond I
16 assume since then?

17 MS. HERRING-LASH: No. He's been in
18 Charleston County jail.

19 THE COURT: But he's been in jail since
20 January 13th of -- well, since -- well, in Georgia?

21 MS. HERRING-LASH: No. Here -- back
22 here January 3rd of 2014, and been in Charleston
23 County Detention Center since then.

24 THE COURT: Okay. Anything further
25 from the State?

1 MS. HERRING-LASH: Your Honor, the only
2 thing that I would add, it's been my experience
3 that the -- having the treatment record, although
4 it wouldn't be admissible, would aid the State much
5 more than it would aid the defense, just based on
6 the fact that it was prepared by her advocate, her
7 therapist.

8 THE COURT: And do you have any
9 evidence that she has recanted her story during the
10 course of this time period?

11 MS. HERRING-LASH: No, Your Honor.

12 THE COURT: That would have needed to
13 be turned over to the defense.

14 MS. HERRING-LASH: As -- I mean, she
15 hasn't spoken about this in years.

16 THE COURT: How old is she now?

17 MS. HERRING-LASH: She's 36 now.

18 THE COURT: And what are the ages she's
19 alleged this happened?

20 MS. HERRING-LASH: She was ten. They
21 moved to Charleston November the 12th of 1989. And
22 she went to school January 15th of 1990, told a
23 guidance counselor, and the Charleston County
24 Sheriff's Department and Charleston County DSS were
25 called to Goodwin Elementary at that time.

1 THE COURT: That's when the parents
2 left?

3 MS. HERRING-LASH: The parents showed
4 up, but she didn't get off of the bus and it was
5 late in the day. They actually had her at school
6 after.

7 THE COURT: And then they were advised
8 law enforcement was on the way --

9 MS. HERRING-LASH: Was en route.

10 THE COURT: -- and they left.

11 MS. HERRING-LASH: That's written in
12 the incident report and what the mother, as best
13 she can, has told me.

14 THE COURT: And so the mother is
15 present and going to testify?

16 MS. HERRING-LASH: She -- Your Honor, I
17 do not think that the mother's memory is credible.
18 She says that she was on drugs and alcohol, that
19 she can't remember very much.

20 THE COURT: What is her name?

21 MS. HERRING-LASH: Cathy Garrett.

22 THE COURT: She is on the list --

23 MS. HERRING-LASH: She is on the
24 witness list. I just --

25 THE COURT: You don't plan to call her.

1 MS. HERRING-LASH: I don't plan to call
2 her.

3 THE COURT: While we're talking about
4 that, is there anyone else on this witness list you
5 don't intend to call?

6 MS. HERRING-LASH: I don't intend to
7 call Tom Campbell. Sherry Church I think can get
8 into anything that he can get into. He simply
9 drove the defendant.

10 THE COURT: Well, you don't have to
11 tell me why. Is there anybody else on this list
12 you don't intend to call?

13 MS. HERRING-LASH: Oh, Patricia Cowhig.
14 She's not able to come.

15 THE COURT: And you will probably not
16 call Mrs. Garrett.

17 MS. HERRING-LASH: I probably will not.

18 THE COURT: Okay.

19 MS. HERRING-LASH: She stays
20 sequestered in case --

21 THE COURT: Yes. Now, did the State --
22 I'm going to read some over lunch, but I read all
23 the stuff when it was submitted to me last week,
24 and I reviewed it again on Thursday prior to the
25 holiday. I'm not convinced that this case is

1 analogous factually to the precedents that was
2 submitted to the court. I'm going to take it under
3 advisement, but I'm letting you know in advance,
4 I'm not inclined to.

5 Now, I need to know from the State, and
6 this is purely for PCR purposes, did you tender any
7 offers to the defendant?

8 MS. HERRING-LASH: I did, but he can
9 plead to one count.

10 THE COURT: I need you to tell me in
11 totality what it was that you offered to him, when
12 it was offered, and what the deadline was.

13 MS. HERRING-LASH: I offered it to him
14 last week before I had -- I'll explain. Before I
15 had the opportunity to make an offer, the defense
16 said they wanted a trial and so I didn't really
17 make an offer.

18 THE COURT: Well, it doesn't matter to
19 me one way or the other, I just need to know if one
20 was tendered what the nature of it was so I can
21 make sure it was fully explained to him. Hindsight
22 is 20/20, and I want a full contemporaneous record.

23 MS. HERRING-LASH: To dismiss one
24 charge and let him plead.

25 THE COURT: And that was last week?

1 MS. HERRING-LASH: Yes, ma'am.

2 THE COURT: Nolle pros one count, plead
3 to one count. Were there any sentencing
4 recommendations?

5 MS. HERRING-LASH: No, Your Honor.

6 THE COURT: Was the State seeking
7 active time?

8 MS. HERRING-LASH: Oh, yes, Your Honor.

9 THE COURT: 0 to 30 is that --

10 MS. HERRING-LASH: 0 to 30.

11 THE COURT: Was there any expiration
12 date on that?

13 MS. HERRING-LASH: I think it was
14 rejected.

15 THE COURT: No. No. Was there an
16 expiration date on it.

17 MS. HERRING-LASH: No. No.

18 THE COURT: Mr. Kozelski, did you fully
19 explain to your client the State's offer regarding
20 this case?

21 MR. KOZELSKI: Yes, I did.

22 THE COURT: And what Ms. Herring-Lash
23 has represented to the Court, is that accurate as
24 to what they offered?

25 MR. KOZELSKI: It is, Your Honor.

EXAMINATION BY THE COURT

1 THE COURT: And do you believe he fully
2 understood your conversation with him?

3 MR. KOZELSKI: Yes.

4 THE COURT: And did he wish to accept
5 or reject that offer?

6 MR. KOZELSKI: Reject.

7 THE COURT: Did he do that with or
8 against your advice?

9 MR. KOZELSKI: With my advice, Your
10 Honor.

11 THE COURT: Sir, please stand and raise
12 your right hand to be sworn.

13 WALTER SCOTT GARRETT,
14 being first duly sworn, testified as follows:

15 EXAMINATION

16 BY THE COURT:

17 Q. State your full name for the record.
18 You can put your hand down.

19 A. Walter Scott Garrett.

20 Q. And, Mr. Garrett, did your lawyer fully
21 explain to you the State's offer?

22 A. Yes.

23 Q. Did you understand the conversation
24 with him?

25 A. Yes, ma'am.

EXAMINATION BY THE COURT

1 Q. And were you -- did you accept or
2 reject the offer?

3 A. I rejected.

4 Q. And was that with or against your
5 lawyer's advice?

6 A. With it.

7 Q. Were you suffering from any mental
8 disabilities at the time?

9 A. No, ma'am.

10 Q. Did you feel that you were forced in
11 any way to accept or reject the offer?

12 A. No, ma'am.

13 Q. Did you feel anybody put you under any
14 undue influence?

15 A. No, ma'am.

16 Q. Were you under the influence of any
17 drugs or alcohol or suffering from any mental
18 disabilities?

19 A. No, ma'am.

20 THE COURT: Thank you. You may take
21 your seat.

22 I think we should break for lunch until
23 3:00. Does that give everybody enough time to get
24 regrouped? That gives the jury enough time.
25 They're probably mad as hornets at me right now.

1 Would you get the jury for me, and I
2 will just fall on my sword as delicately as I can.

3 (Jury in, 1:37 p.m.)

4 THE COURT: Ladies and gentlemen,
5 you-all have been incredibly patient with us. I
6 told my bailiff before he went to get you-all that
7 I was going to have to fall on my sword and try to
8 do it delicately. It is completely my fault.
9 We've been dealing with some matters of law, that
10 took a little longer than I thought they would,
11 that would allow us to start the case and move it
12 along fairly expeditiously without having to start
13 and stop, sending you-all in and out of the
14 courtroom.

15 We are going to resume at 3:00. You
16 will have about an hour and 20 minutes for lunch.
17 You will find that in downtown, that's not a lot of
18 time because it's the height of tourist season. So
19 I would strongly suggest that you not move your
20 cars if they are at Cumberland. You will
21 invariably come back and not have a space, which
22 would be frustrating to you. Also, although that
23 seems like a long time, it really isn't; time tends
24 to evaporate.

25 If you need to come back into the jury

1 room before 3:00, just let the bailiffs know.
2 Usually they're here 15 minutes before. So if
3 you-all get bored and want to come back, usually
4 they're here about 15 minutes to give themselves a
5 ten-minute window before we get restarted.

6 I'm going to have the clerk swear you.
7 If you would stand for me please and raise your
8 right-hand to be sworn.

9 THE JURY,
10 being first duly sworn, testified as follows:

11 THE CLERK: If you accept this oath,
12 please sit down.

13 (Jury seated)

14 THE CLERK: Let the record reflect that
15 all jurors have been seated.

16 THE COURT: Thank you. We will break
17 until 3:00. During the break, please do not
18 discuss the case among yourselves or with anyone
19 else. Please don't have any contact with anyone in
20 or about the courthouse that does not have a juror
21 sticker. Even an innocent conversation during
22 litigation can be very easily misinterpreted. I
23 don't know how to say it delicately, but people are
24 generally paranoid during litigation. They would
25 rather assume that you were having an inappropriate

1 conversation than a passing conversation.

2 If you would notice these little
3 bubbles that are all over, you will notice they're
4 everywhere, I think they're in the elevators now,
5 those are high-definition cameras that record
6 everything that we do. So -- I don't like
7 lipreading, I don't like watching the videos trying
8 to figure out what you were saying, so the best
9 course of action is not to have any of those
10 conversations.

11 Also, now with technology, people will
12 record you on their tablets and their phones. So,
13 again, I would ask that you refrain from having any
14 contact with someone you do not recognize to be a
15 juror. If you will, return directly to the jury
16 room; the bailiff will show you how to do it.
17 Also, please don't do independent research
18 regarding any issue or matter involved in this case
19 on the Internet or otherwise. Please don't allow
20 yourself to be exposed to any media coverage if
21 there is any.

22 Please don't make any comments
23 regarding your status on social networking sites
24 such as Facebook, Vine, Twitter -- there are so
25 many I've lost track. I don't have any of them so

1 I'm a bit of a dinosaur. You would be amazed the
2 people that troll those sites during the day and
3 call our jury coordinator and let us know what
4 you've said. And, again, a very innocent comment
5 could be very easily misinterpreted. What I find
6 incredibly disturbing is that they're not on jury
7 duty, so I wonder what they're doing all day to
8 peruse social media when they're supposed to be
9 working, but I guess that's a whole other issue
10 that's none of my business. But, again, a passing
11 comment could be so very easily misinterpreted, so
12 I would ask that you refrain from that during the
13 course of your jury service as well.

14 You've been incredibly patient with us.
15 I know this process is foreign to you. We do this
16 every day, day in and day out, except holidays, so
17 we're very used to it. I try very hard not to take
18 for granted that you're unfamiliar with it. Please
19 know how much we value you. We have jury trials in
20 Charleston -- again, almost every week we have four
21 trial courts operating, and we could not conduct
22 the business of the court without your willingness
23 to be here with us.

24 I hope you-all have a good lunch. It's
25 supposed to be fairly temperate today. At least it

1 won't be 110. Have a good lunch and we'll see you
2 all back at 3:00. Come back to your jury room. I
3 will leave you in the hands of our bailiffs.

4 (Jury out, 1:42 p.m.)

5 THE COURT: All right. Is there
6 anything before we break for lunch from the State?

7 MS. HERRING-LASH: No, Your Honor.

8 THE COURT: From the defense?

9 MR. KOZELSKI: No, Your Honor

10 THE COURT: Are there any exhibits that
11 you-all have agreed upon that you can premarked.

12 MS. HERRING-LASH: I have premarked the
13 only exhibit that I have.

14 THE COURT: Did you-all agree to it?

15 MR. KOZELSKI: Yes, Your Honor.

16 THE COURT: What is it, State's 1?

17 MS. HERRING-LASH: It's a photograph.

18 THE COURT: State's Exhibit Number 1
19 will be marked and admitted without objection. Is
20 that correct, from the State?

21 MS. HERRING-LASH: Yes, Your Honor.

22 THE COURT: From the defense?

23 MR. KOZELSKI: Yes, Your
24 Honor.

25 (STATE'S EXH. 1 in evidence.)

1 THE COURT: All right. Have a good
2 lunch. I'll see you at 3:00.

3 (A luncheon recess transpired.)

4 THE COURT: State ready to proceed?

5 MS. HERRING-LASH: Yes, Your Honor.

6 THE COURT: Defense ready to proceed?

7 MR. KOZELSKI: We are, Your Honor.

8 MS. PROCTOR: Your Honor, may I talk to
9 you about a scheduling matter?

10 THE COURT: Sure.

11 MS. PROCTOR: Would it be possible if
12 in the morning we started at 10:00? The reason I'm
13 asking is, Nina and myself both have pretrial
14 conferences with Harrington at 9:15, and I have
15 three people on the trial docket so I have to be
16 there. And it usually takes about 45 minutes.

17 THE COURT: Yeah, I'll accommodate you.
18 It's not a problem.

19 MS. PROCTOR: Thank you.

20 THE COURT: You're welcome.

21 Do we have notebooks and pens or
22 pencils for the jury?

23 Number 189, Mrs. Lawson, is the
24 foreperson. Bring her in last.

25 I do not take speaking objections, so

1 if you have an objection, you need to simply state,
2 objection. I will ask for the grounds for the
3 objection or the basis, and you should be able to
4 succinctly state that, whether it be leading,
5 bolstering, pitting, relevance, you know, the
6 myriad of hearsay. If I need to have argument, I
7 will ask for argument; otherwise, I will make a
8 contemporaneous ruling for the record.

9 I needed to ask, does the defense plan
10 to introduce any evidence that would come within
11 the ambit of the State's motion in limine regarding
12 State v. Boyder?

13 MR. KOZELSKI: No, Your Honor.

14 THE COURT: So that motion is moot as
15 well, correct?

16 MR. KOZELSKI: Yes, ma'am.

17 THE COURT: Is there any evidence the
18 defense would be seeking to introduce that would
19 run afoul of the rape shield statute?

20 MR. KOZELSKI: No, Your Honor.

21 THE COURT: So that motion is moot as
22 well.

23 Now, I assume none of the individuals
24 in the courtroom are witnesses in the case, as you
25 all have agreed to sequester all witnesses except

1 the victim in this case and the case agent; is that
2 accurate from the State?

3 MS. HERRING-LASH: Yes, Your Honor;
4 Minor and Bill Reed.

5 THE COURT: And is that correct from
6 the defense?

7 MR. KOZELSKI: Yes, Your Honor.

8 THE COURT: Okay. Even those witnesses
9 you may contemplate calling, you might want to --
10 you said you may call some witnesses, so I assume
11 that anybody that's in here is not somebody that
12 you've contemplated calling.

13 MR. KOZELSKI: No, Your Honor.

14 THE COURT: Who would be the State's
15 first witness?

16 MS. HERRING-LASH: Your Honor, the
17 first witness would be Minor , also known as
18 Minor , the victim.

19 THE COURT: I assume Minor is her
20 married name.

21 MS. HERRING-LASH: Yes, Your Honor.
22 And she was adopted --

23 THE COURT: Or was that her adopted
24 name?

25 MS. HERRING-LASH: Her adopted name is

1 Minor , but her married name is Minor .

2 THE COURT: Okay. Are you standing up
3 for a reason?

4 MR. KOZELSKI: Your Honor, I just
5 wanted to address one motion before we go forward
6 with opening statements.

7 THE COURT: Which is?

8 MR. KOZELSKI: And that is the motion
9 pertaining to evidence of flight.

10 THE COURT: Is the State going to be
11 talking about flight during its opening arguments?

12 MS. HERRING-LASH: The only thing that
13 I was going to say that may pertain to that is,
14 after the day in January of 1990 that Minor went
15 to school, she did not see her mother or stepfather
16 again.

17 THE COURT: That's not flight, is it?

18 MR. KOZELSKI: No, Your Honor.

19 THE COURT: So your motion is moot?

20 MR. KOZELSKI: I don't know if it's
21 moot pertaining to all the testimony as we go
22 forward --

23 THE COURT: Well, let me ask the
24 question more particularly. Does the State plan to
25 introduce any evidence of flight of the defendant?

1 I assume you're going to present some testimony
2 that when the police arrived at the school or when
3 the -- let me rephrase that, when the parents were
4 advised that the police were coming to the school,
5 that they left the school?

6 MS. HERRING-LASH: Right, Your Honor.

7 THE COURT: Is that what you're
8 referring to, MR. KOZELSKI?

9 MR. KOZELSKI: I believe so, Your
10 Honor.

11 THE COURT: I think that would -- based
12 on what has been presented to me pretrial, they
13 would be allowed to introduce that into evidence.

14 MR. KOZELSKI: Well, I'm not exactly
15 sure where they get that evidence from.

16 THE COURT: I don't know. I guess
17 we'll have to wait and see if they lay the
18 appropriate foundation based on someone's rational
19 perception who was there to witness it.

20 MR. KOZELSKI: Yes, Your Honor.

21 THE COURT: And then you'd have to make
22 a contemporaneous objection at that time, but if
23 they can establish the appropriate foundation, it's
24 an appropriate line of questioning.

25 MR. KOZELSKI: I understand, Your

1 Honor.

2 THE COURT: We're going to take up any
3 testimony regarding what could be loosely
4 characterized as prior bad acts in camera. And
5 we've already established that, correct?

6 MS. HERRING-LASH: Yes, Your Honor.
7 I'll go through the Charleston allegations and then
8 I'll break and she can talk about Georgia in
9 camera.

10 THE COURT: As regards to the
11 defendant's motion to dismiss, that motion is
12 denied based on the applicable precedent. I am
13 going to make specific findings of fact and
14 conclusions of law when we have a break, but I'm
15 not going to do that now in the interest of time
16 because I have a jury waiting and I don't see
17 anything to be served by doing it now.

18 The defendant has not established the
19 elements that are applicable pursuant to case law
20 regarding prejudice such that he can establish that
21 the indictment should be dismissed. But, again, I
22 will go into it very specifically and address each
23 item at the appropriate -- when I -- within my
24 discretion when I determine we have an appropriate
25 break to take the matter up.

COURT'S OPENING INSTRUCTIONS

1 I have already fully heard argument,
2 and once the Court has ruled I'm not going to hear
3 any additional argument.

4 State ready to proceed?

5 MS. HERRING-LASH: Yes, Your Honor.

6 THE COURT: Is the defense ready to
7 proceed?

8 MR. KOZELSKI: We are, Your Honor.

9 THE COURT: Please bring in the jury.

10 (Jury in, 3:16 p.m.)

11 THE BAILIFF: All jurors present.

12 THE COURT: Thank you. Ladies and
13 gentlemen, I hope that you-all had a pleasant lunch
14 recess. We are going to try the case of the State
15 of South Carolina versus Walter Scott Garrett, the
16 Defendant.

17 What I will say to you now is intended
18 to serve as an introduction to the trial of this
19 case so that you may better understand what is
20 happening procedurally as the case goes forward.
21 These remarks are not a charge on the law in this
22 case. I will instruct you on the law applicable to
23 this case at the end of the trial before you are
24 allowed to deliberate regarding this case.

25 And when you hear me use the word,

COURT'S OPENING INSTRUCTIONS

1 regarding that at the conclusion of the case.

2 Ladies and gentlemen, the foreperson
3 does not have any greater vote or voice than you
4 do. It is purely administrative and it is a purely
5 random process that the Court employs in appointing
6 fore people so that a random cross section of the
7 community is represented in that capacity. Again,
8 I emphasize that that person has no greater voice
9 or vote than any other juror. It is simply that we
10 need someone to fill out the verdict form and also
11 to write out any questions that you may have during
12 the deliberation process.

13 In order to preserve everyone's rights,
14 I will give the parties the opportunity to take
15 exception to anything that the Court has said by
16 way of opening instructions. Are there any
17 exceptions from the State?

18 MS. HERRING-LASH: No, Your Honor.

19 THE COURT: From the defense?

20 MR. KOZELSKI: No, Your Honor.

21 THE COURT: Ladies and gentlemen, I
22 would ask that you give counsel your undivided
23 attention in opening argument.

24 You may proceed.

25 MS. HERRING-LASH: May it please the

STATE'S OPENING STATEMENT

1 Court?

2 THE COURT: Yes, ma'am.

3 MS. HERRING-LASH: First of all, ladies
4 and gentlemen, I would like to thank you for being
5 here and I know this has been a long day for you.

6 One of the things that may seem a bit
7 odd to you as you hear the facts in this case is
8 that the assaults that we are here about occurred
9 at the very end of 1989 up until January the 15th
10 of 1990. Back in that time Minor , who
11 is the victim in this case, was ten years of age.

12 Today she is an adult and she is known as Minor

13 -- she is sitting on the front row -- and
14 you will hear her testimony.

15 Minor -- I will call her Minor when
16 we're talking about this, when she was a child --
17 had met Mr. Garrett, her stepfather, when she was
18 around toddler age when her mother married him.
19 They lived in Georgia for a great portion of her
20 life. They had moved just briefly to Panama City,
21 Florida and then moved to Charleston around late,
22 late end of October or very beginning part of
23 November of 1989. That year, some of you may
24 trigger, that was the year that Hugo occurred and a
25 lot of people were moving for labor and work that

STATE'S OPENING STATEMENT

1 had to do with the rebuilding of homes and roofs
2 and whatever, so they ended up coming here..

3 When they first got here, they stayed
4 in the car. Then, through the help of the
5 Salvation Army, were put up in a place, back then
6 called the Reed House, a shelter for families. I
7 don't think it exists any longer. And so they
8 were -- with the help of the Salvation Army then
9 got a trailer in North Charleston on Lambs Road to
10 live in. So at this point in time now, Minor
11 would be in the fifth grade, ten years of age, and
12 going to Goodwin Elementary.

13 She went to Goodwin Elementary the
14 morning of January the 15th, and later that day
15 told her guidance counselor at the school about the
16 sexual abuse that she will talk about here today.
17 Her guidance counselor called the Department of
18 Social Services and law enforcement, and that is
19 the last day that Minor ever saw Mr. Garrett and
20 the last day that she ever saw her mother until
21 later on in adulthood. They -- the law enforcement
22 took custody of her, she was put in a foster home,
23 and subsequently she was adopted.

24 In 2013, the sheriff's department was
25 doing audits of warrants and found these warrants

STATE'S OPENING STATEMENT

1 charging Mr. Garrett with the sexual assaults,
2 found that they had not been served. So what they
3 did at that point in time was see if they could
4 locate the victim, and they did find her living in
5 Fayetteville, North Carolina now as Minor
6 They also located Mr. Garrett in Georgia and he was
7 subsequently then charged.

8 He is charged with criminal sexual
9 conduct with a minor in the first degree, and the
10 State must prove to you these elements of the
11 crime. The elements of criminal sexual conduct
12 with a minor in the first degree are fairly simple;
13 that the actor, in this case the actor is the
14 defendant, Walter Scott Garrett, commits a sexual
15 battery -- and I will define sexual battery for you
16 in a moment -- and that the victim, in this case
17 Minor , also known as Minor ,
18 was under the age of 11.

19 A sexual battery is defined as
20 intercourse, cunnilingus, fellatio -- fellatio is
21 oral copulation of the penis by the mouth -- anal
22 intercourse, or any intrusion, however slight, of
23 any part of a person's body, or any object into the
24 genital or anal opening of another person, except
25 for medically-recognized diagnosis and treatment.

STATE'S OPENING STATEMENT

1 The two Indictments that you have in
2 this case, one alleges sexual intercourse, which is
3 the penis into the -- just the genital opening, and
4 fellatio, which is the defendant's penis into the
5 child's mouth. Those are the two warrants and
6 Indictments that he is charged with.

7 Now, what you -- the evidence that you
8 will hear will be what Minor tells you
9 happened to her. It will be fairly difficult for
10 her. She hasn't really spoken about this in years.
11 We can only imagine how shocking it must be to get
12 a call 20-something years later that, you know, are
13 you so and so, do you remember this. But that's
14 what happened to her. She got just a cold call by
15 law enforcement telling her that they were now
16 looking to serve the warrants so many years later,
17 or to attempt to serve them.

18 She was taken to the hospital back in
19 1990 and examined. It had been too long for any
20 kind of DNA to be looked for, so there is nothing
21 like that. There is her statement to you and how
22 she would describe it. It will not be pleasant for
23 her or pleasant for you to listen to.

24 In cases like child sexual assaults,
25 almost exclusively you don't have eye witnesses.

DEFENDANT'S OPENING STATEMENT

1 People don't chose to abuse children in front of
2 other people. They don't go around telling people
3 that they've done it. There's no damage except to
4 the soul. There's nothing stolen that we can
5 bring in here and show you except the child's
6 innocence. And in a case like this, often you have
7 another parent that turns a blind eye to what is
8 going on. So you will hear from **Minor** and she will
9 tell you what happened.

10 At the end of the evidence, we will ask
11 you to find Mr. Garrett guilty of what he did to
12 **Minor** in Charleston County back in 1990. Thank
13 you.

14 THE COURT: Defense may proceed.

15 MR. KOZELSKI: Thank you, Your Honor.
16 May it please the Court?

17 THE COURT: Yes, sir, you may proceed.

18 MR. KOZELSKI: Over 30 years ago
19 **Minor** was a little girl who, like most
20 of us, loved her mother very much. More than
21 anything. And as a very small child, it was just
22 her and her mother, Cathy Garrett, on the road.
23 And when I say on the road, I mean literally on the
24 road. They would hitchhike from state to state to
25 state escaping whatever it was that Cathy Garrett

DEFENDANT'S OPENING STATEMENT

1 was running from at the time. And many times it
2 was fueled by drugs and alcohol. That was until
3 she met my client, Walter Scott Garrett, as they
4 passed through Clayton County, Georgia in 1983.

5 Now, Cathy Garrett loved Walter
6 Garrett, she married Walter Garrett, but he was
7 also a person that stood in between the mother of a
8 child who desperately craved her mother's
9 attention. Now, Walter took the two into his home
10 and raised Minor as his own.

11 Now, he didn't have a child of his own,
12 so he did the best that he could knowing what he
13 did at the time. No one is going to claim that
14 Walter was the father of the year. He was poor, he
15 was a laborer, but even after they were married in
16 1985, it was a constant struggle. Like all
17 relationships there were fights, some worse than
18 others, and many would be brought on by drugs and
19 alcohol.

20 Now, when these fights would happen,
21 Cathy would often neglect Minor, not giving her
22 the attention that she desired, the attention that
23 she once had before Walter was in the picture.
24 This was an endless cycle of neglect that didn't
25 end until Cathy Garrett finally abandoned Minor

DEFENDANT'S OPENING STATEMENT

1 when she was ten years old.

2 Now, Minor has every right to be mad
3 as hell, and I suspect that she's going to get up
4 on the stand and deliver a very emotional
5 statement. Trials aren't about emotion. Trials
6 are about facts. This isn't a trial about bad
7 parenting skills. This isn't even a trial about
8 physical abuse. This is a trial about child sexual
9 abuse and at the end of this trial, when all the
10 facts are in, you're going to find that not all the
11 pieces fit, that something does not match up with
12 these allegations and that there's no physical
13 evidence of sexual abuse to Minor, and
14 that's because Walter Garrett is innocent.

15 He did not commit the acts that the
16 State alleges he did. Just as he told you a few
17 hours ago, he knows nothing of these charges.
18 Thank you.

19 THE COURT: State may proceed.

20 MS. HERRING-LASH: The State would call
21 Minor

22 Minor
23 being first duly sworn, testified as follows:

24 THE WITNESS: I do.

25 THE CLERK: Thank you. You may be

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 seated. Once seated, give your first and last name
2 and spell your last name loudly and clearly into
3 the microphone.

4 THE WITNESS: My name is Minor

5 MS. HERRING-LASH: And spell your last
6 name for the court reporter.

7 THE WITNESS: Minor

8 DIRECT EXAMINATION

9 BY MS. HERRING-LASH:

10 Q. Minor, did you have another name
11 earlier in life?

12 A. Yes, ma'am, I did.

13 Q. And what was that?

14 A. Minor

15 Q. And did you change your name?

16 A. Yes, I did.

17 Q. And why did you change your name?

18 A. When I was adopted at age 17, I was
19 given the choice to keep the name that I had or
20 take the name of the family that was adopting me,
21 and since I no longer wanted the name that my
22 mother gave me and since she did not want me, I
23 wanted to change it completely.

24 Q. What is your complete name now?

25 A. Minor.

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 Minor .

2 Q. What is the -- explain what each of
3 those names are.

4 A. Minor was the only thing I wanted
5 to keep just because it was part of my biological
6 father who was deceased, and I wanted to be able to
7 continue looking for his family so I wanted to have
8 something to relate myself to that family. And
9 Minor is my adopted name and Minor was my
10 married name.

11 Q. And Minor is your middle name?

12 A. Correct.

13 Q. Who is your mother?

14 A. My biological mother is Cathy Garrett.

15 Q. And you do have an adopted mother also?

16 A. Yes, I do.

17 Q. And who is your stepfather?

18 A. Walter Scott Garrett.

19 Q. And who was your natural father?

20 A. Jeffrey Scott Minor .

21 Q. And how long or about what age were you
22 when Mr. Garrett became your stepfather?

23 A. Earliest years I remember was three,
24 but I believe they met before I was three.

25 Q. And so he -- did he come to live with

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 you?

2 A. I believe we came to live with him.

3 Q. Okay. And what did you call him?

4 A. I called him daddy.

5 Q. And how old are you now?

6 A. I'm 36.

7 Q. What is your date of birth?

8 A. May 25, 1979.

9 Q. And where do you live now?

10 A. I live at Fayetteville, North Carolina.

11 Q. How long have you lived in Fayetteville?

12 A. About 13 years now.

13 Q. What job do you have now?

14 A. I work in retail.

15 Q. And before moving to Fayetteville, where
16 did you live?

17 A. In Texas.

18 Q. Why were you in Texas?

19 A. I was in the Army.

20 Q. How long were you in the Army?

21 A. For a combined total of eight years.

22 Q. How did you end up in Fayetteville?

23 A. The man I was married to was stationed
24 in Fort Bragg, North Carolina.

25 Q. And do you have any children?

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 A. We do.

2 Q. And what are -- what is their gender
3 and ages?

4 A. I have two boys and they're 11 and 12.

5 Q. And before entering the military, where
6 did you live?

7 A. I lived here in Charleston.

8 Q. And who did you live with?

9 A. I lived with my biological family,
10 Patty Cowhig and Richard Cowhig.

11 Q. What part of Charleston did they live
12 in?

13 A. It was actually in Ravenel.

14 Q. Did you go to high school in
15 Charleston?

16 A. I went to high school in Youngs Island
17 at Baptist Hill High School.

18 Q. When you first went to the Cowhig
19 house, were you a foster child?

20 A. I was.

21 Q. And then they after that adopted you?

22 A. Yes.

23 Q. And how long were you in foster care?

24 A. I was in and out of foster care from
25 three years old until I was ten years old, until we

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 came to Charleston and when I was abandoned and
2 left in permanent foster care at ten.

3 Q. And who was your first foster family
4 that you remember?

5 A. That I remember was the Sutton family.

6 Q. And when you got placed into foster
7 care, where were you physically, like, when DSS
8 came?

9 A. I was in my elementary school.

10 Q. Do you remember that day?

11 A. I remember certain parts of that day,
12 yes.

13 Q. And tell the jury what happened that
14 day.

15 A. The most I remember is, once I told my
16 guidance counselor what was happening to me at
17 home, I was sent to an office that had a large
18 desk. As I was sitting there with somebody, I
19 recall hearing voices outside the room, and they
20 opened the door slightly where I saw my mother
21 asking questions. And then after that, once the
22 door closed, I didn't see her anymore that day or
23 after that day as well.

24 Q. And what caused you to tell the
25 guidance counselor?

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 A. At that time they were starting to go
2 through I guess like stranger-danger type classes
3 at school, telling how people were -- if they tried
4 to touch you in any way that made you uncomfortable
5 to let someone know. I had attempted to tell
6 someone in the past, but they didn't listen to me,
7 so I did tell my guidance counselor who in turn
8 helped me.

9 Q. Do you remember if the police and the
10 Department of Social Services came?

11 A. Yes, they did.

12 Q. And is that when you went to foster
13 care?

14 A. They sent me to a children's center.

15 Q. The shelter and then foster care?

16 A. Yes.

17 Q. Now going back, Minor , when did you
18 move to Charleston; do you recall?

19 A. About November of '89, right after
20 Hurricane Hugh.

21 Q. Where had you been right before that?

22 A. We were in Florida.

23 Q. How long were you in Florida; do you
24 remember?

25 A. I believe just a few months in Florida.

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 Q. And then before Florida, where had you
2 lived?

