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ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Alison Renee Lee, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

AUSTON BREAZEAL

APPELLANT

APPELLATE CASE NO 2016-001780

RECORD ON APPEAL

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JUN 23 2017

SC Court of Appeals

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1 August 22, 2016

2 * * * * *

3 THE COURT: Ladies and gentlemen, we are about to
4 begin the case of the State versus Auston Lee Breazeale.
5 Ladies and gentlemen, this case comes to us by way of an
6 indictment. I now will read the indictment to you. It
7 states that at a Court of General Sessions convened in
8 June of 2016 the grand jurors of Lexington County present
9 upon their oath that in Lexington County, South Carolina
10 between the dates of April 2, 2014 and February 7, 2015
11 the defendant Auston Lee Breazeale did commit a sexual
12 battery upon a minor, C.M., with the date of birth of
13 4/2/2010 who was less than 11 years of age by putting his
14 penis in her mouth in violation of Section 16-3-655 of
15 the South Carolina code of laws as amended all against
16 the piece and dignity of the State and contrary to the
17 statute in such case made and provided.

18 Ladies and gentlemen, this is an indictment against
19 Mr. Breazeale for criminal sexual conduct with a minor in
20 the first degree and to this indictment, ladies and
21 gentlemen, the defendant has pleaded not guilty and so
22 that casts the burden upon the State to prove that the
23 defendant is guilty of this particular crime by evidence
24 that satisfies the jury of that guilt beyond a reasonable
25 doubt.

1 Is there any member of jury panel who was a member
2 of the grand jury that returned the indictment in this
3 particular case? If so, please stand.

4 (No one standing.)

5 THE COURT: The State of South Carolina is
6 represented by Kinli Abee. Please stand and face the
7 panel. And David Fernandez both with the South Carolina
8 Attorney General's Office. Is there any member of the
9 jury panel who is related by blood or marriage or a close
10 personal friend of any of these attorneys or have you
11 ever been represented by them or have you ever been
12 employed with the South Carolina Attorney General's
13 Office? If so, please stand.

14 (No one standing.)

15 THE COURT: Thank you. The victim in this case is
16 Minor Child Is there any member of the jury panel
17 related by blood or marriage or close personal friend of
18 Minor Child ? If so, please stand.

19 (No one standing.)

20 THE COURT: The defendant in this case is Auston Lee
21 Breazeale. Mr. Breazeale, if you would stand and face
22 the jury panel please.

23 MR. BREAZEALE: (Complies.)

24 THE COURT: Is there any member of the jury panel
25 who is related by blood or marriage or close personal

1 friend of Mr. Breazeale? If so, please stand.

2 (No one standing.)

3 THE COURT: Thank you, sir. Mr. Breazeale is
4 represented by Theo Williams of the law firm of Williams,
5 Stitley and Brink. Is there any member of the jury panel
6 related by blood or marriage or close personal friend of
7 Mr. Williams or have you ever been represented by him or
8 members of his law firm? If so, please stand.

9 (No one standing.)

10 THE COURT: Thank you. Ladies and gentlemen, there
11 may be additional witnesses who may be called to testify
12 in this matter. If the witnesses are present, if they
13 would stand when I call their names. Ladies and
14 gentlemen, the question to you will be is there any
15 member of the jury panel who is related by blood or
16 marriage or close personal friend of any of the following
17 individuals. And if you hear a name in which that
18 applies, if you would stand when you hear the name.

19 Matthew Trey Marsh. Standing here in the courtroom.
20 Whitney Marsh who is also standing in the courtroom.
21 Thank you. You may be seated. Linda Marsh. James
22 Kemfort with the Lexington County Sheriff's Department.
23 Shannon Hardy. She's standing in the back of the
24 courtroom. Dwayne Rice. Agent April Sykes with the
25 South Carolina Law Enforcement Division. David Kellin.

1 Ladies and gentlemen, is there any member of the
2 jury panel a close personal friend or immediate family
3 member who has ever been the victim of sexual abuse? If
4 so, please stand. Yes, ma'am. Tell me your name
5 please.

6 MARY DAVID: Mary Davis.

7 THE CLERK: Number 46, your Honor.

8 THE COURT: Ms. Davis, I don't want to cause you any
9 embarrassment. If you need to come and speak to me
10 personally, I'll be happy to talk to you personally but I
11 do need to ask you a series of questions.

12 (Side bar.)

13 THE COURT: Is that you or a family member?

14 MARY DAVIS: It was me.

15 THE COURT: And was that recently or a while ago?

16 MARY DAVIS: It was a while ago.

17 THE COURT: And the fact that that occurred, would
18 that prevent you from being able to listen to the
19 evidence in this matter?

20 MARY DAVIS: Yes, ma'am.

21 THE COURT: So you believe that whatever the
22 circumstances, that that would prevent you from being
23 able to serve as a fair and impartial juror in this case?

24 MARY DAVIS: Yes, ma'am.

25 THE COURT: I will excuse you from service in this

1 matter. You can have a seat but you don't have to answer
2 anymore questions. Thank you.

3 Juror number 46 has been excused.

4 (End of side bar.)

5 BAILIFF: 71, Your Honor.

6 (Side bar.)

7 THE COURT: Tell me your name please.

8 KEVIN GLASS: Kevin Glass.

9 THE COURT: Is that you or a family member?

10 KEVIN GLASS: Me.

11 THE COURT: Is that recently or a while ago?

12 KEVIN GLASS: No. When I was young.

13 THE COURT: The fact that that occurred, would that
14 prevent you from being able to listen to the evidence in
15 this case?

16 KEVIN GLASS: No.

17 THE COURT: Would you be able to make a decision
18 based strictly upon the evidence presented here?

19 KEVIN GLASS: Yes.

20 THE COURT: Would you be able to be fair to the
21 State as well as the defendant and be fair and impartial?

22 KEVIN GLASS: Yes.

23 THE COURT: I'll find you qualified. You may have a
24 seat. Thank you. Juror 71 is eligible.

25 (End of side bar.)

1 THE COURT: Is there any member of the jury panel a
2 close personal friend or a family member who has ever
3 been accused of sexual abuse whether there were or were
4 not criminal charges brought? If so, please stand. And
5 again, if you need to discuss the matter with me
6 personally, I'll be happy to talk to you.

7 BAILIFF: 207, your Honor.

8 (Side bar.)

9 THE COURT: Tell me your name please.

10 DEAN VARNEY: Dean Varney. My stepson was accused
11 of sexual abuse of his daughter when she was three, four,
12 something like that. He was found not guilty.

13 THE COURT: So there were criminal charges?

14 DEAN VARNEY: Yes.

15 THE COURT: The fact that that occurred, would that
16 prevent you from being able to listen to the evidence?

17 DEAN VARNEY: No, ma'am. I feel like I had to let
18 you know.

19 THE COURT: Sure. Yes. That's fine.

20 DEAN VARNEY: In case somebody found out later.

21 THE COURT: Would you be able to make a decision
22 based strictly upon the evidence to be presented here?

23 DEAN VARNEY: Yes, ma'am.

24 THE COURT: Would you be able to give both the State
25 as well as the defendant a fair and impartial trial?

1 DEAN VARNEY: Yes, ma'am.

2 THE COURT: Thank you. Have a seat. Juror 207 is
3 eligible and qualified.

4 (End of side bar.)

5 THE COURT: Is there any member of the jury panel
6 who is a member of or contributor to an organization that
7 has as its primary focus those of law enforcement rights
8 or victim's rights? Such organizations would include
9 MADD, SADD, CAV, CODRA, the Sheriff's Law Enforcement
10 Association or the Law Enforcement Officers Association?
11 If so, please stand.

12 (No one standing.)

13 THE COURT: Is there any member of the jury panel
14 who is a member of or contributor to any organization
15 that has as its primary goal the focus or primary focus
16 of those of prisoner rights? Such organizations would
17 include The Innocence Project, any prison ministries, any
18 church affiliated ministries within the prison system as
19 examples. If so, please stand. Yes, sir. Tell me your
20 name please.

21 RICKEY HIERS: Rickey Hiers, number 95.

22 THE COURT: Mr. Hiers, you are a member of or a
23 contributor of one of those organizations for prisoner
24 rights?

25 RICKEY HIERS: Yes, ma'am.

1 THE COURT: The fact that you are a member of or a
2 contributor to one of those organizations would that
3 prevent you in this case to be able to listen to the
4 evidence to be presented?

5 RICKEY HIERS: No, ma'am.

6 THE COURT: Would you be all to make a decision that
7 would be based strictly upon the evidence to be presented
8 here throughout the course of the trial?

9 RICKEY HIERS: Yes, ma'am.

10 THE COURT: Would you be able to give both the State
11 as well as the defendant a fair and impartial trial?

12 RICKEY HIERS: Yes, ma'am.

13 THE COURT: Thank you. You may have a seat.

14 Is there any member of the jury panel who has formed
15 or expressed an opinion about any of the issues that are
16 to be determined in this particular case? If so, please
17 stand.

18 (No one standing.)

19 THE COURT: Is there any member of the jury panel
20 who has formed or expressed an opinion as to the guilt or
21 the innocence of the defendant in this case? If so,
22 please stand. Yes, ma'am. Tell me your name please.

23 PAMELLA WADFORD: Juror 209, Pamela Wadford.

24 THE COURT: Ms. Wadford, you have formed an opinion
25 as to the guilt or innocence of the defendant in this

1 case?

2 PAMELLA WADFORD: In all fairness, probably. Yes,
3 ma'am.

4 THE COURT: Then I will excuse you from service in
5 this particular matter. You may have a seat. You do not
6 need to answer any additional questions. Thank you.

7 Any member of the jury panel that's aware of any
8 bias or prejudice against the State in this particular
9 matter? If so, please stand.

10 (No one standing.)

11 THE COURT: Is there any member of the jury panel
12 that knows of any reason why you would not be able to
13 serve as a fair and impartial juror in this trial of this
14 particular case? If so, please stand. Yes, ma'am. Come
15 forward please.

16 BAILIFF: Number 3, Your Honor.

17 (Side bar.)

18 THE COURT: Your name please.

19 AMBER AMICK: Amber Amick. I just don't think that
20 I will be able to give a fair trial.

21 THE COURT: Okay. So I saw you shaking your head.

22 AMBER AMICK: I'm sorry.

23 THE COURT: You're much like Ms. Wadford.

24 AMBER AMICK: Yes.

25 THE COURT: Okay. That's okay. I'm going to --

1 That's all right. That's why we ask these questions, for
2 you to come forward. I'll excuse you from the trial of
3 this case. You don't have to answer any further
4 questions. I'll transfer you. You can have a seat.

5 AMBER AMICK: Thank you.

6 THE COURT: That's okay.

7 AMBER AMICK: Try to get myself together. Sorry.

8 THE COURT: It's an emotional topic.

9 AMBER AMICK: Yes.

10 THE COURT: You don't have to explain. All right.
11 Thank you. Juror number 3 is excused.

12 (End of side bar.)

13 THE COURT: Is there anything further from the
14 State?

15 MS. ABEE: No, Your Honor.

16 THE COURT: Anything further from the defense?

17 MR. WILLIAMS: Nothing from the defendant, Your
18 Honor.

19 THE COURT: Just to recap and make sure that I have
20 written it correctly, I'm excusing juror number 3, juror
21 number 46, juror number 209. I believe that there are
22 five strikes for the State and ten strikes for the
23 defense. Do the parties wish to have an alternate?

24 MS. ABEE: Yes, Your Honor.

25 MR. WILLIAMS: Yes, ma'am.

1 THE COURT: One or two?

2 MS. ABEE: I think one will suffice, Your Honor.

3 THE COURT: And for the alternate we have one strike
4 for the State and two for the defense.

5 Ladies and gentlemen, as your names are called, if
6 you would please come down to the podium right here where
7 this bailiff is standing and turn and face the attorneys
8 and state your name again please.

9 THE CLERK: Number 108, Dominic Jones.

10 (Whereupon, Dominic Jones, a black male, was called
11 forward.)

12 THE CLERK: What say for the State?

13 MS. ABEE: Please present Mr. Jones.

14 THE CLERK: What says for the defense?

15 MR. WILLIAMS: Please swear the juror.

16 THE CLERK: Have a seat in the jury box, sir. 98,
17 Christopher Holden.

18 (Whereupon, Christopher Holden, a white male, was
19 called forward.)

20 THE CLERK: What say for the State?

21 MS. ABEE: Please present Mr. Holden.

22 THE CLERK: What say for the defense?

23 MR. WILLIAMS: Please excuse the juror from the
24 trial of this case.

25 THE CLERK: Return to your seat please, sir. Number

1 12, Julie Baker.

2 (Whereupon, Julie Baker, a white female, was called
3 forward.)

4 THE CLERK: What say for the State?

5 MS. ABEE: Please present Ms. Baker.

6 THE CLERK: What say for the defense?

7 MR. WILLIAMS: Please excuse the juror from the
8 trial of this case.

9 THE CLERK: Return to your seat, please, ma'am.
10 188, Brent Sires.

11 (Whereupon, Brent Sires, a white male, was called
12 forward.)