3 A. It was in Georgia.

4 Q. Where is the first place that you
5 remember staying in Charleston?

6 A. Well, we didn't have anywhere to stay
7 at first. We were sleeping in the El Camino car.

8 Q. Is that the kind of car you had?

9 A. Yes. And shortly after we went to a
10 family shelter.

11 Q. Do you remember going to that family
12 center or being there?

13 A. Yes, I do.

14 Q. Do you remember any holidays there?

15 A. Yeah; we had Thanksgiving there.

16 Q. And did you stay at that shelter for
17 long?

18 A. I believe it was just for a few weeks
19 before the Salvation Army found us a place to stay
20 and a trailer.

21 Q. Now, going back to the shelter, how was
22 that set up? Did you have an apartment or a room,
23 or do you remember?

24 A. I believe it was a small room because I
25 remember just a small bed being inside the room

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 beside like a kitchen.

2 Q. And while you were -- well, at the
3 shelter, did you go to a school also?

4 A. Yes. I went to the school that was
5 downtown; I just don't recall the name any longer.

6 Q. When you met -- when you were at the
7 shelter, did anything sexual happen to you?

8 A. While I was at the shelter, I only
9 remember him touching me on the outside of my
10 clothes in the kitchen.

11 Q. Tell the jury what you remember about
12 happening in the kitchen.

13 A. I just remember being in the kitchen
14 getting ready to cook something and he would just
15 rub me on the outside of my pants.

16 Q. And did he say anything about that?

17 A. Not that I recall.

18 Q. Do you remember anything on the couch
19 or the bed or anywhere else at the shelter?

20 A. Not at the shelter.

21 Q. Now, when you left the shelter where
22 did you go?

23 A. We went to the trailer.

24 Q. And -- well, let me go back. When you
25 were at the shelter, did you go on any fishing

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 trips?

2 A. Yes.

3 Q. And tell the jury about the fishing
4 trips.

5 A. There used to be like a -- well, I
6 still see it when we drive by sometimes. There's a
7 boating ramp near the -- I believe what is the
8 Arthur Ravenel Bridge. And sometimes in the front
9 seat he would push my head down into his lap and
10 cause -- put his penis in my mouth.

11 Q. Now, where in the car would you be?

12 A. Usually in -- the El Camino only has
13 one bench seat. So I would be in the front seat in
14 the middle.

15 Q. And what does an El Camino look like?

16 A. It kind of looks like a car, but it has
17 a pickup truck looking back.

18 Q. You said he would take your head --
19 explain --

20 A. He would unzip his pants and put my
21 head into his lap.

22 Q. What would happen?

23 A. He would move my head up and down until
24 he would ejaculate into my mouth.

25 Q. At the time when that was happening,

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 did you know what that was?

2 A. I knew it happened often. I just
3 didn't know exactly what it was.

4 Q. And what would you do with the
5 ejaculate?

6 A. Usually I would have to spit it out.

7 Q. And was your mother ever in the car?

8 A. Not that I remember. She didn't like
9 getting dirty.

10 Q. Were you ever in the car with her when
11 something happened?

12 A. There was one incident I remember, I
13 just don't remember exactly how he told me, but he
14 told me to make sure that I looked through the back
15 window, as I was sitting in the back, to watch
16 because he was going to have my mom do the same
17 thing he had me do so I could learn how to do it
18 correctly.

19 Q. And do you remember watching?

20 A. I do.

21 Q. Did your mother know you were back
22 there?

23 A. Yes, she knew I was in the back.

24 Q. Okay. And after you all lived at the
25 shelter, where did you go?

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 A. We went to the trailer.

2 Q. Do you remember where that trailer was?

3 A. It was in the -- I don't think it's
4 considered downtown, but it was still kind of in
5 that area. I believe -- I don't remember exactly,
6 no.

7 Q. Do you remember what school you went to
8 there?

9 A. Goodwin Elementary.

10 Q. And did anything sexual happen to you
11 in the trailer?

12 A. Yes.

13 Q. Do you remember anything that happened
14 to you in the kitchen of the trailer?

15 A. Yes.

16 Q. Can you tell the jury about that?

17 A. I don't remember exactly where my
18 mother was, she was in the house because my --
19 Walter Garrett had the refrigerator door open and
20 was telling me to get something out of the fridge.
21 That's when he unzipped his pants and had me put
22 his penis in my mouth. And then when he heard my
23 mother come, he pushed me down into the fridge and
24 backed away from the door.

25 Q. Did that happen one time or more than

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 one time?

2 A. By the fridge, it was -- probably that
3 was the only time it happened by the fridge, that I
4 can recall clearly.

5 Q. Go back to when you lived in the
6 trailer. Do you remember if your mother had a job?

7 A. That I don't remember if she -- if he
8 or her were working.

9 Q. Did anything happen in the bathroom in
10 the trailer?

11 A. I just remember him drying me off and
12 rubbing my privates with the towel.

13 Q. And what did he have on when that
14 happened?

15 A. I don't remember.

16 Q. Did anything happen in the bedroom?

17 A. Yes.

18 Q. And what happened in the bedroom?

19 A. I just remember him telling me to
20 undress and lay on the bed, and he laid on top of
21 me and put his penis in my privates while he laid
22 over me with his hair hanging down over my body.

23 Q. And what did he have on?

24 A. Nothing.

25 Q. And how were you laying?

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 A. On my back.

2 Q. And what about him, what position was
3 he in?

4 A. He was on his knees and above me.

5 Q. And where was his hair on you?

6 A. The way he was arched, it was in my
7 face.

8 Q. Did he have long hair then, like he has
9 now?

10 A. He had more.

11 Q. He had more hair?

12 A. (Nodding)

13 Q. Did something happen in the bedroom
14 once or more than once?

15 A. That happened many times.

16 Q. Many times?

17 A. (Nodding)

18 Q. Was it always -- was there anything
19 different about what happened in the bedroom?

20 A. Not that I recall.

21 Q. Do you know if he ejaculated when he
22 had his penis in you?

23 A. I don't remember.

24 Q. What about the living room?

25 A. He would put -- have me sit on the

Minor

- DIRECT EXAM BY MS. HERRING-LASH

1 couch and put his -- bend me over and put his penis
2 in my mouth.

3 Q. And what would happen to the
4 ejaculation?

5 A. I would have to spit it out in the
6 sink.

7 Q. Did you ever have to swallow it?

8 A. He would try to make me sometimes.

9 Q. How would he do that?

10 A. Holding my mouth shut.

11 Q. And what happen?

12 A. Usually I would just grunt and try to
13 hold it in my mouth.

14 Q. Do you remember him ever sitting in a
15 chair and holding you up over him?

16 A. Not in Georgia.

17 Q. Okay. You mean not in South Carolina?

18 A. Yes, I'm sorry.

19 Q. When he would do these things in the
20 trailer, do you know where your mother was?

21 A. I don't remember.

22 Q. Was she sometimes there?

23 A. Sometimes she was there, but on the bed
24 I don't recall her ever being there.

25 Q. And now from the trailer is where you

Minor

-DIRECT EXAM IN CAMERA BY MS. HERRING-LASH

1 went to the school and told, right?

2 A. Yes.

3 MS. HERRING-LASH: Beg the Court's
4 indulgence for one moment.

5 THE COURT: Yes.

6 BY MS. HERRING-LASH:

7 Q. Now, after going to school and going to
8 foster care, did you go to some counselling?

9 A. I did.

10 Q. Do you know how long or --

11 A. I remember some of the counselling. I
12 don't remember how long I had to go for.

13 MS. HERRING-LASH: Your Honor, at this
14 time we would have a matter of law?

15 THE COURT: Madame Forelady, ladies and
16 gentlemen, we have a brief matter of law we need to
17 take up. During the break, please do not discuss
18 the case and please leave your notepads in your
19 seats. We appreciate your patience.

20 (Jury out, 3:59 p.m.)

21 THE COURT: You may proceed.

22 DIRECT EXAMINATION IN CAMERA

23 BY MS. HERRING-LASH:

24 Q. Minor , where did you go live when you
25 first met Mr. Garrett?

Minor

-DIRECT EXAM IN CAMERA BY MS. HERRING-LASH

1 A. In Georgia.

2 Q. And when you and your mother lived in
3 Georgia, did the sexual assaults also occur?

4 A. They did.

5 Q. And were they of the same nature that
6 they were in Charleston?

7 A. Yes, they were.

8 Q. Can you just tell the Court about an
9 incident in Georgia that you remember? I know
10 there were a lot. To start with, maybe perhaps one
11 -- what's the first house you remember living in?

12 A. I remember living in -- near the area
13 that his mother owned -- managed the apartments in
14 Forest Park.

15 Q. And did anything occur in that house?

16 A. Yes.

17 Q. And what was that?

18 A. That's one of the places that it began.
19 One of the times was when we were in my room and he
20 was sitting in a chair, and he was playing and
21 tickling and flipping me around, and that's when he
22 flipped me upside down into his lap and when he put
23 his penis into my mouth.

24 Q. And how did he put it in your mouth?

25 A. He flipped me upside down like a sack

Minor

-DIRECT EXAM IN CAMERA BY MS. HERRING-LASH

1 of potatoes and unzipped his pants and had my legs
2 over his shoulders and my head down into his lap
3 and his pants unzipped.

4 Q. While in that house, did any other
5 things happen?

6 A. Yes. I remember him putting his penis
7 in my privates and a lot of other times when he
8 started having me put his penis in my mouth.

9 Q. Explain one of the times when he put
10 his penis in the privates to the Court.

11 A. That was one of the times I think I was
12 on the bed. I don't remember how old I was.
13 Again, I was on my back and he was on top of me,
14 but I was more closer to his chest than his head
15 being in my face at that time.

16 Q. Your body was positioned a little
17 differently?

18 A. Yes.

19 Q. And that is when he put his penis in
20 you?

21 A. Yes.

22 Q. Did those events continue to occur the
23 whole time you lived in Georgia?

24 A. That I remember, yes. The times we
25 were with him.

Minor

-DIRECT EXAM IN CAMERA BY MS. HERRING-LASH

1 Q. Were there times you were not living in
2 the home with him?

3 A. Yes.

4 Q. Where would you be then?

5 A. I was in another foster home.

6 Q. And when you were living in the home
7 back with him, would they begin again?

8 A. They would.

9 Q. And it was both him putting his penis
10 in you and his penis in your mouth?

11 A. Yes.

12 MS. HERRING-LASH: Your Honor, she has
13 many incidents, but they -- but it was a
14 continuous --

15 THE COURT: Is this all that you would
16 need to be eliciting?

17 MS. HERRING-LASH: No, I can --

18 THE COURT: You need to ask everything
19 that you plan to ask.

20 BY MS. HERRING-LASH:

21 Q. Now, you've talked to us about the
22 first house you remember living in. Was there
23 another house you lived in?

24 A. We lived in a house I recall on Lee
25 Street.

Minor

-DIRECT EXAM IN CAMERA BY MS. HERRING-LASH

1 Q. And was that in the same town?

2 A. Yes, on Forest Park.

3 Q. Was that a house or a trailer or --

4 A. That was a house.

5 Q. And what happened there?

6 A. The most I recall there is when I
7 started sleeping under my bed, and he would come to
8 me at night while my mom was sleeping and come into
9 my bed and put his penis into my private.

10 Q. Why were you sleeping under your bed?

11 A. I started sleeping under my bed because
12 I was trying to not be there when he came looking
13 for me.

14 Q. And do you remember anything else that
15 happened at the home on Lee Street?

16 A. At this time, I remember him putting
17 his penis in my privates.

18 Q. And did you all live in another house
19 in Clayton County?

20 A. I think it was when we went back to the
21 same house outside of the apartments.

22 Q. The same house you had previously lived
23 in?

24 A. Yes.

25 Q. Did anything happen in that home?

Minor

-DIRECT EXAM IN CAMERA BY MS. HERRING-LASH

1 A. It was the same events.. I can't recall
2 a specific one I don't think.

3 Q. Do you remember anything in the bedroom
4 of that home?

5 A. Not that I can think of.

6 Q. What about the bathroom?

7 A. That was when he would wash me in the
8 tub and put his hands onto my privates.

9 Q. What about after the tub?

10 A. Take me out and dry me off and then he
11 would have himself put his penis in my mouth.

12 Q. Where would you be after the bath?

13 A. Then I would be sent to bed.

14 Q. When -- after he dried you off, which
15 room would he send to you?

16 A. My room.

17 Q. And then he would come in there?

18 A. Yes..

19 Q. And would you be -- what position would
20 you be and where?

21 A. There were times he would be standing
22 in front of me and he would have me go down and put
23 his penis in my mouth.

24 Q. He would be standing?

25 A. Yes.

Minor

-DIRECT EXAM IN CAMERA BY MS. HERRING-LASH

1 Q. And what position would you be in?

2 A. I recall -- I don't recall being in a
3 position because I wouldn't have been very tall.

4 Q. Did you all live anywhere else?

5 A. Not that I can remember.

6 Q. Did you go back and forth in foster
7 care?

8 A. Yes, ma'am.

9 Q. And do you know, like, when you lived
10 in Georgia, how did you get placed in foster care?
11 What happened when you went to foster care?

12 A. Usually it was from some type of
13 physical abuse.

14 Q. Did you ever tell anybody there about
15 the sexual abuse?

16 A. I remember at the very beginning, but
17 they had sent me back. And I remember the second
18 time when I was in the house for the longest time,
19 when I had mentioned something they still sent me
20 home.

21 Q. Did he ever talk to you either in
22 Charleston or in Georgia about telling?

23 A. Well, it was always with anything,
24 whether a physical abuse or sexual, whatever goes
25 on in this house stays in this house.

Minor

-DIRECT EXAM IN CAMERA BY MS. HERRING-LASH

1 Q. We won't be able to talk about the
2 physical abuse when the jury is in here unless it
3 had to do with the sexual abuse. Was there anytime
4 there was a specific threat made about the sexual
5 abuse?

6 A. No. I just wasn't allowed to talk to
7 anybody about anything.

8 Q. And he told you that?

9 A. Yes.

10 Q. Is that why you didn't talk about the
11 sexual abuse?

12 A. The reason why I stopped talking about
13 it because no one was listening.

14 Q. And did you know the exact reasons why
15 you were put back into the home those times?

16 A. They just said that they were doing
17 better.

18 Q. Right. That your parents were doing
19 better?

20 A. Yes.

21 MS. HERRING-LASH: Okay. Your Honor,
22 those would be the questions I would have about
23 Georgia.

24 THE COURT: Any cross-examination
25 regarding questions of what is alleged to have

Minor

-CROSS-EXAM IN CAMERA BY MR. KOZELSKI

1 taken place in Georgia.

2 MR. KOZELSKI: Briefly, Your Honor.

3 THE COURT: You may proceed.

4 CROSS-EXAMINATION IN CAMERA

5 BY MR. KOZELSKI:

6 Q. Mrs. Minor , you said that you told
7 the workers in Georgia about this sexual abuse when
8 it first started happening?

9 A. Yes.

10 Q. Okay. And you stopped telling them
11 about it because you thought they didn't believe
12 you?

13 A. No; I stopped telling them about it
14 because no one was listening to me.

15 Q. But at some point you did tell one of
16 the case workers about the sexual acts that
17 Mr. Garrett was performing on you?

18 A. Yes, I did.

19 Q. And do you know who exactly that you
20 told this information to?

21 A. I don't remember anymore.

22 Q. Do you know about how old you were?

23 A. I was probably three or four at the
24 time.

25 Q. And when was the next time that you

Minor

-CROSS-EXAM IN CAMERA BY MR. KOZELSKI

1 disclosed this sexual abuse?

2 A. The one that I remember clearly is when
3 I was ten years old and we were coming back from
4 New Hampshire, hitchhiking back to Georgia, before
5 my mom got all the way there I did tell her.

6 Q. You told your mother?

7 A. Yes.

8 Q. And what did your mother do?

9 A. She chose to ignore it.

10 Q. Did you tell anybody else?

11 A. Not that I recall anymore, besides the
12 guidance counselor.

13 Q. That was when you were at Goodwin
14 Elementary?

15 A. Yes.

16 Q. And you described these acts to your
17 guidance counselor?

18 A. Yes.

19 Q. And you said that he made you put his
20 penis in your mouth?

21 A. Yes.

22 Q. And did you tell them at the time where
23 this took place?

24 A. Yes.

25 Q. Do you remember who you told this

Minor

-CROSS-EXAM IN CAMERA BY MR. KOZELSKI

1 information to --

2 THE COURT: I anticipated your
3 cross-examination being limited to the acts alleged
4 in the Georgia and Florida period. I'm trying to
5 create a profer in the event I exclude the
6 evidence.

7 BY MR. KOZELSKI:

8 Q. And so the only person that you told
9 this to, other than your mother in Georgia, was to
10 somebody when you were about three or four years
11 old?

12 A. Yes.

13 Q. But you did at some point report other
14 sexual abuse?

15 A. I believe I may have told my foster mom
16 at the time.

17 Q. Okay.

18 A. When I was probably six.

19 Q. You told them that Mr. Garrett put his
20 finger in you?

21 A. I don't remember what I told them. I
22 just remember I did speak about some of the things.

23 Q. Okay. And do you remember which foster
24 parent that was?

25 A. It would have been Ms. Powell.

Minor

-REDIRECT EXAM IN CAMERA BY MS. HERRING-LASH

1 Q. Mrs. Powell. Is that Mrs Myrtle
2 Powell?

3 A. I don't remember her first name, I'm
4 sorry.

5 Q. And that is who you stayed with in
6 1984?

7 A. It may have been.

8 MR. KOZELSKI: Beg the Court's
9 indulgence. I have no further questions.

10 THE COURT: Any redirect?

11 REDIRECT EXAMINATION IN CAMERA
12 BY MS. HERRING-LASH:

13 Q. Minor , do you remember how old you were
14 when the first event occurred?

15 A. Yes; when I was three years old.

16 Q. And what happened when you were three?

17 A. I recall it being on my birthday, and
18 my birthday present was that he was going to write
19 me a book, because I loved to read books. And he
20 was going to write me a back about how I grow up
21 and how I change, and since I didn't have my
22 father, he was going to show me how men can treat
23 girls.

24 Q. And that was in Georgia?

25 A. Yes.

Minor

-REDIRECT EXAM IN CAMERA BY MS. HERRING-LASH

1 Q. And do you remember any incidents that
2 -- you told us about Lee Street and then the house
3 you lived back in when he would dance or you would
4 dance?

5 A. Oh, on Lee Street, I forgot about that.
6 Vaguely, yes. When my mother wasn't home, I
7 believe she was working as a cleaning lady at that
8 time, he would have me dress up in her shoes and
9 clothes and dance in the middle of the living room.

10 MS. HERRING-LASH: Those are all the
11 questions I have.

12 THE COURT: Is there any exception to
13 this line of questioning?

14 MR. KOZELSKI: Your Honor, the only
15 exception that I'm making, none of these acts --
16 this is the first time that I'm actually hearing
17 about these acts in particular.

18 THE COURT: It's not the first time
19 that you were on notice that the State intended to
20 go down this street or you wouldn't have filed a
21 motion, correct?

22 MR. KOZELSKI: Well, Your Honor, that
23 is true to a certain extent. The allegations that
24 we received were all from the Department of Family
25 and Child Needs in Clayton County. The only

1 allegations that were reported to that department
2 were allegations of fondling and fingering. This
3 is the first time that I've heard of any actual
4 penile penetration or fellatio being performed
5 which -- you know, we were never provided this
6 information.

7 THE COURT: That's not a basis for
8 exclusion. I need to hear a basis for the
9 exclusion of the testimony. They don't have any
10 duty to tell you anything that is not exculpatory,
11 so they don't have to -- you know, South Carolina
12 trials, criminal cases, are to a large extent about
13 ambush, unfortunately or fortunately. I'm used to
14 it. I've been doing this so long I don't know that
15 there is any appreciable difference.

16 Bottom line is, you were on notice that
17 they did intend to seek -- did intend to introduce
18 evidence in which you termed in your motion as
19 prior bad acts.

20 MR. KOZELSKI: Your Honor, that is the
21 motion that we put forth. We thought that was on
22 the basis of the information that was provided to
23 us. It is somewhat a trial by ambush, but this is
24 the first time that we're hearing this information
25 that the State intends to use at trial.

1 THE COURT: Is that unusual?

2 MR. KOZELSKI: Well, my understanding
3 is that if they intend to use it at trial, it
4 should be given to the defense so that they do have
5 a proper opportunity to --

6 THE COURT: Under what Rule provides
7 that?

8 MR. KOZELSKI: I would say that's under
9 Rule 5.

10 THE COURT: I think that would be a
11 liberal reading of Rule 5.

12 MR. KOZELSKI: Your Honor, that is how
13 we read it. We would ask the Court to exclude it
14 for that reason.

15 THE COURT: Anything from the State?

16 MS. HERRING-LASH: I mean, the child
17 talked about, I think, throughout some of the
18 records that these events --

19 THE COURT: What records are you
20 referring to?

21 MS. HERRING-LASH: There were some --
22 the DSS records. They talk about the continuing
23 abuse. The motion I filed told him that the abuse
24 began at age three in Georgia and was of the same
25 nature and the same manner as the assaults that

1 were alleged to have happened in -- in Charleston.

2 THE COURT: What page of your memo are
3 you referring to?

4 MS. HERRING-LASH: Page 3. It starts,
5 the assaults would occur in the home where the
6 defendant and the victim lived -- well, first of
7 all, the State would show the continuous course of
8 conduct. The assaults would occur in the home
9 where the defendant and victim lived. They would
10 occur when the victim's mother was asleep, or on
11 occasion when the mother was out of the home. The
12 victim complained of these assaults to her mother
13 and other professionals. The victim was placed in
14 foster care but always returned.

15 And then I talk about the law. And
16 then the assaults began when Minor was three
17 years old and only stopped when she would be
18 removed from the home. The assaults would begin
19 again upon the return to the home with the
20 defendant. The family lived for the most part in
21 Georgia, but did move to Florida during -- before
22 moving to Charleston.

23 The defendant, victim, and her mother
24 moved to Charleston late '89. The defendant
25 continued assaulting the victim when they moved to

1 Charleston. The assaults were the same in manner
2 as the prior assaults and they were ongoing as
3 reported to law enforcement.

4 THE COURT: And you filed this in
5 response --

6 MS. HERRING-LASH: No, I filed this
7 last week. I sent it --

8 THE COURT: This is undated what I
9 have. What date did you file it?

10 MS. HERRING-LASH: It was filed
11 July 1st --

12 THE COURT: And when did you give a
13 copy to --

14 MS. HERRING-LASH: I had already
15 e-mailed a copy before I filed it. They got
16 e-mailed it the day before I filed it. The day
17 that we realized Your Honor would be -- I got a
18 message from your legal assistant. I emailed you
19 and Mr. Kozelski the motion that day, then I filed
20 it the next day I think.

21 THE COURT: When did you file your
22 motion? It's dated July 1st. So I assume it's the
23 day after that -- well, the day Ms. Herring-Lash
24 filed her motion.

25 What is the State's basis for seeking

1 the introduction of the testimony?

2 MS. HERRING-LASH: Your Honor, I think
3 that it is to explain to the jury that this didn't
4 occur in a vacuum all of a sudden when she was ten
5 years old and they moved to Charleston, but, in
6 fact, it had been ongoing. I mean, I think -- I
7 know that the defense's opening statement alleged
8 that she started making these allegations when she
9 was very, very young. And that in order to explain
10 some of her reactions, it's important for the jury
11 to get a clear understanding -- and the case law is
12 very clear I think that if it is -- if Your Honor
13 believes it is clear and convincing and it is
14 relevant -- and it is extremely relevant to just
15 show the continuous course of conduct.

16 The -- it would be very difficult for
17 the jury I think to understand that, all of a
18 sudden, they're living here in Charleston and he
19 starts assaulting her for the first time ever. And
20 the way she's described it is, it appears that it
21 was something that had been going on, and for her
22 to not be allowed to give the details -- that the
23 case law would allow because it was more similar
24 than dissimilar.

25 There were other things that occurred

1 in Georgia that I specifically didn't ask her
2 about, the digital penetration, because she did not
3 talk about that here in Charleston during her
4 direct testimony. And I would base it on State v.
5 Wallace. And then other -- State v. Taylor, which
6 is another case that has the same parties, that is
7 731 SE2nd 596. And there's a whole litany of cases
8 that go into assessing when it's the same two
9 parties, basically coming down to a continuous
10 course of conduct, if it's the same behavior that
11 has occurred.

12 Some of these cases the State just
13 didn't charge the other conduct. In this case, it
14 couldn't have been charged because of the different
15 jurisdiction.

16 THE COURT: Anything further from the
17 State?

18 MS. HERRING-LASH: No, Your Honor.

19 THE COURT: Anything further from the
20 defense?

21 MR. KOZELSKI: Your Honor, I'd just go
22 back to our earlier argument. You know, we did --
23 we did file a specific Brady motion in this case on
24 the 29th. And within that, we did ask for evidence
25 of other crimes or other acts that the State may

1 attempt to show motive, identity, and the existence
2 of the common scheme or plan. That --

3 THE COURT: Didn't they provide that to
4 you?

5 MR. KOZELSKI: In part, Your Honor.
6 Like I said, this is the first time that I'm
7 hearing --

8 THE COURT: Did you read the memo that
9 she served you with?

10 MR. KOZELSKI: I did read the memo, but
11 once again, it's very vague as to the incidents
12 that she's talking about. There were no
13 allegations that I received of the sexual
14 intercourse or fellatio performed within the state
15 of Georgia.

16 I haven't had an opportunity to talk to
17 my client about these incidents to see whether or
18 not there is some other alibi, explanation, or
19 whatnot in order for him to properly defend against
20 these allegations.

21 THE COURT: I think it's disingenuous
22 to say that you weren't aware they were alleging
23 that these assaults happened from the age of three,
24 and I think it's unlikely you could have
25 established an alibi in such a broad range of time.

1 You would have to establish basically that he had
2 not lived in the home. I think as a practical
3 matter you wouldn't have been able to establish an
4 alibi. Three-year-olds rarely give you a date and
5 time. It's hard enough for adults to remember.

6 MR. KOZELSKI: I understand, Your
7 Honor.

8 THE COURT: So I think that's --

9 MR. KOZELSKI: I'm --

10 THE COURT: -- speculative at best. I
11 need the State to respond to his -- well, his
12 assertion that he didn't have notice, that this is
13 the first time -- that you all did not fully
14 disclose to him under Brady what the source of
15 these allegations or these prior bad acts would be.

16 MS. HERRING-LASH: Well, Your Honor, I
17 don't think this is Brady material because it is
18 certainly not exculpatory. I explained to him that
19 I planned on doing the motion to put into evidence
20 the assaults that occurred throughout her life and
21 then filing the actual motion that I -- that the
22 State would be seeking to put in those.

23 I did not have all of the specifics
24 until I was able to meet with her when she traveled
25 to Charleston on Saturday. As I put in there, the

1 same manner, the same nature of assaults had been
2 occurring since age three. And she detailed in her
3 audio-taped statement what the assaults were in
4 Charleston; and they were the same, fellatio --

5 THE COURT: Are you saying the
6 audio-taped statement indicates the same type --
7 what are you saying? I'm confused.

8 MS. HERRING-LASH: The audio-taped
9 statement alleges fellatio and penile penetration.

10 THE COURT: What audio tape are you
11 referring to?

12 MS. HERRING-LASH: Detective Reed took
13 an audio-taped statement from her January of 1990,
14 January 15th of 1990.

15 THE COURT: And that alleges what
16 happened in Charleston?

17 MS. HERRING-LASH: In Charleston. And
18 what I had filed was that what happened in Georgia
19 was of the same nature and manner of the assault in
20 Charleston. Also, he had a copy of the medical
21 report that reads, ten-year-old white female
22 reports repeated involvement by stepfather since
23 age three. Has involved recurring -- has involved
24 requiring her to touch his penis and penile, oral
25 penetration and digital vaginal penetration. Said

1 daddy has a problem with drinking and sometimes he
2 drinks six-packs in a day.

3 I mean, that there is stating that she
4 states since three there has been involvement with
5 the private and the penile, oral, and digital.

6 THE COURT: Did you have this
7 information, Mr. Kozelski?

8 MR. KOZELSKI: I didn't have this, Your
9 Honor. I think it's a little -- it's presented a
10 different way in the final report. It's written,
11 possible vaginal penetration --

12 MS. HERRING-LASH: I think the
13 discussion is this patient gives a history of
14 moderately extensive sexual involvement by
15 stepfather over a period of approximately seven
16 years. This patient has alleged general oral
17 contact with ejaculation as well as fondling of the
18 genitalia, digital and penile contact with the
19 genitalia. And that Dr. Schuh wrote, and what I
20 read before was also from her report. One she
21 typed after she had handwritten it.

22 THE COURT: Anything further from the
23 State?

24 MS. HERRING-LASH: Just that the doctor
25 does also talk about prior exams in Georgia due to

1 this. I do not plan on asking the doctor about
2 that, but for this she had had an exam earlier with
3 some rectal bleeding and some pain in her private
4 area that the doctor notes.

5 Anything further from the defense?

6 MR. KOZELSKI: At the risk of repeating
7 myself, Your Honor, no.

8 THE COURT: The evidence is clearly
9 admissible pursuant to -- and the way the State has
10 sought to introduce the evidence is through a Lyle
11 exception. And I have read the line of cases that
12 the State has produced in support of its position.
13 There are several cases in this litany on page 2
14 that support the introduction of the testimony.

15 Unlike some cases where the Court has
16 ruled that such testimony is inadmissible, this
17 case is not factually similar. In fact, it is
18 dissimilar. In the line of cases -- and our courts
19 have been very clear that each of these should be
20 done on a case-by-case basis as each fact in each
21 case are peculiar in and of themselves and should
22 be considered in that way. In most cases where our
23 courts have considered or upheld the exclusion of
24 such evidence, it's because the time frame within
25 which the acts have taken place have been

1 protracted.

2 And I'm referring specifically to the
3 Fonseco case where one alleged incident is alleged
4 to have happened in 2001, and then another, and
5 then there's a lapse where there's nothing alleged
6 to have happened except the second incident in
7 2003, which really in and of itself -- the line of
8 cases that support the exclusion of such evidence
9 deals with basically where there are two
10 dissimilar, or even similar, bad acts that are
11 protracted in time that are not connected in any
12 way.

13 And in most of those cases where
14 separate Indictments have been brought or warrants
15 have been brought against the particular individual
16 for those separate incidents, and for whatever
17 reason the State has not sought to go forward on
18 those charges, but instead have sought to introduce
19 the evidence under an exception to support -- or
20 basically to bolster its position on a separate and
21 distinct offence.

22 This case is very dissimilar in that
23 what the State is really describing is a continuous
24 course of conduct, which almost falls in the nature
25 of res gestae, to establish that these incidents

1 did not occur in a vacuum, that they did not
2 spontaneously just begin to happen when the parties
3 arrived in Charleston, and also to give a complete
4 context of the crime; that this was a continuing
5 course of conduct that is alleged to have begun
6 when the minor was three years old, that -- not
7 only similar in its course, but that every alleged
8 action was of the same in nature, either by play
9 resulting in fellatio or -- the other incidents
10 have already been described that ended in fellatio
11 or intercourse or some form of penetration, whether
12 it be digital, oral, or penile.

13 And the defense has argued that this
14 comes as some surprise, and I asked very
15 specifically how that is perceived of their
16 posture, because I read the State's motion and it
17 seems very clear to me -- and I asked Ms.
18 Herring-Lash very specifically to point out to the
19 Court what she specifically put you on notice of.
20 And it's very clear on page 3 of her memo what
21 she's articulated. When you read that in
22 conjunction with the other material that was
23 already provided, that being the audio tapes that
24 were provided in 1990 at the time of the minor's
25 statement, as well as the reports of the doctors

1 and the other DSS reports, when Ms. Herring-Lash
2 says of a similar nature, that they basically
3 happened the same way just in different homes. I
4 don't really think there's any merit to the
5 argument that somehow this comes as a surprise.