13 THE CLERK: What say for the State?

14 MS. ABEE: Please present Mr. Sires.

15 THE CLERK: What say for the defense?

16 MR. WILLIAMS: Please swear the juror.

17 MR. WILLIAMS: Have a seat in the jury box, sir.
18 141, Daniel Murphy.

19 (Whereupon, Daniel Murphy, a white male, was called
20 forward.)

21 THE CLERK: What say the State?

22 MS. ABEE: Please present Mr. Murphy.

23 THE CLERK: What say for the defense?

24 MR. WILLIAMS: Please excuse the juror from the
25 trial of this case.

1 THE CLERK: Please return to your seat, sir. Number
2 22, Timothy Breen.

3 (Whereupon, Timothy Breen, a white male, was called
4 forward.)

5 THE CLERK: What say for the State?

6 MS. ABEE: Please present Mr. Breen.

7 THE CLERK: What say for the defense?

8 MR. WILLIAMS: Please swear the juror.

9 THE CLERK: Have a seat in the jury box, sir. 58,
10 Jeremy Fallaw.

11 (Whereupon, Jeremy Fallaw, a white male, was called
12 forward.)

13 THE CLERK: What say for the State?

14 MS. ABEE: Please present Mr. Fallaw.

15 THE CLERK: What say for the defense?

16 MR. WILLIAMS: Please swear the juror.

17 THE CLERK: Have a seat in the jury box, sir. 218,
18 Tabitha Wilson.

19 (Whereupon, Tabitha Wilson, a black female, was
20 called forward.)

21 THE CLERK: What say for the State?

22 MS. ABEE: Please present Ms. Wilson.

23 THE CLERK: What say for the defense?

24 MR. WILLIAMS: Please excuse the juror from the
25 trial of this case.

1 THE CLERK: Return to your seat, please, ma'am.
2 166, Sandra Rickard.

3 (Whereupon, Sandra Rickard, a white female, was
4 called forward.)

5 THE CLERK: What say for the State?

6 MS. ABEE: Please present Ms. Rickard.

7 THE CLERK: What say for the defense?

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

10 THE CLERK: Please return to your seat, ma'am.

11 THE COURT: The State has five strikes remaining,
12 the defense has five strikes remaining.

13 THE CLERK: 122, Christina Marquis.

14 (Whereupon, Christina Marquis, a white female, was
15 called forward.)

16 THE CLERK: What say for the State?

17 MS. ABEE: Please present Ms. Marquis.

18 THE CLERK: What say for the defense?

19 MR. WILLIAMS: Please excuse the juror from the
20 trial of this case.

21 THE CLERK: Return to your seat, please, ma'am.
22 Number 67, Pamela Gantt.

23 (Whereupon, Pamela Gantt, a black female, was called
24 forward.)

25 THE CLERK: What say for the State?

1 MS. ABEE: Please present Ms. Gantt.

2 THE CLERK: What say for the defense?

3 MR. WILLIAMS: Please swear the juror.

4 THE CLERK: Have a seat in the jury box, ma'am.

5 Number 121, Catherine Maples.

6 (Whereupon, Catherine Maples, a white female, was
7 called forward.)

8 THE CLERK: What say for the State?

9 MS. ABEE: Please present Ms. Maples.

10 THE CLERK: What say for the defense?

11 MR. WILLIAMS: Please swear the juror.

12 THE CLERK: Have a seat in the jury box, ma'am.

13 Number 158, Hunter Poston.

14 (Whereupon, Hunter Poston, a white male, was called
15 forward.)

16 THE CLERK: What say for the State?

17 MS. ABEE: Please present Mr. Poston.

18 THE CLERK: What say for the defense?

19 MR. WILLIAMS: Please excuse the juror from the
20 trial of this case.

21 THE CLERK: Return to your seat please, sir. 95,
22 Rickey Hiers.

23 (Whereupon, Rickey Hiers, a white male, was called
24 forward.)

25 THE CLERK: What say for the State?

1 MS. ABEE: Please present Mr. Hiers.

2 THE CLERK: What say for the defense?

3 MR. WILLIAMS: Please swear the juror.

4 THE CLERK: Have a seat in the jury box, sir. 96,
5 Jeffrey Hoffman.

6 (Whereupon, Jeffrey Hoffman, a white male, was
7 called forward.)

8 THE CLERK: What say for the State?

9 MS. ABEE: Please present Mr. Hoffman.

10 THE CLERK: What say for the defense?

11 MR. WILLIAMS: Please swear the juror.

12 THE CLERK: Have a seat in the jury box, sir. 172,
13 Andrew Rogers.

14 (Whereupon, Andrew Rogers, a white male, was called
15 forward.)

16 THE CLERK: What say for the State?

17 MS. ABEE: Please excuse Mr. Rogers from this
18 case.

19 THE CLERK: Return to your seat please, sir. 21,
20 Dawson Brantley.

21 (Whereupon, Dawson Brantley, a white male, was
22 called forward.)

23 THE CLERK: What say for the State?

24 MS. ABEE: Please present Mr. Brantley.

25 THE CLERK: What say for the defense?

1 MR. WILLIAMS: Please swear the juror.

2 THE CLERK: Have a seat in the jury box, sir. 156,
3 Larry Pitts.

4 (Whereupon, Larry Pitts, a white male, was called
5 forward.)

6 THE CLERK: What say for the State?

7 MS. ABEE: Please excuse Mr. Pitts from this case.

8 THE CLERK: Return to your seat please, sir. 208,
9 Frank Veney.

10 (Whereupon, Frank Veney, a black male, was called
11 forward.)

12 THE CLERK: What say for the State?

13 MS. ABEE: Please excuse Mr. Veney from this case.

14 THE CLERK: Return to your seat please, sir. 49,
15 Dylan Deese.

16 (Whereupon, Dylan Deese, a white male, was called
17 forward.)

18 THE COURT: The State has two strikes remaining.

19 The defense has three strikes remaining.

20 THE CLERK: What say for the State?

21 MS. ABEE: Please excuse Mr. Deese from this case.

22 THE CLERK: Return to your seat please, sir. 53,
23 Claudia Dubose.

24 (Whereupon, Claudia Dubose, a white female, was
25 called forward.)

1 THE CLERK: What say for the State?

2 MS. ABEE: Please present Ms. Dubose.

3 THE CLERK: What say for the defense?

4 MR. WILLIAMS: Please excuse the juror from the
5 trial of this case.

6 THE CLERK: Return to your seat please, ma'am.
7 Number 16, Zachary Barnes.

8 (Whereupon, Zachary Barnes, a white male, was called
9 forward.)

10 THE CLERK: What say for the State?

11 MS. ABEE: Please present Mr. Barnes.

12 THE CLERK: What say for the defense?

13 MR. WILLIAMS: Please swear the juror.

14 THE CLERK: Have a seat in the jury box, sir. 203,
15 Hiram Texidor Guzman.

16 (Whereupon, Hiram Texidor Guzman, a Hispanic male,
17 was called forward.)

18 THE CLERK: What say for the State?

19 MS. ABEE: Please present Mr. Texidor Guzman.

20 THE CLERK: What say for the defense?

21 MR. WILLIAMS: Please swear the juror.

22 THE CLERK: Have a seat in the jury box, sir. 159,
23 Christine Price.

24 (Whereupon, Christine Price, a white female, was
25 called forward.)

1 THE CLERK: What say for the State?

2 MS. ABEE: Please present Ms. Price.

3 THE CLERK: What say for the defense?

4 MR. WILLIAMS: Please swear the juror.

5 THE CLERK: Have a seat in the jury box, ma'am.

6 Proceed with alternate, Your Honor?

7 THE COURT: Yes. One strike from the State, two
8 strikes for the defense.

9 THE CLERK: 223, Juan Young.

10 (Whereupon, Juan Young, black male, was called
11 forward.)

12 THE CLERK: What say for the State?

13 MS. ABEE: Please present Mr. Young.

14 THE CLERK: What say for the defense?

15 MR. WILLIAMS: Please swear the juror.

16 THE CLERK: Have a seat in the jury box, sir.

17 That's the alternate, Your Honor.

18 THE COURT: Are there any motions with respect to
19 the selection of the jury?

20 MS. ABEE: Nothing from the State, Your Honor.

21 MR. WILLIAMS: Nothing from the defense, Your
22 Honor.

23 THE COURT: The remaining members of the jury panel,
24 I would like to thank you very much for your willingness
25 to serve as jurors in this matter. You are now excused

1 for the remainder of the day. Please call the telephone
2 number that you have been given after 6:00 p.m. tonight
3 for further instructions. Thank you.

4 (Whereupon, the remaining jury venire were released
5 from jury service on this case.)

6 THE COURT: Ladies and gentlemen, you have now been
7 chosen as jurors in this particular case. As jurors your
8 function is to determine the facts based upon the
9 evidence that's been presented and then ultimately to
10 determine whether or not the State will meet its burden
11 of proof in this particular case. In connection with
12 this case I ask, I'm going to ask that you follow certain
13 instructions that I'm going to give you. I'm not going
14 to swear you as jurors at this particular time, but I
15 will do that shortly.

16 The first thing, ladies and gentlemen, I ask that
17 you not begin to discuss this matter among yourselves.
18 You have heard of the indictment in this case. The
19 reading of the indictment. The indictment is just the
20 charge that has been brought against this particular
21 defendant. It is not evidence in this case and so I ask
22 that you not discuss what you hear or see throughout the
23 course of this trial among yourselves until it's time for
24 y'all to begin your deliberations. The evidence does not
25 always come in in a chronological order. It may come in

1 in a piecemeal basis, but until you have heard all of the
2 evidence and until you have heard my instructions to you
3 as to the law you are not in a position to be able to
4 make a decision in this matter so I ask that you simply
5 do not discuss it until it's time for you to begin your
6 deliberations.

7 Secondly, ladies and gentlemen, as you come and go
8 from the courthouse when we take a lunch break and when
9 we take a break, I ask that you not allow anyone to
10 approach you to discuss this matter with you. It's
11 inappropriate for anyone to come up to you and talk to
12 you about this case while you're seated as a juror. If
13 someone approaches you and wants to talk to you about
14 this case, please tell them that you are a juror and you
15 cannot discuss it and we ask that you report it as soon
16 as possible. You can report it to the bailiffs or to the
17 Clerk's Office or to me. But certainly we ask that you
18 report it so we can conduct an investigation to make sure
19 that no one is attempting to influence you in any way.
20 And, of course, the only way that we can do an
21 investigation is if you report it to us.

22 Also, ladies and gentlemen, as you come and go from
23 the courthouse, please do not listen to conversations
24 that you may hear in the hallways. Oftentimes the
25 attorneys may be discussing things with each other, with

1 their clients or witnesses, and the decisions that you
2 have to make about this case must be based upon the
3 evidence that will be presented here in this courtroom.
4 It should not be based upon conversations that you may
5 overhear as you come and go so I simply ask that you not
6 listen to any of those conversations or discussions.

7 Now, Mr. Young is the alternate. Your role is also
8 very important in this case. If one your fellow jurors
9 is unable to complete service, then you would step into
10 that person's shoes and fulfill service on that part.
11 When you come into the courtroom, I ask that you always
12 take the seat where you are seated at this particular
13 time so that we can keep up with your whereabouts.

14 Mr. Barnes, I'm going to ask if you will switch
15 seats with this gentleman in the front row in the blue
16 shirt please. I'm going to ask that you serve as the
17 foreperson of this jury. As the foreperson your role is
18 to communicate with me in the event that there is
19 anything that you need throughout the course of this
20 trial. For example, if there is anyone that has any
21 health issues or conflicts, after work appointments that
22 I need to be aware of for purposes of scheduling court
23 and making sure that everyone is able to come to court,
24 you should write me a note about that. But more
25 importantly when this case is submitted to the jury, you

1 will be the person who will be responsible for making
2 sure that everyone has the opportunity to express his or
3 her views about the evidence and what the evidence shows.

4 It's also your responsibility to coordinate those
5 discussions during the course of your deliberations and
6 then when you have rendered a verdict, it will be your
7 responsibility to record the verdict on the appropriate
8 form. I thank you in advance for your service in this
9 matter.

10 Ladies and gentlemen, I also ask that if you have
11 any reading materials, I don't screen your reading
12 materials. I don't want to screen them. I never know
13 when there is something that you possess that may have
14 some impact or some issue or fact to be determined in
15 this case. Out of an abundance of caution we ask that
16 you not keep that with you into the jury room so to the
17 extent that you have any of those materials, they will
18 collect them from you. At lunch time they will return
19 them to you and then at the end of the day they will
20 return them to you.

21 Additionally, the same with your cell phones. Your
22 cell phones will be collected from you so I ask if you
23 will turn them off. If for some reason you need to be
24 connected to your home or office for whatever reason, if
25 you will turn it on silent or vibrate, if it goes off,

1 then we'll try to take a break so that you can address
2 any emergencies that may arise. But we ask that you not
3 keep your phones with you while you're in the jury room.

4 At this particular time, ladies and gentlemen, I'm
5 going to ask that you retire to the jury room for just a
6 few moments. We do have some legal issues which we need
7 to take up outside of your presence. I will consult with
8 the attorneys to find out if that can be done quickly.
9 If it's going to take us a little bit of time, then I
10 will probably send you on to lunch and then we'll just
11 come back early from lunch and be able to go forward at
12 this time. I don't want to keep you in the jury room if
13 I don't have to keep you in the jury room. But if you
14 will just give me a few moments to consult with the
15 attorneys. If you will follow the bailiff out, he will
16 show you the room that you should report to. This will
17 also be the same room that you will report to throughout
18 the course of this trial. So whenever you come back from
19 lunch and when return in the morning, you report to the
20 same jury room.

21 I will also before we start the trial give you a
22 little bit of an overview of how the trial will progress.
23 I'm sure that we will not finish today. I think they're
24 hopeful that we may be able to get the case to you
25 tomorrow for you to begin your deliberations. We'll see

1 how that works out. So if you will just follow the
2 bailiff out and retire to the jury room temporarily and
3 we'll bring you back in just a few moments.

4 (Whereupon, the jury entered the jury room at 11:45
5 a.m.)

6 THE COURT: Counsel, I understand that there are
7 some pretrial issues. I believe earlier y'all indicated
8 that you discussed a few of them. I'm just trying to get
9 kind of a handle on the length of time that this might
10 take. I understand that there is also a video that I
11 need to watch which may take a little bit of time.

12 MS. ABEE: Yes, Your Honor. I do think it's
13 probably best to start after lunch. I think our pretrial
14 motions -- Or for the jury to come back after. I don't
15 think there is anything we would be able to get done
16 before that.

17 MR. WILLIAMS: Your Honor, I would think that we
18 could handle all the pretrial motions as well as view the
19 video by 1:00. It will take us up to probably 1:00, Your
20 Honor.

21 THE COURT: For all the pretrial motions?

22 MR. WILLIAMS: Yes, ma'am.

23 THE COURT: Then we need to get a lunch hour. So
24 you're saying that we will be hearing argument for
25 another hour?

1 MR. WILLIAMS: The video is 30 minutes so maybe less
2 than that.

3 THE COURT: Okay. That's not a problem. That tells
4 me what time I need to tell them to come back then.
5 Thank you. I don't intend to swear them until we finish
6 all the pretrial issues. We can bring them back in.
7 That was quick.

8 (Whereupon, the jury entered the courtroom at 11:47
9 a.m.)

10 THE COURT: Just when you were getting back to the
11 room, I call you back in. Ladies and gentlemen, I have
12 consulted with the attorneys. I'm going to give you
13 until 2:00 for a lunch break. That will give us plenty
14 of time to be able address our legal issues and give us
15 an opportunity to grab some lunch as well. If you will
16 report back to the same jury room at 2:00 p.m. Please
17 remember all the instructions that I have given to you,
18 that is not to discuss this matter among yourselves. Not
19 to allow anyone to approach you to discuss this matter
20 with you. Not to listen to conversations that you may
21 hear in the hallways as you come and go. When you report
22 back at 2:00, then at that time we will be ready to begin
23 the trial. I'll give you the overview of how the trial
24 will proceed and then we'll get started. Thank you.
25 Have a good lunch. We'll see you back at 2:00.

1 (Whereupon, the jury was excused for lunch.)

2 THE COURT: I believe the State had some pretrial
3 motions; is that correct?

4 MS. ABEE: Yes, Your Honor.

5 THE COURT: Let's take up the motion to exclude
6 third party evidence.

7 MS. ABEE: Yes, Your Honor. This case is somewhat
8 interesting. As Your Honor read on the indictment the
9 defendant is charged with criminal sexual conduct with a
10 minor in the first degree for engaging in a sexual
11 battery with a minor Minor Child who was four years old
12 at the time. The victim in the case, Your Honor, alleges
13 that the defendant placed his penis in her mouth.

14 During the forensic interview portion of this
15 investigation, Your Honor, the victim also disclosed that
16 she had seen the penis of someone named Jacob. Jacob is
17 a small minor boy similar to the age of the victim, Your
18 Honor, and in speaking with the mother of the child she
19 states that the child alleges that he showed her his
20 penis and may have touched her with a stick or something
21 like that in her private area. She then alleges the
22 sexual assault against the defendant, Your Honor, which
23 again is simply him placing his penis inside of her
24 mouth.

25 Although the child does, in fact, bring up Jacob in

1 that incident, Your Honor, they are completely separate
2 and distinct from the allegations that the minor makes
3 against the defendant in this case, therefore we would we
4 ask that they be excluded for any reference by the State
5 or by the defense as any reference to Jacob and Jacob
6 possibly being the perpetrator of this sexual assault
7 just merely casts suspicion on Jacob as the child has
8 never asserted that Jacob did any oral penetration as she
9 said the defendant does. Therefore, we would contend
10 that it doesn't rise to the level of third party guilt,
11 Your Honor. That is just casts a bear suspicion and we
12 would ask that any reference to that child and that
13 sexual contact be excluded from this case.

14 THE COURT: Mr. Williams.

15 MR. WILLIAMS: Your Honor, on the face of it I would
16 agree with the Attorney General's Office. However, it's
17 a little more complicated than that because the other two
18 motions that they actually have, one is for the alleged
19 indictment which the defendant is charged with which is
20 criminal sexual conduct first degree, and then they're
21 gonna attempt to allow in another assault type of case
22 into that particular case.

23 I learned yesterday, Your Honor, from a text from
24 the Attorney General's Office that there had been some
25 acting out. I appreciate her doing this on Sunday, but

1 she sent me a text indicating that the child may have
2 exhibited some sort of sexual acting out and as we know
3 in this particular case they have a blind, they call them
4 a blind expert. I assume that's an expert who has not
5 seen the victim is going to testify about characteristics
6 of someone who has been sexually assaulted.

7 So, Your Honor, the complication is this. As I
8 understand sexual assaults that sometimes with a small
9 child there will be acting out if the child has been
10 sexually assaulted. So for whatever reason that this
11 acting out the child may testify to or may be repeated in
12 the courtroom about, that may be evidence that the child
13 has been sexually abused by someone else and we wouldn't
14 want the characteristics in regards to the sexual assault
15 attributed to this defendant if indeed it was the result
16 of some other sexual assault.

17 So it's not as clean as you would like it to be. As
18 we know, the reason they use Lyle on these types of cases
19 is because when you have a four year old child, it's hard
20 to recollect specifically things that happen and they use
21 this on the State identity, things of that nature. So
22 only because they are attempting to Lyle in this evidence
23 we think that that would be appropriate. At least have
24 that testimony out that that occurred when she was given
25 that forensic interview.

1 THE COURT: But in order to constitute any evidence
2 related to third party guilt there has to be evidence
3 which would exclude the defendant as the perpetrator.

4 MR. WILLIAMS: I understand.

5 THE COURT: And so are you claiming that that
6 information would rise to that level? And if so, how?
7 It has to be inconsistent with his own guilt or evidence
8 of his own guilt.

9 MR. WILLIAMS: Your Honor, obviously it's a
10 difficult thing for me to argue because I guess what I'm
11 saying is that if they are going to be allowed to testify
12 to the acting out of the child as evidence of a sexual
13 assault, then they can't differentiate between that and
14 alleged assault which occurred by some other, as a result
15 of some other child. So I guess that's the problem.
16 Maybe not for purposes of third party guilt but as the
17 State in regards to her memory, recollection, things of
18 that nature. So I'm not exactly sure how you qualify
19 that but that's the issue which we really have is that if
20 she is going to testify in regards to some sort of sexual
21 acting out or if that's brought up, then that might be a
22 problem if we can't bring up the fact, well, she's
23 already been at least touched inappropriately by some
24 other child.

25 And I agree with her. Not that these specific

1 episodes which he's charged with could be attributed to
2 that because clearly she says it's oral sex committed by
3 the defendant. I guess it's limited in scope, Your
4 Honor.

5 THE COURT: Yes, sir. So more as a reason, it's
6 something to point to to indicate that her acting out
7 could be for these other reasons and not for the
8 allegations in this particular case?

9 MR. WILLIAMS: Yes, ma'am.

10 THE COURT: Okay. What says the State?

11 MS. ABEE: Your Honor, we would ask that if that is
12 the holding in this case, that the defense be limited
13 until we actually bring that evidence up. We may not
14 even go into the fact that the child was acting out so if
15 that is their rebuttal to this third party guilt, then we
16 would ask that they be limited and only presenting that
17 once the State has, in fact, opened the door and talked
18 about any sexual acting out on behalf of the minor
19 because as I stated, that might not even come out
20 throughout the course of the trial, Your Honor.

21 However, we would still contend that the sexual
22 acting out and stating that she was sexually - she had
23 seen a penis of a small child, a four year old child
24 still isn't consistent with the fact of the defendant's
25 guilt in this case; that she alleges that she was

1 sexually assaulted by him. My understanding of the
2 previous allegation or the allegations with Jacob is that
3 he is a four year old boy. And I hate to rephrase it
4 this way, but one of those kindergarten type, you show me
5 yours, I'll show you mine kind of incidences and that he
6 touched her with a stick in her private area. That is
7 completely inconsistent and different with sexualized
8 acting out of oral penetration which she alleges against
9 the defendant. So we would contend that any reference of
10 that still is inconsistent with the defendant's guilt.

11 THE COURT: And I would tend to agree with that, if
12 the evidence supports what you have indicated to me that
13 it was a four year old who showed his penis and perhaps
14 touched her with a stick. But I think I need to, and
15 perhaps if this was discussed during the course of the
16 forensic interview, that might clarify some of that
17 information as well.

18 MS. ABEE: It is, Your Honor. It is.

19 THE COURT: I would tend to agree. If that's
20 basically the substance, we are not talking about someone
21 who is older and perhaps has more of what I would call a
22 criminal intent or was aware of what was going on and
23 intentionally engaged in those acts. I think it's a
24 little bit different with someone who is four years old
25 who I would like to think could not develop any kind of

1 criminal intent at that particular age under the
2 circumstances.

3 MS. ABEE: And, Your Honor, if for some reason it's
4 still unclear after the forensic, we will be happy to
5 proffer any testimony from any witnesses that can help
6 fill in the blanks.

7 THE COURT: All right. Then turning to the other
8 bad acts.

9 MS. ABEE: Yes, Your Honor. As I stated, the
10 defendant is charged with oral penetration of the minor
11 Minor Child when she was four years old. There are two
12 other incidents that we would contend are prior bad acts
13 that were committed on behalf of the defendant, Your
14 Honor. First would be sometime between April and May of
15 2014 when the child alleges that the defendant exposed
16 his penis to her, Your Honor. That took place at the
17 minor's home. Secondly, it would be sometime between
18 July 7th, 2014 and July 11th, 2014 when the defendant,
19 actually an eyewitness walked in and saw the defendant
20 with his hand down the front of the minor's pants. She
21 was again four years old at that point in time, Your
22 Honor, and was located at her grandmother's house which
23 is the location of the alleged oral sexual assault as
24 well, Your Honor. We would contend that these are other
25 bad acts, prior bad acts on behalf of the defendant and

1 should be admissible under the common scheme or plan
2 exception under Rule 404(b), Your Honor, and I'm prepared
3 to go into that legal argument if you're ready.

4 THE COURT: And those are acts that are not the
5 subject of the other indictment?

6 MS. ABEE: Correct. The indictment right here, Your
7 Honor.

8 THE COURT: Either this indictment or the indictment
9 ending in 6030 since this one has been changed. This is
10 6031. 2015-GS-32-6031.

11 MS. ABEE: Yes, Your Honor.

12 THE COURT: And I understand there is another
13 indictment as well. 2015-GS-32-6030.

14 MS. ABEE: 6030, Your Honor, is digital penetration
15 alleged at the same time that the eyewitness saw the
16 defendant's hand down the front of the minor's pants so
17 that would be part of that indictment although we are not
18 necessarily going into the digital penetration that the
19 minor alleged in the forensic interview, rather just the
20 fact that an eyewitness saw his hands down the front of
21 the pants. So it would be more of a CSC third or a lewd
22 act as opposed to the CSC first with a minor that he's
23 charged with. So while it's a part of that, it isn't
24 actually what the acts he's charged with. It's just the
25 eyewitness witnessing the hand down the front of the

1 pants.

2 THE COURT: And you're claiming that it should be
3 admissible under 404(b) as evidence of a common scheme or
4 plan?

5 MS. ABEE: Yes, Your Honor.

6 THE COURT: Any others?

7 MS. ABEE: No, Your Honor. Just the common scheme
8 or plan exception that this is kind of what the defendant
9 does.

10 THE COURT: Any additional argument that you want to
11 make about this at this time?

12 MS. ABEE: Your Honor, just to make the record clean
13 I would. For this evidence to be admissible we first
14 have to determine that it's relevant pursuant to Rule
15 401. This is extremely relevant in this case not only
16 because it's sexualized acts between the defendant and
17 the same victim at the same age and generally in the same
18 locations, but also because family members in this case,
19 Your Honor, when they found out about the prior acts,
20 they then took additional steps in preventing or
21 attempting go prevent the defendant and the victim from
22 being together. So there are acts of other witnesses in
23 this case, Your Honor, that occurred as a result of these
24 prior allegation.