6 Now, having made that observation,
7 almost everything in a criminal case that is not
8 exculpatory is going to come as a surprise to the
9 defense, especially if there's anything exculpatory
10 in nature, because the State has no duty to
11 disclose that to you and -- but everything that
12 they were required to disclose, it appears that
13 they did. That being in the nature of all the
14 medical reports and DSS reports, as well as the
15 recorded statement of the alleged victim in this
16 case. They don't have to give you specifics.

17 And the argument that somehow you could
18 have provided an alibi is tenuous at best. Most
19 adults don't remember an exact date. I rarely -- I
20 will note that when you talk about a continuing
21 course of conduct, I don't know that I can ever
22 recall a case where an adult victim was able to
23 give exact dates and times, but only speak in terms
24 of ranges of dates and times. So I think it would
25 have been tenuous at best the argument that somehow

1 an alibi could have been procured, especially in
2 light of the fact that these parties basically
3 continuously cohabitated. So I don't really find
4 that argument to hold a particular amount of weight
5 either.

6 Very clearly, this evidence comes
7 within the Lyle exception if I were to view it even
8 as -- because it's such a -- it's unusual in that
9 if all of these events happened in South Carolina,
10 he would have been -- he could have been charged
11 separately or he could have been charged with one
12 continuous event, which in all likelihood he would
13 have been charged with one continuous event, but in
14 any event, these acts happened outside of the state
15 of South Carolina, but they are continuous in
16 nature.

17 In other words, this is alleged that
18 they began when they resided -- I'm looking for my
19 dates. I wrote it down I think on the other part
20 of the motion. It happened from 1983 through 1989,
21 upon which time they then moved to South Carolina
22 and that the acts happened unabated, except for the
23 times that she was removed from the house.

24 And I think of a particular note is
25 that she was not removed from the house because of

1 sexual abuse. She was removed from the house
2 because of physical abuse, which will not be
3 mentioned, and the State has conceded it would not
4 be appropriate to mention that, but that's not why
5 she was removed from the home.

6 And, then, I would only have to assume
7 that once DSS, or its counterpart in Georgia, felt
8 the behavior was abated or addressed that the child
9 was then reunified or reunited with her family.
10 But based on what has been presented to the Court,
11 it clearly falls under the precedent of the line of
12 cases that the State has relied on with the Lyle
13 exception.

14 It has been shown by clear and
15 convincing evidence, that being that of the alleged
16 victim in this case, Mrs. Minor, could have
17 likewise corroborated by records that are yet --
18 may or may not be introduced, I'm not certain, but
19 for purposes of this hearing is sufficient to
20 establish corroboration in terms of establishing
21 clear and convincing evidence and the State meeting
22 that standard. And it clearly comes within the
23 exceptions of a common scene or plan, as well as
24 absence of a mistake. But I assume that based on
25 this memo, the State is seeking to introduce it as

1 common scheme or plan. Is that correct?

2 MS. HERRING-LASH: Yes, Your Honor.

3 THE COURT: It clearly comes within
4 that exception.

5 Now, what I will do is when instructing
6 the jury, I will instruct them that they've heard
7 evidence of prior bad acts that are not subject to
8 the conviction and they can only be considered for
9 that limited purpose, but not evidence of his guilt
10 of the crime for which he is being prosecuted for,
11 in terms of these two Indictments.

12 MR. KOZELSKI: Your Honor, just as a
13 moment of clarification, I would like to say that
14 the allegations in Georgia under DSS were
15 : allegations of sexual abuse and physical abuse
16 before she was put back into the home --

17 THE COURT: She said, based on her
18 testimony, nobody ever listened to her. Based on
19 what you all told me pretrial and this testimony
20 she was removed from the house for physical abuse.

21 MR. KOZELSKI: The only testimony that
22 we received in the records were allegations of
23 fondling and a finger in the vagina. That's the
24 only sexual abuse that was alleged and what we're
25 arguing we had notice for.

1 THE COURT: I don't think they have to
2 give you every specific. The bottom line is, if
3 they say, we have evidence of prior bad acts
4 similar to what we've alleged in South Carolina,
5 that's enough notice for you to inquire of that
6 with your client and to find out -- they don't have
7 to give you every specific incident that they claim
8 or that they're going to claim it's similar. It's
9 not exculpatory, they're not required to divulge
10 it, it does not come within Brady.

11 But I think there is more than
12 sufficient information in the record to put you on
13 notice as to what line of questioning they were
14 going to pursue, because if it were not similar in
15 nature, there would be no purpose in pursuing it
16 and, certainly, would not meet any of the elements
17 of Lyle.

18 Are we ready to proceed? What time is
19 it? All right. How long does the State need to
20 conclude this witness's testimony?

21 MS. HERRING-LASH: Your Honor, it won't
22 be much more than I just went over in camera.

23 THE COURT: How long do you need for
24 your close? Do you want to break after Ms.
25 Herring-Lash finishes direct and then do your cross

1 in the morning, because I assume your cross is
2 going to go beyond 5:00? And I don't like keeping
3 the jury past 5:00, especially not on a Monday. It
4 does not make for good will.

5 MR. KOZELSKI: I understand that, Your
6 Honor, but I'm somewhat prejudiced --

7 THE COURT: How? It gives you more
8 time to think about it. If anything, it prejudices
9 me because you're going to be shorter if I make you
10 go forward now than in the morning.

11 MR. KOZELSKI: I understand, Your
12 Honor, and if that's the Court's decision I will --

13 THE COURT: I'm going to play it by
14 ear, but I'm at a loss as to how it prejudices you.
15 The State can't discuss it whether she -- I mean,
16 if she's inconsistent in her responses, it will be
17 glaring, and you already have a record as to what
18 she said.

19 MR. KOZELSKI: I understand that, Your
20 Honor. I just find it a little unsettling to end
21 on this type of testimony, but we can do
22 cross-examination in the morning.

23 THE COURT: We'll see how it goes, but
24 I don't like, you know -- you don't get to read the
25 letters, I do, when they're blasting us because we

1 kept them after 5:00 and they were struck in
2 traffic because they had to walk all the way to
3 Cumberland and it's hot and it's raining. Yeah.
4 Yeah.

5 MS. HERRING-LASH: Your Honor, just
6 as --

7 THE COURT: Or we could -- I don't know
8 how much more unsettling it could be than to stop
9 now.

10 MR. KOZELSKI: I agree. I think the --

11 THE COURT: Or we could stop now and
12 resume -- I mean, it is about to storm.

13 Do me a favor, Mr. Chris, look out
14 there and see what it looks like. I know at
15 lunchtime it was getting dark and I know according
16 to the -- I didn't really pay attention as to what
17 time the weather was going to start.

18 (Off-the-record conference.)

19 MS. HERRING-LASH: Your Honor, while
20 they're doing that, just as a precaution, I just
21 wanted to make sure that the witness understood not
22 to say anything about physical abuse.

23 THE COURT: Yes, ma'am. You understand
24 that, do you?

25 THE WITNESS: Yes, ma'am, I do.

1 THE COURT: It might be better to stop
2 at this point and have a full direct and a full
3 cross. Is there any exception from the State?

4 MS. HERRING-LASH: No, Your Honor.

5 THE COURT: Any exception from the
6 defense?

7 MR. KOZELSKI: No, Your Honor.

8 THE COURT: Okay. Please bring in the
9 jury.

10 (Jury in, 4:43 p.m.)

11 THE BAILIFF: All jurors present, Your
12 Honor.

13 THE COURT: Ladies and gentlemen, we
14 appreciate your patience. I have made the decision
15 that we will adjourn for the day and resume in the
16 morning. I anticipate that the remaining testimony
17 would take us well beyond 5:00, and you all have
18 had a long day, and I think it's best to break and
19 then resume in the morning. Also, there is the
20 possibility of some thunder storms heading in this
21 direction, as well as some flooding, and I don't
22 want you to be caught downtown in that weather or
23 in the rush of people trying to exit downtown. So
24 out of an abundance of caution, I'm going to go
25 ahead and break and we're going to resume in the

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) 2014-GS-10-3549, 3550, 3551

The State,)
))
Plaintiff,) Transcript of Record
))
vs.) July 7, 2015
))
Walter Scott Garrett,)
))
Defendant.)

B E F O R E :

Honorable Deadra L. Jefferson
Charleston County Courthouse
Charleston, South Carolina

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

Debbie Herring-Lash, Esquire
Nina Savas, Esquire
Attorneys for Plaintiff

John J. Kozelski, III, Esquire
Lorelle Proctor, Esquire
Attorneys for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

1 (On the record, July 7, 2015. The following takes place
2 outside the presence of the jury.)

3 THE COURT: Is the State ready to proceed?

4 MS. HERRING-LASH: Yes, Your Honor.

5 THE COURT: Is the Defense ready to proceed?

6 MR. KOZELSKI, III: We are, Your Honor.

7 THE COURT: Please bring in the jury.

8 MS. HERRING-LASH: His client.

9 MR. KOZELSKI, III: Your Honor, are we waiting for the --

10 THE COURT: Oh. I'm sorry. I didn't realize he wasn't
11 here yet, but they can still -- you can still go get them.
12 They've got a long walk. They have to walk a block to get
13 here.

14 MS. HERRING-LASH: And Your Honor, he's getting the
15 victim to go back up.

16 THE COURT: I'm going to do that once the jury's in --

17 MS. HERRING-LASH: Oh, okay.

18 THE COURT: -- so I can remind her she's still under oath
19 in their presence. Thank you. That's fine.

20 (Defendant enters courtroom.)

21 (Whereupon, the following takes place in the presence of
22 the jury.)

23 BAILIFF: All jurors present, Your Honor.

24 THE COURT: Thank you.

25 Good afternoon, ladies and gentlemen. I hope that you

Minor

- Direct by Ms. Herring-Lash

6

1 all enjoyed your recess. We are now going to resume the
2 testimony of the witness that we began on yesterday. Ms.
3 Minor , if you would retake the stand. I'll remind you that
4 you're still under oath, and ma'am, as you're being seated if
5 you would state your full name for the record, spelling your
6 last name for the benefit of the court reporter.

7 MS. Minor : My name is Minor

9 THE COURT: You may proceed, Ms. Herring-Lash.

10 DIRECT EXAMINATION (Continued)

11 BY MS. HERRING-LASH:

12 Q Minor , I think when we stopped yesterday you had
13 just explained being placed in foster care in Charleston in
14 1990 and then not seeing your stepfather or your mother again.

15 A Yes, ma'am.

16 Q And do you feel that you have a real clear memory about
17 all that occurred in Charleston?

18 A I have a pretty good memory. There are some things that
19 are fuzzy and there's others that I have clear pictures of.

20 Q And now, before living in Charleston, where did you live?

21 A We lived in Panama City, Florida, for a short period and
22 before that in Georgia.

23 Q And where did you live when your mother met Mr. Garrett?

24 A Atlanta, Georgia.

25 Q And where did you all live together first?

Minor

- Direct by Ms. Herring-Lash

7

1 A We lived, I believe, in the -- the home's near where his
2 mother managed the apartments in the area.

3 Q Can you explain his mother managed apartments and what?

4 A There was like, I guess, one level apartments, and I can
5 only imagine like a parking lot area in front of some storage
6 buildings --

7 Q Uh-huh.

8 A -- and then there was a ditch and then a home to the --
9 if you're standing in the back, to the left of all the
10 buildings.

11 Q And that's where you all lived?

12 A Yes.

13 Q And how old were you when you all lived there?

14 A I believe I was probably three and four, if I remember
15 that correctly.

16 Q And did any sexual abuse occur in that home?

17 A Yes, ma'am. It did.

18 Q And at what age do you remember the first occurrence?

19 A I remember being around three.

20 Q And explain what happened at three.

21 A That's when he first started touching as far as just
22 touching on the arms and legs and started touching in the
23 private areas and started with the oral sex at that time.

24 Q What about -- do you remember anything on your third
25 birthday?

Minor

- Direct by Ms. Herring-Lash

8

1 A That's when it first occurred. My birthday present was
2 going to be him writing a story for me since I enjoyed books.
3 He was going to write a story to show how I grew up and how I
4 changed.

5 Q And did other -- do you remember specific instances of
6 other things happening in that home?

7 A I remember one of the first times was when he was playing
8 around on the chair flipping me over his shoulders like a sack
9 of potatoes. I was hanging upside down in his lap and put --
10 unzipped his pants and put his penis in my mouth.

11 Q And how are you now?

12 A I was probably around three or so at that time.

13 Q I mean what position?

14 A I was upside down on his shoulders.

15 Q How was he holding you?

16 A It's like he threw over his shoulder like a sack of
17 potatoes where my legs are hanging more or less behind his
18 back at his head and my arms and my head are down into his
19 lap.

20 Q And then what happened?

21 A He unzipped his pants and had me put his penis in my
22 mouth.

23 Q And do you remember any other things happening in that
24 home in Georgia, any other rooms?

25 A I do remember in the bathroom with him giving me a bath

Minor

- Direct by Ms. Herring-Lash

9

1 and drying me off touching me down in my privates and causing
2 me to do oral sex in the bathroom standing in front of him
3 while he was standing up and also remember him putting his
4 penis into my privates on the bed in the bedroom.

5 Q Now, let's go back. Which bedroom are you talking about?

6 A That would have been in my bedroom at that time.

7 Q Do you remember how many bedrooms were in that home?

8 A I think there was two.

9 Q And when you say you were on the bed, how were you on the
10 bed, what position?

11 A I would have been laying on my back and he would have
12 been over on top of me.

13 Q And you said he put his penis in your private. What do
14 you mean by private?

15 A Down near the opening, the --

16 Q Of what part of your body?

17 A Down in my vagina.

18 Q So when you say private you're talking about vagina?

19 A Yes, ma'am.

20 Q And that was on the bed. Were your clothes on or off?

21 A They would have been off.

22 Q What about his clothes?

23 A His clothes are off.

24 Q Do you remember any other events that occurred in that
25 home?

Minor

- Direct by Ms. Herring-Lash

10

1 A I can't remember any more specific events in that home.

2 Q Would it be fair to say that more things did happen?

3 A Yes. I remember stuff happening over multiple basis.

4 It's just some things are clear and just some things are so
5 long ago kind of all melt together.

6 Q And were you put in foster care at some point then?

7 A I believe I was put in foster care between three and
8 four, at that time.

9 Q And then do you remember any details about going and
10 returning from foster care?

11 A Only some with the different homes. I know the main home
12 I was in was in Ms. Powell's house. I went to her multiple
13 times.

14 Q And when you returned from foster care the first time
15 back to your mother and stepfather, where were you all living
16 then?

17 A I think we were -- went back to an apartment at that time
18 and that -- I, I don't recall any events in that apartment,
19 not very clearly.

20 Q Where did you live after that?

21 A I know somewhere in that time period we moved to a house
22 on Lee Street.

23 Q On what street?

24 A Lee Street.

25 Q Okay. And was -- that was a home or a trailer?

Minor

- Direct by Ms. Herring-Lash

11

1 A It was a house.

2 Q And do you remember if that house had multiple bedrooms
3 or what it was like?

4 A I believe that one had two or three bedrooms and I think
5 it had an attic to that as well.

6 Q And do you remember if anything happened at Lee Street?

7 A I know a lot of stuff happened there. Some of the main
8 things, I remember more of the -- him putting his penis in my
9 privates like in the, in the bed while my mom was sleeping or
10 at work.

11 Q Uh-huh. And where would you sleep?

12 A Well, I had my own room, but when the events started
13 occurring, I would sometimes hide underneath my bed and sleep
14 or in the closets trying to not be found.

15 Q And so where -- how would you go about getting under the
16 bed? Would you take blankets with you or what would you do?

17 A Sometimes it would just be my pillow. I would leave the
18 blanket so they can't see that I'm not in the bed.

19 Q And would you get found?

20 A Sometimes.

21 Q And how -- explain how that would happen.

22 A Sometimes he would put his head under the bed and pull me
23 out or try to talk to me to get me to come out. I don't know.
24 I can't recall any times of when he got me out of the closet.
25 Usually I would be hiding behind clothes or something like

Minor

- Direct by Ms. Herring-Lash

12

1 that.

2 Q And what would happen after he would pull you out of the
3 closet?

4 A I don't remember anything clearly, kind of blank that
5 out.

6 Q But did anything happen in the bedroom?

7 A Yes, ma'am.

8 Q And that was what?

9 A On my bed he would lay me down or pull my panties off and
10 he would put his penis in my privates.

11 Q And you had mentioned before about his hair on you?
12 Would that have happened also?

13 A Yes.

14 Q Do you remember that?

15 A I have had -- I had a lot of nightmares about that.

16 Q About which part?

17 A His hair in my face, finding me under the bed.

18 Q Finding you under the bed. Did anything happen in any
19 other room beside your bedroom at Lee Street?

20 A I know there was a time when my mom would have been out
21 of the house, I am assuming probably working or something like
22 that, and he had me dress up in her clothes and her high heels
23 and go into the living room, and he'd have me dance for him,
24 playing around. At first it would be fun, and then he would
25 have me take the clothes off and either put his penis in my

Minor

- Direct by Ms. Herring-Lash

13

1 mouth or in my privates or lay me down.

2 Q Where would he lay you down?

3 A On the floor. It was hardwood.

4 Q And how would he be on the floor?

5 A I would be laid down with my knees up.

6 Q And where would he be?

7 A Usually on top of me.

8 Q And were you placed in foster care again at some point?

9 A For the timeline for that, it's very hazy because I was
10 in and out quite a few times between that time period.

11 Q Do you remember living at another home after you returned
12 from one of the foster care placements?

13 A We lived in a lot of different areas. We moved very
14 constantly. I can't even count how many schools I went to to
15 know for sure where, what locations it could have been.

16 Q Do you remember another house where events happened in
17 Georgia?

18 A I believe we lived in the one house by his mother twice.

19 Q Again?

20 A Yes. And the same events were occurring. I can't recall
21 any specific.

22 Q Now, you all eventually then moved to South Carolina?

23 A Yes. We did.

24 Q And I think you've said this, but do you remember how
25 many schools and placements you were in throughout your life

Minor

- Direct by Ms. Herring-Lash

14

1 up until you came to Charleston?

2 A I remember kindergarten was at least five different
3 schools. That's how I know we moved so often. I can't always
4 remember the areas or the homes that it may have been
5 specifically.

6 Q And do you remember having a lot of friends to turn to?

7 A I didn't make friends very easily.

8 Q Do you know why that is?

9 A Partly was I was told that I wasn't allowed to speak to
10 anybody because whatever goes on in the house stays in the
11 house.

12 Q So did you tell people about the sexual abuse?

13 A I attempted to a couple of times when I was in foster
14 care for the first time, but after they went through whatever
15 classes they were supposed to be in they would send me back.

16 Q So DSS required them to go to classes?

17 A Yes.

18 Q And who told you not to tell?

19 A It would be Walter Scott Garrett.

20 Q And did you eventually end up telling about the sexual
21 abuse?

22 A At the very end I told my, my mother when we were
23 hitchhiking back from New Hampshire to come back to him. She
24 was returning to him again, and I tried to tell her in the
25 semi-truck we were riding in in the front seat --

Minor

- Direct by Ms. Herring-Lash

15

1 Q Uh-huh.

2 A -- before we got all the way back when we were on the
3 highway before we got to the exit, but she chose to tell me
4 that I was wrong and that she was going back still. So she
5 chose to go back with him.

6 Q Was that difficult?

7 A It was difficult.

8 Q And did you always realize that this was wrong?

9 A Not, not always. I mean, I didn't really have much
10 people in my life who actually showed love. So I didn't know
11 how love was supposed to be shown.

12 Q Over this last 25 years how often have you talked about
13 this to people?

14 A It's only been in the past year that I've actually spoken
15 to a few people who are close to me about what's gone on and
16 then there was a time, bad time in the Army when I was going
17 through some of my close friends knew what was going on.

18 Q And have you tried to remember or forget or --

19 A I try more not to think about it, to forget it.

20 Q Have you and are you now trying to control your emotions?

21 A Yes, ma'am.

22 Q And why?

23 A I'm so used to trying to keep everything to myself.

24 Q And what was your reaction when law enforcement contacted
25 you, I guess in 2013, about these warrants were now going to

Minor

- Direct by Ms. Herring-Lash

16

1 be served?

2 A First I couldn't believe it.

3 Q Uh-huh.

4 A It was very surprising. I didn't even know, know for
5 sure if what they were telling me was true because I thought,
6 you know, this has to be a joke, and then when I finally spoke
7 and they came up to Fayetteville to speak to me, I was
8 actually in parts relieved that something may actually finally
9 be taken care of and resolved.

10 Q And you said in part relieved. What was the other part?

11 A I was kind of scared.

12 Q Had you tried to locate him yourself over the years?

13 A Yes. Throughout my teenage years and my adulthood, I
14 would do numerous searches trying to find any links to his
15 name or something. I don't know what I would have done if I
16 had found him, but it was something I was trying to do.

17 Q And how has it been like coming here to Court and
18 discussing this?

19 A Very nerve-wracking.

20 MS. HERRING-LASH: The Court's indulgence for one moment.

21 THE COURT: Uh-huh.

22 BY MS. HERRING-LASH:

23 Q Ms. Minor , those are all the questions I have. If you
24 would now answer any for the Defense.

25 THE COURT: You may proceed.

Minor

- Cross by Mr. Kozelski

17

1 MR. KOZELSKI, III: Thank you, Your Honor.

2 THE COURT: You're welcome.

3 MR. KOZELSKI, III: May it please the Court?

4 THE COURT: Yes, sir.

5 CROSS EXAMINATION

6 BY MR. KOZELSKI, III:

7 Q Good afternoon, Ms. Minor .

8 A Hello.

9 Q I want to talk to you just briefly about growing up with
10 your mother, Kathy. You were never able to, to know your
11 father?

12 A No. He, he committed suicide in prison. I'm not sure if
13 it was when I was a baby or when she was pregnant with me.

14 Q And so that was -- it was just you and your mother
15 growing up?

16 A It was me and my mother for a couple of years before she
17 met Walter Scott Garrett.

18 Q And your mom was sort of transient, she moved around a
19 lot?

20 A She was.

21 Q She hitchhiked a lot?

22 A She did.

23 Q And that was when you were still an infant?

24 A Yes.

25 Q And you lived in New Hampshire?

Minor

- Cross by Mr. Kozelski

18

1 A It was more -- yeah. Manchester, New Hampshire, yes.

2 Q And then you lived in Georgia for about six, seven years?

3 A Off and -- in and out saying her back and forth.

4 Q Off and on between the foster care and --

5 A Yes.

6 Q Okay. And then you were in Panama City, Florida, for
7 about a month or two?

8 A Something like that.

9 Q Okay. And then --

10 A A few months. I don't remember exactly. It couldn't
11 have been very long because we came back in '89 to Georgia to
12 go to Florida and then back to Charleston all in '89. So it
13 had to be just a couple of months.

14 Q And then in November of '89 you came to -- around
15 November of '89 you came to Charleston?

16 A That would be right.

17 Q Okay. And you went to several different schools since
18 the time you'd started about fifth grade?

19 A I believe at that time by the time I got in permanent
20 foster care was about my fifth school.

21 Q And your mom would pull you out of school and take you to
22 New Hampshire, for instance?

23 A Yes.

24 Q But you still loved your mom very much?

25 A Yes.

Minor

- Cross by Mr. Kozelski

19

1 Q Your mom was a drug addict?

2 A I saw both her and Walter Scott Garrett use drugs.

3 Q Okay. Would you consider your mom a drug addict?

4 A I would consider them both drug addicts.

5 Q Okay. But would you consider your mother a drug addict?

6 A Yes. I would consider them both drug addicts.

7 Q Okay. But was she --

8 A Because they both would take me on excursions to go get
9 drugs.

10 Q Was, was your mother an alcoholic?

11 A No. I never saw her drink as much as I saw him drink.

12 Q So she was doing these drugs, cocaine, is that what she
13 was using?

14 A At the time I didn't know the names, but I'm sure.

15 Q Do you remember telling the officers that you saw her do
16 cocaine?

17 A I remember saying I saw her doing something with a spoon
18 and, I guess, a clear pipe, metal pipe.

19 Q And this -- when she would be doing drugs, she would be
20 neglectful towards you?

21 A Yes.

22 Q She'd just do whatever she would want to do and she would
23 ignore you?

24 A I remember both of them doing whatever they wanted to do.

25 Q Okay. Do you remember the first time that you were

Minor

- Cross by Mr. Kozelski

20

1 involved with child protective services?

2 A The very first time probably not very well.

3 Q Okay. Can you remember back in August of 1982 back when
4 the DeKalb County Child Protective Services took you?

5 A I don't recall very well, no, because there was a few
6 different times I know DSS picked me up.

7 Q Okay. Do you, do you remember when your mom was arrested
8 for public drunkenness?

9 A No. The only time I remember when they came to pick me
10 up was when she threw herself on the cop car to try to keep
11 them from taking me.

12 Q Okay. So would it surprise you that you were taken into
13 DSS custody or child protective service custody for about five
14 days in August of 1982?

15 A No. It wouldn't.

16 Q Do you remember exactly when your mom and Mr. Garrett
17 first met?

18 A I, I believe it was sometime before I was three.

19 Q And it was pretty quickly thereafter that you and your
20 mother went to live with Mr. Garrett?

21 A Yes.

22 Q And you described the number of places that you all had
23 lived that were very close to his mother's --

24 A Yes.

25 Q -- place of business, and those were, those were

Minor

- Cross by Mr. Kozelski

21

1 apartment complexes that she ran or kind of a motel?

2 A I think it was. Yeah.

3 Q Okay. And all those places that you lived with Mr.

4 Garrett, those were in Clayton County?

5 A That I couldn't give you an honest answer because I'm not

6 sure what county it would have been. I would have been too

7 young to know because I believe we lived some in Riverdale as

8 well, which is the same place where I was in foster care with

9 Ms. Powell.

10 Q Okay.

11 A I don't know if that's the same county or not.

12 Q Okay. So you don't know definitely if --

13 A No.

14 Q -- Riverdale is in Clayton County. Okay. But you, you
15 remember Mr. Garrett's mother?

16 A Yes.

17 Q Okay. She's sort of like a grandmother to you?

18 A Yes.

19 Q Did you -- you contacted her even after this --

20 A Yes.

21 Q -- occurred in 1990?

22 A DSS helped me get in contact with her to speak with her.

23 Q Okay. And how many times did you speak to her?

24 A I only remember one time.

25 Q Okay. And do you remember what you talked to her about?

Minor

- Cross by Mr. Kozelski

22

1 A I was asking her where my daddy was and my mom. She said
2 that they had come to her house and got my belongings out of
3 storage. She, she wouldn't tell me where he was because I had
4 told her I was -- that -- what had happened. She didn't
5 believe me.

6 Q Okay. So you did talk about these instances with her?

7 A Yes.

8 Q Now, you briefly mentioned about some of your time in
9 foster care while you were in Clayton County, and the first
10 time that you said you remember was with Ms. Powell?

11 A Yes.

12 Q And that was in 1984?

13 A I believe it may have been. That sounds about right
14 because I was there about five or six.

15 Q Okay. And you were there for about six months or so?

16 A That may have been the first time because I think there
17 was another time when I was there for a year or two.

18 Q And you had -- during this time you had a lot of
19 different caseworkers from the Department of Family and Child
20 Needs. Do you remember any of your caseworkers?

21 A I do not.

22 Q Okay. You don't remember -- do you remember Sarah
23 Hansburg [spelled phonetically] at all?

24 A I don't remember any caseworkers. I'm sorry.

25 Q Okay. Do you remember any caseworkers after say 1985?

Minor

- Cross by Mr. Kozelski

23

1 A I don't.

2 Q So you don't remember meeting any of these caseworkers?

3 A I don't remember any of them specifically. Too many
4 people came in, in and out of my life. Unless they were a
5 constant, there wasn't too many people I would be able to put
6 a clear picture to.

7 Q Okay. So you remember people coming and meeting with
8 you. You just don't remember their names.

9 A I, I don't -- probably don't even remember meeting with
10 them.

11 Q Okay. Would you often have people come up to you and ask
12 you if you were having any problems in the home?

13 A There, there would be some people. Ms. Powell would --
14 used to try to talk to me because once I was there for a while
15 I came to look at her very significantly.

16 Q Okay. And when you were given back to your parents, were
17 there people that would show up some, sometimes unannounced to
18 talk to you?

19 A I don't recall anyone visiting to check on me or
20 anything, no.

21 Q So you don't remember anybody asking you to tell them
22 that your parents were having any problems at the home?

23 A I don't recall. No.

24 Q We talked a little bit briefly yesterday, and, and I had
25 asked you whether you had reported some of these instances of

Minor

- Cross by Mr. Kozelski

24

1 conduct to, to anybody other than your mother, who you said
2 did not believe you, and you told -- you said no; correct?

3 A No. I said I recall them not listening, and they just
4 sent me back to the home because they asked me if I wanted to
5 go back to the home, and I said I would like to go back to my
6 mother.

7 Q Okay.. And this was every time that you went into foster
8 care --

9 A Yes.

10 Q -- you'd have somebody ask you about your situation?

11 A Yes.

12 Q Do you remember the first time that you went into foster
13 care in 1984, around December of '84, and having your parents
14 come see you at the foster, foster care?

15 A No. I don't.

16 Q Do you remember having any home visits where you would
17 get to go home for the weekend?

18 A I do remember one time I got to go home and that's when
19 they had got a new dog who was barking in my room.

20 Q And do you remember a caseworker asking you about Mr.
21 Garrett during that weekend?

22 A I don't recall. No.

23 Q Okay. You don't recall her asking you if you had been
24 happy to see him?

25 A No.

Minor

- Cross by Mr. Kozelski

25

1 Q And you don't recall telling her that you were happy to
2 see him?

3 A No.

4 Q Do you recall telling Ms. Wendy Mullis that you were
5 happy because they let you go in the refrigerator and they let
6 you do anything you wanted?

7 A No.

8 Q You eventually went back into foster care from about 1985
9 to 1987?

10 A Yes.

11 Q Okay. And you had continuous interaction with different
12 caseworkers? I'm sure they changed a lot?

13 A Probably.

14 Q Okay. And you were never really shy with these
15 caseworkers; were you?

16 A I probably was. There was some that they -- I know Ms.
17 Powell used to have to come and get me to get me to speak to
18 people.

19 Q Do you remember a Ms. Cindy Wheeler --

20 A No.

21 Q -- in about 1988?

22 A No.

23 Q You don't remember having private conversations with Ms.
24 Wheeler in your room?

25 A I don't.

Minor

- Cross by Mr. Kozelski

26

1 Q You don't remember her telling you that if anything were
2 to happen you could confide in her?

3 A No.

4 Q And around February of 1989 do you remember meeting with
5 Ms. Wheeler again?

6 A No. I just remember us hitchhiking to New Hampshire that
7 year.

8 Q Okay. So before you hitchhiked to New Hampshire, do you
9 remember telling Ms. Wheeler that everything was fine and that
10 you weren't having any problems?

11 A I don't recall that. No.

12 Q Okay. Do you remember telling her how glad you were to
13 be home with your family?

14 A I probably was glad to be home with my parents.

15 Q Okay. Do you remember telling her that you -- "you know,
16 if she has any problems that you could talk to her about"?

17 A I don't recall that.

18 Q Do you remember in March of that same year the same
19 caseworker coming to speak with you?

20 A No.

21 Q Okay. Do you remember telling her that you, your mother
22 and Mr. Garrett were getting along very well?

23 A No.

24 Q Do you remember her telling you that if you had any
25 problems to contact you or let a counselor at school know?

Minor

- Cross by Mr. Kozelski

27

1 A No.

2 Q You don't remember telling her that you understood this

3 --

4 A No. I don't --

5 Q -- the words of that?

6 A -- I don't remember that conversation at all.

7 Q But you did tell them, at some point you told some
8 caseworker at some point that there were problems in the home?

9 A Yeah. I would have had to tell them there was some
10 problems, but they kept sending me back to the same home with
11 the same problems and going back to the foster care and going
12 back to the same problems and having to go back to foster care
13 if something else happened again, and after a point there's a
14 time where you just don't speak about stuff anymore if you
15 keep getting hurt.

16 Q Okay. But at no point while you were in Georgia did you
17 tell any caseworker about Mr. Garrett making you perform oral
18 sex or him performing sexual intercourse on you?

19 A I remember telling somebody that there was touching and
20 other stuff going on and of that nature, but I wouldn't have
21 known the sex word or any of that at that time either.

22 Q Okay. You never said that he put his privates in your
23 mouth?

24 A I don't know what I would have told them. I just know I
25 had told somebody.

Minor

- Cross by Mr. Kozelski

28

1 Q Okay. But you don't recall telling that to somebody?

2 A I just recall telling them that I was being touched
3 inappropriately.

4 Q And also your parents fought a lot; right?

5 A Yes. They did.

6 Q They fought about different, different things?

7 A I don't even remember what they fought about. Sometimes
8 it didn't even seem like anything worth fighting about.

9 Q Okay. Do you recall telling the police that your, your,
10 your mother cheated on Mr. Garrett?

11 A I do remember that.

12 Q And that was with a man named Joseph?

13 A Yes. I remember that.

14 Q Do you recall if that's the reason why they split up?

15 A No. Because she went back.

16 Q But they were off and on and off and on?

17 A They were always back and forth. Yes.

18 Q As long as they weren't fighting in the home you were --
19 you would tell your caseworkers you were happy to be home?

20 A Yes.

21 Q Then in November of '89 you moved to South Carolina?

22 A Yes.

23 Q And you didn't have anywhere to stay at first?

24 A Right.

25 Q Your parents were poor?

Minor

- Cross by Mr. Kozelski

29

- 1 A Yes.
- 2 Q Mr. Garrett was trying to find work after Hurricane Hugo?
- 3 A Yes.
- 4 Q And eventually you talked about getting a trailer off of
- 5 Lands Road?
- 6 A Yes.
- 7 Q And this was just a one, one-bedroom trailer?
- 8 A I believe it was. Yes.
- 9 Q Okay. There was only one bed in it?
- 10 A Yes.
- 11 Q So you all slept in the same bed?
- 12 A Yes.
- 13 Q And early January that year your parents started fighting
- 14 again?
- 15 A I don't remember any fights.
- 16 Q Do you remember telling the police anything about your
- 17 mother two-timing Mr. Garrett?
- 18 A If I spoke about Joseph, then yes.
- 19 Q And on January the 15th you went to your guidance
- 20 counselor at Goodwin Elementary?
- 21 A Yes.
- 22 Q And you told her about the abuse?
- 23 A Yes.
- 24 Q And you usually rode the bus to school, back and forth
- 25 from school?

Minor

- Cross by Mr. Kozelski

30

1 A That's right.

2 Q Okay. And because you missed the bus your mom showed up
3 at the school?

4 A Yeah. He brought her to the school.

5 Q Okay. Did you ever see Mr. Garrett at the school?

6 A No. They said he was waiting outside.

7 Q Okay. But you never saw Mr. Garrett?

8 A I never saw him, but my mom didn't drive.

9 Q You don't know if somebody else would have driven her?

10 A No. She didn't know anyone at that time.

11 Q Okay. No one else in the trailer park that she knew --

12 A No.

13 Q -- or hung out with?

14 A No.

15 Q And you said that was the last time you saw your mom?

16 A Yes.

17 Q So you're not sure what happened with her relationship to
18 Mr. Garrett?

19 A I just know that his mother told me that they came to
20 Georgia together.

21 Q And eventually the police showed up at the school?

22 A Yes.

23 Q And by that time your mom had already left?

24 A Yes.

25 Q And they took you into, into DSS custody then?

Minor

- Cross by Mr. Kozelski

31

- 1 A Yes.
- 2 Q And eventually you were interviewed by Detective Reed
- 3 over there?
- 4 A Yes. I just remember him.
- 5 Q Okay. A nice man?
- 6 A Yes.
- 7 Q Gave you a doll?
- 8 A Yeah. Probably at that time.
- 9 Q Okay. And started asking you questions about your
- 10 parents?
- 11 A Yes.
- 12 Q Kind of like all the caseworkers before him?
- 13 A Right.
- 14 Q And eventually you get assigned a caseworker, William
- 15 Cramer?
- 16 A Uh-huh.
- 17 Q Do you remember Mr. Cramer?
- 18 A I did not.
- 19 Q Okay. Do you remember him asking you questions about
- 20 your parents?
- 21 A I don't, I don't recall him at all.
- 22 Q At all?
- 23 A Huh-uh.
- 24 Q Okay. So you don't, you don't remember demonstrating
- 25 sexual acts to Mr. Cramer?

Minor

- Cross by Mr. Kozelski

32

1 A I remember talking about it to, to someone when they were
2 asking me the questions about it. Yes.

3 Q Okay. Do you remember later telling him that Mr. Garrett
4 did not --

5 A No.

6 Q -- penetrate your vagina with his penis?

7 A No. I don't remember that. You would have to show me.

8 Q And this is probably in August of 1990. You don't
9 remember telling him that your father did not do that?

10 A No.

11 Q You briefly touched on with Ms. Herring-Lash that you had
12 to undergo some counseling through the Department of Social
13 Services?

14 A Right.

15 Q And that was with Dr. Jane Cuplus [spelled phonetically].

16 A I believe that was her name.

17 Q Okay. So you do remember talking to her?

18 A Vaguely.

19 Q And you had about 21 therapy sessions with her?

20 A Yes.

21 Q Okay. Do you remember telling her about what she
22 describes as auditory and visual hallucinations?

23 A I remember imagining blue and red people speaking to me,
24 if that's what you're referring to.

25 Q Okay. And did she ever do anything to address those

Minor

- Cross by Mr. Kozelski

33

1 issues?

2 A Just the counseling sessions, speaking to me to let me
3 know that what I, what I may have been imagining, of course,
4 wasn't real.

5 Q You went through a couple of different foster, foster
6 parents here in South Carolina?

7 A Yes.

8 Q Until you eventually got with the Suttons?

9 A The Suttons was one of my first foster families.

10 Q Okay. And this is, is until you were adopted by the
11 Cowhigs?

12 A No. The Suttons and then the Shannihans and then there
13 was another family and then it would have been the Cowhigs.

14 Q Then you graduated from high school?

15 A Yes.

16 Q And then joined the Army?

17 A Correct.

18 Q And at any time did you try to make contact with your
19 mother?

20 A Yes.

21 Q Okay. And were you able to establish contact with her?

22 A Yes.

23 Q Okay. And she did not -- she still did not believe you
24 about these allegations?

25 A It's not she didn't believe me. She chose not to speak

Minor

- Cross by Mr. Kozelski

34

1 about it. She chose to ignore that anything in the past
2 happened.

3 Q Okay. And you never got in contact with Mr. Garrett?

4 A No.

5 Q Okay. But you said you were looking for him?

6 A Yes.

7 Q Did you ever go back to Clayton County?

8 A No.

9 Q Did you ever try to contact law enforcement in any way?

10 A No.

11 Q Okay. So is that because you didn't know he had a
12 warrant out for him?

13 A I didn't know he had a warrant. No.

14 Q And have you ever pursued the charges back in Georgia?

15 A No. I didn't know there were any charges in Georgia. I
16 just thought it was all forgotten about and didn't matter.

17 Q So that's a no?

18 A That's correct.

19 Q And it wasn't until law enforcement contacted you that
20 you ended up here today?

21 A Correct. That's when I found out that there were
22 warrants at all.

23 MR. KOZELSKI, III: Beg the Court's indulgence?

24 THE COURT: Uh-huh.

25 MR. KOZELSKI, III: No further questions, Your Honor.

Minor

- Redirect by Ms. Herring-Lash

35

1 THE COURT: Any redirect?

2 REDIRECT EXAMINATION

3 BY MS. HERRING-LASH:

4 Q Minor , by the time that you were returned I guess the
5 third or fourth time, did you any longer trust DSS to protect
6 you at all?

7 A No, ma'am.

8 Q Did you trust them to do anything that you told them?

9 A No, ma'am.

10 Q What were you told about telling people outside of the
11 family by Mr. Garrett?

12 A That, again, what goes on in this house stays in this
13 house, if I told anyone he may hurt my mother.

14 Q Were you afraid?

15 A I was.

16 Q Had there -- you, you were asked about you were allowed
17 to go into the refrigerator, you had told a worker you were
18 allowed to go into the refrigerator?

19 A I must have. I don't remember that.

20 Q Do you remember at points in your life never being
21 allowed to get food and go into the refrigerator?

22 A I do remember getting in trouble for trying to get food,
23 or if whatever they were trying to feed me, if I didn't eat it
24 right, it got thrown away.

25 Q So if, if you had been allowed to go in the refrigerator

Minor

- Redirect by Ms. Herring-Lash

36

1 that would have been a big deal?

2 A Correct.

3 Q Have you been -- I guess you were told that Mr. Garrett
4 was waiting in the car when your mother was at the school, and
5 I want to show you the August 1990 document that you were
6 asked about. You were asked if you remembered talking to Mr.
7 Cramer or someone about the things that had happened to you,
8 and you were asked if you told him that your stepfather did
9 not put his private in you.

10 A I don't recall saying that. No.

11 Q And do you recall what -- telling him that there was not
12 full penetration but he tried to put it in full?

13 A I remember saying putting it near like --

14 Q And -- okay.

15 A -- not going all the way in.

16 Q What do you mean now? I guess as an adult you have a
17 better understanding of your, your genitalia.

18 A Correct.

19 Q What do you mean about as far as full penetration and
20 what you were talking about there?

21 A Well, the way he did, of course, he didn't go all the way
22 inside as far as what I understand, especially I have
23 children, but it was near the area where the lips and the, the
24 labia would be.

25 Q So it was penetration of that?

Minor

- Redirect by Ms. Herring-Lash

37

1 A Right.

2 Q And at the time you didn't know the difference.

3 A I didn't. I just know that it was pressure enough to
4 hurt.

5 Q And so it was pressure --

6 A Yes.

7 Q -- and pain?

8 A Yes.

9 Q Have you ever -- well, why did you try to contact Mr.
10 Garrett?

11 A At the time I -- it's just I wanted someone to be found
12 because then I didn't even know what I would have done if I
13 found him, if I would have called the cops because nothing was
14 ever done. I, I didn't know that there was any warrants out.
15 I thought once it was told, you know, they left so no one
16 could come and get me anymore and they didn't do anything else
17 because I felt like nobody cared.

18 Q And you actually through these 25 years didn't do
19 anything to actively pursue charges anywhere?

20 A No. I didn't.

21 Q Those are all the questions I have.

22 THE COURT: Ma'am, you may step down. You may call your
23 next witness.

24 MR. KOZELSKI, III: Your Honor.

25 THE COURT: Direct, cross, redirect.

1 MS. HERRING-LASH: The State would call Tia Sutton.

2 THE COURT: Ma'am, if you would come forward to be sworn,
3 please.

4 MS. HERRING-LASH: Right up there with the gentleman
5 standing.

6 MS. SUTTON: Okay.

7 Whereupon, Tia Sutton was called to the stand, duly sworn
8 by the clerk and testified as follows:

9 THE CLERK: Please be seated. Once seated, please state
10 your first and last name and spell your last namely loudly and
11 clearly into the microphone.

12 MS. SUTTON: My name is Tia Sutton, S-U-T-T-O-N.

13 THE COURT: You may proceed.

14 MS. HERRING-LASH: Thank you, Your Honor.

15 THE COURT: You're welcome.

16 DIRECT EXAMINATION

17 BY MS. HERRING-LASH:

18 Q Ms. Sutton, where do you live now?

19 A Fayetteville, Georgia.

20 Q And did you at some point live in Charleston, South
21 Carolina?

22 A Yes. We did.

23 Q And when was that?

24 A 1980 to 2007.

25 Q And who was in your family at that time?

Tia Sutton - Direct by Ms. Herring-Lash

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1 A My husband, myself and our four children.

2 Q And where did you work when you were in Charleston?

3 A I worked for two pediatricians at Roper Hospital for a
4 while and at MUSC on two occasions.

5 Q And were you also a foster parent?

6 A Yes.

7 Q And when were you a foster parent?

8 A From the summer of 1984 till the summer of 1991.

9 Q And were you licensed by the Charleston County Department
10 of Social Services?

11 A Yes.

12 Q And do you remember how many foster children you had in
13 all?

14 A We had 11 total.

15 Q And was **Minor** a foster child that was at
16 some point placed in your home?

17 A Yes.

18 Q Do you remember when that was?

19 A **Minor** came to us early in 1990 and she stayed till
20 almost the summer of 1991.

21 MS. HERRING-LASH: Your Honor, may I approach the
22 witness?

23 THE COURT: Uh-huh. You may.

24 BY MS. HERRING-LASH:

25 Q Ms. Sutton, I want to show you what has been admitted as

1 Court -- as State's Exhibit Number One. Do you recognize
2 this?

3 A Yes. I do.

4 Q And what is that?

5 A It is a school picture either fifth or sixth grade.

6 Q Is that when **Minor** was in your home?

7 A Yes. It was.

8 Q What was **Minor** 's physical description back then?

9 A Tall and lanky.

10 Q And this is when she -- approximately the time she came
11 to your home?

12 A Yes.

13 Q Was -- you -- was your home the first foster home that
14 she had been in or do you know?

15 A When they first called about **Minor** , I was given the
16 impression that she was in some other facilities and maybe
17 another foster home, but I'm not sure. Yeah.

18 Q Some children go like to a shelter before they find a
19 home?

20 A Right.

21 Q And did **Minor** tell you about being sexually assaulted?

22 A Yes.

23 Q Did she tell you where she was assaulted?

24 A In every room of the home they lived in.

25 Q And did she tell you when it had occurred?

Tia Sutton - Direct by Ms. Herring-Lash

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1 A She indicated that this happened almost every day for as
2 long as she could remember.

3 Q And while she was with you did you take her to
4 counseling?

5 A Yes. I did.

6 Q And did **Minor** have any behavioral issues when she was
7 in your home?

8 A When **Minor** came to us she was very soft-spoken. She
9 was fearful. She did not know normal household things that a
10 fifth grader would know. She read voraciously but did not
11 know how to pronounce certain words. There were huge
12 educational gaps in, in her understanding of different
13 subjects. She was afraid. Sometimes she would zone out kind
14 of like a daydream and it would take a little bit of effort to
15 snap her out of that.

16 Q Did counseling that she went to seem to help?

17 A Eventually. Yes.

18 Q And how long was she with you?

19 A About a year and a half.

20 Q After she left your home did she go to other foster homes
21 that you know of?

22 A Yes. She did.

23 Q Now, have you kept in contact with **Minor** ?

24 A Sporadically.

25 Q Did, did you go to her high school graduation as an

1 example?

2 A We did. From time to time we would have phone calls. We
3 went to the high school graduation. I know that after high
4 school graduation she went into the Army. After the Army we
5 kind of lost track of her for a while, and then a couple of
6 years ago we found her on Facebook.

7 Q And how did you find out about this trial?

8 A She told me in a Facebook message.

9 Q And did you agree to be -- help her through this?

10 A Yes.

11 MS. HERRING-LASH: The Court's indulgence one moment.

12 THE COURT: Uh-huh.

13 BY MS. HERRING-LASH:

14 Q Ms. Sutton, if you would answer any questions that the
15 Defense has.

16 A Okay.

17 THE COURT: You may proceed.

18 CROSS EXAMINATION

19 BY MR. KOZELSKI, III:

20 Q Ms. Sutton, I just have a few questions for you.

21 A Okay.

22 Q Kids don't always have the easiest transition going into
23 a foster home; right?

24 A Right.

25 Q And **Minor** was no exception to that?

Tia Sutton - Cross by Mr. Kozelski, III

43

1 A Right.

2 Q And she came to you almost immediately after she had
3 reported this alleged conduct to the police; right?

4 A I'm not sure how many days between, but yes.

5 Q But relatively soon after?

6 A Yes.

7 Q And did the police ever contact you or come speak to
8 Minor ?

9 A Those kinds of meetings would have been done at the
10 offices of DSS.

11 Q Okay. And did you ever meet with them?

12 A The police?

13 Q Yes.

14 A I don't think I did. I don't remember meeting police.

15 Q Okay. So you don't know -- you didn't know at the time
16 what was going on with her, her case against her stepfather?

17 A When, when a foster parent accepts a foster child she is
18 -- they are usually contacted by phone by DSS. You are given
19 a short description of what is going on with the child, what
20 the age of the child is, what some of the needs of the child
21 may be. I was told that Minor had told a child at school
22 that something had happened to her and that the child she told
23 said, "We need to tell an adult." I was told, you know, in
24 that initial phone conversation that as soon as that adult
25 heard what was going on that the police and DSS were contacted

1 and --

2 Q Okay. So you never kept up with it personally?

3 A I didn't kept up with it -- keep up with it.

4 Q Keep up with her and her case. You didn't, you didn't
5 ever go ask the police whether they served a, served a warrant
6 on Mr. Garrett or --

7 A I knew these facts through DSS.

8 Q Okay.

9 A And through the periodic visits that we would have with
10 her caseworkers and through the therapy, and thus, was not
11 through the police department but through DSS.

12 A I got you. Thank you, ma'am.

13 THE COURT: Any redirect?

14 MS. HERRING-LASH: No, Your Honor.

15 THE COURT: Any objection to the witness being excused?
16 From the State?

17 MS. HERRING-LASH: No, Your Honor.

18 THE COURT: From the Defense?

19 MR. KOZELSKI, III: No, Your Honor.

20 THE COURT: Ma'am, you're excused.

21 Madam Forelady, ladies and gentlemen, ma'am, you can
22 continue. We're going to take advantage of this break in
23 testimony to take a brief restroom break. During the break,
24 please do not discuss the case and please leave your notepads
25 in your seats. We'll be out about 10 minutes.

Tia Sutton - Cross by Mr. Kozelski, III

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1 (Whereupon, the following takes place outside the
2 presence of the jury.)

3 THE COURT: We'll be at ease for a restroom break.

4 OFF THE RECORD

5 (On the record. Whereupon, the following takes place outside
6 the presence of the jury.)

7 THE COURT: Is the State ready to proceed?

8 MS. HERRING-LASH: Yes, Your Honor.

9 THE COURT: The Defense ready to proceed?

10 MR. KOZELSKI, III: We are, Your Honor.

11 THE COURT: Who's the State's next witness?

12 MS. HERRING-LASH: Your Honor, William Cramer.

13 THE COURT: Is he in the courtroom?

14 MS. HERRING-LASH: No. He's in the hallway.

15 THE COURT: Go ahead and get him, please.

16 And his -- is his last name correctly spelled with a C or
17 a K?

18 MS. HERRING-LASH: It's a C, Your Honor.

19 THE COURT: Okay.

20 (Whereupon, the following takes place in the presence of
21 the jury.)

22 BAILIFF: All jurors are present, Your Honor.

23 THE COURT: Thank you. Ladies and gentlemen, I hope you
24 enjoyed your break. We'll now resume testimony. The State
25 may proceed.

1 MS. HERRING-LASH: The State would call William Cramer.

2 THE COURT: Sir, if you would come to the stand to be
3 sworn.

4 Whereupon, William Cramer was called to the stand, duly
5 sworn by the clerk and testified as follows:

6 THE CLERK: Please be seated. Once seated, please state
7 your first and last name and spell your last name loudly and
8 clearly into the microphone.

9 MR. CRAMER: William Cramer, C-R-A-M-E-R.

10 THE COURT: You may proceed.

11 DIRECT EXAMINATION

12 BY MS. HERRING-LASH:

13 Q Mr. Cramer, where are you currently employed?

14 A With the Charleston County Department of Mental
15 Health.

16 Q And what are your duties there?

17 A I am a mental health counselor. I work with individuals
18 who have persistent mental illness.

19 Q And were you employed at the Charleston County Department
20 of Social Services at some point?

21 A Yes. I was.

22 Q And when was that?

23 A Early nineties, late eighties.

24 Q And what were your duties there?

25 A I was a foster care worker. I worked within -- with

William Cramer - Direct by Ms. Herring-Lash

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1 people who were in foster care system, foster parents and some
2 with the, with the biological parents, also..

3 Q And what kind of things does a foster care worker do for
4 the foster child and the foster parents?

5 A They work with the foster parent as far as helping them
6 with what needs they may have with the child, intervene,
7 intervene with school issues, medical issues. Since the State
8 is the custodial of the child, we take care of all the medical
9 needs as far as signing paperwork, the school paperwork, we
10 meet the school staff to determine if a 504 plan or IEP is
11 needed for special education needs. We try to address the
12 needs of the foster parent if they have them going on. If
13 there's a problem with the placement, we try to mediate the
14 problem, deal with that. We also represent a -- DSS to the
15 foster care review board on a regular basis, give an update
16 about the foster care placement and applies to the court order
17 that we're following.

18 Q And do you try to get the child's history as much as
19 possible when you're doing that?

20 A As much as possible. Yes.

21 Q And now, as a foster care worker do you provide actual
22 counseling?

23 A No.

24 Q But do you see that the child is taken to counseling if
25 needed?

1 A Yes.

2 Q And do you remember a foster child in your caseload at
3 some point named Minor ?

4 A Yes. I do.

5 Q Do you remember when she was in your caseload?

6 A There again, be the early nineties.

7 Q And do you remember who her foster mother was?

8 A Ms. Tia Sutton.

9 Q And do you remember if Minor was in counseling at the
10 time?

11 A Yes. Court reports I have read and recall she was, I
12 believe, with the crime victim center.

13 Q And was that a common place that children, foster
14 children would be taken for therapy?

15 A One who had, had suffered trauma in her background. Yes.

16 Q And while you were Minor 's worker -- well, let me ask
17 you first, also as a foster care worker do you work with the
18 natural parents?

19 A As much as possible.

20 Q And in Minor 's case did you work with her mother and
21 her stepfather?

22 A No, ma'am.

23 Q Did you ever have any contact with them?

24 A No. I did not.

25 Q Was DSS ever able -- anyone at DSS ever able to locate

1 them?

2 A The last record I read, the last report of contact was I
3 think the 23rd of January 1990 when the mother appeared for a
4 -- on a hearing.

5 Q And that's the last contact for anybody?

6 A Yes.

7 Q Was **Minor** -- had **Minor** been in other foster care
8 placements in Georgia?

9 A Yes.

10 Q And did you review those records, too, as part of your
11 caseload management?

12 A Yes.

13 Q Now, is -- what is the number one goal of DSS usually?

14 A Reunification of the child with the parents.

15 Q And do parents have to go through treatment plans and
16 counseling and things like that to get reunified?

17 A Depending upon the nature in which the child was removed
18 that will determine what type of care is predicated and we
19 would follow through with that.

20 Q And when you were no longer **Minor** 's caseworker, was she
21 still a foster child at that point or had she been adopted?

22 A She was still in foster care.

23 MS. HERRING-LASH: The Court's indulgence for one moment.

24 THE COURT: Uh-huh.

25 MS. HERRING-LASH: Those are all the questions I have.

1 If you would answer any from the Defense.

2 THE COURT: You may proceed.

3 MR. KOZELSKI, III: May it please the Court?

4 THE COURT: Yes, sir.

5 CROSS EXAMINATION

6 By MR. KOZELSKI, III:

7 Q Good afternoon, Mr. Cramer.

8 A Good afternoon.

9 Q You just testified that part of what you do as a foster
10 care worker is you write reports?

11 A (Indicates affirmatively.)

12 Q And is that a, is that a yes?

13 A Yes. Sorry..

14 Q And in August of 1990 you created a treatment plan for
15 Minor ; is that correct?

16 A Correct.

17 Q And these reports are fairly important to what you do?

18 A Yes.

19 Q People rely on these reports?

20 A Yes.

21 Q Courts rely on these reports?

22 A Yes.

23 Q They want to do what's in the best interest of the child
24 and that's what your report is geared towards?

25 A Yes.

1 Q And do you have an opportunity to talk with the child
2 before you issue your report?

3 A I had regular contact with the child during the time, so
4 yes.

5 Q Okay. And do you -- you ask that child what her wants
6 are?

7 A At times we do.

8 Q Okay. And you also try to assess the past history of
9 abuse?

10 A Yes.

11 Q And you did that in this case; correct?

12 A Yes.

13 Q And during those talks with **Minor** , you wrote in your
14 report that she demonstrated the motions of intercourse?

15 A My understanding the words that were used was
16 masturbation with objects.

17 Q Okay. But did she describe to you sexual intercourse?

18 A My role as a foster care worker was after the
19 investigation. I didn't do the initial investigation. Other
20 work would do that and they would pass the case on to me. So
21 the investigation had already been taken place and a case was
22 already founded by the time I got the case. I do not
23 reinvestigate the case.

24 Q Okay. But did she later deny to you that her
25 stepfather's penis was in her vagina?

1 A No. I don't recall those words.

2 Q Okay. If, if I showed you a copy of your treatment plan.
3 would that help refresh your recollection?

4 A I can look at it, definitely. Yes.

5 MR. KOZELSKI, III: Permission to approach, Your Honor?

6 THE COURT: You may.

7 BY MR. KOZELSKI, III:

8 Q And is that your treatment plan?

9 A Yes. It has my name on it.

10 Q Okay. And is that the correct date, August 6th, 1990?

11 A Yes, sir.

12 Q Okay. And I just wanted to direct you to, to the
13 beginning of paragraph three.

14 A On which page?

15 Q On the first page.

16 A Okay. Yes. I see it.

17 Q So does that, does that help refresh your recollection at
18 all?

19 A I, I see what I wrote down.

20 Q Okay.

21 A I see what I wrote down. Yes.

22 Q Basically that was she denied the full penetration --

23 A Correct.

24 Q -- by her stepfather's penis into her vagina?

25 A Correct.

1 MR. KOZELSKI, III: Beg the Court's indulgence. No
2 further questions, Your Honor.

3 THE COURT: Any redirect?

4 MS. HERRING-LASH: Yes, Your Honor.

5 THE COURT: You may proceed.

6 REDIRECT EXAMINATION

7 BY MS. HERRING-LASH:

8 Q Does he still have it? Do you still have your copy of
9 this report?

10 A Yes, ma'am.

11 Q Going back to paragraph three, will you read to yourself
12 now the entire paragraph?

13 A To myself?

14 Q Uh-huh.

15 A Okay. Okay.

16 Q And did -- she denied full penetration?

17 A Correct.

18 Q But do you talk about still going through her
19 demonstrating the motions of intercourse?

20 A Yes.

21 Q And what about -- what else about him putting his private
22 in her did you write?

23 A I put down there he requested **Minor** suck his private.

24 **Minor** stated and demonstrated he --

25 MR. KOZELSKI, III: Objection, Your Honor.

1 THE COURT: Basis?

2 MR. KOZELSKI, III: Hearsay.

3 THE COURT: He prepared the report; correct?

4 MR. KOZELSKI, III: Yes. He did, Your Honor. That's --

5 THE COURT: Please approach.

6 (Whereupon, a bench conference is held in the presence
7 but out of the hearing of the jury.)

8 THE COURT: The last portion of the answer is stricken.

9 Ladies and gentlemen, you are to disregard the answer. You're
10 to give it absolutely no consideration in your deliberations.
11 You may proceed. Rephrase the question.

12 BY MS. HERRING-LASH:

13 Q You have already talked about the first sentence that the
14 Defense asked you about --

15 A Correct.

16 Q -- where she went through the motions of intercourse.
17 Now, go down to the next -- the third from the bottom.

18 MS. HERRING-LASH: And Your Honor, may I approach and
19 show him?

20 THE COURT: You may.

21 BY MS. HERRING-LASH:

22 Q Talking to her again about the penile penetration, what
23 else did she say?

24 A She said he tried to put his private in her.

25 Q Did you discuss with her at that time what in her meant?

1 A No. I did not. I left it to the therapist.

2 Q And did you discuss with her what full penetration meant?

3 A There again, I left that to the therapist.

4 Q And what about motions of intercourse, is that something
5 she demonstrated or said?

6 A Taxing my memory very much.

7 Q I know. Sorry.

8 A We had -- I know we had discussions as far as my, you
9 know, put in my report what she would have told me. As far as
10 the actual content at the time, I don't have absolute
11 recollection, but only what I put in my report.

12 Q Those are all the questions I have. Thank you.

13 THE COURT: Any objection to the witness being excused
14 from the State?

15 MS. HERRING-LASH: No, Your Honor.

16 THE COURT: From the Defense?

17 MR. KOZELSKI, III: No, Your Honor.

18 THE COURT: Sir, you're excused. You may call your next
19 witness.

20 MS. SAVAS: The State calls Sheri Church.

21 Whereupon, Sheri Church was called to the stand, duly
22 sworn by the clerk and testified as follows:

23 THE CLERK: When seated, please state your first and last
24 name and spell your last name loudly, clearly into the
25 microphone.

1 MS. CHURCH: My name is Sheri Church. My last name is C-
2 H-U-R-C-H.

3 THE COURT: You may proceed.

4 MS. SAVAS: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 DIRECT EXAMINATION

7 BY MS. SAVAS:

8 Q Where do you currently work?

9 A The Charleston County Sheriff's Office.

10 Q And what is your official title there?

11 A I am a patrol sergeant.

12 Q And what are your duties being a patrol sergeant?

13 A I supervise deputies that are on patrol in our west
14 district area. I have 12 deputies that I supervise, and we
15 cover the area between James Island, Johns Island and Edisto
16 Island.

17 Q And did you work for the Charleston County Sheriff's
18 Department back in December of 2013?

19 A Yes. I did.

20 Q And what were your duties back then?

21 A I was a detective and I handled child abuse cases and
22 sexual assault cases.

23 Q And did you eventually become involved in this
24 investigation?

25 A Yes.

Sheri Church - Direct by Ms. Savas

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1 Q How did you become involved?

2 A In 2000 -- the end of 2013, beginning of December, end of
3 November the warrants division at the Sheriff's Office
4 conducted an audit of the entire warrants division and located
5 some warrants that were still on file and active, but had not
6 been placed in the national data base, the NCIC system, and so
7 they formed a task force and I was part of the task force.

8 Q And did you end up receiving and reviewing warrants here
9 for this case?

10 A I did. I was -- I was given three warrants for Walter
11 Garrett.

12 Q And what was the Defendant's date of birth?

13 A His birthday is September 10th, 1959.

14 Q And when were those warrants originally issued?

15 THE COURT: Could I please have counsel approach?

16 (Whereupon, a bench conference is held in the presence
17 but out of the hearing of the jury.)

18 THE COURT: Proceed.

19 BY MS. SAVAS:

20 Q Those -- the warrants for Mr. Garrett, they were not
21 served back in 1990; were they?

22 A No, ma'am.

23 Q Was there an attempt for them to be served?

24 A The warrants were obtained in 1990, and there was an
25 attempt to serve them, but Walter Garrett had left the area

1 and we weren't able to locate him.

2 Q And what happened to the warrants when they attempted to
3 serve them but were unable to locate the Defendant?

4 A The warrants were turned into the warrants office.

5 MR. KOZELSKI, III: Objection, Your Honor.

6 THE COURT: Basis?

7 MR. KOZELSKI, III: Hearsay.

8 THE COURT: She was part of the task force that performed
9 the audit. We're talking about something that's procedural.
10 That's within the ambit of her rational perception and what
11 she does for a living. It's not hearsay. Overruled.

12 MR. KOZELSKI, III: Okay.

13 A The warrants were turned into the warrants records office
14 where they were to be entered into the sheriff's office
15 computer and also NCIC.

16 Q And was the case then made to be in inactive status?

17 A The investigation was inactivated by the detective, which
18 just means that he had exhausted all leads in locating the
19 suspect that he was looking for. It doesn't close the case.
20 Inactive just means we're waiting for additional leads.

21 Q And does that mean that the warrants are still good
22 warrants?

23 A Yes. The inactive case file doesn't have anything to do
24 with the warrants. The warrants were still active.

25 Q And who was the detective?

Sheri Church - Direct by Ms. Savas

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1 A That was William Reed.

2 Q And were you able to locate his file?

3 A Yes, ma'am. It was in our warehouse.

4 Q And what did that include?

5 A His original case file was still intact. It was stored
6 in the warehouse, and it had his original report, his case
7 notes, records from DSS, hospital records.

8 Q And what did you do first upon finding his file?

9 A Well, my position on the task force, I was assigned to
10 locate the victims because, of course, the case was so old we
11 needed to find the victim. So I was tasked with locating who
12 at the time of the incident was Minor , and using
13 our normal databases I wasn't -- like DMV records and our
14 computer system I couldn't find Minor . So in the
15 case file I was able to see what the DSS notes were, and so I
16 called DSS and was told that she had been adopted and they
17 gave me her adopted name, and I went from there.

18 Q And were you eventually able to locate her?

19 A I was.

20 Q How did you do that?

21 A She -- I located her adoptive parents, who still lived in
22 Charleston County, the Cowhigs, and they told me that the last
23 place that -- they told me her last -- her name when she got
24 married. It had changed again. So they gave me her married
25 name and told me that she had moved. They believed that she

1 was in North Carolina.