25 THE COURT: I'm sorry. Repeat that again. There

1 are other acts involving other individuals? Is that what
2 you're saying?

3 MS. ABEE: What I'm saying is the other, for
4 instance, the parents in this case took acts to limit
5 access between the defendant and the victim after these
6 allegations came out, after the exposure incidents came
7 out so other witnesses took steps in furtherance of kind
8 of the daily interactions between the defendant and
9 victim because of these prior allegations.

10 Your Honor, once we determine whether or not it's
11 relevant under 401, we have to determine whether or not
12 it fits into the 404(b) exception of common scheme or
13 plan. In State v. Wallace is lists some factors that we
14 look at. One being the age of the victim, Your Honor.
15 She is the same age during all these allegations. She's
16 four years old. Second being the relationship between
17 the victim and the perpetrator. They were cousins, Your
18 Honor, so the relationship is the same throughout.
19 Number 3 is the location. The location is always the
20 family home, Your Honor. One being the home of the
21 victim. The other two incidents being the home of the
22 grandmother of both the victim and the defendant. Four
23 being use of coercion or threats which just are absent in
24 all three of these cases, Your Honor. And then finally
25 the manner or type of sexual battery, your Honor.

1 And although they are not the same battery, it's not
2 oral penetration each time, this does show an escalating
3 pattern of behavior starting with exposure and then a
4 hand down the pants and ultimately oral penetration, Your
5 Honor. In State v. Kirton, Your Honor, actually held
6 that a six or seven year of escalating abuse was, in
7 fact, prior bad acts even though it wasn't completely the
8 same. So, Your Honor, we contend that this shows the
9 defendant's common scheme or plan to isolate the victim
10 in a home by herself and then engage in some sort of
11 sexual touching or sexual act with her and we would
12 contend that it's appropriate to be talked about
13 throughout the course of this trial, Your Honor, as it is
14 another bad act.

15 THE COURT: And then finally I would have to do any
16 validity test in terms of weighing the probative value
17 versus prejudice.

18 MS. ABEE: Yes, Your Honor.

19 THE COURT: Mr. Williams?

20 MR. WILLIAMS: Your Honor, I don't know that I
21 disagree with the argument of the Attorney General's
22 Office provided that's what the facts reveal so as long
23 as those facts are revealed in testimony, then I don't
24 know that I would disagree. I have tried several of
25 these types of cases and I think she has quoted the law

1 perfectly.

2 THE COURT: It does appear based upon what's been
3 stated to me as the facts in the case to be relevant
4 under 401 and I would believe that under 404 it would
5 demonstrate a common scheme or plan particularly in the
6 fact that it's the same individual. The relationship
7 between them, that their family members, that occurred in
8 family homes, and that it appeared that it was, over time
9 the acts appeared to escalate and so I think it's
10 relevant. In terms of balancing its probative value
11 versus the prejudice, I think that it's always
12 prejudicial in some form or fashion but I don't think
13 that the prejudice would outweigh its probative value in
14 this particular matter as long as it's limited to those
15 particular instances and as it's been described so I will
16 allow it.

17 Of course, in order to preserve, you need to raise
18 it again, any objection if there is an objection. Then
19 finally I believe we'll go to the information relating to
20 the admissibility of the out of court statement and I
21 assume that's in the form of the video; is that correct?

22 MS. ABEE: It is the video, Your Honor.

23 THE COURT: Yes, ma'am.

24 MS. ABEE: Your Honor, under 17-23-175, the forensic
25 interview is admissible if it meets certain criteria,

1 Your Honor. Mainly that it's preserved in an electronic
2 copy, that the child will be available to testify which
3 we do intend for her to testify and that it contains
4 certain indicators of internal coherence or
5 trustworthiness, Your Honor. Mainly that it's conducted
6 with non leading questions, it's conducted by a trained
7 professional, contains a detailed account of the offense
8 and has internal coherence and that there is the sworn
9 testimony of the victim as well as the forensic
10 interviewer, your Honor. The forensic interviewer is on
11 her way to the courthouse to testify regarding her
12 credentials and her training as a forensic interviewer,
13 Your Honor, and we do in fact have the forensic interview
14 for Your Honor to watch. It's approximately 32 minutes
15 long.

16 THE COURT: Who is the forensic interviewer?

17 MS. ABEE: April Sykes. She's an agent with SLED,
18 Your Honor.

19 THE COURT: Yes, ma'am. I'll watch it at this
20 time.

21 MS. ABEE: Your Honor, I don't know if we have the
22 computer set up for you to watch it in the courtroom.

23 (Whereupon, a video of a forensic interview of the
24 minor child shown to the Court.)

25 MS ABEE: Your Honor, that being the interview

1 portion of the video itself.

2 THE COURT: Any further argument you want to make
3 related to the video?

4 MS. ABEE: Nothing from the State at this time, Your
5 Honor.

6 THE COURT: Mr. Williams?

7 MR. WILLIAMS: None by the defense, Your Honor.

8 THE COURT: At this particular point while there are
9 some additional prerequisites prior to the admissibility
10 of the video, that being the actual testimony of the
11 child and learning more information about the person who
12 interviewed the child, basically the contents appear to
13 be, there was audio and visual, the child appeared to
14 understand about telling what occurred through the use of
15 questions that were asked throughout the interview, the
16 questions were not leading in nature. There was also
17 sufficient preliminary information to understand, for the
18 interviewer and for the interviewer to be able to
19 understand that the child understood body parts, that she
20 understood how to answer the questions in terms of
21 telling whether she did not understand a question or she
22 understood the difference between what was factually true
23 and not factually true based upon some preliminary
24 questions that were asked of her. The statements appear
25 to have coherence. There were follow up questions in

1 relation to what she was asked and she was able to answer
2 those questions, and so subject to the other
3 prerequisites being fulfilled it appears that the
4 statement, the video would be admissible. She is under
5 the age of 12 and otherwise meets the criteria set forth
6 in the statute. Is there anything further?

7 MS. ABEE: Nothing at this time, Your Honor.
8 However, if you wanted us to question the forensic
9 interviewer at this point, she is here or we can just
10 wait prior to the video being published and entered into
11 evidence.

12 THE COURT: You know, I hate to have her testify
13 twice, although I assume she can, but to the extent that
14 -- Mr. Williams, do you anticipate that her
15 qualifications would be called into question?

16 MR. WILLIAMS: I do not, Your Honor.

17 THE COURT: Certainly once she's testified as to her
18 qualifications, if there are some issues, we can take
19 them up at that particular point.

20 MS. ABEE: Yes, Your Honor.

21 THE COURT: And certainly the prerequisite is that
22 the child testify so subject to those two things, then
23 we'll determine at that particular point the full
24 admissibility of the video. Is there anything else that
25 we need to take up at this time?

1 MS. ABEE: Nothing from the State, Your Honor.

2 THE COURT: Anything from the defense?

3 MR. WILLIAMS: Nothing in regards to the trial
4 itself, Your Honor.

5 THE COURT: Okay. That implies that there's
6 something else.

7 MR WILLIAMS: It does, doesn't it, Your Honor? The
8 jury has not been sworn yet.

9 THE COURT: That's correct.

10 MR. WILLIAMS: I was hopeful that my client could
11 eat lunch without being in the custody of the Lexington
12 County Sheriff's Department since the jury has not been
13 sworn.

14 THE COURT: Mr. Breazeale, you are currently on
15 bail; is that correct?

16 MR. BREAZEALE: Yes, ma'am.

17 MR. WILLIAMS: He is on bail, Your Honor.

18 THE COURT: You are on bail?

19 MR. BREAZEALE: Yes, ma'am.

20 THE COURT: And so you understand I have not ever
21 required that once the trial starts that they be taken
22 into custody. This is what I will tell you,
23 Mr. Breazeale. You are still on bond and I will allow
24 you to remain on bond, but the requirements are this.
25 You are required to be in this courtroom, in this

1 courthouse at the time that I designate. If I say be
2 back at 2:00, whether Mr. Williams is here, whether the
3 other attorneys are here, you need to be present. If I
4 require that you come to court and you are not in court,
5 this trial will continue in your absence so you leaving
6 will not prevent this trial from going forward.

7 In addition, if you are not here when we are
8 supposed to start back with court and we cannot determine
9 where you are or why you are not here, if there is not a
10 good reason for you not being present, then a bench
11 warrant would be issued for your arrest, and then once
12 you are arrested you would remain in custody until such
13 time as either these proceedings are finished or if
14 there's already been a verdict and/or sentence that would
15 be read to you. Do you understand that?

16 MR. BREAZEAL: Yes, ma'am.

17 THE COURT: So no matter what else goes on, you need
18 to make sure that you are here at the time and place that
19 I designate. Do you understand that?

20 MR. BREAZEAL: Yes, ma'am.

21 THE COURT: Is there anything else we need to take
22 up?

23 MS. ABEE: Just two very brief things, Your Honor.
24 One, I did relay this to your law clerk. We have two
25 witnesses that are not available until tomorrow morning.

1 That should give us six witnesses for this afternoon
2 which I do believe will fill up the afternoon. However,
3 I want to bring that to Your Honor's attention in case we
4 do go through those six witnesses a little bit quicker
5 than anticipated. There are some medical reasons and
6 work reasons that the two witnesses are not available
7 until tomorrow morning.

8 Lastly, Your Honor, before the jury comes back and
9 instead of having to stop prior to the child's testimony,
10 we will be asking that Your Honor clear the courtroom of
11 all non essential individuals in the courtroom when the
12 minor testifies. She is only six years old. We would
13 ask that the courtroom be cleared of anyone other than
14 those people that are necessary for the case.

15 THE COURT: Who do you consider to be necessary for
16 the case?

17 MS. ABEE: Your Honor, the defendant, the
18 defendant's attorney, any bailiffs, staff like that. All
19 of our witnesses are going to leave at that point in
20 time. I don't believe the defense has any witnesses.
21 But it would just be the defendant, the defense attorney,
22 us and any necessary staff and personnel.

23 THE COURT: And so her parents will not be present?

24 MS. ABEE: No, Your Honor. They are going to leave
25 during her testimony.

1 THE COURT: All right.

2 MR. WILLIAMS: No objection, Your Honor.

3 THE COURT: Anything further?

4 MS. ABEE: No, Your Honor.

5 THE COURT: Then we'll come back at 2:00 and we'll
6 be ready to go forward at that particular point.

7 MS. ABEE: Thank you, Your Honor.

8 MR. WILLIAMS: Thank you, Your Honor.

9 (Lunch recess.)

10 BAILIFF: All rise. Court is now in session. The
11 Honorable Judge Alison Lee presiding.

12 THE COURT: Good afternoon. Be seated please.
13 Thank you. Is there anything that we need to take up
14 before we get started?

15 MS. ABEE: Nothing from the State, Your Honor.

16 MR. WILLIAMS: Nothing from the defendant, Your
17 Honor.

18 THE COURT: Okay. We can call for the jury panel.

19 (Whereupon, the jury entered the courtroom at 2:20
20 p.m.)

21 THE COURT: Good afternoon, ladies and gentlemen.
22 If you would stand and raise your right hand at this time
23 for the administration of the oath.

24 (Whereupon the jury was sworn by the Clerk of Court
25 at 2:20 p.m.)

1 THE COURT: Thank you. All right. Ladies and
2 gentlemen, I have indicated to you that what I would do
3 this afternoon is explain to you the procedure that we
4 will follow and then we'll have the opportunity to
5 actually get started with the trial. The first thing I
6 would like to do is to explain to you the procedure that
7 we'll follow for this case. The first thing you will
8 hear will be the opening statements of the attorneys.

9 Now, their openings statements are not required and
10 they are not evidence so they may or may not make an
11 opening statement to you, but the purpose of the opening
12 statement is for them to tell you a little bit more about
13 what this case is about and what they hope that you will
14 be able to hear in the form of any evidence that will be
15 presented throughout the course of this trial. So I ask
16 that you listen carefully to the opening statements.

17 Once they have made those statements then you will,
18 in fact, hear the evidence. Now the evidence may take
19 many forms. It may be in the form of a witness'
20 testimony from the witness stand. It may be in the form
21 of photographs or documents or other physical pieces of
22 evidence that you will be able to take with you into the
23 jury room when it's time for y'all to begin your
24 deliberations.

25 Now, just as in any profession there are certain

1 rules that govern that profession. For trials it's what
2 we call rules of evidence. Those rules are designed to
3 make sure that what you hear and what you can consider
4 will assist you in being able to determine the facts of
5 this case. Again, that's your job here today or this
6 week. Whether or not certain evidence is admissible is a
7 legal question so you may hear the attorneys objecting
8 about certain evidence that will be presented throughout
9 the course of the trial. If I sustain the objection,
10 then you will be able to hear the evidence. No. That's
11 wrong. If I sustain the objection, you will not be able
12 to hear the evidence. So I ask that you not speculate as
13 to what the evidence might have been or the reasons for
14 the objection. I assure you that we are not trying to
15 hide or keep anything from you. Again, we are just
16 trying to make sure that what you hear and what you can
17 consider will help you in being able to determine the
18 facts. On the other hand if I overrule the objection,
19 then you will be able to hear the evidence and it will be
20 admissible.