2 Q And what was her name when you came to find her?

3 A When I found her her name was Minor .

4 Q And did you ever end up speaking with her?

5 A I did. I was finally able to talk to her on the phone,
6 and then another detective and I drove to Fayetteville, and we
7 met with her at a victim advocate office near the Fayetteville
8 Police Department.

9 Q And do you recall when that was?

10 A December of 2013.

11 Q And was the Defendant eventually located?

12 A Yes. The Defendant was located in Clayton County,
13 Georgia.

14 Q And how was he found?

15 A The warrants division deputies found him. I didn't -- I
16 wasn't part of that..

17 Q Was the Defendant eventually served his warrants?

18 A He was.

19 Q Do you know when that was?

20 A The warrants were served on January the 3rd of 2014, and
21 the bond hearing was the next day. That's how I know. I had
22 to notify the victim of the bond hearing.

23 Q And was the Defendant transported back here to
24 Charleston?

25 A Yes, ma'am.

Sheri Church - Cross by Mr. Kozelski

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1 Q When was that?

2 A The -- oh, during the nighttime between the 3rd and the
3 4th.

4 Q And you said the victim, she was present during the bond
5 hearing?

6 A She was present at the bond hearing.

7 MS. SAVAS: Beg the Court's indulgence.

8 THE COURT: Uh-huh.

9 MS. SAVAS: Nothing further.

10 THE COURT: Any cross examination of the witness?

11 MR. KOZELSKI, III: Briefly, Your Honor.

12 THE COURT: You may proceed.

13 CROSS EXAMINATION

14 BY MR. KOZELSKI, III:

15 Q Good afternoon, Sergeant Church. I just have a few
16 questions for you. I just want to ask you about this NCIC
17 system. Could you explain to the jury a little bit more of
18 what that is?

19 A The NCIC system is the National Crime Information Center.
20 So if we have a missing person, if we have a runaway juvenile,
21 someone in danger or somebody that's wanted with warrants, an
22 agency will enter that information into the system, and then
23 if that person is stopped or if law enforcement in any other
24 jurisdiction comes across them and runs their name, date of
25 birth, their information, they would be notified that they're

1 wanted by the agency that entered them.

2 Q So even if a person is stopped for a traffic ticket
3 they're going to be flagged?

4 A If they're in the NCIC system then another agency would
5 know that they're wanted, yes.

6 Q Okay. And you said that you met with Ms. Minor
7 December of 2013?

8 A Yes.

9 Q Okay. And how long from the time that you met with her
10 did it take you to, to find Mr. Garrett?

11 A I don't know the exact what day. We had two -- the task
12 force had different players. So the warrant deputies were
13 working on locating him and setting up the extradition, but he
14 was back in Charleston by January the 4th for the bond hearing.
15 So that's only about two weeks.

16 Q Okay. So he was arrested in Georgia in December?

17 A Sometime between, yeah, December.

18 Q So it didn't take you very long to, to locate him?

19 A No.

20 Q Okay. And did it appear from your investigation that he
21 lived anywhere other than Clayton County, Georgia?

22 A I didn't investigate him. I really don't know the answer
23 to that.

24 Q Okay. And from, from your reports, did, did it appear
25 that he resisted arrest in any way?

Sheri Church - Cross by Mr. Kozelski

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1 A I don't know.

2 Q And then he was eventually -- he waived his extradition
3 hearing?

4 A I would assume so since he's here. I don't -- again, I
5 didn't arrest him and I didn't serve the extradition papers.
6 So I don't know.

7 Q And he ended up in Charleston on December 3rd --

8 A January.

9 Q -- January 3rd?

10 A Yes.

11 Q 2014?

12 A Uh-huh.

13 MR. KOZELSKI, III: Beg the Court's indulgence. No
14 further questions, Your Honor.

15 THE COURT: Any redirect for the witness?

16 MS. SAVAS: No, Your Honor.

17 THE COURT: Any exception to the witness being excused?
18 From the State?

19 MS. SAVAS: No, Your Honor.

20 THE COURT: From the Defense?

21 MR. KOZELSKI, III: No, Your Honor.

22 THE COURT: Ma'am, you're excused. The State may
23 proceed.

24 MS. SAVAS: The State calls William Reed.

25 Whereupon, William Reed was called to the stand, duly

1 sworn by the clerk and testified as follows:

2 THE CLERK: You may be seated. When seated, please state
3 your first and last name and spell your last name loudly,
4 clearly into the microphone.

5 MR. REED: William Reed, R-E-E-D.

6 THE COURT: You may proceed.

7 MS. SAVAS: Thank you, Your Honor.

8 THE COURT: You're welcome.

9 DIRECT EXAMINATION

10 BY MS. SAVAS:

11 Q Where do you currently work?

12 A I work for the Charleston County Sheriff's Office.

13 Q And what is your title?

14 A Master deputy.

15 Q And what are your duties as a master deputy?

16 A Well, right now I'm assigned to the civil process
17 division of the, of the department.

18 Q And where were you working back in January of 1990?

19 A I worked for the Charleston County Police Department.

20 Q And what did you do for them back then?

21 A I was a detective and I handled the juvenile crime and
22 also victims.

23 Q And was there a special unit that you were part of?

24 A Yeah. It was a -- well, I mean it was a -- just the
25 detective office. I mean, we handled -- and but like I said,

William Reed - Direct by Ms. Savas

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1 I was -- we -- the -- me and another person we just -- that's
2 all we handled was -- were juveniles.

3 Q The juveniles?

4 A Right.

5 Q Okay. And did you do an investigation in State versus
6 Walter Garrett?

7 A Yes, ma'am. I did.

8 Q And when were you first assigned that case?

9 A On the, the 15th of January, 1990.

10 Q And what did you do first?

11 A Well, the -- I was notified that a -- there were -- that
12 we had a criminal sexual battery of a child, and the, the
13 officer and DSS responded and brought them to the -- to my
14 office.

15 Q And do you remember what officer that was?

16 A Yes. It was Officer Steve Hearn.

17 Q And he was the responding officer --

18 A Yes, ma'am.

19 Q -- at that time?

20 A He was.

21 Q And who reported the case to law enforcement?

22 A It was the guidance counselor at the school. I'm trying
23 to think. It was --

24 Q Was that at the elementary school?

25 A Yeah. Goodwin Elementary.

1 Q And when was that reported?

2 A That was reported on the 13th of January 1990. No, that's
3 -- well, that's the -- I remember. Let me rephrase that. It
4 was -- that was the timeframe that they gave. It was actually
5 on the 15th was when it was reported.

6 Q Okay. So it was reported on January 15th?

7 A Yes, ma'am.

8 Q From the guidance counselor at the school?

9 A Yes, ma'am. I'm looking at the wrong date.

10 Q Okay. That's okay. And did the parents go to the school
11 that day?

12 A Yes, ma'am.

13 MR. KOZELSKI, III: Objection, Your Honor.

14 THE COURT: Basis?

15 MR. KOZELSKI, III: Hearsay.

16 THE COURT: You need to establish a foundation for his
17 knowledge of that event and he's the investigating officer.
18 Under the, under the precedent it is not hearsay, but I'm
19 still going to require her to establish the foundation for his
20 knowledge. You may proceed. Overruled.

21 MS. SAVAS: Thank you, Your Honor.

22 BY MS. SAVAS:

23 Q When you began investigating the case, did you work
24 closely with the reporting officer, Steve Hearn?

25 A Yes, ma'am.

William Reed - Direct by Ms. Savas

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1 Q And did you have conversations about the case at that
2 time?

3 A Yes, ma'am.

4 Q And you said that it was reported by the guidance
5 counselor at Goodwin Elementary. Did you also go to that
6 school?

7 A No, ma'am. Not at, not at that time.

8 Q But you did eventually go to the --

9 A Yes, ma'am.

10 Q -- school? Okay. And during your course of conversation
11 and investigation, did it come to your knowing that the
12 parents had been to the school that day?

13 A Yes.

14 MR. KOZELSKI, III: Objection, Your Honor.

15 THE COURT: Please approach.

16 (Whereupon, a bench conference is held in the presence,
17 but out of the hearing of the jury.)

18 BY MS. SAVAS:

19 Q Did you end up meeting with Officer Hearn at that time
20 back at the police station?

21 A Yes, ma'am.

22 Q And did you discuss the case with him at length?

23 A Yes, ma'am. And also went over part of his -- went over
24 the basic report that he had at the time.

25 Q And in that discussion did you discuss how it came to be

1 that the child was at the school --

2 A Well --

3 Q -- just in your conversations?

4 A Yeah. Yeah. I mean, as far as being the student and --

5 Q And when -- did you end up meeting with the child that
6 day?

7 A Yes, ma'am. I did.

8 Q And was she taken into custody already?

9 A Yes, ma'am. She was in protective custody by DSS.

10 Q And what, what does protective custody mean?

11 A That means that they take her and then they will, then
12 will put her in a foster home until whatever litigation or
13 whatever is taken care of or whatever, if they have to go
14 through steps, certain steps until they make their decision.

15 Q And did you discuss this with Officer Hearn as to why she
16 was placed into protective custody?

17 A Yes, ma'am.

18 Q And did you have conversations with him and during your
19 investigation as to what happened to her parents?

20 A In his report --

21 Q Let me --

22 MR. KOZELSKI, III: Objection, Your Honor.

23 THE COURT: Madam Forelady, ladies and gentlemen, I have
24 a brief matter of law to take up, but during this break please
25 do not discuss the case and please leave your notepads in your

1 seats.

2 (Whereupon, the following takes place outside the
3 presence of the jury.)

4 MR. KOZELSKI, III: Your Honor --

5 THE COURT: I didn't ask for argument. You can take your
6 seat. When I'm ready to talk to you I'll let you know.

7 For what purpose is the State offering the testimony?
8 Actually, I guess I really need to hear what question it is
9 you're trying to get out and what answer you're trying to
10 elicit from him because I'm really not clear.

11 MS. SAVAS: Yes, Your Honor. The question is just one
12 simple question as to where are the parents or did the parents
13 ever appear at the school that day and the answer we're trying
14 to elicit is simply they fled once the -- they left once they
15 realized that the police were in route.

16 THE COURT: How would he know that?

17 MS. SAVAS: It was -- part of the investigation, it.
18 Yes. It was in the reporting officer's incident report.

19 THE COURT: Who was the reporting officer?

20 MS. SAVAS: Officer Steve Hearn.

21 THE COURT: Why didn't you call him as a witness?

22 MS. SAVAS: Steve Hearn is currently in assisted living
23 in a home and he had a stroke, and Detective Reed here was ---

24 THE COURT: Who else was at the school that can
25 corroborate that? Did you make any attempts to find out?

1 MS. SAVAS: The guidance counselor was actually killed in
2 a car accident 20 years ago, two years ago. I'm sorry, and
3 Detective Reed did speak at length with Officer Hearn, and
4 through that investigative process, that's how they determined
5 what happened to the parents in order to determine what to do
6 with the child as to why she was placed in protective custody.
7 Detective Reed also went to the house later and learned that
8 the Defendant did leave when he went to visit the trailer and
9 her mother had answered the door and stated that he has left
10 and is not aware --

11 THE COURT: Who's her mother? Who are you referring to?

12 MS. SAVAS: Ms. Kathy Garrett, the victim's mother.

13 THE COURT: So I'm trying to be clear. For what purpose
14 are you offering the testimony?

15 MS. SAVAS: Just to show that he had left the school and
16 had knowledge that the police were there.

17 THE COURT: For what purpose?

18 MS. SAVAS: The consciousness of guilt.

19 THE COURT: That's problematic based on State versus
20 King. You can only allow hearsay testimony to show the
21 processes of an investigation and the purposes for which an
22 investigation is undertaken, but not to offer it as truthful
23 and for the matter asserted and that is exactly what you just
24 told me. You're offering it as consciousness of guilt when he
25 doesn't have personal knowledge of that. Officer Hearn would.

William Reed - Direct by Ms. Savas

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1 The guidance counselor would or anybody else who is present at
2 the school that day might have who would have witnessed what
3 happened. Her mother may well have. I don't know if you've
4 made any attempts to get in touch with her or whether she's
5 been cooperative or non-cooperative. The only way you can get
6 into this testimony tangentially is for the purposes of the
7 officer testifying as to why he undertook a particular part of
8 an investigation, whether that being whether he as a result of
9 what he determined the child had to be taken into foster care
10 or had to be taken into DSS custody and to why -- or as to why
11 the child was taken into DSS custody, and even in that
12 context, them leaving at the behest of the police is not
13 germane. The fact that they just weren't present is what's
14 germane. So if you're going to pursue that line of
15 questioning, it's going to have to be limited to that. You're
16 not going to be able to elicit what somebody said to him
17 because you're offering it for its truth and it can't be cross
18 examined. He can only testify as to what he learned through
19 his investigative process to explain his investigative process
20 and why he undertook an investigation for what particular
21 purpose and why he pursued it in that manner. So the only
22 thing that would be relevant in that line of questioning is
23 why he came in contact with the child, why he -- what he had
24 to do with her once he got to the school and apparently there
25 was no, no parent to take her -- take care of her, and what he

1 did after that with her, and the only thing that's germane,
2 again, in that line of questioning is simply that they weren't
3 there because he doesn't know of his own knowledge why they
4 left. He knows what somebody told him, but that can't be
5 cross examined, especially when you're offering it for its
6 truth on the issue of flight and consciousness of guilt
7 because you want the jury to believe he left the school
8 because the police were on their way and innocent people who
9 are concerned about their children don't flee a school when
10 the police are coming. They stay because they want to hear
11 what's going on, and that's why you're offering it.

12 MS. SAVAS: Uh-huh.

13 THE COURT: And that's problematic.

14 BY MS. SAVAS:

15 Q Detective Reed, was it part of your investigation to
16 determine where the parents were located at that time?

17 A Yes, ma'am, partly because of the fact that we were
18 having to take a child in protective custody, and most of the
19 time we try, if something like that happened, we tried to
20 notify parents or somebody or a relative that could either
21 possibly take the child or know that -- be able to establish
22 for the parents where their child was.

23 Q And were you involved in the process of taking this child
24 into protective custody?

25 A I was --- she was taken into protective custody at the

William Reed - Direct by Ms. Savas

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1 school and transported to my office where she was still placed
2 in protective custody because we had no way to turn any --
3 turn her to any -- return her to her parents or anybody else.

4 Q And so during your investigation she was taken to the
5 police station and spoke with you --

6 A Yes, ma'am.

7 Q -- while she was in that protective custody?

8 A Yes, ma'am. I interviewed her.

9 Q Was it imperative to your investigation to determine
10 where her parents were at that time?

11 A In the, in -- so it's -- well, really, no, at that
12 particular time because we had already taken her in protective
13 custody.

14 Q During your interview of the victim did you, did you --

15 MS. SAVAS: Your Honor --

16 THE COURT: Uh-huh.

17 MS. SAVAS: -- based on Detective Reed's answer to that
18 question, I don't believe that we could pursue that line of
19 questioning under your --

20 THE COURT: Are you withdrawing your line of questioning?

21 MS. SAVAS: Yes, Your Honor.

22 THE COURT: Okay. Please bring in the jury.

23 MR. KOZELSKI, III: Your Honor --

24 THE COURT: Yes, sir.

25 MR. KOZELSKI, III: -- I'd also ask for a motion to

1 strike the statement made and --

2 THE COURT: He didn't finish his statement. She didn't
3 finish a question. There was no answer to strike.

4 MR. KOZELSKI, III: I believe there was an answer that
5 came out of his mouth that said --

6 THE COURT: I didn't hear any.

7 MR. KOZELSKI, III: -- the parents had fled the
8 school. That's why I --

9 THE COURT: I think you may -- I'll get the court
10 reporter -- was there an answer?

11 (Court and court reporter confer.)

12 THE COURT: There was no answer because you -- because I
13 interrupted her before she could finish her question.

14 (Testimony reviewed.)

15 THE COURT: That's all he said. Uh-huh. So there's
16 nothing to strike.

17 MS. SAVAS: Your Honor --

18 THE COURT: Yes.

19 MS. SAVAS: -- if we may ask that you instruct Detective
20 Reed to not mention then that they had fled the school in --
21 on direct.

22 THE COURT: I think you need to ask him the questions and
23 your questions should not elicit that. I have not restricted
24 him from testifying how he investigated this case and what he
25 knows of his own rational perception and how he came to take

William Reed - Direct by Ms. Savas

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1 this child into custody. He just can't say as a result of
2 somebody telling him the police were on the way the parents
3 fled the school.

4 MS. SAVAS: Okay.

5 THE COURT: There's nothing that precludes him from
6 saying the parents were not present, and therefore, we had to
7 take this child into custody because that's true and that's
8 what he observed.

9 MS. SAVAS: Yes, Your Honor.

10 (Whereupon, the following takes place in the presence of
11 the jury.)

12 BAILIFF: All jurors are present, Your Honor.

13 THE COURT: Ladies and gentlemen, we appreciate your
14 patience. We're now going to resume the witness's testimony.
15 You may proceed.

16 MS. SAVAS: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 BY MS. SAVAS:

19 Q Detective Reed, at the time that you met with **Minor** was
20 she in protective custody?

21 A Yes. She was.

22 Q Okay. And do you interview **Minor** ?

23 A Yes, ma'am. I did.

24 Q And what was her date of birth?

25 A Her date of birth, let's see -- her date of birth was

1 . She was ten years old.

2 Q. Okay. And was there anyone assisting you during that
3 interview?

4 A Yes, ma'am. Patty Christensen from DSS.

5 Q And was Minor cooperative during your interview?

6 A Yes. She was.

7 Q And did you use anything to aid you in your interview?

8 A Yes. I have a -- I had a diagram of a male front and
9 back to where she could point out and tell me what, what she
10 called whatever, whatever parts, and we also -- we had some
11 anatomical --

12.	Q	Anatomical.
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13	A	-- dolls.
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14 Q Okay. And did Minor ever tell you about being sexually
15 assaulted?

16. A Yes. She did.

17 Q And did she tell you where that happened?

18 A She stated that it happened in the house on Lands Road
19 where they lived at. She also stated that they -- some of it
20 occurred at -- in the State of Georgia.

21 Q And the Lands Road, is that a trailer -- do you know --
22 or a house?

23 A Lands Road, that -- it was a mobile home.

24 Q And was there another location in Charleston? Was there
25 a shelter?

William Reed - Direct by Ms. Savas

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1 A There, there were -- yeah. The -- I'm trying to -- it's
2 a Salvation Army had, had a, a homeless shelter and it's --
3 and called the Reed House.

4 Q And do you know when they were referred to the Reed
5 House?

6 A Yes, ma'am. I apologize. It's -- they, they were
7 referred on, on 11-17 of '89.

8 Q And do you know where they moved from?

9 A They had moved, moved from Panama City, Florida.

10 Q And do you know when that was?

11 A That was on 11-12 of 1989.

12 Q And did she tell you when she was sexually assaulted?

13 A She said that they were such that she was assaulted --
14 that she was sexually assaulted in Georgia and in -- when she
15 came here.

16 Q When she came to Charleston?

17 A Charleston. Yes, ma'am.

18 Q And did she mention about how many times? Was it more
19 than once?

20 A Yes, ma'am.

21 Q Okay. And what did you do next on January 16th?

22 A On January the 16th I -- on the 16th I got in touch with
23 the Salvation Army and confirmed that the Garretts had been
24 given a referral to go to the Reed House to stay.

25 Q And did **Minor** tell you that she was sexually assaulted

1 more than once in the Reed House and the Lands Road trailer?

2 A Yes, ma'am.

3 Q Okay. And did you confirm any other facts?

4 A Well, I confirmed the fact that in Georgia, in Clayton
5 County, Georgia, they had had an open case against her, and
6 the -- I, I contact -- when I contacted them on the 30th, I
7 spoke with a caseworker, Bob Brown, with the Clayton County
8 Department of Social Services, and he advised me that --

9 MR. KOZELSKI, III: Objection, Your Honor.

10 THE COURT: Basis?

11 MR. KOZELSKI, III: Hearsay.

12 THE COURT: He cannot say what he said to him. He can
13 say what he did as a result of the conversation.

14 Q As -- after speaking with the Georgia DSS, did you retain
15 any DSS files from them? Let me ask it another way. In
16 speaking with him, would you, to the best of your memory, have
17 gained the file from Georgia as part of your investigation?

18 A Yes, ma'am.

19 Q Okay. And did you take out warrants for the -- on
20 January 16th?

21 A Yes. I did take some warrants out.

22 Q Okay.

23 A For the arrest of the Defendant for criminal sexual
24 conduct on a minor.

25 Q Okay. And did you ever attempt to serve the warrants?

William Reed - Direct by Ms. Savas

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1 A Yes, ma'am. I did.

2 Q When was that?

3 A That was on the 29th of January.

4 Q Okay. And did you ever end up serving the warrants on
5 the Defendant?

6 A No, ma'am. I did not. I -- they were placed in the
7 warrants division's file and the, the -- and at that time I
8 had to put the case on an inactive status.

9 Q Did you go to the last known home to try to locate the
10 Defendant?

11 A Yes. Had a -- yes, ma'am. I had an order of inspection.

12 Q And what is an inspection warrant?

13 A Let me find it. That's a -- it's a court order and to --
14 that allows us to inspect the residence at the, at the home.

15 Q And when did you do that?

16 A That was --

17 Q Did you prepare an affidavit? Would it be helpful if I
18 showed you your report to refresh your memory?

19 A It may because I've had -- this is -- it's been a long
20 time.

21 Q That's okay.

22 A And I apologize. I believe it was 3-6.

23 MS. SAVAS: May I approach the witness, Your Honor?

24 THE COURT: Uh-huh.

25 A I believe it was 3-6. Yes. That, that was on April the

1 5th, 1990.

2 Q Great. Thank you. And that was when you went for the
3 inspection warrant, and did you go with anyone when you did
4 that?

5 A Yeah. A party from DSS went.

6 Q Okay.

7 A I don't recall her name at the time.

8 Q And did you ever take out any other warrants involved in
9 this case?

10 A Yes, ma'am. I did.

11 Q And what was that warrant?

12 A That warrant was for unlawful conduct toward a child.

13 Q And who was that warrant for?

14 A For the mother.

15 Q And what was her name? Was her name Kathy Garrett?

16 A Yes, ma'am.

17 Q And after taking out these warrants, you had placed them
18 in the file; correct?

19 A Yes, ma'am. Yes, ma'am.

20 Q Okay. No further questions.

21 THE COURT: Any questions of the witness?

22 MR. KOZELSKI, III: Yes, Your Honor. May it please the
23 Court?

24 THE COURT: Yes, sir. You may proceed.

25 CROSS EXAMINATION

William Reed - Cross by Mr. Kozelski

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1 BY MR. KOZELSKI, III:

2 Q Deputy Reed, I want to ask you just a few questions about
3 what it means to be a police detective. Not everybody can be
4 a detective; right?

5 A No. I would agree with that. Yes, sir.

6 Q You need special training?

7 A Yes, sir.

8 Q And part of that training is going to a police academy?

9 A Well, there's other avenues, but yes, sir, but part of
10 that. Yes, sir.

11 Q And part of what you learn at the police academy is how
12 to write incident reports; right?

13 A No. I didn't learn to write them at -- I wasn't -- we
14 was taught how to write them before I ever went to the police
15 academy.

16 Q So you say you never learned how to write an incident
17 report?

18 A No. I said -- you said at the, the academy trained me.
19 No. When I was on -- when I came on to the -- in police work
20 we worked the road and everything for at least a year before
21 we were able to go to the academy.

22 Q Okay. And so you, you learned how to write reports
23 somewhere?

24 A Yeah. At the, at the Charleston County Police station, I
25 mean, at the Charleston City Police station where I was --

1 where I was first in law enforcement.

2 Q And you learn how to do that because it's a big part of
3 what you do?

4 A Yes, sir.

5 Q All right. And it's fair to say that there's a decent
6 amount of crime in Charleston?

7 A Yes, sir.

8 Q And you work on a number of cases?

9 A Yes, sir.

10 Q Sometimes you work on more than one case at a time?

11 A Oh, yeah. Yes, without a doubt.

12 Q And so you have to write stuff down in your incident
13 report so then you can recall it later?

14 A Yes, sir. Or makes notes on something else.

15 Q And that's because from the time that you write your
16 incident report to say the time of trial there could be a big
17 gap in time?

18 A Yes, sir. This is the largest one I've ever had.

19 Q It's probably the largest I've ever heard of, and, and in
20 the, in the meantime, you've worked hundreds of cases?

21 A I would say that's fair.

22 Q So when you write these reports you write them down so
23 that they're fresh in your mind?

24 A Well, hopefully while they're -- while they are fresh in
25 my mind. Yes, sir.

1 Q Right. And that way when you need to, to review for
2 testimony you can, you can go to that and see what you wrote?

3 A Pretty much. Yes, sir.

4 Q And that way you can recall certain events that the
5 solicitor asks you when you're up here?

6 A Yes, sir.

7 Q Now, if, if you don't have these reports you might not be
8 able to, to tell the solicitor what you did in the
9 investigation; right?

10 A Well, that's correct unless it's something that I really,
11 you know, worked hard on and had a lot of time in.

12 Q And it's important for your reports to be accurate?

13 A Accurate. Yes, sir.

14 Q And also that they be complete?

15 A Yes, sir.

16 Q And your, your ability to testify truthfully requires
17 that you tell the complete truth?

18 A Sure.

19 Q Because you can tell half of a story and it might not
20 come out as the, the whole truth?

21 A Well, I don't have anything to gain by telling the truth.
22 That's what I do.

23 Q Right. You have no dog in this fight?

24 A Exactly.

25 Q And so if I were to ask you how do you remember that you

1 would say, "I wrote it down."

2 A Or, yes, sir, or I refreshed it.

3 Q And part of your job is investigating criminal activity?

4 A Yes, sir.

5 Q You gather facts?

6 A Yes, sir.

7 Q And gathering facts isn't good enough. You've got to be
8 able to communicate those facts to other people.

9 A Yes, sir..

10 Q Say the solicitor?

11 A Yes, sir.

12 Q She relies on your reports?

13 A Yes, sir.

14 Q And she, in turn, gives a copy of those reports to me?

15 A I think so. I'm -- under -- upcoming -- because you're
16 entitled to them under a Rule 5.

17 Q Right. And I rely on those reports?

18 A Yes, sir.

19 Q And they're important that they be complete and accurate?

20 A Yes, sir.

21 Q So we're all depending on your, your report to be fair,
22 like you said, truthful and accurate?

23 A Yes, sir.

24 Q And you wrote some reports in this case; correct?

25 A Yes, sir.

William Reed - Cross by Mr. Kozelski

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1 Q Now, I want to talk to you about one of the first things
2 you did in this case and that was interview Minor

?

4 A Yes, sir.

5 Q And this was on January 15th, 1990?

6 A Yes, sir.

7 Q And this was down at the station?

8 A Yes, sir.

9 Q And the interview was about 15 minutes long?

10 A Yes, sir. I mean, it wouldn't have been, it wouldn't
11 have been no long drawn out, not on, not on a child.

12 Q And to be fair you're not trained in giving child
13 forensic interviews; are you?

14 A I was trained to do interviews.

15 Q Okay. But interviewing a child is a bit different; is it
16 not?

17 A Not really.

18 Q Okay. So you're telling me interviewing a 10 year old
19 that's alleging sexual abuse is no different than questioning
20 another adult individual?

21 A Not if, not if you know what you're talking about it's
22 not.

23 Q Okay. And you, you recorded these -- this interview;
24 right?

25 A Yes, sir. Yes, sir.

1 Q And it's just audio. It's not video.

2 A Yeah. It's just audio. Back -- we didn't have video
3 back then.

4 Q Okay. Did you -- you had a chance to speak with Minor
5 before you started recoding the statement?

6 A Yes, sir.

7 Q Okay.

8 A I didn't question her, but I had a chance to talk to her.

9 Q Okay. You talked to her?

10 A Yes, sir.

11 Q And did you write down what she said?

12 A No. I mean, we just talk about just kid stuff.

13 Q Okay.

14 A Because I wanted -- she needed to be -- I wanted her to
15 be relaxed because she was already upset.

16 Q So you, you wanted to make her feel more comfortable with
17 you?

18 A Yes, sir.

19 Q Okay. And you handed her some dolls?

20 A Yes, sir.

21 Q And you started asking her questions about what happened?

22 A Well, I let her play. She played with the dolls and
23 stuff there and then, and then I started asking her some
24 questions, "What, well, what happened to you," or something
25 like that or --

William Reed - Cross by Mr. Kozelski

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1 Q Okay.

2 A -- on that basis. I don't remember the exact wording now
3 after this long.

4 Q And so did you have an opportunity to review that
5 interview before you got up here today?

6 A No. I have not.

7 Q And do you remember in part of that interview process
8 that she would give you an answer, you would repeat it back to
9 her in question form?

10 A Right offhand I don't remember.

11 Q Okay. Do you remember asking her any sort of leading
12 questions?

13 A Probably. I mean, I don't know. Like I said, it's been
14 -- I don't remember exactly what, that technique I used
15 totally, but I'm sure -- but I'm -- I asked her what happened
16 to her or, or different things like that, but she would be
17 able to or, "Where were you," you know, "What did, what did he
18 do to you," or stuff like that.

19 Q Okay.

20 A I'm sure.

21 Q And you're, you're a pretty affable fellow, and she was
22 pretty forthcoming with you?

23 A Yes, sir.

24 Q Okay. She wasn't shy?

25 A No. I would say she, she, she was comfortable.

1 Q Okay. She didn't seem upset?

2 A No. Not really.

3 Q What about nervous?

4 A Yeah. She -- I would say she was probably a little
5 nervous.

6 Q Okay. Now, I want to talk to you briefly about what you
7 did in this case other than the interview. Did -- you
8 attempted to corroborate some of what **Minor** said about the
9 Reed House --

10 A Yes, sir.

11 Q -- the Salvation Army?

12 A Yes, sir.

13 Q Okay. And did you talk to any other witnesses or persons
14 involved in this incident?

15 A I talked, I talked to, to a few -- for -- to, to several
16 people when this -- see what the -- mainly, I mean, DSS
17 people.

18 Q Okay. And you didn't, you didn't take any statements
19 from anybody?

20 A No. Not from -- yeah, just -- not from DSS or anything.
21 No, ma'am. No, sir.

22 Q Right. No, no audio recordings of any other interviews
23 that you conducted?

24 A Just audio of **Minor** .

25 Q You ever contacted Kathy Garrett to question her about

William Reed - Cross by Mr. Kozelski

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1 the story?

2 A I went to the house. She was not there.

3 Q And you never made contact with Mr. Garrett --

4 A No, sir.

5 Q -- to question him? You never got a -- you got -- you
6 said you got an inspection warrant?

7 A Yes, sir. Issued by Judge Creech, Family Court Judge.

8 Q And that was on April the 5th, 1990?

9 A Yes, sir. Yes, sir.

10 Q So you didn't get a search warrant immediately after this
11 to go inspect the trailer?

12 A I didn't get the search warrant. No, sir.

13 Q Okay. You didn't bother to go find any physical evidence
14 that this might have happened?

15 A Well, there was nobody at the, at the mobile home. So we
16 -- I mean.

17 Q You don't need somebody there to serve a warrant --

18 A Yeah.

19 Q -- a search warrant; do you?

20 A But, but no, sir. No, sir.

21 Q Do you need somebody at the home to serve a search
22 warrant?

23 A No, sir. I --

24 Q Okay. But you didn't get a search warrant in this case?

25 A No, sir.

1 Q Okay. You didn't attempt to find any sort of physical
2 evidence that this had taken place?

3 A No, sir. Not at the --

4 Q You didn't conduct any sort of crime scene investigation?

5 A No, sir.

6 Q You didn't take any photos?

7 A No, sir.

8 Q You didn't recover any physical evidence that would have
9 corroborated **Minor** 's story?

10 A Well, most of the incidents that she talked to me about
11 there -- if there would have been any -- there wouldn't have
12 been any evidence like that at the time that we went.

13 Q She told you she was sexually abused at the trailer;
14 correct?

15 A Yes, sir.

16 Q Okay.

17 A But as you well know, the evidence -- if you don't -- if
18 you don't know exact -- if it's a -- there's a length of
19 period of time there's only so much time that that evidence
20 is, is going to be any good. It would be --

21 Q So you decided to wait --

22 A -- contaminated.

23 Q -- until April 5th to go to the trailer?

24 A Yes, sir, but we -- that's -- I waited. Yes, sir. I was
25 -- but that's when we went.

William Reed - Cross by Mr. Kozelski

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1 Q And you actually went to the trailer on Lands Road?

2 A Yes, sir. And a Ms. -- and a party from DSS.

3 Q Do you remember having a preliminary hearing in this case
4 back in February 25th of 2014?

5 A I remember there was a preliminary hearing.

6 Q Okay. Do you remember --

7 A But I don't remember having one on, on -- I thought --
8 the one I had, if I'm not mistaken, was on Mrs. Garrett.

9 Q Okay. You don't remember me questioning you about what
10 happened in this case?

11 A No, sir. Not right off the top of my head I don't.

12 Q Okay. So you don't remember telling me that you never
13 went to the trailer, that Officer Hearn or Sergeant Brock went
14 to the trailer, that you never went to the trailer?

15 A I'm, I'm talking about -- they did that on the first day.

16 Q Okay.

17 A I didn't go on the first day.

18 Q Okay. You went, you went in April?

19 A Yes, sir. On a, on a court order.

20 Q Now, the day after you interviewed **Minor** you, you
21 drafted these warrants for Mr. Garrett?

22 A Let's see what I've got here --17. Yeah. They were --
23 they -- on the 15th and they were signed on the 16th.

24 Q So they, they were signed by the judge on the 16th?

25 A Yes, sir.

1 Q And it wasn't until April that you attempted to serve
2 those warrants?

3 A Well, the -- if you're talking about the inspection
4 warrant that's what's -- was with DSS for, for something.
5 That wasn't for -- I tried to serve them before that.

6 Q You just told us that's the first time you went to the
7 home; correct?

8 A To the -- this here?

9 Q Yes.

10 A Yeah. To their home. Yes.

11 Q Okay. So that's the first time you went to the home --

12 A Yes, sir.

13 Q -- and tried to serve the warrants?

14 A That's correct.

15 Q And you knocked on the door?

16 A Give me just a minute. If you'd give me just a moment,
17 please.

18 Q Take your time.

19 A The first time that we went to, to the house was on the
20 29th of January.

21 Q Okay. So it wasn't the first time -- on April 5th wasn't
22 the first time you went to the trailer? It was January 29th?

23 A Yes, sir.

24 Q Okay. And when you went to the trailer two weeks later,
25 Mr. Garrett wasn't there?

1 A Nobody answered the door on the first time, and I didn't
2 -- there -- he wasn't there the -- this time either.

3 Q Okay. And what else did you do to try to find him?

4 A I mean, we just -- I mean, there -- had no way because
5 the lady that answered the door said he didn't -- that they
6 separated and she didn't know where he was.

7 Q The lady that answered the door, so there was somebody
8 home?

9 A At, at one time when we went there she said that -- I
10 don't know -- let me get -- and I don't know that it was -- I
11 think she said that they didn't live there. On the 29th after
12 attempting to serve the warrants, Mrs., Mrs. Garrett told us
13 that she did not know where -- that he was at and did not know
14 where he was living and so the warrants were put on file.

15 Q They, they were separated?

16 A That's what she said, that they were now separated.

17 Q And did you contact any other law enforcement agencies to
18 try to find him?

19 A No, sir. We had -- no, sir.

20 Q How about the FBI?

21 A I don't think that at that time that would fall
22 underneath the FBI's, would not have taken it at that time
23 because it's not that -- he's not a fugitive as far as a major
24 fugitive anyway.

25 Q I couldn't hear that last. What did you say?

1 A I said that the FBI wouldn't have taken that case yet.

2 Q The FBI doesn't care about people charged with criminal
3 sexual conduct --

4 A I didn't say that.

5 Q -- with a minor?

6 A I'm just saying at that particular time they would not
7 have taken it. There was not a -- the -- their criteria
8 hasn't -- I didn't have their criteria to do that.

9 Q Okay. It's not important to the FBI. Did you look at
10 the last known address?

11 A It was on Lands Road.

12 Q Okay. That's, that's where he was in Charleston. How
13 about his last known address? Say you got copies of the DSS
14 file from Clayton County; right? That's what you testified to
15 in direct?

16 A Yes, sir.

17 Q Okay.

18 A No. I didn't -- I, I, I got information from them. Yes,
19 sir. I didn't get a file.

20 Q Okay. So, so you knew he was in Clayton County?

21 A I knew he had lived there. Yes, sir.

22 Q Okay. For a significant amount of time.

23 A I don't know how much time.

24 Q Okay.

25 A I just knew that he had lived there.

1 Q You didn't ask that question? You didn't ask that
2 question of how much time he lived in Clayton County?

3 A No, sir.

4 Q Okay. But you did receive --

5 A I established that he had lived there at that time and at
6 one time. Yes, sir.

7 Q Did you contact the authorities in Clayton County?

8 A No, sir.

9 Q Okay. And I take it you didn't go to Clayton County
10 yourself?

11 A No, sir.

12 Q Did you contact any family members?

13 A The only one I knew was her mom, and she'd already -- and
14 we -- and she just said that she didn't know where he was.

15 Q Okay. Did you ever try to contact **Minor** after
16 interviewing her?

17 A No, sir.

18 Q Okay. So you knocked on the door of the trailer two
19 weeks later and Mr. Garrett wasn't there?

20 A Correct.

21 Q You exhausted all efforts?

22 A As far as trying to find him right there in the immediate
23 area, yes, sir, because, I mean, I had nowhere -- no other
24 leads to follow to try to locate.

25 Q No other means?

1 A No, sir. Not at that time.

2 Q Okay. Put the warrants in a file and marked it inactive?

3 A No. I put the warrants at the warrants division to have
4 them have -- put them into the computer where if anybody came
5 across him and ran his name that he would be picked up.

6 Q But as far as your case was concerned it was inactive?

7 A Yes, sir.

8 MR. KOZELSKI, III: No further questions, Your Honor.

9 THE COURT: Any redirect?

10 REDIRECT EXAMINATION

11 BY MS. SAVAS:

12 Q Detective Reed, you did testify that on the day of the
13 reporting on January 15th Sergeant Brock did, in fact, go
14 attempt to locate the Defendant at the trailer; is that
15 correct?

16 A Yes. He did.

17 Q Okay. And you followed that up yourself and went to the
18 trailer at another time a few days later; correct?

19 A Yes, sir. Yes, ma'am.

20 Q So attempts were made to locate the Defendant in this
21 case?

22 A Yes, ma'am.

23 Q Nothing further.

24 THE COURT: Sir, you may step down.

25 Madam Forelady, ladies and gentlemen, we're going to take

1 advantage of this testimony to take a brief restroom break.
2 During the break please do not discuss the case and please
3 leave your notepads in your seats.

4 (Whereupon, the following takes place outside the
5 presence of the jury.)

6 THE COURT: Be at ease for a few moments. Who's the
7 State's next witness?

8 MS. HERRING-LASH: Your Honor, we just have one more
9 witness.

10 THE COURT: And who is that?

11 MS. HERRING-LASH: And that is Dr. Sara Schuh.

12 THE COURT: Is Dr. Schuh present?

13 MS. HERRING-LASH: Yes, Your Honor.

14 THE COURT: All right. We'll be out -- I guess it'll
15 take the jury about 10 minutes. How long do you expect her
16 testimony to be?

17 MS. HERRING-LASH: I would expect her direct to be 15
18 minutes, perhaps less.

19 THE COURT: Okay. Does -- are you calling Kathy Garrett?

20 MS. HERRING-LASH: I don't think so, Your Honor. I'll
21 speak to her during this --

22 THE COURT: Well, you had her on your list. That's why
23 I'm asking.

24 MS. HERRING-LASH: Right. I'll speak to her during this
25 10 minutes and see if she's --

1 THE COURT: Okay. Let me know. Does the Defense plan to
2 introduce any testimony?

3 MR. KOZELSKI, III: No, Your Honor.

4 THE COURT: Okay. All right. We'll be at ease for a few
5 moments.

6 OFF THE RECORD.

7 (On the record. Whereupon, the following takes place outside
8 the presence of the jury.)

9 THE COURT: You may be seated. The State ready to
10 proceed?

11 MS. HERRING-LASH: Yes, Your Honor.

12 THE COURT: The Defense ready to proceed?

13 MR. KOZELSKI, III: We are, Your Honor.

14 BAILIFF: Are you ready for the jury, Your Honor?

15 THE COURT: Give me one second. The State ready to
16 proceed?

17 MS. HERRING-LASH: Yes, Your Honor.

18 THE COURT: The Defense ready to proceed?

19 MR. KOZELSKI, III: We are, Your Honor.

20 THE COURT: Please bring in the jury. Could counsel
21 approach for me, please?

22 (Whereupon, a bench conference is held.)

23 (Whereupon, the following takes place in the presence of
24 the jury.)

25 BAILIFF: All jurors are present, Your Honor.

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1 THE COURT: Ladies and gentlemen, we appreciate your
2 patience. We'll now resume testimony. The State may call its
3 next witness.

4 MS. HERRING-LASH: The State would call Dr. Sara Schuh.
5 Right up here.

6 Whereupon, Sara Schuh was called to the stand, duly sworn
7 by the clerk and testified as follows:

8 THE CLERK: Thank you. Please be seated. Once seated,
9 please state your first and last name and spell your last name
10 loudly, clearly into the microphone.

11 MS. SCHUH: My name is Sara, S-A-R-A, Schuh, S-C-H-U-H.

12 THE COURT: You may proceed.

13 DIRECT EXAMINATION

14 BY MS. HERRING-LASH:

15 Q Dr. Schuh, are you a little bit ill today?

16 A I am, and I apologize for that.

17 Q And we'll apologize for having to take you out of your
18 sick bed, but what is your educational background, Dr. Schuh?

19 A I am a medical doctor. I graduated from Columbia
20 University College of Physicians and Surgeons in New York City
21 in 1961 and completed my pediatric residency at St. Luke's,
22 now St. Luke's Roosevelt Hospital Center in New York City in
23 1964 and was board certified in pediatrics in 1967.

24 Q And have you had any other specialized education and
25 training --

1 A I have a --

2 Q -- in the area of child abuse?

3 A Yeah. I have a Master's Degree in public health, but I,
4 I began reading and studying the area of child abuse, and
5 specifically child sexual abuse, in 1979 and 1980 at which
6 time there was no board certification in that area and began
7 to do work evaluating children when there were allegations or
8 suspicions of abuse or neglect in 1980 and have continued to
9 do that up to the present time at the Medical University of
10 South Carolina.

11 Q And what are your duties at the Medical University of
12 South Carolina?

13 A My initial -- initially, when I initially began this
14 work, my primary duties were in general pediatrics, but they
15 became increasingly focused in the area of child abuse and
16 child neglect, and currently they are all in the area of child
17 abuse and child neglect assessments when there's confusion or
18 concern about how a child may have been injured or something
19 the child may have said.

20 Q And how many child sexual assault exams do you estimate
21 that you have performed?

22 A Several thousand.

23 Q And have you testified in court before as an expert in
24 the area of pediatrics and child sexual abuse?

25 A Yes. I have.

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1 Q Do you know how many times?

2 A No. Many times.

3 Q Both in state court and other courts?

4 A In state court and in military courts and in other states
5 as well as South Carolina.

6 Q And in family court?

7 A And in family court.

8 MS. HERRING-LASH: Your Honor, at this time the State
9 would offer Dr. Schuh as an expert in pediatrics and child
10 sexual assault examinations.

11 THE COURT: Any questions or objections?

12 MS. PROCTOR: No, Your Honor.

13 THE COURT: Admitted without objection. You may proceed.

14 BY MS. HERRING-LASH:

15 Q Dr. Schuh, where were you working in January of 1990?

16 A I was on the faculty at the Medical University of South
17 Carolina and working in Charleston.

18 Q And did you see a -- where? I'm sorry.

19 A And working in Charleston.

20 Q And at that time were you already performing exams in the
21 area of child sexual abuse routinely?

22 A Yes. I was.

23 Q And did you see Minor ?

24 A I did.

25 Q And where did you see her?

1 A I saw her at the Medical University Hospital.

2 Q And did someone accompany her to that appointment?

3 A Yes. She was accompanied by Alice Brown of the
4 Charleston County Department of Social Services.

5 Q And at the time you saw **Minor** was she in protective
6 custody?

7 A Yes. She was.

8 Q And Dr. Schuh, before we talk about her specific exam,
9 are there different types like two different types of sexual
10 exams? I think they used to be called chronic and acute, and
11 there may be different terminology now.

12 A Yes. Yes. There are, there are two different types of
13 examination performed, and the examination itself actually is
14 the same, but what makes the difference between them mostly is
15 that after a certain period of time and a fairly short period
16 of time the chances that you'll find any physical evidence
17 like DNA evidence or anything like that is, is much less. In
18 fact, it's not exactly zero always but close to zero, and in,
19 in adolescents and adults we consider this to be 72 hours and
20 that technically is the time we use also for, for prepubertal
21 children or little children, although much of the evidence now
22 says that after 24 hours it's unlikely to find any physical
23 evidence on a young child. You're more like to find evidence
24 on their clothing or bedding.

25 Q They --

1 A The -- but the exact -- the actual examination of the
2 child is the same.

3 Q I guess the difference would be if it was within 24 to 72
4 hours you would swab parts of the body that you wouldn't swab
5 if it's been longer?

6 A Yes. That's true.

7 Q And those swabs we'd be looking for trace -- anything of
8 trace value that the perpetrator would have left on the child?

9 A Yes. That's correct.

10 Q And would those be things that if a child had had a bath
11 would be washed off?

12 A Most often. Yes.

13 Q And now, did you -- which type of these exams did you
14 perform on **Minor** ?

15 A I performed an, an acute exam in terms of the paperwork
16 because her history to me was that the last time she had been
17 touched inappropriately had been within 48 hours or so, but we
18 actually did not try to collect any trace evidence because she
19 had been bathed and she would -- had changed her clothing.

20 Q And had -- did she report a more extensive assault
21 greater out than 48 hours?

22 A Yes. She did.

23 Q And had she also urinated and defecated since?

24 A Yes. She had.

25 Q And at that point in time were you able to get any kind

1 of really good medical history from just this child?

2 A Minor gave a very clear history to me on a child's
3 level, not on the level you would expect from an adult, but a
4 very clear history. Yes.

5 Q And what was her outward appearance at that time?

6 A She was anxious about the medical exam because she'd had
7 previous unhappy experiences with doctors, so she told me, but
8 she was clean and, and, and appeared healthy.

9 Q And what was her emotional state like at that point?

10 A She was upset. She did not want to be examined
11 particularly.

12 Q And did you also get a medical history of the sexual
13 assault?

14 A Yes. I did.

15 Q And what was the medically pertinent part of that
16 history?

17 A Well, when you take a medically pertinent history, one of
18 the things that you want to know is is it possible or likely
19 that a child may have contracted any type of sexually
20 transmitted disease. So we always ask about happened, you
21 know, as much as the child is able to tell, and she told me
22 that the, the person that, that had, had done something to her
23 had put his private in her mouth and in her private.

24 Q And now, you cannot testify to this, but did she tell you
25 who?

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1 A Yes. She did tell me who.

2 Q Now, did you also perform a genital exam?

3 A Yes. I did.

4 Q And what were the results of that genital exam?

5 A The genital exam was completely normal without any
6 evidence of injury at the time I saw her.

7 Q Now, does a normal genital exam rule out penetration of
8 the genital area?

9 A No. It does not.

10 Q And can you explain to the jury why not?

11 A Well, the, the genital area in a child or any area in a
12 child can be touched without leaving marks. If there's --
13 just as you could touch an arm or a face and leave no marks,
14 you can touch the genital area and leave no marks. That's
15 particularly true if time has passed between when the event
16 occurred and when you actually get to see the child and
17 examine them. Also, for a child when they tell you they put
18 something in their mouth, they understand about putting
19 something in their mouth because they put food in their mouth
20 and other things in their mouth, and they understand about
21 putting something into the genital area to some extent because
22 there is an area that's pink or flesh, you know, pink colored
23 as opposed to flesh colored, and to them that is in the
24 genital area, but most young children and children who have
25 not been given a lot of information about sexual behavior do

1 not understand that there is a vaginal canal or an area into
2 which you can actually put something deep into the body, and
3 so for them anything that touches within the pink part of
4 their genitalia is in, and you don't have to do any damage in
5 order to make it very upsetting to the child or to have the
6 child recognize that it isn't right.

7 Q And inside of the pink area or what would be the vulva --

8 A Yes.

9 Q -- is that inside of the genital area?

10 A It is inside the genital area.

11 Q But medically there's a distinction between inside the
12 vaginal vault and the genital area?

13 A That's correct.

14 Q And does the, the timeframe to which there was any last
15 contact into the vulva area also affect any damage that you
16 may see?

17 A Well, anything that's very superficial will go away with
18 time. I mean, the, the tissue that most people are familiar
19 with that is most familiar or most similar to the genital
20 tissue would be the tissue of the inside of the lip, for
21 example, where you can bite your lip or fall on your lip and
22 within a matter of hours or days or sometimes weeks there's no
23 evidence of scar or injury of any kind.

24 Q Have you, in fact, examined children that came to you
25 very, very immediately after and found some trauma and then at

1 follow-up they're normal?

2 A Yes. Many times.

3 Q And so in -- after the genital exam did you also do lab
4 work and those and testing on Minor ?

5 A Yes. I did.

6 Q And were those, I guess, negative?

7 A Yes. They were.

8 MS. HERRING-LASH: The Court's indulgence for one moment.

9 BY MS. HERRING-LASH:

10 Q Dr. Schuh, those are all the questions that I have. If
11 you would answer any that Ms. Proctor may have.

12 THE COURT: You may proceed.

13 MS. PROCTOR: May it please the Court?

14 THE COURT: Yes, ma'am.

15 CROSS EXAMINATION

16 BY MS. PROCTOR:

17 Q Dr. Schuh, you examined Minor , you say, in 1990;
18 correct?

19 A Yes.

20 Q And so that was about 25 years ago?

21 A Twenty-five, I believe.

22 Q And was this the only time that you saw her?

23 A To the best of my knowledge. I may have seen her one
24 time in follow-up after the labs were done, but I don't
25 believe so.

1 Q And she was brought to you by a social worker you said?

2 A Yes.

3 Q And also when you saw her a social worker brought her to
4 you and they also brought some police reports? Do you
5 remember?

6 A Yes. They did. They did. I, I do not have access to
7 them today.

8 Q But at the time they would have brought that information
9 to you?

10 A I believe they did. According to my report, they did.

11 Q And **Minor** was ten years old at this time; correct?

12 A Yes. She was.

13 Q And because of that age, do you ever perform any kind of
14 competency test or anything because of their young age?

15 A Not in terms of doing a formal assessment like a
16 psychologist would do, but we certainly ask questions and try
17 to talk to a child in a way that we believe the child will,
18 will understand, and I had no reason to believe that she did
19 not understand the questions I asked.

20 Q And do you, do you get her medical history from her or do
21 you -- did you get them from the social worker?

22 A In this case I took my medical history from her.

23 Q And do -- you follow a certain protocol, correct, when
24 you do an interview? You rely on police reports, you rely on
25 the DSS and also from --

1 A Yes.

2 Q And each child that -- you say probably thousands of
3 children -- each child is different; correct?

4 A Absolutely.

5 Q And so when you interview each child, you ask different
6 questions, your whole, whole routine is different, sort of
7 modeled towards that child and that age?

8 A Yes.

9 Q And when you interview children, when you interviewed
10 Minor , do you ever tape record the interview or videotape
11 it?

12 A I do not normally do it. I may -- I have recorded some
13 in the past on audiotape, but very few and under very specific
14 circumstances.

15 Q And in this case you, you didn't record it?

16 A No. I did not.

17 Q And do you recall or in your notes how long your
18 interview lasted with her?

19 A No. I have no idea. I -- my, my recollection is that it
20 was not excessively long. I don't remember it as being
21 excessively long.

22 Q And you said that over the years you've interviewed over
23 a thousand children?

24 A Just a second.

25 Q And --

1 A I'm sorry. Would you repeat that?

2 Q I'm sorry. I said over -- you said you've interviewed
3 over probably a thousand children over the years; correct?

4 A Yes.

5 Q And during this time, you have sometimes had children
6 that have made up stories of abuse; correct?

7 A Some.

8 Q And sometimes children are led by adults say like in a
9 custody case or something to come in and make up stories?

10 A Rarely in my experience, but sometimes.

11 Q Well, sometimes, and sometimes children exaggerate to you
12 what happened?

13 A Not very often. We do, when we talk to children, try to
14 make -- try to ask questions in a way that will lead a child
15 to tell the truth as that child sees the truth and to fill in
16 as much of what happened with background information from the
17 child as it's -- as the child seems able to give.

18 Q And sometimes, though, it will be natural that sometimes
19 children exaggerate? I mean, that's children.

20 A Children, children do exaggerate, of course.

21 Q And sometimes, like you say not always, but there have
22 been false reports.

23 A Certainly there must have been. Yes.

24 Q And there isn't really any reliable way of
25 distinguishing, would you say, a false report from a true

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1 report if there aren't any physical findings?

2 A I think sometimes the level of a child's information
3 about what happened is sufficient to make one or to make the
4 interviewer or the doctor in this case convicted that the
5 information given is truthful.

6 Q In --

7 A But not always.

8 Q When you talk to children in your interviews, do you ask
9 them leading questions of what happened, do you just -- or do
10 you just say, "Tell, tell us what happened"?

11 A Usually we say, "Tell us what happened," but obviously,
12 if you just say to a child, "Tell me what happened today or
13 three weeks ago," that's not going to give you any reliable
14 information or useful information. So to some extent the
15 questions may be leading. You might want to say, "Tell me
16 what happened that you found uncomfortable and talked to
17 somebody about," or you -- I mean, you try not to say, you
18 know, something that's extremely leading, but, but you have to
19 provide some guidance very often, and the younger the child is
20 the more guidance that you may need to direct the child to the
21 area that you're interested in.

22 Q Do you -- and in your interviews, do you use anatomical
23 dolls?

24 A I have in the past, but I have not in any recent years.

25 Q Do you remember if you used them with Minor ?

1 A I would, I would say no because, first of all, her age
2 made it unnecessary to use demonstrations, but also, I did not
3 indicate the use of dolls in my, in my dictation.

4 Q And you testified just a moment ago that when you started
5 to do the medical exam she was a little upset about that;
6 correct?

7 A Yes. She was anxious, not necessarily about -- she was
8 anxious because she had had a very unpleasant or unhappy
9 experience with a doctor in the past, according to the history
10 she gave me.

11 Q Oh, with another doctor?

12 A With another doctor.

13 Q But isn't it, isn't it though, too, sort of common with a
14 small child anytime you're going to do an exam like that it's
15 a little bit anxious when you're going to?

16 A No.

17 Q In children; right?

18 A It's not common. The -- most children are -- most
19 children are most anxious that you're going to give them a
20 shot, and they're not really anxious about what you're looking
21 at. Some children are anxious about looking at the genital
22 area, but the majority of those are reassured by their parent
23 that it's okay. It's the doctor who's looking, and they're
24 fine.

25 Q But in this case, there wasn't a parent in the room

1 though; was it, just you?

2 A No, which there were other, I mean, they were -- we never
3 do an exam without a chaperon. There were other people in the
4 room, and, and it was not my impression that she was more
5 worried about the genital exam than that she had had a really
6 bad experience with a doctor in the past.

7 Q And in your report of your pelvic exam you found that her
8 labia minora was normal; correct?

9 A Yes.

10 Q And her labia majora was prepubertal?

11 A Yes. She had no hair.

12 Q Okay. And that's normal for a ten year old?

13 A And that's normal for a ten year old.

14 Q And her vulva you have was clean and atraumatic?

15 A Yes.

16 Q And her hymen was intact?

17 A Yes.

18 Q And her vagina, there was no discharge?

19 A There was no discharge, but I really didn't get a good
20 look in the vagina because I didn't put anything inside to
21 look.

22 Q Okay. And her cervix you didn't see that. Is that
23 because of her age?

24 A Pardon me?

25 Q Her cervix?

1 A Oh, yes. The cervix is inches, inches into the vagina,
2 an inch and a half or so into the vagina, and I didn't --

3 Q You wouldn't have seen that?

4 A No.

5 Q And her rectum was atraumatic and her anus was just of
6 average tone?

7 A Yes.

8 Q Now, in your report you write, "It is possible that
9 digital penetration of some degree could have occurred without
10 lacerations of the hymen." So you're saying it's possible,
11 but -- and it could have, but you didn't say that it was --
12 that it did occur, you said it was possible; correct?

13 A Yes.

14 Q And so you found no physical evidence of any sexual abuse
15 following your examination of her?

16 A There was no physical evidence of injury of any kind.

17 MS. PROCTOR: The Court's indulgence?

18 THE COURT: Yes, ma'am.

19 MS. PROCTOR: I have no further questions.

20 THE COURT: Any redirect of the witness?

21 MS. HERRING-LASH: Yes, Your Honor.

22 THE COURT: You may proceed.

23 REDIRECT EXAMINATION

24 BY MS. HERRING-LASH:

25 Q Dr. Schuh, just once again, I think you -- the lack of

1 physical evidence, does that rule out genital penetration of
2 the penis into the genital area of the child?

3 A No. Not at all.

4 Q Is this the only child you've ever seen that gave a
5 history of penetration with a penis into the vaginal area
6 without damage?

7 A No. The majority of children give a history, in the
8 absence of any bleeding, the majority give a history and have
9 few physical findings unless we see them almost immediately.

10 Q So it's commonplace to see -- to have a normal exam after
11 a child --

12 A Yes. It is most common to have a normal exam.

13 Q That's all the questions I have.

14 THE COURT: Any objection to the witness being excused
15 from the State?

16 MS. HERRING-LASH: No, Your Honor.

17 THE COURT: From the Defense?

18 MS. PROCTOR: No, Your Honor.

19 THE COURT: Doctor, you're excused.

20 A Thank you, ma'am.

21 THE COURT: I hope you feel better. The State may
22 proceed.

23 MS. HERRING-LASH: Your Honor, at this point the State
24 rests.

25 THE COURT: Madam Forelady, ladies and gentlemen, the

1 jury room. Please don't have any contact with anyone in or
2 about the courthouse. If you would leave your notepads in
3 your seats we'll secure those during the break. Have a
4 wonderful day and we appreciate your patience.

5 (Whereupon, the following takes place outside the
6 presence of the jury.)

7 THE COURT: The State has rested. Are there any motions?

8 MS. HERRING-LASH: Not from the State, Your Honor.

9 MR. KOZELSKI, III: Your Honor, at this time we'd move
10 for a directed verdict on both counts.

11 THE COURT: I can't hear you.

12 MR. KOZELSKI, III: We'd move for a directed verdict on
13 both counts.

14 THE COURT: Would the State like to respond?

15 MS. HERRING-LASH: Yes, Your Honor. Your Honor, at this
16 point in the process, I think if the Court looks at this
17 evidence in the light most favorable to the State, if there's
18 any factual basis for the jury to convict, and I think there
19 is a factual basis. If they were to choose to believe the
20 victim, she gave a complete and compelling history of both
21 fellatio and sexual intercourse, which I think are the two
22 charges, and there's testimony that his -- of his date of
23 birth and there's testimony of her date of birth showing that
24 she was under 11 and that he was older.

25 THE COURT: Anything further from the Defense?

Motions

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1 MR. KOZELSKI, III: No, Your Honor.

2 THE COURT: In considering a motion for a directed
3 verdict, the Court considers the evidence in the most -- in
4 the light most favorable to the State, but in addition to
5 that, the Court does not act as the fact finder. The Court is
6 only concerned with the existence or non-existence of
7 evidence. The Court is not required to find that the evidence
8 infers guilt to the exclusion of any other reasonable
9 hypothesis. There is both direct -- well, there really in
10 this case is only direct evidence of the alleged allegations
11 of criminal sexual conduct in the first degree, that being in
12 the nature of the testimony of Minor . It's not for the
13 Court to weigh the credibility of that testimony. That is for
14 and solely within the province of the fact finder. In order
15 to establish criminal sexual conduct with a minor in the first
16 degree, the State need only establish that the Defendant
17 engaged in a sexual battery with the victim. There's direct
18 testimony from Minor that that did, in fact, occur. She
19 has testified that there were both intrusions into her genital
20 openings, as well as touching, to cause arousal for that
21 purposes. Then the State must prove beyond a reasonable doubt
22 that the victim was less than 11 years old at the time, and
23 they have established that by the direct testimony of both Ms.
24 Minor and other witnesses, and of course, under our law, she
25 could not have consented, although there has been no testimony

1 regarding that. So there is direct testimony in the record
2 which establishes the elements of the offense, and therefore,
3 the motion for directed verdict is denied. Are there any
4 requests for instruction?

5 MS. HERRING-LASH: Not from the State, Your Honor.

6 THE COURT: Any from the Defense?

7 MR. KOZELSKI, III: Your Honor, the only one that I can
8 think of is I just wanted it --

9 THE COURT: If you have something in writing I need to
10 see it. Otherwise, I'll use my standard instructions.

11 MR. KOZELSKI, III: Standard instructions, I didn't know
12 if it was updated.

13 THE COURT: There's no need for you to go to any extra
14 work. If you had something you wanted me to look at, I just
15 wanted you to give it to me so I could read it overnight.

16 MR. KOZELSKI, III: Okay.

17 THE COURT: Sir, if you would stand for me, please, and
18 raise your right hand to be sworn.

19 (Defendant is sworn by the Court.)

20 THE COURT: You can put your right hand down. Sir, state
21 your full name for the record.

22 MR. GARRETT: Walter Scott Garrett.

23 THE COURT: Mr. Garrett, at this time I'm going to
24 explain to you certain of your rights. If there's something
25 you do not understand, please let me know. If you need me to

1 THE COURT: I didn't include any and I
2 wanted to make sure that that was, in fact, your
3 desire.

4 If you-all would give me a moment to
5 print the verdict forms, I will give you the
6 opportunity to look at those as well.

7 (A recess transpired.)

8 THE COURT: If Counsel could approach
9 to view the verdict forms.

10 Any exceptions from the State?

11 MS. HERRING-LASH: No, Your Honor.

12 THE COURT: From the defense?

13 MR. KOZELSKI: No, Your Honor.

14 THE COURT: How long do you need for
15 closing?

16 MS. HERRING-LASH: 30 minutes, or less.

17 THE COURT: Defense will be?

18 MR. KOZELSKI: Probably less than ten
19 minutes.

20 THE COURT: I think 12:00 is safe to
21 tell them for lunch.

22 We're still missing five jurors so I'll
23 take advantage of the time to deal with the motion
24 to dismiss. As I indicated on the other day, I had
25 denied the motion and I would make the appropriate

1 findings of fact and conclusions of law for the
2 record when we had an opportune moment to do so.

3 I have reviewed the defendant's motion
4 to dismiss, as well as the accompanying memoranda
5 brought in support of the motion to dismiss, and
6 I've reviewed applicable cases regarding that
7 motion. While South Carolina does not have a
8 statute of limitations on any crime in its criminal
9 code, in effect, our supreme court has modeled
10 basically what, in effect, is the -- what would be
11 considered, in effect, the statute of limitations
12 regarding -- how motions to dismiss of this type
13 are handled regarding any sort of a pre-indictment
14 delay and when the State proceeds on a case that
15 has some age on it, so to speak, such as a case of
16 this nature.

17 The defense's motion contends that the
18 Indictments should be dismissed because in large
19 fact -- the gravamen of their argument is that the
20 defendant was originally charged with these
21 offences in 1990, and he was not prosecuted
22 regarding these offences until recently, and that
23 the pre-indictment delay amounted to a deprivation
24 of his constitutional rights because he feels that
25 he's been prejudiced by the delay in proceeding --

1 the State proceeding and prosecuting these
2 Indictments or these charges against him.

3 I need to ask this question, because I
4 asked it on Monday and I did not get a clear-cut
5 answer and I gave what amounted to additional time
6 for the defense to investigate this matter, that
7 being a forensic child -- an expert forensic child
8 psychologist to review the records they had in
9 their possession regarding Ms. Minor and the
10 ability of that expert to provide testimony.

11 And I need to know if you pursued that
12 and if you followed up on it with this forensic
13 person that you were speaking with, Mr. Kozelski.

14 MR. KOZELSKI: Your Honor, I believe I
15 did talk with Dr. Sallis on Sunday after the 4th of
16 July and indicated to her that I would not -- I was
17 not able to obtain a continuance. I wasn't able to
18 seek specifically whether she was still able to
19 review over the entire case before us, but she --
20 when she originally told me that she was going to
21 -- she was going to be on vacation and that she
22 would need some time to look over the case, she
23 indicated to me that it would take a little bit of
24 time in order to go over it.