21 From time to time we may need to take up other
22 issues outside of your presence. To the extent that we
23 can do that quickly here in the courtroom, they may
24 approach the bench and we may discuss it here. On other
25 occasions I may need to ask that you retire to the jury

1 room. I ask that you please not speculate as to what we
2 are discussing or the reasons for the discussion. Again,
3 we are trying to make sure that everyone's legal rights
4 are protected. The only way we can do that is if we are
5 able to discuss those legal issues in open court and we
6 have to do that outside of your presence.

7 Once you have heard all the evidence, then you will
8 hear again from the attorneys this time in the form of a
9 closing argument. Now, their closing arguments again are
10 not evidence, but what they will do is pick out portions
11 of the evidence that you have heard and make arguments to
12 you in an effort to try to sway you to find the facts in
13 accordance with their view of what occurred. So I do ask
14 that you listen carefully to those closing arguments as
15 well.

16 Once you have heard those closing arguments, then I
17 will instruct you on the law that's to be determined by
18 you so that you can apply those facts in the law and come
19 up with your verdict in this case. Then you will be able
20 to begin your deliberations after I have instructed you
21 on the law. Ladies and gentlemen, I ask that you listen
22 carefully to the attorneys and to the evidence as it's
23 presented throughout the course of this trial. I ask
24 that you not take notes. I find that sometimes when
25 people take notes, they're busy writing information and

1 they're missing something that is being presented.

2 Having said that I do understand that sometimes
3 people need to take notes to help them remember
4 information. If that applies to you, then please let me
5 know and I'll be happy to accommodate you so that you can
6 take notes to help you remember.

7 Ladies and gentlemen, as an introduction to a
8 criminal case let me tell you a little bit more about the
9 criminal case. Part of this, ladies and gentlemen, this
10 is the case of the State versus Auston Breazeale and this
11 case comes to us by indictment, by way of indictment
12 which I read to you earlier. He is charged with criminal
13 sexual conduct with a minor in the first degree and again
14 to this indictment Mr. Breazeale has pleaded not guilty
15 and so that plea casts the burden upon the State to prove
16 that Mr. Breazeale is guilty of this particular charge by
17 evidence that convinces you of that guilt beyond a
18 reasonable doubt.

19 I'll explain all those terms to you, what reasonable
20 doubt means at the close of the case when it's time for
21 y'all to begin your deliberations. So the purpose of our
22 trial, ladies and gentlemen, is to determine whether or
23 not the State would be able to meet that particular
24 burden. So I ask that you listen carefully. I'm not
25 allowed to make any comments to you about the facts of

1 this case and I don't have any opinion about the facts.
2 You and you alone are the fact finders in this case. No
3 one can tell you what the facts of this case are and so
4 it is your job to listen carefully to all the evidence
5 that's being presented to enable you to be able to
6 determine what facts you choose to find based upon the
7 evidence that's been presented and then you will apply
8 the law as I instruct you to those facts and then you
9 will be able to arrive at your verdict.

10 Now, just as you are the sole judges of the facts of
11 this case, I'm the sole judge of the law that applies.
12 I'll discuss that a little later at the time for the
13 deliberations in this matter. But I ask that you listen
14 very carefully to the attorneys and to the witnesses who
15 testify and to all of the evidence that's presented
16 throughout the course of this particular trial and when
17 you have done that, then you will be able to determine
18 the facts and then you will be able to apply the law as I
19 instruct you and then you will have done your job and
20 your duty as jurors in this case.

21 At this time, ladies and gentlemen, I believe that
22 we are ready to hear from the attorneys in the opening
23 statement. Would you like to make an opening statement,
24 Mr. Fernandez?

25 MR. FERNANDEZ: Thank you, Your Honor. Yes. May it

1 please the Court.

2 THE COURT: Yes, sir.

3 MR. FERNANDEZ: February 7th, 2015. That's a day
4 that most of y'all, just an ordinary day. Probably not
5 even memorable. A day that most people don't even think
6 about anymore. But for Trey and Whitney Marsh that's a
7 day they will never forget. It began as a normal
8 Saturday. They woke up real early because there's young
9 children, made breakfast, getting kids ready for a trip
10 to the zoo, family trip to the zoo that day. That's the
11 day when Trey and Whitney's daughter Minor Child, then four
12 years old, told them she had been sexually assaulted by
13 her cousin Auston Breazeale.

14 Good afternoon. My name is David Fernandez and I
15 along with Kinli Abee, we are representing the State of
16 South Carolina in the matter of State v. Auston Breazeale
17 for the crime of criminal sexual conduct with a minor
18 first degree.

19 I want to begin by thanking y'all for you service.
20 No one understands it more than we do the disruption that
21 jury service can cause in your lives. We all have
22 families. We all have work we would rather be at. But
23 I want to thank you because what you do is perhaps the
24 most important thing our citizens can do. Our system of
25 - our judicial system as a whole depends on our citizens

1 showing up for jury service, otherwise nothing could be
2 done. So I want to sincerely thank you all for showing
3 up.

4 I want to tell you the Judge did a great job
5 explaining essentially what our roles are, what your role
6 is. I want to reiterate some of that and let y'all know
7 that it's understandable. Most people know nothing about
8 what a trial is. Most folks don't know anything about
9 what the law is concerning criminal sexual conduct. Rest
10 assured at the conclusion of the case, Judge Lee will
11 tell you everything you need to know in order to render a
12 verdict.

13 The State's role is to present evidence and it's our
14 burden to present evidence to you to meet the elements of
15 criminal sexual conduct with a minor in the first degree.
16 A trial in its most general sense is a search for the
17 truth. Evidence is presented to you and you all are
18 ultimately the deciders of what the truth is. That's
19 what you are doing when you render a verdict at the end.
20 You're telling us what the truth is. What happened. And
21 that's what we ask you. We ask you to tell us what
22 happened. The truth.

23 Criminal sexual conduct with a minor in the first
24 degree is defined as when a defendant engages in a sexual
25 battery with a child under the age of 11. Sexual battery

1 is put simply any sort of penetration no matter how
2 slight. This also includes what we would refer to as
3 oral sex since that is a penetration.

4 Now, I'm going to be honest with you all. Much of
5 what you will hear today is not going to be easy. It's
6 going to be uncomfortable. It's not a fun subject
7 matter. It's the State's burden to prove to you that the
8 defendant did this and it's a burden we gladly accept and
9 we would have it no other way.

10 Now, you heard a little bit about reasonable doubt.
11 That is the standard in a criminal matter is reasonable
12 doubt. Proof beyond a reasonable doubt. Reasonable
13 doubt doesn't mean the case has to be one hundred percent
14 perfect. Reasonable doubt simply means that the State
15 must present evidence to you that satisfies you beyond
16 that reasonable doubt. Put another way, if after hearing
17 all the evidence in the case you are left firmly
18 convinced of what happened, what the truth was, then you
19 have met that burden. Firmly convinced. This is a
20 burden in this case that we gladly accept in this case
21 because the facts are clear. The evidence is clear.

22 In order to meet this burden the State will call
23 several witnesses to the stand and they will testify.
24 We'll call law enforcement. We'll call family members.
25 We'll call an expert in the area of child abuse dynamics

1 who is going to come here and educate us all on what that
2 is, an area arguably most people are not familiar with.
3 You will also hear from eye witnesses. Eye witnesses who
4 saw the conduct we are here for today.

5 What you will hear is a lot about a little girl
6 named **Minor Child**. She was then four years old. You will
7 hear about the relationship the defendant had with her.
8 You will hear about a pattern of escalating sexual
9 contact between them. What began as exposure, then
10 escalated to touching and ultimately ended with oral sex.
11 You will watch a video of an interview with then four
12 year old **Minor Child** where she talks about what her cousin
13 did to her. And then finally and most importantly you
14 will hear from **Minor Child** herself.

15 Now, **Minor Child** is six years old now and she is a
16 little girl and very full of energy, loves everything
17 pink and princesses and shockingly frozen. I have no
18 doubt that she will come here and tell you all about it.
19 But she is also here today to tell you about other stuff.
20 She's also going to come here and tell you about her
21 cousin. She is going to tell you about the attention he
22 showed her. She is going to tell you about maybe he
23 bothered her sometimes. She will tell you about how he
24 showed her his penis. And she is going to tell you about
25 how he put his penis in her mouth and forced her to

1 perform oral sex on him. And I know none of this is
2 going to be easy to hear, but you will hear a lot about
3 it through the course of this trial.

4 Now, this isn't a case you might see on TV like Law
5 and Order or CSI. There's not gonna be a screen that
6 comes down and shows you DNA and shows you all sorts of
7 forensics and cool maps. That's not this type of case.
8 This case is built on testimony. Testimony of a young
9 girl. Testimony of people who know her. Her family and
10 people who saw it happen. It's built largely on the
11 bravery of **Minor Child** herself. But she does not stand alone
12 as I said, supported by other witnesses.

13 You may hear the defense talk about things like, oh,
14 the State doesn't have this, the State doesn't have that.
15 Well, what you won't hear the Judge tell you at the
16 conclusion of the case when she charges you on the law,
17 she won't tell you that you need DNA. She won't tell you
18 that you need forensics or fingerprints, whatever. She
19 won't tell you that. What she will tell you is that it
20 is your job to hear the evidence that is presented and
21 then if after hearing that evidence you are firmly
22 convinced of guilt, then the burden has been met.

23 Again, we are asking you to tell us what the truth
24 is about what happened that day in 2014. What happened.

25 As I said earlier when I introduced the case, the

1 subject matter is not easy and it's not. But what will
2 be easy, what will be easy is finding that man guilty as
3 charged of criminal sexual conduct in the first degree
4 with a minor. Thank you for your service.

5 THE COURT: Mr. Williams.

6 MR. WILLIAMS: May it please the Court.

7 THE COURT: Yes, sir.

8 MR. WILLIAMS: Mr. Foreman, ladies and gentlemen of
9 the jury, I first want to start by telling you that in
10 these types of cases they are not cases which are decided
11 upon emotion. The Judge will tell you at the conclusion
12 of this case that you don't make decisions based on
13 emotion. You make decisions based on facts and evidence.
14 So to a certain extent when you have opening arguments
15 and things of that nature there is a little bit of got
16 you. A little bit of setting the frame, if you will. A
17 preamble such as, say, on February such and such,
18 Saturday morning, everyone was preparing to go to the
19 zoo. Well, that is an emotional statement to, I don't
20 know, to gather you in. To get you to the right frame of
21 mind as to how you should start thinking about this case.

22 But this is an analytic endeavor which you're
23 getting ready to be involved in. It's analytical with
24 humans. You don't have computers. You don't have any
25 type of instrument to make decisions about what happened

1 other than your minds. But there is a common thing which
2 human beings have which they have always had and that is
3 common sense. So actually what your job is as a jury and
4 as individual jurors is to use that common sense and to
5 evaluate things. You're not on a search for the truth.
6 It is a search for the truth but you're not a detective.
7 You don't have an eyeglass. What you actually are is you
8 are an evaluator, if you will. You are an evaluator of
9 the testimony that's being presented and determine what
10 you believe to be true because you will learn at the
11 conclusion of this case when you're instructed as to how
12 you determine truth, you will learn that you can make a
13 decision as to the truth of what a witness is saying
14 based on how you interpret what they are saying. Whether
15 or not they are forthright. Whether or not there is
16 inconsistencies in their testimony. Whether or not there
17 are reasons why the testimony should be angled in such
18 a way.

19 So you are weighers. You're weighers. It's just
20 like the scales of justice to a certain extent. You
21 weigh that evidence. And, you know, there's a reason why
22 we use human beings to do this. Because you don't just
23 add up numbers. You can't assign a numerical value for a
24 fact and add those facts up and make a determination and
25 say, well, you know, that's enough. What you do is you

1 listen to the witnesses that are presented and you
2 determine in your minds whether or not these facts exist
3 and then you weigh those facts, you apply the facts to
4 the law as Her Honor -- and I keep wanting to say His
5 Honor only because that's a phrase I have learned -- as
6 Her Honor will tell you. And the law is - we cannot
7 dispute what the law is in regards to what the Judge
8 instructs you because she is the giver of the law. But
9 your determination as to how those facts apply to the law
10 is something which is in your purview. Something
11 which you decide.

12 This is the type of case where it's obviously going
13 to be somebody else's word against somebody else's word.
14 But you have to still evaluate it. You have to make that
15 determination as to what you believe to be the truth in
16 the case and whether or not it has satisfied you to such
17 a degree that you feel that you can convict somebody.
18 That's what it's all about.