25 So that was -- when we originally

1 discussed it, she said, I basically would need a
2 continuance in order to go forward.

3 THE COURT: But the bottom line is you
4 didn't make any further efforts to talk to her on
5 Monday to find out whether she had additional time
6 to look at the records and whether she would be
7 able to provide testimony?

8 MR. KOZELSKI: I did not, Your Honor.

9 THE COURT: Okay. Thank you.

10 Basically, the defendant had made a
11 claim that the pre-indictment delay violated due
12 process. In order for him to prevail on that
13 claim, he must prove that the delay caused --
14 actually prejudiced his right to a fair trial. The
15 Court is then required to consider the reason for
16 the State's delay and balance the justification of
17 the delay against the prejudice to the defendant.

18 To prove substantial prejudice, the
19 defendant, alleging the pre-indictment delay
20 violated his due process rights, must show that he
21 was meaningfully impaired in his ability to defend
22 against the State's charges to such an extent that
23 the disposition of the criminal proceeding was
24 likely affected.

25 Prejudice in this context, when we talk

1 about a criminal case, may result from the shortest
2 -- and our court has been very clear that the
3 length of delay really is not the most critical
4 element in the analysis, because even a short delay
5 can still result in a deprivation of constitutional
6 rights; however, our courts have pointed out that
7 the shortest and most necessary pre-indictment
8 delay, but every delay-caused detriment to a
9 defendant's case should not abort criminal
10 prosecution.

11 And they have articulated, to
12 accommodate the administration of justice to the
13 rights of the defendant to a fair trial would
14 necessarily involve a delicate judgment based on
15 the circumstances of each case. Simply stated,
16 that there is no blanket rule, there is a set of
17 criteria that every case is to be judged on a
18 case-by-case basis based on each particular fact
19 and circumstances of that case.

20 In order for the defendant to meet his
21 burden of showing substantial prejudice, the
22 defendant alleging the pre-indictment delay
23 violated his due process must identify the evidence
24 and expected content of the evidence with
25 specificity, as well as show that he made serious

1 efforts to obtain the evidence and that it was not
2 available from another -- or other sources.

3 The defendant does not have to prove
4 that the State acted intentionally or that they
5 acted in some way to gain an unfair tactical
6 advantage in the delay.

7 When the court is balancing prejudice
8 and the State's justification, the basic inquiry is
9 whether the government's action of prosecuting
10 after substantial delay violated fundamental
11 conceptions of justice or the community sense of
12 fair play and decency.

13 Now, the defense has heavily relied on
14 the case of State v. Larry Lee, which was decided
15 in 2007. Our courts have -- in that case, our
16 courts have adopted a two-prong inquiry when
17 pre-indictment delay is alleged to have violated
18 the defendant's due process. First, the Court has
19 to look at -- first, the defendant must prove that
20 the delay caused substantial actual prejudice to
21 his right to a fair trial. And the second prong
22 requires the court to consider the reason for the
23 State's delay and to balance the justification for
24 the delay against the prejudice to the defendant.

25 In order to prove substantial

1 prejudice, the defendant must prove that he was
2 meaningfully impaired in his ability to defend
3 against the State's charges to such an extent that
4 the disposition of the criminal proceeding was
5 likely affected.

6 I've already found for the record that
7 the motion to dismiss is denied. There are several
8 distinctions and differences in the Lee case. The
9 standard of the court is accurate and that is the
10 standard that this court will employ in making its
11 analysis, as our courts have indicated is the
12 appropriate analysis to apply.

13 First, the Court must look to whether
14 the defendant has proved the delay caused
15 substantial actual prejudice to his right to a fair
16 trial, and I find that he has failed to meet that
17 burden.

18 Next, the Court has to look at whether
19 the reason for the State -- has to balance the
20 State's delay against the justification for the
21 delay and prejudice to the defendant, which is a
22 little convoluted, but I guess the actual
23 application is not.

24 The State has already articulated that
25 the reason for the delay was, one -- and, actually,

1 and why this case is so quite different from the
2 Lee case, in this case when the allegations were
3 made, the State immediately procured a warrant for
4 the defendant's arrest; they made an immediate
5 attempt to serve the warrant; the defendant
6 absented himself from the state of South Carolina,
7 or more particularly, from the residence; if we are
8 to believe the representations that Ms. Minor 's
9 mother made at the time that the police presented
10 themselves to serve the warrant, and that being Ms.
11 Cathy Garrett, that the defendant no longer lived
12 at the residence and she did not know where he was,
13 but it seems that that lacks a fair amount of
14 credibility in light of the fact that sometime
15 within close proximity to that she and Mr. Garrett
16 appeared at his mother's home in Georgia.

17 So it appears that there was some
18 effort to evade the service of the warrant, and
19 while the jury could not consider that they vacated
20 themselves or left the school at the thought of law
21 enforcement arriving at the school, it seems to be
22 some credibility in -- in that -- in -- which is
23 tangentially corroborated by Minor when she
24 indicated the last time -- in her last testimony
25 when she indicated the last time that she saw her

1 mother, which was at the school, and then never
2 seeing her again after that point until adulthood.

3 In the Lee case, the State was aware of
4 the allegations, was aware of the conduct and
5 simply did nothing for a period of years until such
6 time that other allegations came forward, and then
7 they decided to prosecute the defendant in that
8 case.

9 Also, in that case, another distinction
10 is that no records existed, and I will address that
11 shortly in the remainder of the court's analysis,
12 which is totally unlike the case that we are
13 dealing with today. And if there were no records,
14 I might be inclined to agree with the defense's
15 posture regarding this case, but that is simply
16 factually not the circumstances in the case.

17 And the State's -- the rest of the
18 State's explanation is that once they were unable
19 to serve Mr. Garrett with -- Mr. -- Mr. Garrett
20 with the warrant, then it was placed in a file and
21 turned over to Warrants. The case was placed on an
22 inactive status because they were not able to serve
23 the warrant. Warrants then had the responsibility
24 and entered it into NCIC so that it could be
25 flagged in the event that the defendant ever came

1 in contact with law enforcement, such that he would
2 have been arrested and that the charges
3 theoretically disposed of; however, in light of my
4 experience with NCIC, there are several things that
5 could have happened.

6 Even though the State -- and they
7 freely admit they did not put it into NCIC and
8 through this audit process discovered it, and of
9 course Mr. Garrett's warrant wasn't the only one
10 that was discovered during this audit process under
11 this task force, and certainly he was not the only
12 person I would assume that was prosecuted, but even
13 if it had been admitted and placed into NCIC,
14 theoretically, he could have gone all these years
15 and never been arrested in which case he would
16 never have been discovered. I don't know of any
17 state that actively goes to seek out and execute
18 other state's warrants without some event as a
19 catalyst to urge them to do that. So it would have
20 laid dormant in the system.

21 And it's also been my experience that
22 even when it is correctly entered into the system,
23 there is no guarantee that it's going to flag
24 somebody, and even oftentimes when it does, the
25 corresponding state often -- it's just missed and

1 it falls through the cracks. So I'm just not
2 convinced that even if it had been entered as it
3 should have been, that he would have been flagged
4 or that he would have been identified or captured
5 prior to this date.

6 Also, what I find interesting is that I
7 asked the question very directly, and I have
8 observed this trial now and had the ability with
9 hindsight to have seen the entire proceeding,
10 except for argument and the jury's deliberative
11 process, but I cannot discern any appreciable
12 difference between this case having been tried in
13 2015 versus it having been tried -- and, really, we
14 all know as a practical matter, even if they had
15 arrested him in 1990, it would have been a couple
16 of years before the case would have been disposed
17 of.

18 So, really, the best-case scenario, we
19 would have been looking at it being disposed of in
20 1992, but I can't really see any appreciable
21 difference between the case having been disposed of
22 in that year or it having been tried in this year,
23 except with the extent, of course, of the natural
24 process of life; one of the officers having had a
25 stroke and being unable to testify which, frankly,

1 inured to the benefit of the defendant, not the
2 State, as there was certain testimony they could
3 not get into the records because of the
4 unavailability of that witness, and a guidance
5 counselor having been killed in a car accident, but
6 I don't know that time dictates that having
7 happened. That could have happened in 1992 as
8 well, as life is precarious and from day to day we
9 don't know what can affect our lives.

10 Having considered all of that, what
11 basically has been alleged by the defendant is a
12 very broad assertion that records are missing.
13 It's not been stated with any specificity, no
14 evidence has been identified with any specificity
15 such that the court could have judged any expected
16 contents of that -- of that evidence and, likewise,
17 I have not seen anything, nor has it been presented
18 to the court, that there were any other serious
19 efforts to obtain evidence or that it was not
20 available from other sources.

21 Again, the evidence in this case is not
22 factually similar to the Lee case. In the Lee case
23 the children were returned -- actually, in the Lee
24 case, another distinction is that what precipitated
25 their involvement in the system was a juvenile

1 proceeding. And from the language in this case, it
2 appears that there must have been some problem with
3 these children regarding their behavior that
4 brought them into the system, then these
5 allegations came to light. They were removed from
6 the home, but then they were almost within months
7 placed back into the home, which is factually
8 different from this case, and the record in that
9 case is not clear as to why they were returned.
10 And, in addition to that, no records existed at all
11 in the Lee case.

12 In this case, what is different is
13 several things; one, the DSS records were available
14 both from Georgia and South Carolina. Now, there's
15 been some assertion that the records were not
16 available and that's not accurate. What is not
17 available is the individual case notes it appears.
18 But from my experience in family court, and I guess
19 to some extent I have a more detailed experience
20 than you all since I served as a family court
21 judge, there's nothing in an individual case note
22 that does not make its way into a court file.

23 The caseworker with DSS has an
24 affirmative obligation to make the Court aware of
25 everything that the child has said, whether

1 spontaneous, whether it has been gone into detail
2 with a caseworker. So if she had recanted, if she
3 had had something inconsistent to say regarding her
4 story regarding these events, the judge would have
5 been made aware of it, and it would have been in
6 that treatment plan. It would have been
7 articulated in some order from the family court.

8 And unlike the Lee case, the entire
9 family court record was available in the
10 investigator's file. And much to -- to the
11 officer's credit in this case, which is very
12 unusual, that I was amazed at what was available in
13 his file after all these years, and I'm referring
14 to Deputy Reed, the entire family court file was
15 there, the entire Georgia DSS record was there, the
16 audio recording of the child's original statement
17 was there, the witness statements were I assume in
18 the file based on the testimony. It was as
19 complete a file as I've ever heard after all these
20 years. It was, frankly, a more complete file than
21 what I hear of cases that are contemporaneously
22 heard in this court.

23 So it involved -- and after -- and I'm
24 getting a little ahead of myself, but as I listened
25 to the cross-examination of Minor by defense

1 counsel, it is clear that he had a great amount of
2 information from which to impeach her credibility
3 and that it was available in those records and that
4 he utilized those records. So the family court
5 records were available, they were preserved and
6 they were available to the defense.

7 Anything, frankly, that was missing
8 would have basically benefitted the State because
9 it merely would have bolstered their case. And,
10 generally -- what the defense has indicated was
11 missing, it would generally have corroborated the
12 State's version of the events.

13 Again, it is clear from
14 cross-examination of the defense counsel that he
15 had specifics from the DSS records that he was able
16 to ask Minor regarding those records,
17 regarding any changes in her statement, any
18 fluctuation in her statements, and that those
19 records were preserved. So he was able to inquire
20 thoroughly of her credibility regarding these
21 incidents.

22 The other distinction from the Lee case
23 is that the State in this case took immediate
24 action. It was recorded in January of 19 -- it was
25 reported in January of 1990, and the warrants were

1 issued in January of 1990.

2 While there's been a general allegation
3 of prejudice, I've not heard any specificity
4 regarding what was missing such that it would
5 amount to a constitutional deprivation of the
6 defendant's rights. In addition to that, the
7 foster care representative, that being the person
8 who was the agent regarding this case, was present
9 and available to testify, and the defense was able
10 to thoroughly question him regarding his
11 involvement in the case and any interaction with
12 Ms. Minor at the time of these events, also,
13 enabling them to inquire as to her credibility and
14 consistency or inconsistencies of anything that she
15 would have reported to DSS at that time.

16 Also, there was a line of questioning
17 that the State indicated -- the defense indicated
18 they would have been deprived of asking the --
19 about in this case regarding the grandmother, that
20 being the mother of the defendant, who has now
21 subsequently been deceased, but when given the
22 opportunity to ask those questions regarding what
23 statements allegedly were made to the grandmother,
24 that being that I only made these allegations --
25 and I'm paraphrasing it, I'm not stating it

1 exactly, but in general that the reason I made
2 these allegations is because he took my mother from
3 me. When given the opportunity to explore that
4 line of questioning, the defense did not and,
5 certainly, had the ability to have explored it
6 through the testimony of Mr. Cramer who I believe
7 you all indicated had privy to that conversation
8 and could, frankly, have explored it through the
9 testimony of Minor , and did not.

10 And I can only assume that for
11 strategic reasons or for reasons of the evaluation
12 of the case, they did not desire or decided to
13 pursue that line of questioning. Certainly, they
14 could have asked Minor that question.

15 Based on what has been presented to the
16 court as well as the applicable case law, the
17 motion, as I've already indicated for the record,
18 is denied.

19 Are we ready to proceed with closing
20 argument from the State?

21 MS. HERRING-LASH: Yes, Your Honor.

22 THE COURT: From the defense?

23 MR. KOZELSKI: Yes, Your Honor.

24 THE COURT: Bring in the jury.

25 Now, I did not instruct corroboration

1 of testimony which is 16-3651, and I only instruct
2 that when it is requested. I assume that the State
3 did not want that since it did not request it.

4 MS. HERRING-LASH: I did not request
5 that, Your Honor.

6 THE COURT: I just wanted to make sure.
7 I didn't want you-all to think it was an oversight
8 on my part.

9 All right. Tell them to bring in the
10 jury.

11 I have arranged for the jury's lunch to
12 be here at 12:00. And once their lunch arrives, I
13 will let you all know so that you can take a lunch
14 break as well.

15 THE BAILIFF: Ready, Your Honor?

16 THE COURT: Yes.

17 (Jury in, 10:20 a.m.)

18 THE COURT: Morning, ladies and
19 gentlemen. I hope that you all had a pleasant
20 evening. I hope that it was restful. As I
21 indicated on yesterday, both the State and --

22 Actually, let me give you the
23 opportunity to rest.

24 Mr. Kozelski, you may proceed.

25 MR. KOZELSKI: Your Honor, the defense

1 rests.

2 THE COURT: Thank you.

3 Both the State and defense have rested
4 their cases. We have now reached the stage of the
5 trial where we will have closing argument and the
6 Court's instructions on the law. You will hear
7 from the State, followed by the defense, after
8 which I will instruct you on the law applicable to
9 this case. I would ask that you give counsel your
10 undivided attention.

11 Also, you have interacted with the
12 clerk this morning; he has taken your lunch orders.
13 We will arrange for your lunch to be here by noon
14 so we won't have to break the proceedings for you
15 all to go out and eat. I figured that's the least
16 we can do is feed you since we kept you here all
17 week. Your lunch, for your planning purposes,
18 should arrive by noon. And once it has arrived,
19 the bailiff will bring it into the jury room with
20 you and at that time you can eat and still continue
21 to deliberate.

22 If anyone needs to go out for air, or
23 otherwise, you just need to let the bailiff know
24 and they will take you out so you can have a break.
25 I would ask that you give the attorneys your

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1 undivided attention.

2 MS. HERRING-LASH: May it please the
3 Court?

4 THE COURT: Yes, ma'am.

5 MS. HERRING-LASH: Ladies and
6 gentlemen, I would like to once again thank you for
7 your time and attention time this week. As the
8 Court will explain to you, you are the judges of
9 the credibility of the witnesses, as you are in
10 every case, but in a child sexual abuse case that
11 is a little more important sometimes, because very
12 often the only evidence that you hear will be --
13 the only real solid evidence, the only eyewitness
14 direct testimony that you will hear will be what
15 the child tells you.

16 Because these crimes happen in the
17 secrecy of the home, the adult chooses when these
18 assaults will occur and when no other people are
19 around or watching. Very often a child does not
20 tell anyone. Now, in a case of a stranger
21 assaulting someone in a home, law enforcement can
22 go into that home and look around and perhaps find
23 trace evidence that the defendant has been there.
24 But when the person lives in the house, sleeps in
25 the house, cooks in the house, uses the rest room

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1 in the house, sits on the couch in the house, going
2 and finding evidence that he's been there is not
3 very probative.

4 Now, in judging the credibility of the
5 witnesses, you use this skill every day. When you
6 interact with people, you judge; do you believe
7 them or do you not believe them? One of the things
8 that you often look for is whether that person has
9 a motive to lie to you, whether they are biased.
10 Whether there's a reason for them to say what
11 they're saying.

12 In this case, Minor has
13 absolutely no reason 25 years later to come in here
14 and lie to you. And she had no reason in 1990 to
15 say this, except that she wanted it to stop and
16 that she thought she had interacted with someone
17 that may help her make it stop.

18 Now, the defense said to you or
19 suggested to you in opening that her reason was
20 because she was jealous that he had taken this
21 mother that she was so close to away. Well, she
22 was two when he came into their family. From what
23 we have heard, the mother didn't spend a lot of
24 quality time with her up to that point. Drugs,
25 alcohol, hitch-hiking, not exactly a great

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1 relationship. So there wasn't really a lot to take
2 away.

3 Having a child at age three or four
4 even know or saying something like this would
5 really -- you know, would really get my mother
6 back. And in 2013, when the police officers went
7 to her, she could have easily said, it's been too
8 long, I just don't want to deal with this, I've
9 gone on with my life. Why did she choose to come
10 here and go through this? Because the pain was
11 still there. She still wanted her day in court.
12 She still wanted somebody to do something about and
13 to this man that tortured her and treated her so
14 inhumanly.

15 In judging the credibility of
16 witnesses, another thing -- or of people in
17 general, another thing you look at is, well, what
18 can they tell you about what happened? The
19 details, the specifics they can tell you. Now,
20 granted, in this case, the delay, which is no fault
21 of hers, deprived her of a lot of the details,
22 deprived her of the memory of a lot of these events
23 that she could have much more easily explained to
24 you 25 years ago, but she still remembers some
25 specifics. The fishing trips in the El Camino

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1 where there was a bench seat and he would hold her
2 head in his lap and make her suck his penis, making
3 her watch while her mother did it on occasions so
4 she could do it better, making -- opening the
5 refrigerator door to shield the view and making her
6 suck on his penis, and if her mother came, just
7 shoving her down like an object.

8 Laying in the bed and having him lay
9 over her with his penis in her private and
10 remembering his hair on her face, that was a very
11 hurtful memory that still gives her nightmares.
12 Not something she made up in this courtroom. On
13 the couch, sitting on the couch and him taking her
14 head and forcing it down onto his penis. Her
15 always trying to spit out the ejaculate. When he
16 didn't want her to, holding her mouth up like that
17 (Indicating) so she couldn't spit it out. Taking
18 her in the bathroom and drying her off, then laying
19 her on the bed. This time standing up so that she
20 could suck on his penis while she was laying down.

21 You may remember other details and
22 events that she told you about. A lot of the
23 specifics were triggered by where she was. The
24 Reed house, you can remember not as much happened
25 there. It was a room with common areas and the

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1 mother wasn't working. That's when he had to take
2 her out for fishing.

3 She also explained that these events
4 occurred in Georgia. Now, he cannot be charged
5 with what occurred in Georgia. You are only able
6 to hear that to show that it's a common scheme,
7 that it was a continuous course of conduct, and
8 that, all of a sudden, at age ten when they moved
9 here, this just doesn't begin to happen.

10 What a great third birthday present,
11 taking your love of books, since you don't have a
12 daddy, I'm going to help you with a book about your
13 father and start touching you and feeling of you.
14 Then on another occasion, holding her over his
15 shoulders like a sack of potatoes, making her suck
16 on his penis while she was upside down. How
17 inhumane to do this to a small child.

18 She knew also in that home he would lay
19 on her, again with the hair on her face. More --
20 she said he had more hair then than now.

21 She was taken away, put back. The next
22 house she remembered I think was the Lee house.
23 There may have been another house she remembered,
24 but didn't remember any specific events in that
25 house. The next house she remembered events was

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1 the Lee Street house where she got to dress up in
2 her mom's clothes and shoes and dance. And that
3 was fun until it was over and she had to lay on the
4 floor, he took off her clothes and sexually
5 assaulted her this time on the floor.

6 She began at this age to try to sleep
7 under the bed or in the closet, something only a
8 child would think they could do to hide, and it
9 didn't work. He drug her from under the bed. She
10 said sometimes he didn't find her in the closet,
11 but he drug her from under the bed.

12 She told, she got taken away, they went
13 through some classes, she went back. She remembers
14 the assaults being ongoing. This is not something
15 that she made up. She didn't make this up; she
16 told you details. And she did tell you like in a
17 couple of houses, I just don't remember. I know it
18 was ongoing, but I don't remember enough to tell
19 you; honestly, I don't remember the exact things
20 that happened in those houses.

21 In judging the credibility of the
22 witnesses, another thing is the demeanor in which
23 someone is telling you what has happened. I ask
24 you to remember her demeanor. She would often kind
25 of close her eyes. She was envisioning what

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1 happened. She was not making this up. She's not
2 overly dramatic, not uncontrollably crying. She
3 was trying to reserve some dignity in this horrible
4 testimony.

5 Thank goodness for Mary Wolf, the
6 guidance counselor at Goodwin Elementary.
7 Something about this woman made **Minor** think, she'll
8 believe me, she will do something. She heard about
9 the touching at the school, about strangers, and
10 she told. I don't know if it was because she was
11 older and realized this was a lot longer than she
12 had maybe thought of it, but she thought, maybe
13 this person. It is a miracle that she told after
14 all of the times that she had told and then been
15 sent back.

16 The defense asked her on
17 cross-examination over and over and over again, why
18 didn't you tell this caseworker? Why didn't you
19 tell that caseworker? They were visiting her home,
20 they were trying to find out if things were okay.
21 Well, she said she did tell one she didn't want to
22 go back if he was going to hurt her anymore. She
23 went back anyway.

24 Why didn't she tell one of those social
25 workers? Because what else had happened is that

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1 she had been threatened; what goes on in this house
2 stays in this house, and if you tell, somebody is
3 going to get hurt. She knew the score. She tells,
4 she gets taken away, she goes back, now she's in
5 more trouble because she's broken the threat.

6 That day in school she saw her mom come
7 in. She didn't get off the bus. She saw her mom
8 come. She was in a room. She told the defense she
9 knew he was with her because her momma didn't
10 drive. They didn't have any friends. They left
11 that day, they left her there forever as far as she
12 was concerned.

13 You heard from Officer Reed that he
14 went to see the mom like on the 29th and she said,
15 well, he's gone, they're separated. We don't know.
16 We do know that when Minor talked to her
17 grandmother later, the grandmother said they came
18 here together and got their stuff.

19 Thank goodness for foster mothers who
20 are loving and supportive like Mrs. Sutton, who is
21 still supportive. She described to you how damaged
22 this child was. She was shy, she was afraid, she
23 wouldn't know how to live in a normal home. She
24 had zoned -- she would zone out. She told Mrs.
25 Sutton what happened. And you can remember Mrs.

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1 Sutton had a picture of Minor . It's very difficult
2 to look at her as an adult, but what she was in the
3 1990s wasn't an adult. She was a little kid. You
4 just had that one picture. She doesn't have any
5 before that. She was a little kid then, not the
6 grown woman that you've seen here.

7 William Cramer was a good foster care
8 worker. He found her a good home, he ensured that
9 she went to counseling. He never got to meet her
10 mother and stepfather to do what DSS was supposed
11 to. He was asked by the defense, wasn't there a
12 conversation when Minor denied penetration? Well,
13 when the whole conversation was explained, she
14 denied full penetration. She was still showing the
15 emotions of intercourse and him still trying to put
16 the penis in her vagina. That's not a denial.
17 Perhaps that is a little more knowledge that she
18 had about the extent of the penetration.

19 There is really no doubt that law
20 enforcement made a mistake, they made a mistake in
21 this case. The warrant was not put in the national
22 system. If it had been, it may have been served
23 earlier.

24 Officer Reed did not remember a lot.
25 He was not trying to be uncooperative. He was very

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1 nervous and just had a difficult time looking at
2 his paperwork. It's nerve-racking sitting up
3 there, and he couldn't remember specifically
4 because it was so long ago, but he did tell you-all
5 about Sam Barton going to the house the night of
6 the 15th -- excuse me, I mean -- yeah, the night of
7 the 15th. He went on the 29th. They went again on
8 April 5th. He got his tape, he got records. He --
9 he got a lot of information from Georgia.

10 It is unfair really to judge his
11 investigation by today's CSI standards because that
12 wasn't the state of investigations back then, but I
13 am not going to tell you it was a great job. It
14 wasn't. I'm sure that the defense would point out
15 a lot of other things that he could have, should
16 have done, but in this case you're not in judgment
17 of the Charleston County Sheriff's Department. If
18 you have complaints about that, make them, but
19 that's not what this is about. This is not against
20 law enforcement to decide what they did, good or
21 bad. This is Minor 's case and whether she
22 is telling you the truth, and that's what the trial
23 is about.

24 I don't know who is more at fault for
25 delaying the investigation, not putting the warrant

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1 in, or the parents leaving, but I can tell you who
2 is not responsible for it, and that was Minor

3

4 Now, Dr. Schuh came here. Luckily, for
5 us she is still practicing after all of these
6 years, and she explained to you that Minor told her
7 there was oral penetration with the penis in the
8 mouth and there was genital penetration. And then
9 she explained, as only a pediatrician that's worked
10 with kids for umpteen years could, well, you know,
11 little kids know about what goes in their mouth,
12 because they are used to things going in their
13 mouth, but they really don't have a perception of
14 what the genitalia is like.

15 And when they say, in, it is very often
16 in the pink part, the vulva part, and not way into
17 the vaginal area which we all would think would be
18 penetration and would cause damage. The important
19 part about that is, that is one of the reasons that
20 you don't see damage when a child is saying that
21 they were penetrated in the genitals. As I go
22 through these elements, it's penetration of the
23 genitals, however slight.

24 She also explained that a time delay
25 can cause what could have been a -- some small

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1 trauma to have healed. In this case, the time
2 delay since the last intercourse was such that she
3 didn't perform swabs, which they don't do after 72
4 hours. Now, Dr. Schuh was not here to tell you --
5 well, because this was a normal exam. But it would
6 be unfair to you in trying to judge the credibility
7 and unfair to Minor to let you make a decision like
8 that without benefit of her clinical experience and
9 her education and her training, knowing that
10 children predominantly present with normal exams.
11 You need that information in helping judge the
12 credibility.

13 Now, the State must prove each of these
14 elements to you beyond a reasonable doubt. The
15 elements of criminal sexual conduct with a minor
16 is, the actor, in this case we have to prove Walter
17 Scott Garrett, committed a sexual battery -- and I
18 will explain what sexual battery is in a moment --
19 upon the victim, Minor, at the time Minor
20, and that she was under the age of 11.
21 She has identified him; that's one of the elements.
22 She is under 11. She explained she was 10 at the
23 time.

24 The sexual battery, sexual intercourse,
25 cunnilingus, fellatio, anal intercourse, any

STATE'S CLOSING ARGUMENT

1 intrusion, however slight, of any part of a
2 person's body or an object into the genital or anal
3 opening of another person's body. In this case, we
4 have intercourse, which is the penetration of the
5 genital opening by the penis, and fellatio, which
6 is the penis in the mouth. If you notice, it does
7 say genital opening and not the vaginal vault.

8 Now, beyond a reasonable doubt is not
9 every doubt. It is not any doubt. It is not even
10 a shadow of a doubt. It's a doubt which a
11 reasonable, honest, truth-seeking juror is not
12 firmly convinced. There are few things in this
13 world, if any, that any of us know with absolute
14 certainty. If absolute certainty were the
15 standard, you would have been -- and you're
16 convinced with absolute certainty, you would have
17 been up there (Indicating) because you would have
18 been an eyewitness.

19 You came in here on Monday not knowing
20 anything about this case, not knowing Minor . If
21 you now believe that she is not lying, if you now
22 believe she is telling the truth, the State has met
23 that burden.

24 This is a very important day for
25 Mr. Garrett and it's an equally important day for

DEFENDANT'S CLOSING ARGUMENT

1 Minor . We ask that you think about the
2 details, look at how she tried to explain the worst
3 events in her life for her day in court and for
4 justice. Thank you.

5 THE COURT: Mr. Kozelski, you may
6 proceed.

7 MR. KOZELSKI: Thank you, Your Honor.
8 May it please the Court.

9 THE COURT: Yes, sir.

10 MR. KOZELSKI: I will talk to you
11 briefly about some of the things Ms. Herring-Lash
12 just talked to you about. I'm not going to rehash
13 all the testimony that you heard yesterday. I've
14 been watching you guys and you honestly seem like
15 one of the most diligent juries I've ever been in
16 front of. I see you taking notes and I know when
17 you go back there you're going to go over those
18 notes and that somebody is going to find the key,
19 somebody is going to find the answer as to why this
20 story does not add up, why the pieces do not fit
21 together.

22 Now, Ms. Minor , formerly Minor
23 , got up there and she gave some very
24 passionate, very emotional testimony. We knew that
25 she was going to give that very emotional

DEFENDANT'S CLOSING ARGUMENT

1 testimony. She's angry. She has every right to be
2 angry. She had a horrible childhood, but that
3 doesn't mean that she was sexually abused. She
4 gave details and specifics about what happened.

5 How could any child at ten years old
6 know about putting a penis in their mouth and going
7 up and down, moving their head? How could they
8 possibly know that if it didn't happen? Well, Ms.
9 Minor told you; her mom made her watch. Said she
10 told her to watch so she could see how it was done.
11 Whether that part is true or not, I suspect Ms.
12 Minor did see that at some point. They were a
13 poor family living in a one-bedroom trailer, same
14 bed. I'm not saying it's right, but it does
15 happen.

16 She might have on occasion saw them
17 performing sexually, but she didn't report any of
18 those acts to a single person in DSS. And not --
19 she was asked on multiple occasions. She did
20 allege some inappropriate touching is what she
21 said, and at some point the department gave her
22 back to her family. And that's why she said she
23 doesn't trust them. She didn't tell them what was
24 actually happening, that is until she got to South
25 Carolina. Her parents were fighting again, her

DEFENDANT'S CLOSING ARGUMENT

1 parents were separating again, and she wasn't happy
2 anymore. She wanted Walter Scott out of her life.

3 Now, what she tells us now happened in
4 Georgia was pretty crappy, on her third birthday.
5 I don't remember anything about my third birthday,
6 but this was a traumatic incident. I'm not saying
7 it couldn't happen, but she didn't remember in
8 August of 1982, when she was three years old, being
9 taken into protective custody for the first time
10 when her mother was arrested for public drunkenness
11 in Cobb County.

12 Cobb County is not Clayton County. You
13 haven't heard any evidence to say that Mr. Garrett
14 has lived anywhere other than Clayton County,
15 Georgia, other than the trip to Panama City,
16 Florida and to North Charleston in order to work.
17 They found him in Clayton County, Georgia, and
18 that's where he was trying to make him love her.

19 He ran from the system, but there is no
20 evidence to suggest that he knew a warrant was out
21 for him. Ms. Minor never knew there was an
22 arrest warrant out for him. The police clearly
23 weren't looking for him. And I don't know if that
24 is Detective Reed admitting that in evidence in
25 being a detective, or he just didn't believe her.

DEFENDANT'S CLOSING ARGUMENT

1 I don't know. Either way it makes me angry.

2 And Ms. Herring-Lash wants to blame it
3 on, well, the standards weren't the same back then.
4 We didn't have CSI back in 1990. You're talking
5 about allegations of a man having sex with a child,
6 and they did nothing. Did absolutely nothing.

7 Now, Mrs. Sutton is supportive, but I
8 don't think she bears much on this case. She said
9 that Minor told her that she was sexually abused
10 every day in every room of the house. I don't know
11 how you could necessarily square that with what Dr.
12 Schuh said. And Dr. Sarah Schuh is an expert.
13 There is no doubt about that. The woman has
14 examined several thousands of children.