19 In this particular case you have met my client
20 Auston Breazeale. 16 years old at the time of the
21 allegations. He's 18 now. So you're going to hear
22 allegations that supposedly he had some sort of sexual
23 act which he performed with a cousin. He denies it. He
24 denies it. That's why we are having a trial. It's that
25 simple. So now you have to make the call.

1 Periodically attorneys may stand up and object. I
2 would ask that if we make those objections, that you not
3 hold it against us. Trust me if we do it the wrong way,
4 the Judge will tell us. But we do things because we are
5 technicians. We are representing our various clients.
6 We're making those objections. If we think that a
7 position or a question or an answer is incorrect, we make
8 an objection and the Judge will tell us if we are right
9 or wrong. It's that simple. But don't be trapped into
10 some sort of emotional, and it's easy to do that. I know
11 I'm asking you to do a tough thing. It's easy to do
12 that. But you can't do that in this type of case because
13 you're here to determine the truth.

14 The Judge will tell you that you have no enemies to
15 punish. You have no friends to reward. So you have to
16 look upon this case, as he stands right there he is not
17 guilty and they have got to prove that he's guilty. They
18 have got to prove it. You don't come in with any
19 pre-thoughts that he is guilty of anything and he denies
20 it.

21 If there was anything else I could tell you, I would
22 tell you, but you know, it all comes down to common human
23 experience and that is your common sense. I think once
24 you listen to the testimony you will make a decision that
25 he's not guilty. There is missing evidence. There is

1 suspect evidence. There is suspect allegations and you
2 will do your job that you were sworn to do. You take an
3 oath just like as lawyers take an oath. As judges when
4 they're sworn in take an oath and that is to do what
5 jurors are supposed to do and that is to evaluate the
6 evidence and to speak the truth. Thank you.

7 THE COURT: You may call your first witness.

8 MR. FERNANDEZ: Thank you, Your Honor. The State
9 calls Detective James Kemfort.

10 Thereupon,

11 JAMES KEMFORT

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

13 THE CLERK: Please have a seat. After you're
14 seated, please state your full name spelling your last
15 name for the record.

16 THE WITNESS: James Kemfort, K-e-m-f-o-r-t.

17 DIRECT EXAMINATION

18 BY MR. FERNANDEZ:

19 Q. All right. Detective Kemfort, would you please tell
20 us with whom you are currently employed?

21 A. I work for the Lexington County Sheriff's
22 Department.

23 Q. And how long have you been employed with Lexington
24 County?

25 A. I have been employed by them for ten years.

1 Q. Okay. What is your current job title at Lexington
2 County Sheriff's Department?

3 A. I am a major crimes investigator with the special
4 victims unit.

5 Q. Tell us a little bit about your law enforcement
6 career. How long have you been in law enforcement?

7 A. All together almost 15 years.

8 Q. Where did you work prior to Lexington County?

9 A. I worked at the city of Columbia, Columbia Police
10 Department.

11 Q. You did attend what's called the Criminal Justice
12 Academy?

13 A. I did.

14 Q. You said you were in the SVU, the special victims
15 unit. Have you received any additional trainings in order to
16 conduct those sorts of investigations?

17 A. I have. I have been with the special victims unit
18 now for a year and eight months. I have received over 90
19 hours of training in child sexual victimization as well as
20 child victim homicide, child sexual abuse and interviewing
21 child victims.

22 Q. What sorts of cases would you typically be assigned
23 in your capacity in the SVU?

24 A. In the year and eight months I have had 250 cases of
25 which 200 of them have been child sexual abuse cases.

1 Q. Now, Detective Kemfort, I'm going to direct your
2 attention to the case at hand. You understand why you are
3 here today; is that correct?

4 A. Yes. I do.

5 Q. When did you begin your investigations into Auston
6 Breazeale?

7 A. I received the incident report, it was assigned to
8 me on February 9th, it was assigned to me on Monday, 2015.

9 Q. If you would, walk us through what your initial in
10 investigating this sort of allegation, what would be your
11 initial steps you take?

12 A. My - actually my supervisor on the previous day came
13 in on Sunday to assign cases that occurred over the weekend
14 and she went ahead and already referred the victim for a
15 forensic interview. Generally that's what we do when we first
16 get cases. We look over it and we refer our child victim to
17 the Dickerson Center which is our primary choice for forensic
18 interviews and forensic matters.

19 Q. You're using some terms we may not be familiar with.
20 Very generally what is a forensic interview?

21 A. Generally it is just a child friendly way of
22 interviewing a child so that they are not intimidated by law
23 enforcement and it's comfortable for them and it's using non
24 leading questions so that the child can disclose without
25 forcing any disclosure.

1 Q. Okay. Is that a tool you use typically with
2 underage, with minor victims?

3 A. Yes. It is.

4 Q. In investigating any kind of criminal sexual conduct
5 with minors, do you make it a point to interview the child
6 themselves or do you leave that to other folks?

7 A. We leave it to the Child Advocacy Center, the
8 forensic interviewer.

9 Q. In this case what then did you do after the referral
10 to the Dickerson Center? Did you attend that interview?

11 A. I did. I attended the interview and observed it
12 through, I guess it's like closed circuit television from
13 another room.

14 Q. Did you have a chance to interview all the folks
15 that were involved, her parents, Minor Child s parents?

16 A. I did. They completed written statements for me.
17 Actually they had already completed written statements at the
18 time of the incident. I interviewed each one of them and
19 spoke to them to clarify their statements to see if there was
20 anything they wanted me to add to it.

21 Q. The child victim, what is her name?

22 A. Minor Child .

23 Q. What is her date of birth? Is that in your file?

24 A. It is. Date of birth is [REDACTED] [REDACTED] [REDACTED]

25 Q. Now, Detective Kemfort, did you determine where the

1 allegations of abuse had occurred?

2 A. Yes. We did. From the interviews with the parents
3 and as well as the forensic interview could tell it happened
4 at the child's grandmother's former residence which was at [REDACTED]
5 [REDACTED] [REDACTED] in Lexington County.

6 Q. I know you just said it, but that is within
7 Lexington County?

8 A. Yes. It is.

9 MR. FERNANDEZ: Please let the record reflect the
10 jurisdiction.

11 BY MR. FERNANDEZ:

12 Q. Now, Detective Kemfort, after interviewing Trey
13 Marsh and Whitney Marsh, what did you then do next in your
14 investigation?

15 A. After interviewing both Trey and Whitney and after
16 the forensic interview was done with Minor Child, I then attempted
17 to contact Auston Breazeale in reference to the incident and
18 requested him to speak with me.

19 Q. Were you successful in contacting Auston
20 Breazeale?

21 A. Sort of. I was able to contact his mother. His
22 mother said he wasn't home at the time, but that she
23 immediately brought him up, took him about 40 minutes and she
24 actually brought him up to headquarters to speak with me.

25 Q. When she brought him to headquarters, did you

1 actually speak with him at that point?

2 A. I did not. I spoke with his mother for about 30 to
3 45 minutes, but I did not speak with him.

4 Q. Did you ultimately decide to issue, take out
5 warrants for the arrest of Auston Breazeale?

6 A. I did.

7 Q. What did you base that arrest warrant on?

8 A. I based that on primarily the forensic interview
9 with Minor Child . Her disclosures that were consistent
10 between her disclosure to her mother on that Saturday as well
11 as her disclosure to the forensic interviewer. I based it on
12 the information from Trey and Whitney as well as the
13 information that I had received from Sharon Hardy which is
14 Auston's mom.

15 Q. Is Auston Breazeale seated in the courtroom today?

16 A. Yes. He is.

17 Q. Please identify him for us.

18 A. He's the young man sitting at the defendant's table
19 in the Pittsburgh Steeler's jacket.

20 Q. Your investigation did not end after taking warrants
21 out; is that accurate?

22 A. That's correct.

23 Q. In March of 2015 what was the next subject you
24 investigated?

25 A. I received information, a phone call from an

1 individual who said that he actually --

2 MR. WILLIAMS: Objection to hearsay, Your Honor.

3 THE COURT: Sustained. You cannot testify as to
4 what some person stated.

5 BY THE WITNESS:

6 A. I apologize.

7 BY MR. FERNANDEZ:

8 Q. Without saying what other people would have said,
9 what did you do in order to follow up on additional leads?

10 A. Yes. I received information that another allegation
11 had occurred and so I made phone contact with that individual
12 and scheduled a time to meet with him.

13 Q. And that individual's name was?

14 A. Let me make sure I get his first name right.
15 Mr. Rice. Dwayne Rice.

16 Q. He brought allegations, new information to your
17 attention?

18 A. That's correct.

19 Q. Okay. Again, I'm not asking you to say what he
20 said, but you reported on that. You would created an
21 investigative report as a result of your contact with various
22 witnesses?

23 A. I did. I wrote - I took a statement from Mr. Rice
24 and I also wrote a supplemental incident report to the
25 original case file due to the related nature.

1 MR. FERNANDEZ: Your Honor, I have no further
2 questions. Investigator Kemfort, thank you so much. If
3 you would, just answer any defense questions.

4 THE COURT: Any cross?

5 MR. WILLIAMS: May it please the Court.

6 THE COURT: Yes, sir.

7 CROSS EXAMINATION

8 BY MR. WILLIAMS:

9 Q. Agent Kemfort, when was the forensic interview which
10 you viewed at, you said you saw it through the circuit
11 television set at the Dickerson Center?

12 A. Yes, sir. The date of the interview was February
13 17th, 2015.

14 Q. And I think you have described it. That is an
15 interview where someone who is trained in, I guess, talking to
16 children basically gets asked questions and it's preserved on
17 a video for posterity?

18 A. Yes, sir.

19 Q. Was any type of physical exam done of Ms. Marsh?

20 A. There was a forensic medical exam done as well.

21 Q. When was that done?

22 A. Based on our time constraints unfortunately it was
23 conducted on June 15th, 2015.

24 Q. Where was that done at?

25 A. This was done by the forensic nurse examiner at the

1 Children's Advocacy Center, South Carolina Children's Advocacy
2 Center. It was done at the Dickerson Center.

3 Q. Besides the forensic exam in February and the
4 physical exam in June, were there any other exams that were
5 performed on this child?

6 A. Not to my knowledge.

7 Q. And did you secure -- The child is four?

8 A. Yes.

9 Q. Did you secure any other information from other
10 individuals such as teachers, school notes, any of that type
11 of thing?

12 A. No, sir. There were no teachers involved for us to
13 go talk to. Just her mother. I mean her parents and Auston's
14 mother and family members.

15 MR. WILLIAMS: That's all the questions I have, Your
16 Honor.

17 THE COURT: Any redirect?

18 MR. FERNANDEZ: One question, Your Honor. Thank
19 you.

20 REDIRECT EXAMINATION

21 BY MR. FERNANDEZ:

22 Q. Detective Kemfort, you have a copy of the medical
23 report; is that correct?

24 A. I do.

25 Q. You just testified. You said it was June 15th,

1 2015? I believe the date of the evaluation is in the bottom
2 corner.

3 A. I apologize. I was reading the date it was faxed to
4 me. My mistake.

5 Q. What's the correct date of the evaluation?

6 A. The date of the medical evaluation is April 13th,
7 2015.

8 MR. FERNANDEZ: Thank you. No further questions.

9 THE COURT: You may step down. Thank you. You may
10 call your next witness.

11 MS. ABEE: Your Honor, the State calls Whitney
12 Marsh.

13 Thereupon,

14 WHITNEY MARSH

15 after having been first duly sworn, testified as follows,

16 THE CLERK: Please have a seat. After you're
17 seated, please state your full name spelling your last
18 name for the record.

19 THE WITNESS: My name is Whitney Marsh, M-a-r-s-h.

20 THE COURT: Thank you.

21 MS. ABEE: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. ABEE:

24 Q. Whitney, how old are you?

25 A. I'm 28.

1 Q. Are you currently employed?

2 A. I am.

3 Q. Where at?

4 A. The West Columbia Police Department.

5 Q. What do you do there?

6 A. I'm a patrol officer. I'm a member of the community
7 action team and currently serving as a school resource
8 officer.

9 Q. What school do you serve as a school resource
10 officer at?

11 A. Saluda River Academy for the Arts.

12 Q. How long have you been in law enforcement?

13 A. About five years.

14 Q. Are you married?

15 A. I am.

16 Q. To who?

17 A. Matthew Trey Marsh.

18 Q. What does he go by?

19 A. He goes by Trey.

20 Q. How long have you and Trey been married?

21 A. Seven years.

22 Q. How did y'all meet?

23 A. In high school.

24 Q. Do you have any kids?

25 A. We do.

1 Q. How many?

2 A. We have two girls.

3 Q. What are their names?

4 A. Minor Child and A.M.

5 Q. How old is Minor Child?

6 A. Minor Child is Six.

7 Q. What about A.M. , how old is she?

8 A. A.M. is 19 months.

9 Q. Whitney, I want you to tell us a little bit about
10 Minor Child. What is she like?

11 A. Minor Child is a lot of fun. She is very sociable. She
12 makes a friend wherever she goes which sometimes can be a
13 problem, but she is really quick to pick up a conversation
14 with anybody. Uhm, I would say she's a very well rounded
15 child in the aspect that she wants to wear dresses and have
16 long hair, because that's what princesses do. But then at the
17 same time she will go out on the back porch and shoot her bb
18 gun with her dad or play in the sand with the dogs or feed the
19 chickens and the pigs and stuff at my parents' house. But
20 then she'll come back inside and want her hair curled and her
21 nails painted. She says she's going to be fastest person ever
22 and the next ninja warrior.