15 If it were up to me, I would give the
16 woman a Nobel Peace Prize for her work on child
17 abuse, but that does not change the fact that there
18 were no physical findings. She told you she was a
19 clean, healthy child and that there was no abnormal
20 findings. And the whole reason the State brought
21 her up here was to testify that just because she
22 didn't find anything doesn't mean it didn't happen.
23 This case is about facts. The facts show that it
24 didn't happen.

25 Common sense can lead you to believe

DEFENDANT'S CLOSING ARGUMENT

1 that after years and years and years of sexual
2 abuse, this doctor is not going to find anything?
3 Not a scratch? Not even any type of redness? And
4 the last accusation was within 48 hours. And
5 nothing.

6 Now, Ms. Herring-Lash began with saying
7 Ms. Minor had no motive for lying. No motive to
8 lie back then and no motive to lie now, but that's
9 not exactly true. She told us when her parents
10 weren't fighting, she was happy. When her parents
11 were fighting, DSS got involved, she was taken from
12 them. And we know the parents were fighting
13 because they separated.

14 Now, they want you to -- make it sound
15 like they fled together, but we know that's not the
16 case. She was at the trailer on January 29th.
17 Mrs. Garrett loved that trailer. We don't know
18 honestly that -- I don't think Detective Reed went
19 inside the house to check, he took her at her word
20 something that he shouldn't have, but you also
21 heard testimony from Mr. Cramer she was at the
22 ten-day hearing January 23rd, 1990, over custody.

23 Mr. Garrett wasn't there. Mr. Garrett
24 went home; they had been fighting. I'm not saying
25 it was a good atmosphere that a child should grow

DEFENDANT'S CLOSING ARGUMENT

1 up in, but it is part of life. Couples argue.

2 Now why she would lie now? Why would
3 she get up there and tell you that this abuse still
4 happened? Because she was abandoned. She hadn't
5 seen her parents in 25 years. What better way to
6 end this chapter of her life than to confront them
7 and say, you abandoned me and this is what you get?
8 And there's the one person that I think could shed
9 some light on this. The one person on the State's
10 witness list that the Judge asked you if you knew
11 while you were sitting out there, the one person
12 that they could have called and didn't, and that's
13 Cathy Garrett, the mother and co-defendant.

14 You heard that Detective Reed signed
15 out a warrant for her on May 29th, unlawful conduct
16 towards a child. Now, I suspect she could have
17 gotten up there and helped herself out with her
18 criminal charges and maybe sort of mended things
19 with her daughter that she abandoned so long ago;
20 forgive me, I'm sorry. That's not what she did.
21 She didn't get up there and the State didn't put
22 her up there, I suspect, because she would have
23 said, he didn't do it.

24 Minor has every reason to be upset
25 about the way she was raised. Not every one of us

JURY CHARGE

1 is fortunate to come from a home of loving and
2 caring parents. Not every one of us has the
3 opportunity to be raised in a stable household, not
4 jumping around from school to school to school,
5 being on the road hitch-hiking from state to state
6 to state.

7 Not every one of us is abandoned. And
8 this is her opportunity for justice, and that
9 abandonment is certainly a motive to lie, but when
10 you look at the facts -- all of the facts that were
11 presented to you basically yesterday afternoon,
12 there is nothing, not a single scrap of physical
13 evidence, child's clothes, no evidence of any sort
14 of bleeding, no physical evidence from the exam,
15 absolutely nothing. And that is the simple fact
16 that Walter Scott Garrett didn't do it. He's
17 innocent.

18 THE COURT: During this trial, ladies
19 and gentlemen, you and I have certain duties to
20 perform. As the trial judge, it is my
21 responsibility to preside over the trial of this
22 case, and I also have the duty to pass upon or rule
23 upon the admissibility of evidence offered during
24 this trial. You are to consider only the competent
25 evidence that is before you, and you are to

JURY CHARGE

1 disregard and disabuse from your mind any testimony
2 I have ordered stricken from the record during the
3 progress of this trial in ruling upon the
4 admissibility of evidence, or otherwise, if there
5 has been any. You are to consider only the
6 testimony that has been presented from the witness
7 stand, together with any of the exhibits that have
8 been introduced into the record.

9 I have the additional duty to charge or
10 instruct you on the law applicable to this case.
11 As the presiding judge, I am the sole judge of the
12 law of this case, and it is your duty as jurors to
13 accept and apply the law as I now state it to you.
14 If you have a preconceived idea as to what the law
15 is or what the law ought to be in a case, or in
16 this case, and it should not agree with what I now
17 tell you the law is, you are obligated under your
18 oath to abandon this preconception on your part
19 because you are sworn to accept the law and apply
20 the law precisely as I now state it to you.

21 In every case tried in this court
22 before a jury, the jury becomes the sole and
23 exclusive judges of the facts in the case. You,
24 the jury, are the judges of the facts in this case.
25 This court is the judge of the law. The

JURY CHARGE

1 constitution of our state has declared that a trial
2 judge may not intimate, state, comment upon, or
3 make any statement to a trial jury about the facts
4 in a case.

5 Since you, the jury, are the sole
6 judges of the facts in this case, you are not to
7 infer anything from what I've said during the
8 progress of this trial in ruling upon the
9 admissibility of evidence, or otherwise, or
10 anything that I say now to you during the course of
11 this instruction that I have any opinion about the
12 facts. The law does not allow me to have an
13 opinion about the facts. This is a matter solely
14 for you the jury to determine.

15 As jurors, it is your duty, as I have
16 instructed you, to determine the effect, the value,
17 the weight, and the truth of the evidence presented
18 during this trial.

19 Necessarily, you must assess the
20 credibility of witnesses who have testified in this
21 case. Credibility is simply a legalistic term
22 meaning believability. It becomes your duty as
23 jurors to analyze and evaluate the evidence and
24 determine that evidence which convinces you of its
25 truth.

JURY CHARGE

1 Some of the things you may consider as
2 you decide whether or not to believe a witness's
3 testimony about a particular matter include, what
4 was the manner and appearance of the witness who
5 testified? Was he or she straightforward or
6 hesitant in answering? Was the testimony of the
7 witness consistent or inconsistent? How did the
8 witness come to know the facts that he or she
9 testified to or what was his or her ability to know
10 those facts? Is there some reason a witness would
11 want to give testimony that would help or hurt one
12 side or the other; in other words, was the witness
13 biased or prejudiced? And was the testimony of the
14 witness strengthened or weakened by other testimony
15 or evidence?

16 I further instruct you that in
17 determining the question of the credibility or
18 believability of witnesses who have testified, you
19 may believe one witness as against several
20 witnesses or several witness against one witness.
21 You may believe a part of the testimony of a
22 witness and reject the remaining part of the
23 testimony of that same witness. If you have a good
24 and sound reason, you may believe the testimony of
25 a witness in its entirety or reject the testimony

JURY CHARGE

1 of the witness in its entirety. You may consider
2 the demeanor of a witness, that is the appearance
3 and manner of the witness from the witness stand.

4 Ladies and gentlemen, you can believe
5 as much or as little of each witness's testimony as
6 you think proper. Throughout this process you have
7 but one objective, to seek the truth regardless of
8 its source.

9 Our rules of evidence ordinarily do not
10 permit witnesses to testify to opinions or
11 conclusions. An exception to this rule exists for
12 witnesses we call expert witnesses. A witness who,
13 by their education, training, and experience, has
14 become an expert in some art, science, profession,
15 or calling may state an opinion as to relevant and
16 material matters in which the witness claims to be
17 an expert, and may also state the reasons given for
18 that opinion.

19 You should consider any expert opinion
20 received in this case like any other evidence.
21 Give it the weight that you think it deserves. If
22 you decide that the opinion of an expert is not
23 based on sufficient education, training, and
24 experience, or if you conclude the reasons given in
25 support of these reasons are not sound, or that the

JURY CHARGE

1 opinion is outweighed by other evidence, you may
2 disregard the opinion entirely.

3 An expert witness' testimony is to be
4 given no greater weight than that of other
5 witnesses simply because the witness is an expert.
6 Further, you are not required to accept an expert's
7 opinion even though it is not contradicted.

8 Ladies and gentlemen, you have heard
9 evidence that the defendant committed a bad act not
10 the subject of a conviction, other than the one for
11 which the defendant is now on trial. This
12 testimony, ladies and gentlemen, if you conclude it
13 is true, may only be considered by you on the
14 question of common scheme or plan and for no other
15 reason and no other purpose. You may give this
16 evidence the weight, value, and effect, if any,
17 which you find it should have on the sole issue of
18 common scheme or plan. You must not consider this
19 evidence of the commission of another act --
20 another bad act not the subject of the conviction
21 as proof of the defendant's guilt of the charges we
22 are trying today.

23 Ladies and gentlemen, there are two
24 types of evidence which are generally presented
25 during a trial, direct evidence and circumstantial

JURY CHARGE

1 evidence.

2 Direct evidence is the testimony of a
3 person who asserts a claim to have actual knowledge
4 of a fact, such as an eyewitness.

5 Circumstantial evidence is proof of a
6 chain of facts and circumstances indicating the
7 existence of a fact.

8 The law makes absolutely no distinction
9 between the weight or value to be given to either
10 direct or circumstantial evidence. Nor is a
11 greater degree of certainty required of
12 circumstantial evidence than of direct evidence.
13 You should weigh all of the evidence in this case.

14 Crimes may be proven by circumstantial
15 evidence. And, again, as I have instructed, the
16 law makes no distinction between the weight or
17 value to be given to either direct or
18 circumstantial evidence; however, to the extent the
19 State relies on circumstantial evidence, all of the
20 circumstances must be consistent with each other,
21 and when taken together, point conclusively to the
22 guilt of the accused beyond a reasonable doubt. If
23 these circumstances merely portray the defendant's
24 behavior as suspicious, the proof has failed.

25 The State has the burden of proving the

JURY CHARGE

1 defendant guilty beyond a reasonable doubt. This
2 burden rests with the State regardless of whether
3 the State relies on direct evidence, circumstantial
4 evidence, or a combination of the two.

5 After weighing all of the evidence in
6 this case, ladies and gentlemen, if you are not
7 convinced of the guilt of the defendant beyond a
8 reasonable doubt, you must find the defendant not
9 guilty. Conversely, if you're convinced of the
10 guilt of the defendant beyond a reasonable doubt,
11 then you must find him guilty.

12 I instruct you, ladies and gentlemen,
13 that the fact that the defendant was arrested,
14 charged, and indicted is not evidence in this case
15 and cannot be considered by you as evidence of
16 guilt in this case, nor does it create a need for a
17 presumption or inference of guilt. This
18 documentation is simply the formal written
19 instrument which contains the charge, or charges,
20 made against the defendant. They simply serve as
21 the formal documentation by which the case is
22 processed or brought into the court.

23 The defendant has pled not guilty to
24 the Indictment, and that plea cast a burden on the
25 State to prove the defendant guilty, because a

JURY CHARGE

1 person charged with committing a criminal offense
2 in South Carolina is never required to prove
3 himself innocent.

4 I instruct you, ladies and gentlemen,
5 that it is a cardinal and important rule of the law
6 of evidence that the defendant in a criminal trial,
7 no matter what the seriousness of the charge or
8 charges against him may be, will always be presumed
9 to be innocent of the crime for which he's
10 indicted, unless his guilt has been proven by
11 evidence satisfying you of that guilt beyond a
12 reasonable doubt.

13 This presumption of innocence does not
14 cease when you retire to deliberate, but it
15 accompanies the defendant from the time of his
16 appearance, or arraignment, throughout the trial
17 until you reach a verdict in this case.

18 Our supreme court has said that the
19 presumption of innocence is like a robe of
20 righteousness placed about the shoulders of the
21 defendant and it remains with him and assigns him
22 to that class of the innocent until that
23 presumptive robe of righteousness has been stripped
24 from his person by evidence satisfying you of that
25 guilt beyond a reasonable doubt.

JURY CHARGE

1 The presumption of innocence is not
2 mere legal theory. It is not just a legal phrase.
3 It is a substantial right to which every defendant
4 is entitled unless you, the jury, are satisfied
5 from the evidence of his guilt beyond a reasonable
6 doubt.

7 The State has the burden of proving the
8 defendant guilty beyond a reasonable doubt. Some
9 of you may have served as jurors in civil cases
10 where you were told that it is only necessary to
11 prove that a fact is more likely true than not
12 true, such as by the greater weight or the
13 preponderance of the evidence. In criminal cases,
14 the State's proof must be more powerful than that.
15 It must be beyond a reasonable doubt.

16 Proof beyond a reasonable doubt is
17 proof that leaves you firmly convinced of the
18 defendant's guilt. There are very few things in
19 this world that we know with absolute certainty,
20 and in criminal cases the law does not require
21 proof that overcomes every possible doubt. If,
22 based on your consideration of the evidence, you
23 are firmly convinced that the defendant is guilty
24 of the crime charged, you must find the defendant
25 guilty. If on the other hand, you think there is a

JURY CHARGE

1 real possibility that the defendant is not guilty,
2 you must give the defendant the benefit of that
3 doubt and find him not guilty.

4 I instruct you and emphasize the fact
5 that the defendant did not testify is not a factor
6 to be considered by you in any way in your
7 deliberations and in your consideration on the
8 question of the guilt or innocence of the
9 defendant. It must not be considered by you in any
10 manner whatsoever. It is not to be discussed in
11 any manner whatsoever in your deliberation process.

12 A defendant has the constitutional
13 right to remain silent; and the assertion of this
14 right must not be considered by you in your
15 deliberations. I repeat, under your oath, you are
16 to draw no conclusion whatsoever from the fact that
17 the defendant in this case did not testify. The
18 fact that this defendant did not testify should not
19 be discussed in the jury room. The burden of
20 proof, as I've stated to you, is on the State. The
21 defendant is not required to prove his innocence.
22 The burden of proof remains on the State to prove
23 guilt beyond a reasonable doubt.

24 The defendant is charged with
25 first-degree criminal sexual conduct with a minor.

JURY CHARGE

1 The State must proof beyond a reasonable doubt that
2 the defendant engaged in a sexual battery with the
3 victim. A sexual battery is sexual intercourse,
4 cunnilingus, fellatio, anal intercourse, or any
5 intrusion, however slight, of any part of a
6 persons's body or of any object into the genital or
7 anal openings of another person's body, except when
8 the intrusion is accomplished for
9 medically-recognized treatment or diagnostic
10 purposes.

11 The State must then prove beyond a
12 reasonable doubt that the victim was less than 11
13 years old at the time of the sexual battery. I
14 further instruct you that consent, willingness,
15 indifference, or ignorance on the part of the
16 minor, if any, as to what was taking place does not
17 in any way affect the charge of criminal sexual
18 conduct with a minor, because an unmarried woman
19 under the age of 14 cannot legally consent to
20 sexual intercourse.

21 The defendant has been charged with two
22 counts of criminal sexual conduct with a minor,
23 first degree. When two or more acts of criminal
24 sexual conduct are alleged to occur at or about the
25 same time, each act alleged is a separate crime

JURY CHARGE

1 rather than one continuing crime.

2 Ladies and gentlemen, I further
3 instruct you that the Indictments in this case
4 allege two different offences against the defendant
5 and they are Indictments 2014-GS-10-3549 and 3550.
6 Each indictment is for criminal sexual conduct with
7 a minor, first degree. Each indictment charges a
8 separate and distinct offence. You must decide
9 each Indictment separately on the evidence and the
10 law applicable to it uninfluenced by your decision
11 as to any other indictment. The defendant may be
12 convicted or acquitted on any or all of the
13 offenses charged, and you will be asked to write a
14 separate verdict of guilty or not guilty for each
15 indictment.

16 Ladies and gentlemen, for each
17 Indictment there are two potential verdicts for
18 which you may find in this case. There is no
19 significance whatsoever to the order in which I
20 state these potential verdicts. It is simply that
21 one must be stated first.

22 Ladies and gentlemen, your verdict must
23 be unanimous, which mean that all 12 of you must
24 agree in order to reach a verdict. And, again, you
25 don't -- there is no significance whatsoever to the

JURY CHARGE

1 order in which I state the potential verdicts. It
2 is simply that one must be stated first. You don't
3 have to try to write this down because the verdict
4 forms go into the jury room with you.

5 And they are as follows: As to
6 Indictment 2014-GS-10-3549 and 3550, we, the jury,
7 by unanimous consent, find the defendant guilty of
8 criminal sexual conduct with a minor, first degree,
9 or not guilty. Again, there is no significance
10 whatsoever to the order in which the potential
11 verdicts are stated.

12 And, ladies and gentlemen, your verdict
13 must be unanimous, which means all 12 of you must
14 agree in order to reach a verdict.

15 Madame Forelady, once the jury has
16 reached a verdict on each Indictment, it is your
17 responsibility to fill out the verdict form, to
18 sign and date the form, and knock on the door and
19 advise the bailiff that the jury has reached a
20 verdict in the case. If the jury has any questions
21 during deliberations, it is also your
22 responsibility to write out those questions. And,
23 again, following the same procedure by knocking on
24 the door and advising the bailiff that the jury has
25 a question.

JURY CHARGE

1 Ladies and gentlemen, if you have any
2 questions during deliberations, please know that
3 there will be a delay in our response because there
4 is a procedure we must follow in answering your
5 question. So note in advance that if you have a
6 question, there will be a delay in our response and
7 that is because we are following that process and
8 that we are not ignoring you.

9 Also, Madame Forelady, in any notes
10 that are provided to the Court, there should never
11 be any enumeration of the private deliberation
12 process of the jury, which means, in the event that
13 the jury is unable to reach consensus, there should
14 never be any indication of what the actual jury's
15 vote is. That is private. Jury deliberations are
16 private and should not be disclosed in any manner
17 whatever.

18 Ladies and gentlemen, I'm going to ask
19 that you return to your jury room, but do not yet
20 begin your deliberations. Please leave your
21 notepads in your seats. I have a brief matter of
22 law to take up with the attorneys which may require
23 further instruction or clarification of an
24 instruction; however, if there is no further
25 instruction, we will send in your notebooks and the

JURY CHARGE

1 evidence and, at that time, the alternate will be
2 excused and you will be allowed to begin your
3 deliberations.

4 Also, as I have explained, lunch is
5 scheduled to arrive at noon. If you would go with
6 the bailiff please.

7 (Jury out, 11:14 a.m.)

8 THE COURT: Any exceptions from the
9 State?

10 MS. HERRING-LASH: None, Your Honor.

11 THE COURT: Any exceptions from the
12 defense?

13 MR. KOZELSKI: No, Your Honor.

14 THE COURT: There is only one piece of
15 evidence, right?

16 THE COURT REPORTER: Yes, ma'am.

17 THE COURT: Mr. Robinson, if you would
18 go ahead and give the notepads to the jurors, leave
19 the alternate's and then -- and the evidence, and
20 if you can take these verdict forms from me, and
21 then you can bring the alternate in for me.

22 (Alternate juror in, 11:18 a.m.)

23 THE COURT: Ma'am, we want to thank you
24 for your time and attention to this case. We know
25 that being an alternate can be thankless, but it's

1 such a very valuable use of the system and to the
2 jury process in the event that another juror cannot
3 go forward. I will have one of these bailiffs put
4 you in one of the multipurpose rooms where you can
5 wait for your lunch. After that, you're welcome to
6 leave if you like or you can wait around if you
7 want to, and just let the bailiffs know what you
8 desire to do.

9 We are going to be picking juries in
10 the morning so, unfortunately, I have to tell you
11 to call the jury information line after 6:00 this
12 evening. You're also welcome to discuss this case
13 if you would like, but I would ask that you not do
14 that until Friday when the entire panel is excused.
15 Thank you for your jury service.

16 ALTERNATE JUROR: Thank you.

17 THE COURT: Go with Mr. Robinson,
18 ma'am.

19 Please note the jury started their
20 deliberation at 11:18 a.m.

21 The jury's lunch is scheduled to arrive
22 at 12:00. Once their lunch comes, I will let you
23 know so you can take a lunch break as well. We'll
24 be at ease until -- until I let you-all know the
25 jury's lunch has come and give you a lunch break.

1 (Lunch break, 11:19 a.m. - 1:56 p.m.)
2 (COURT EXH. 1, Jury note, was marked
3 for identification.)

4 THE COURT: We have several questions
5 and they are as follows: One, how many times was
6 Minor in protective custody, parenthesis, DSS,
7 between October 1989 and January 15, 1990?

8 Two, if Minor was put into protective
9 custody between October '89 and January 14th, 1990,
10 did she mention to DSS any details about sexual
11 abuse?

12 Three, while living in Charleston,
13 where did the alleged fellatio take place?

14 Four, did the stranger slash danger
15 class at school occur on January 15th, 1990? If
16 not on that date, then when?

17 My response to them would be as
18 follows: Madame Forelady, and ladies and gentlemen
19 of the jury, all of the evidence in this case has
20 been presented to you. The Court cannot answer
21 factual questions. You must consider only the
22 testimony in evidence that has been submitted into
23 the record for the purposes of your deliberations.

24 You cannot conduct your own independent
25 investigation or factfinding outside of the

1 evidence and testimony presented to you during the
2 course of this trial. You are not to speculate or
3 draw any inferences or conclusions from this
4 response to your inquiry during your deliberations.
5 If you desire to have the testimony of any witness
6 replayed or rehear any portions of the law, please
7 advise the bailiff and we will accommodate your
8 request immediately.

9 Is there any exception to that
10 response, from the State?

11 MS. HERRING-LASH: No, Your Honor.

12 THE COURT: From the defense?

13 MR. KOZELSKI: No.

14 THE COURT: I will attach this response
15 to the note. It has already been marked as a
16 Court's exhibit, and the bailiff will instruct the
17 jury that they are to keep this note along with the
18 other evidence.

19 We will be at ease until we get further
20 instructions.

21 (Jury deliberating 1:58 p.m. - 2:44
22 p.m.)

23 THE COURT: You may be seated. Okay.
24 The first note they sent -- the second note was
25 they wanted to take a break and go outside, and I

1 let them do that. I don't know that we need to
2 have that marked as an exhibit; I'm just going to
3 throw it away.

4 Respectfully, may we please hear or
5 view the testimony of Minor and Dr. Schuh again?
6 When I got this note, I had my court reporter cue
7 up the testimony. My records -- let's see, the
8 first part of Ms. Minor 's testimony was on the
9 6th, started at 3:42. I'm thinking the first part
10 of her testimony is about ten minutes before we
11 broke for the in camera part of it, and then on the
12 7th, her testimony was from 1:12 to 2:03. So
13 that's about an hour -- just shy of an hour, close
14 to 45 minutes.

15 And then Dr. Schuh's testimony was from
16 4:24 to 4:48. So the Court Reporter will take the
17 digital recording into the jury room along with her
18 external speakers and a bailiff will accompany her
19 and she will replay the testimony for the jury.

20 Any exceptions from the State?

21 MS. HERRING-LASH: No, Your Honor.

22 THE COURT: Any exceptions from the
23 defense?

24 MR. KOZELSKI: No, Your Honor.

25 THE COURT: All right. We'll keep you

VERDICT

1 posted.

2 (COURT EXH. 2, Jury note, was marked
3 for identification.)

4 (Testimony played for jury in the jury
5 room.)

6 THE COURT: We have a verdict. The
7 jury has reached a verdict.

8 Is the State ready to proceed?

9 MS. HERRING-LASH: Yes, Your Honor.

10 THE COURT: Is the defense ready to
11 proceed?

12 MR. KOZELSKI: Yes, Your Honor.

13 (Jury in, 4:44 p.m.)

14 THE BAILIFF: All jurors are present.

15 THE COURT: Madame Forelady, is it
16 correct that the jury has reached a verdict?

17 MADAME FORELADY: It is indeed, Your
18 Honor.

19 THE COURT: If you will give the
20 verdict forms to the bailiff please?

21 Sir, stand for publication of the
22 verdict.

23 THE CLERK: In the Court of General
24 Sessions, Indictment Number 2014-GS-10-3549, the
25 State of South Carolina versus Walter Scott

VERDICT

1 Garrett, we the jury, by unanimous consent, find
2 the Defendant guilty of criminal sexual conduct
3 with a minor in the first degree. As to Indictment
4 2014-GS-10-3550, we the jury, by unanimous consent,
5 find the Defendant guilty of criminal sexual
6 conduct with a minor, first degree.

7 Madame Forewoman, ladies and gentlemen
8 of the jury, if this is your verdict, please raise
9 your right hand.

10 (Hands raised)

11 THE CLERK: Please let the record
12 reflect that all jurors have raised their right
13 hands.

14 THE COURT: Is there any request to
15 poll the jury from the State?

16 MS. HERRING-LASH: No, Your Honor.

17 THE COURT: From the defense?

18 MR. KOZELSKI: Yes, Your Honor.

19 THE COURT: Please proceed with polling
20 the jury.

21 Ladies and gentlemen, if you would give
22 the clerk your attention.

23 THE CLERK: When I call your juror
24 number, please raise your hand to identify
25 yourself. I will then ask you two questions.

1 that was done was wrong. I've struggled to accept
2 the fact that nothing is wrong with me. This has
3 been a long and disheartening journey and I have
4 blamed myself in different ways throughout these
5 26 years, and I hope that the blame will finally be
6 placed where it belongs.

7 THE COURT: Thank you, ma'am.

8 Yes, ma'am.

9 MS. HERRING-LASH: Your Honor, I would
10 say that I know these events happened a long time
11 ago, but I don't think that makes them any less
12 serious. The things that this child had to endure
13 were horrific and I would ask the judge for as much
14 time as you can possibly give him.

15 THE COURT: Mr. Kozelski.

16 MR. KOZELSKI: Thank you, Your Honor.
17 May it please the Court?

18 THE COURT: Yes, sir.

19 MR. KOZELSKI: Walter is 55 years old.
20 He has been in custody without a bond since
21 December 31, 2013; by my calculation, 556 days. To
22 me, Mr. Garrett has been an ideal client. He has
23 waited patiently. I know many of the people in the
24 jail don't understand our case loads and they begin
25 to complain that they are not being seen or not

1 being adequately taken care of, but Mr. Garrett was
2 always very patient with me.

3 And, obviously, with these charges
4 looming over his head, he knows that he --
5 potentially with his health, this could be a life
6 sentence.

7 THE COURT: You said with his health,
8 what are you referring to?

9 MR. KOZELSKI: He tells me he has very,
10 very poor health. He has been addressing some of
11 those issues at the jail. He's -- he's got a
12 myriad of health problems, and I think the State
13 could attest to that. I think that was one of the
14 indicators of finding him were all the medical debt
15 that he had accrued in Clayton County, Georgia due
16 to his -- I don't want to get into too many
17 details, but he's arthritic. He does have --
18 suffer issues with his back and some other disease
19 that he suffers from.

20 He has had family support throughout
21 this entire process --I've kept in contact with his
22 brother, Harold, for the last year and a half --
23 they have been very supportive. They have been
24 here every day throughout the trial, and that's
25 along with his other brother and sister that are in

1 the back. And, you know, obviously, we're all in a
2 bit of shock here and I would ask you -- I would
3 ask the Court to consider, obviously, not a
4 probationary sentence, but a sentence that
5 considers the time that he's already done and in
6 his waning years, something in the five to
7 seven-year range.

8 Obviously, this has taken him by
9 surprise, coming 25 years after the fact, and that
10 has, I think to a certain degree, hurt his ability
11 to help me defend him in the sense that he was
12 unable to recall certain events and unable to give
13 me certain witnesses that I think I needed to
14 question in order to give him the proper defense,
15 but -- I've advised him to stay silent for purposes
16 of appeal, but I would say, Your Honor, he's been
17 nothing but -- nothing but kindness and an ideal
18 client of mine.

19 THE COURT: Anything further?

20 MS. HERRING-LASH: Not from the State,
21 Your Honor.

22 THE COURT: I mean from Mr. Kozelski,
23 then I'm going to come back to you.

24 MR. KOZELSKI: No, Your Honor.

25 THE COURT: Anything further from the

1 State?

2 MS. HERRING-LASH: I think that he's
3 been suffering from some sicknesses for a long
4 time, but he seems to have done well. The victim
5 remembers him -- having her grandmother telling her
6 that he was suffering back years ago from some
7 illnesses, and that does nothing to minimize what
8 he did.

9 THE COURT: And what's the State's
10 position on his request to a time frame of five to
11 seven years?

12 MS. HERRING-LASH: Your Honor, I would
13 -- I think that is -- nowhere near speaks to the
14 crime that he committed, and we would ask for much
15 more than seven years active time. I think the
16 high end of his 30 years is what he deserves. Or,
17 actually, I guess it would be 60.

18 THE COURT: Well, if it were run
19 consecutively.

20 MS. HERRING-LASH: That's what I meant.

21 THE COURT: This has a violent
22 classification, correct?

23 MS. HERRING-LASH: Yes, Your Honor.

24 THE COURT: Served at 85 percent?

25 MS. HERRING-LASH: I don't know if it's

SENTENCING

1 85 percent or 65 --

2 THE COURT: Or 65 percent, based on the
3 time that it happened, correct?

4 MS. HERRING-LASH: Right.

5 THE COURT: Do you all know? Have you
6 called the Department of Corrections to find out?

7 MS. HERRING-LASH: I know that it was
8 not most serious and that is when the 85 percent
9 kicked in. Before that, I think they filed it as
10 65.

11 THE COURT: I thought so. If you could
12 bear with me just one moment.

13 Sir, stand for sentencing. Based on
14 what has been presented to the Court, sir, I
15 sentence you to the State Department of Corrections
16 for a period of 15 years on each of these offences.
17 These sentences will run concurrently with one
18 another. You'll get credit for any time that
19 you've served pursuant to 24-13-40, to be
20 calculated and applied by the Department of
21 Corrections.

22 I did not ask, sir, and I apologize, is
23 there anything that you would like to state for the
24 record on your own behalf?

25 THE DEFENDANT: No, ma'am.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

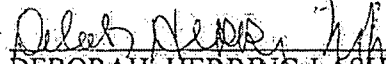
INDICTMENT

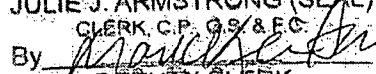
At a Court of General Sessions, convened on July 7, 2014 the Grand Jurors of Charleston County present upon their oath:

Criminal Sexual Conduct With A Minor 1st Degree

That WALTER SCOTT GARRETT, date of birth September 10, 1959, did in Charleston County between October 1989 and January 1990 commit a sexual battery to wit: sexual intercourse upon Minor , date of birth . This is in violation of Section 16-3-655 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 DEBORAH HERRING-LASH
 ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., G.S. & F.C.
 By 
 DEPUTY CLERK

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

199002881B

ARREST WARRANT NUMBER

DATE OF ARREST

January 4, 2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury Date: Cynthia A. Lawler JUL 08 2014

VERDICT

Guilty

Cynthia A. Lawler

Foreperson of Petit Jury

Date: 7/8/15

INDICT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

July Term 2014

THE STATE

vs.

WALTER SCOTT GARRETT

DOB:

W/M

Indictment for

Criminal Sexual Conduct With A Minor 1st Degree

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

INDICTMENT

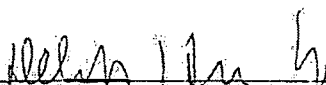
At a Court of General Sessions, convened on July 7, 2014 the Grand Jurors of Charleston County present upon their oath:

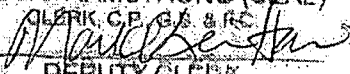
Criminal Sexual Conduct With A Minor 1st Degree

That WALTER SCOTT GARRETT, date of birth September 10, 1959, did in Charleston County between October 1989 and January 1990 commit a sexual battery to wit: fellatio upon Minor date of birth

This is in violation of Section 16-3-655 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 DEBORAH HERRING-LASH
 ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., C.S. & RC
 By 
 DEPUTY CLERK

HER20140100119

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

199002881B

ARREST WARRANT NUMBER

C298433

DATE OF ARREST

July 4, 2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: *Anthony Debb*

VERDICT

Guilty

Foreperson of Petit Jury

INDICT

DOCKET NO. 2014GS1003549

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

July Term 2014

THE STATE

vs.

WALTER SCOTT GARRETT

DOB:

W/M

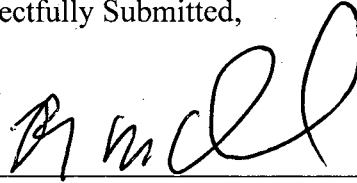
Indictment for

Criminal Sexual Conduct With A Minor 1st
Degree

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 19th day of October, 2016.

RECEIVED

OCT 19 2016

SC Court of Appeals