23 Q. Whitney, do you know Auston Breazeale?

24 A. I do.

25 Q. How do you know him?

1 A. He was my nephew.

2 Q. Explain to us all how you are related?

3 A. He's - through my marriage he's my husband's nephew.
4 My husband's sister's son.

5 Q. Do you see Auston in the courtroom today?

6 A. I do.

7 Q. Can you tell us where he is seated and something
8 that he's wearing?

9 A. Over here. He has a gray dress shirt and a black
10 jacket.

11 MS. ABEE: Your Honor, the witness has identified
12 the defendant as Auston Breazeale.

13 THE COURT: So noted.

14 BY MS. ABEE:

15 Q. So how long have you known Auston?

16 A. Probably about ten years.

17 Q. How often would your family be around the defendant
18 and his family?

19 A. At least once a week.

20 Q. Doing what types of things?

21 A. We would usually have Sunday dinner at his
22 grandmother's, my mother-in-law's house.

23 Q. When you had these Sunday dinners, would Minor Child be
24 around?

25 A. Yes.

1 Q. Were there ever times when Minor Child was around the
2 defendant when you weren't there?

3 A. Yes.

4 Q. Explain that to us.

5 A. Linda was one of our primary caregivers. While Trey
6 and I were away at work she would watch Minor Child

7 Q. You say Linda. Tell us again who is that?

8 A. Linda is Trey's mother, Minor Child's grandmother, my
9 mother-in-law.

10 Q. So is that also the defendant's grandmother?

11 A. Yes.

12 Q. So when Minor Child is over at her grandmother's house,
13 sometimes the defendant would be there?

14 A. Yes. He would.

15 Q. Did you ever have an opportunity to see Minor Child and
16 Auston interacting with each other?

17 A. Yes.

18 Q. Explain to us what their relationship was like.

19 A. Uhm, Minor Child, of course, being Minor Child would want to
20 play and be very excited to see him. He would often act like
21 he was annoyed and she would jump and play and stuff and he
22 would push her away or act like he didn't want anything to do
23 with her.

24 Q. Now, I'm going to fast forward a little bit. I want
25 to talk about February of 2015. Do you remember that time in

1 your life?

2 A. I do.

3 Q. Was there a point in time that **Minor Child** disclosed to
4 you that she had been sexually assaulted?

5 A. Yes, ma'am.

6 Q. And without telling us anything that she said, tell
7 us the circumstances surrounding that disclosure. What were
8 you doing that day?

9 A. We were watching Saturday morning cartoons. Uhm,
10 she - her and her dad were going to go out to the zoo for a
11 father/daughter day and so I told her to go get dressed. Uhm,
12 at that time she disclosed. I told her to go into her room
13 and Trey came in. She came back out because he came to see if
14 she was ready to go. She came back out of her room. I asked
15 her to tell Trey what she had told me and then from there Trey
16 left out of the room again. After a little bit they
17 continued, we decided that they would continue, we would
18 continue on with our day as it was planned. They would go on
19 to the zoo. Uhm, we waited and contacted Shannon because we
20 didn't want her to be blindsided and then once they came back
21 and Shannon was off work, we notified law enforcement.

22 Q. I want to back up some because you just told us a
23 lot. You said that you and **Minor Child** were watching Saturday
24 morning cartoons. Is that normal?

25 A. Yes.

1 Q. Were you talking about anything sexual or anything
2 at the time that she disclosed to you?

3 A. No. We weren't.

4 Q. You stated that Minor Child was going to go to the zoo
5 with her dad. Why was that?

6 A. I had just had A.M. in December of that previous
7 year and, uhm, I had been on maternity leave and Minor Child,
8 because of the new baby, you know, Minor Child was lacking in a
9 little bit of attention so we decided that she would spend
10 some one on one time with Trey.

11 Q. Is this something that y'all tried to do once you
12 had A.M. , was to spend some time with Minor Child ?

13 A. Yes. And we have done it in the past, too. She's
14 gone out with Trey to the movies or the zoo before and then
15 she would do stuff just individually with me also.

16 Q. You stated that it was at that time that she
17 disclosed. What was her demeanor when she disclosed?

18 A. She was calm. I told her, I said go get dressed.
19 Daddy's gonna be ready to go soon. She jumped off the couch,
20 told me. I said okay. Go and get dressed.

21 Q. How old was she when she disclosed to you?

22 A. Four.

23 Q. You said this was February of 2015?

24 A. Yes.

25 Q. When is Minor Child s birthday?

1 A. [REDACTED] [REDACTED]

2 Q. Of which year?

3 A. [REDACTED] so she would have been four.

4 Q. So then after that you told us that you and Trey
5 decided to go on or Trey decided to go onto the zoo. Why was
6 that?

7 A. We didn't want her to think that she had done
8 anything wrong. That this would - that her telling us what
9 had happened should interrupt anything for her because she
10 hadn't done anything wrong. So we thought it was best to go
11 ahead with what we had planned.

12 Q. And after you went to the zoo, I think you said
13 that's when you called Shannon; is that right?

14 A. Mm-hmm.

15 Q. Who is she again?

16 A. Trey's sister, Auston's mother.

17 Q. When did you contact law enforcement?

18 A. Uhm, shortly after we contacted her. They got there
19 shortly after she got to our house.

20 Q. Now, after Minor Child disclosed, did you notice any
21 change in her?

22 A. Yes. She had an increase in nightmares. She had an
23 increase in wetting her panties. She had low self esteem
24 issues. She would say I can't so many times that we actually
25 made an I can't jar. So if she were to say I can't, then she

1 had to pay us a quarter to boost her self esteem to help her
2 move forward.

3 Q. And in the months leading up to this disclosure when
4 Minor Child was four, was this the same time that she was spending
5 time with the defendant at her grandmother's house?

6 A. Yes. But she hadn't seen him since Christmas of
7 2013 so like in the disclosure of February 14th she hadn't
8 seen him since Christmas of the previous year.

9 Q. So we're talking about 2015 she hadn't seen him
10 since Christmas of 2014?

11 A. Right.

12 Q. Okay. But leading up to that was she spending time
13 with the defendant at your mother-in-law's house?

14 A. Yes.

15 MS. ABEE: Your Honor, I have no further questions
16 for Whitney at this time.

17 THE COURT: Any cross?

18 MR. WILLIAMS: Yes, Your Honor.

19 CROSS EXAMINATION

20 BY MR. WILLIAMS:

21 Q. Ma'am, you indicated that you work with West
22 Columbia Police Department. Where does your husband work?

23 A. He's a fabricator for Williams Strength Products.

24 Q. And his mother, where did she work?

25 A. She's a retired SLED officer.

1 Q. So she was a SLED officer. Do you know what she did
2 as a SLED officer?

3 A. Not a hundred percent. I think she worked in the --
4 I don't want to say. I'm not a hundred percent.

5 Q. Do you know how long she worked with SLED?

6 A. Long enough to retire, re-enter and retire again.

7 Q. 20 or 30 years?

8 A. Yeah.

9 Q. And I think you indicated that the times, the only
10 times that you are aware of that the defendant would have been
11 with your daughter would have been when he was at your
12 mother-in-law's house which would have been his grandmother
13 and Minor Child's grandmother; is that correct?

14 A. Like can you clarify? I mean, he would come over to
15 our house sometimes to watch football games. But as a family
16 we would be at her house and then sometimes she would watch
17 both of them.

18 Q. Okay. So he was not alone with the child. He was
19 with his grandmother and she was with her grandmother,
20 correct? Or they were with you?

21 A. I never had them both together myself. No. But
22 Linda would watch Minor Child and then sometimes she would also
23 watch Auston.

24 Q. So your mother-in-law would be there with them if
25 they were at her house?

1 A. Yes.

2 Q. Now, you indicated that after these allegations,
3 that there was something about low self esteem. That the
4 child was exhibiting low self esteem. That was part of the
5 reason why you had the special time with the child with her
6 father, wasn't it?

7 A. No. That didn't have anything to do with her self
8 esteem.

9 Q. Well, wasn't she exhibiting - she was exhibiting
10 some feelings that she wasn't special anymore?

11 A. No. I wouldn't say that.

12 Q. All right. What would you say?

13 A. She was very excited about her sister, but we didn't
14 want there to be, her to get jealous I guess you would say and
15 I wouldn't say she was jealous either, but before the baby I
16 would take her out to do something or Trey would take her out
17 to do something individually and there's no reason that should
18 change after A.M. came so we had that.

19 Q. What was the name of the doctor that did the
20 physical exam shortly after the forensic exam that actually
21 talked to her?

22 A. I can't recall that.

23 Q. But you know she went to a doctor and talked about
24 these things?

25 A. Yes.

1 Q. But you were there when you took the child to that
2 doctor, weren't you?

3 A. Are you talking about like a forensic interview?

4 Q. I'm talking about the physical exam which was
5 conducted in April of 2015.

6 A. That went through the Dickerson Center?

7 Q. Yes.

8 A. Yes. I was there, but I wasn't in the room.

9 Q. So you didn't talk to the doctor about anything?

10 A. I don't remember speaking with her.

11 Q. Describe, if you will, the children as well as any
12 adults which stay in your house.

13 A. In my house it's me and my husband and our two
14 girls.

15 Q. At the time of these allegations your youngest child
16 would have been five months old?

17 A. Two months.

18 Q. Two months old?

19 A. Yes. She would have been two months old.

20 Q. What grade is your child in now?

21 A. At her school it's called K2, so it's
22 kindergarten.

23 Q. What school does she attend?

24 A. She goes to [REDACTED] [REDACTED] [REDACTED].

25 Q. Does [REDACTED] [REDACTED] [REDACTED] begin at the age of

1 four?

2 A. It does.

3 Q. So ergo, that's K2. Go ahead.

4 A. Okay. There is 4K, K1 and K2.

5 Q. There's 4K, K1 and K2?

6 A. Yes.

7 Q. So when she was four, she would be in 4K, when she
8 is five she would be in K1 and now she is in K2?

9 A. Yes.

10 Q. So she's progressing along the same levels that you
11 would start if you were four now?

12 A. Yes.

13 Q. When did she go back to school?

14 A. She hasn't yet. She goes back on Wednesday.

15 MR. WILLIAMS: That's all the questions I have, Your
16 Honor.

17 THE COURT: Any redirect?

18 MS. ABEE: No, Your Honor.

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

20 MS. ABEE: Your Honor, we would ask that this
21 witness be excused from her subpoena.

22 THE COURT: Any objection?

23 MR. WILLIAMS: No objection, Your Honor.

24 THE COURT: You may be excused. Thank you. You may
25 call your next witness.

1 MR. FERNANDEZ: Thank you, Your Honor. The State
2 would call Trey Marsh.
3 Thereupon,

4 MATTHEW TREY MARSH
5 after having been first duly sworn, testified as follows,

6 THE CLERK: Please have a seat. After you're
7 seated, please state your full name spelling your last
8 name for the record.

9 THE WITNESS: My name is Matthew Trey Marsh,
10 M-a-r-s-h.

11 DIRECT EXAMINATION

12 BY MR. FERNANDEZ:

13 Q. Spell your first name for us.

14 A. M-a-t-t-h-e-w.

15 Q. Now, Trey, you go by Trey; is that correct?

16 A. Yes, sir.

17 Q. If you would, please introduce yourself to the jury.
18 How old are you?

19 A. I'm Trey. I'm 27 years old.

20 Q. Trey, where do you work?

21 A. I'm a fabricator at a company called Williams
22 Strength Products. We make weight lifting equipment.

23 Q. How long have you been employed there as a
24 fabricator?

25 A. Seven years. Going on seven years.

1 Q. What's your marital status?

2 A. Married.

3 Q. Who are you married to?

4 A. Whitney Marsh.

5 Q. How long have you been married to Whitney?

6 A. Seven years.

7 Q. When did you first meet Whitney?

8 A. In high school.

9 Q. How long have you all been together?

10 A. We have been together about nine years.

11 Q. What does Whitney do for a living?

12 A. She is a police officer with the City of West
13 Columbia.

14 Q. Do you all have any children together?

15 A. We have two daughters.

16 Q. Tell us a little bit about your daughters. What
17 ages are they and their names.

18 A. Minor Child is six years old. A.M. is a year and a
19 half.

20 Q. All right. Now, where did you and Whitney meet in
21 the first place?

22 A. High school.

23 Q. What high school is that?

24 A. Lexington High School.

25 Q. Did you grow up in this area?

- 1 A. I did.
- 2 Q. Where do you currently live? What general area?
- 3 A. Lexington.
- 4 Q. Who is Auston Breazeale and what's his relation to
5 you?
- 6 A. Auston Breazeale is my nephew. He's my sister's
7 son.
- 8 Q. And is he here today in the courtroom?
- 9 A. Yes, sir. He's the young man in the black jacket
10 sitting at the table over there.
- 11 Q. Who is your sister? You said your sister's son.
12 What's your sister's name?
- 13 A. My sister is Shannon Hardy.
- 14 Q. Is she your younger sister or older sister?
- 15 A. Older sister.
- 16 Q. And who is your mother?
- 17 A. My mother is Linda Marsh.
- 18 Q. Linda Marsh is also the mother to Shannon, your
19 sister?
- 20 A. Yes.
- 21 Q. And would she also be the grandmother to Minor Child and
22 Auston?
- 23 A. Yes, sir.
- 24 Q. How long have you known Mr. Breazeale?
- 25 A. His entire life.

1 Q. Would you please tell us a little bit about your
2 relationship with him. How would you describe it?

3 A. Uhm, I'd say that we were very close. I guess to
4 describe, I guess the way I felt about him, uhm, I kind of saw
5 myself as an older brother or a mentor, a stronger male figure
6 in his life. We did a lot of things together. We watched
7 football games. We spent time with one another. Family
8 gatherings, stuff like that. We were very close. There
9 really wasn't anything that he couldn't come to me about and
10 we couldn't talk about. Whatever. Didn't matter what it
11 was.

12 Q. Trey, when is Minor Child's birthday?

13 A. [REDACTED].

14 Q. Tell us a little bit about what Minor Child is like, her
15 likes, dislikes, her personality.

16 A. Okay. Minor Child is a people person. She is extremely
17 happy. She's very much a girlie girl. Loves pink. Loves
18 dresses. Loves to be around her family. Loves to be around,
19 like I said, be around people and she loves to make new
20 friends. There's quite a few times we go out at any given
21 place and she will find somebody to talk with and be friends
22 with. Very energetic. She loves to go hiking with me when I
23 get a chance to do that. Very happy.

24 Q. Would Minor Child ever be around Mr. Breazeale?

25 A. Yes.

1 Q. Why would they be? What were some of the
2 circumstances they would be together?

3 A. Well, quite frequently my family has always been
4 very close. Quite frequently we would spend a lot of time
5 with my mom at her house eating meals or one another's houses
6 eating meals and things like that. I would say almost on a
7 weekly basis we all see each other.

8 Q. You say eating meals at your mom Linda Marsh's
9 house?

10 A. Yes.

11 Q. What was the arrangement with your mom Linda? Why
12 would Minor Child be at her house?

13 A. Well, outside of having family meals and things like
14 that, she watches both of my daughters during the day while my
15 wife and I work.

16 Q. Among those times that Minor Child and Mr. Breazeale
17 would have been together, of those times how often would they
18 have been alone together?

19 A. Uhm, I would say they had a chance to be alone
20 together a good bit especially during the family get togethers
21 because quite frequently the adults would be in one room
22 eating, watching TV, whatever, and the kids would be off
23 somewhere else and normally in another bedroom or something
24 like that playing. We would check on them every now and again
25 but there was opportunity there. And then I would say there

1 was probably opportunity at times when my mom would be keeping
2 Minor Child during the day and also keeping Auston.

3 Q. Why would she keep Auston also?

4 A. Well, while he was out of school and not working, my
5 sister would have my mom watch him during the day at times.

6 Q. Did you personally witness any changes in Minor Child's
7 behavior or demeanor leading up to February 2015?

8 A. Yes. I do.

9 Q. If you could, please tell us a little bit about the
10 things you noticed.

11 A. Right. Uhm, she had been, uhm, potty trained for a
12 time. Wasn't having that many problems and then she started,
13 I guess her dressing to a point she would wet her bed at night
14 sometimes and then more often than that she would actually wet
15 her pants during the day. It was kind of confusing. She also
16 started having nightmares. There would be nights where she
17 would wake up in the middle of the night and come running into
18 mine and my wife's bedroom saying she was scared. Didn't want
19 to go back to sleep. Things like that. I would say she also
20 started to have some confidence issues every now and again.
21 She's always been a very happy girl and she started to get sad
22 a little more often.

23 Q. Trey, do you remember an incident that occurred back
24 in May of 2014 with Mr. Breazeale and your daughter?

25 A. Yes.

1 Q. Where did this incident occur?

2 A. It occurred at the house we were staying at at the
3 time.

4 Q. Where was that?

5 A. [REDACTED]

6 Q. Is that within Lexington County also?

7 A. Yes. It is.

8 Q. Walk us through what went on that day. Just tel me
9 what you were doing that morning and why Mr. Breazeale was
10 also at your house?

11 A. I'm pretty sure that day was a work day for me, but
12 after work, my sister had been taking night classes so she had
13 a class that particular night and had asked me to watch Auston
14 for a while so I had Auston and my daughter and we had gotten
15 to my house after I picked him up and, you know, I think we
16 bought a pizza so Minor Child sat down at the counter to eat a
17 pizza and Auston went and sat in our living room.

18 Q. You had just gotten home from work. Did you
19 actually use the restroom?

20 A. Yes. I used the restroom when I got home. So
21 I went and did my business.

22 Q. And while you were in the restroom, where was
23 Minor Child and Mr. Breazeale?

24 A. Okay. While I was in the restroom, Minor Child was at
25 our kitchen counter eating. Auston was sitting in the den

1 which is directly adjacent to the kitchen watching TV.

2 Q. Were they out of your sight?

3 A. Yes. I had my bedroom door closed and my bathroom
4 was in my bedroom and that door was closed as well.

5 Q. Then what happened next after you exited the
6 bathroom?

7 A. Okay. So before I exited the bathroom, I heard my
8 front door open and my sister came in. I think she had come
9 home early from class and when I heard her come in, I finished
10 up what I was doing, I walked out of my bedroom into the
11 kitchen where my daughter was and my sister was talking with
12 my daughter and Auston was right there with both of them and
13 my sister looked at me and told *Minor Child* --

14 MR. WILLIAMS: Objection to hearsay, Your Honor.
15 BY MR. FERNANDEZ:

16 Q. Trey, without - we can't talk about what other
17 people said, but who was in the room with you in the den? Who
18 was all there when you exited the bathroom?

19 A. Myself, my sister, *Minor Child* and Auston.

20 Q. Okay. And you had a discussion with - there was a
21 discussion about what had just gone on in your den, correct?

22 A. Yes, sir.

23 Q. And as a result of that discussion did it become
24 apparent to you what had happened?

25 A. Yes, sir.

1 MR. WILLIAMS: Objection to that, Your Honor.

2 Speculation.

3 THE COURT: Sustain the objection currently the way
4 the question is phrased.

5 BY MR. FERNANDEZ:

6 Q. Did you have an opportunity to speak to Minor Child?

7 A. I did.

8 Q. We are talking about directly after whatever had
9 just occurred?

10 A. Yes. I did.

11 Q. Did she tell you without saying what she said, did
12 she tell you what had just occurred?

13 A. Yes, sir.

14 Q. Did the disclosure she made to you, was it in the
15 form, could it be in the form of a sexual assault?

16 MR. WILLIAMS: Objection. Leading.

17 THE COURT: Sustained. Rephrase the question.

18 BY MR. FERNANDEZ:

19 Q. What kind of disclosure did she make to you without
20 saying what it was?

21 A. One that was sexual in nature.

22 Q. Did she tell you where it had happened?

23 A. Yes, sir.

24 Q. Where did she say it had happened?

25 A. In the den.

1 Q. Did she say when it had happened?

2 A. Yes, sir.

3 Q. When did she say it had happened?

4 A. While I was in the restroom and my sister was not at
5 the house.

6 Q. As a result of -- And then did you end up speaking
7 with your sister anymore?

8 A. I did.

9 Q. As a result of your conversations with your sister,
10 what did you do next?

11 A. My sister and my nephew left my house. I talked
12 alone with my daughter about what she had told me.

13 Q. And was your wife home at the time?

14 A. No. She was not.

15 Q. Where was she?

16 A. She was working dispatch night shift at the police
17 department.

18 Q. Did you eventually visit her?

19 A. Yes, sir. I did.

20 Q. Again when you spoke with your wife without saying
21 what she said, did you have a conversation with your wife?

22 A. Yes.

23 Q. As a result of your conversation with your wife,
24 what did you do next?

25 A. I spoke with my sister a little more.

1 Q. After ultimately speaking with your sister-in-law,
2 what agreement did y'all come to?

3 A. We decided that Auston and Minor Child should no longer
4 have the opportunity to be left alone with one another.

5 Q. Were there any another conditional conditions?

6 A. We both agreed that he should seek counseling.
7 Yeah.

8 Q. And, Trey, did you report this incident to law
9 enforcement?

10 A. No.

11 Q. Why didn't you?

12 A. Uhm, I was somewhat confused about the exact nature
13 of what had happened.

14 Q. Okay. Now, Trey, I'm going to fast forward to
15 February of 2015. Do you remember February 7th, 2015?

16 A. Yes, sir. I do.

17 Q. And that Saturday, tell us how the day began.

18 A. Uhm, that morning my wife and I had gotten up. Both
19 my daughters had gotten up. A.M. was young. I myself was
20 getting ready to take Minor Child to the zoo. We were going to
21 have I guess you would call it a daddy/daughter day, so I was
22 in our bedroom getting ready to leave putting clothes on and
23 things like that and, uhm, I walked into the living room after
24 I had put my clothes on and things and --

25 Q. And you came out to the den?

1 A. Right.

2 Q. And at that point did Minor Child --

3 MR. WILLIAMS: Objection. Leading, Your Honor.

4 THE COURT: Sounds like it could be leading.

5 Rephrase it.

6 MR. FERNANDEZ: I don't think I asked anything but
7 okay.

8 THE COURT: It sounded like it could be leading.

9 BY MR. FERNANDEZ:

10 Q. Did Minor Child disclose to you that she had been
11 sexually assaulted?

12 A. She did.

13 Q. Did she tell you when it had happened to her?

14 A. No. She did not.

15 Q. Did she tell you where it had happened to her?

16 A. No. She did not.

17 Q. In this general time frame was there any locations
18 where Minor Child and Mr. Breazeale would have been alone?

19 A. Uhm, in the general time frame, yes.

20 Q. You just said before, I know you just said about the
21 conditions that were placed on them about being alone, but
22 where might they have been alone even after that, the May 2014
23 incident?

24 A. After that they could have still possibly have been
25 alone while my daughter was with my mother during the day

1 because like I said there were frequent times where she kept
2 both Minor Child and Auston.

3 Q. Where was your mother living at that time?

4 A. [REDACTED] [REDACTED] [REDACTED]. It's a subdivision in
5 Lexington.

6 Q. That is within Lexington County?

7 A. Yes.

8 Q. Trey, after your daughter disclosed her sexual
9 assault to you, what did you do the rest of the day?

10 A. After she disclosed the assault, I left from my
11 house and left my daughters and my wife at home and I went
12 directly to my sister's house looking to speak with either her
13 or Auston or my brother-in-law. None of them were at home and
14 so I came back home and talked with my wife and decided it
15 would be best if we tried to make the day as normal as
16 possible for Minor Child and so while continuing to attempt and
17 try to call and talk with my sister or a person in the family,
18 we went ahead and went to the zoo at that time.

19 Q. After you guys completed your trip to the zoo, did
20 you then contact law enforcement?

21 A. Yes.

22 Q. And you have met with law enforcement. Have you met
23 with law enforcement?

24 A. Yes, sir.

25 Q. Did you fully cooperate with the investigation?

1 A. Yes, sir.

2 MR. FERNANDEZ: No further questions, Your Honor.

3 THE COURT: Any cross?

4 MR. WILLIAMS: May it please the Court.

5 CROSS EXAMINATION

6 BY MR. WILLIAMS:

7 Q. Mr. Marsh, your mother is Linda Marsh; is that
8 correct?

9 A. Yes, sir.

10 Q. Obviously you have known her all your life?

11 A. Yes, sir.

12 Q. How old is she?

13 A. She was born in '52.

14 Q. So she's 64?

15 A. Yes, sir.

16 Q. She's still alive?

17 A. Yes, sir.

18 Q. And where did she work?

19 A. Uhm, she was retired SLED agent.

20 Q. What did she do with SLED?

21 A. Uhm, quite a few different things. I know she
22 worked in missing persons for a while. Towards the end of her
23 career she was working in the call center.

24 Q. Okay. Anything else that you can recall about her
25 history with SLED? How many years was she with SLED?

1 A. Over 30. Quite a while.

2 Q. Was she an agent?

3 A. Yes, sir.

4 Q. She went to the training facility that SLED has to
5 become a law enforcement officer?

6 A. Yes, sir. She went to the academy.

7 Q. Now, as I understand your testimony, there is an
8 allegation about May of 2014 and then there is an allegation
9 about reporting in February of 2015. When is the time that
10 you say that my client would have been at your mother's
11 house?

12 A. Sometime during the summer of 2014.

13 Q. So clearly that would have been after May of 2014?

14 A. Yes, sir.

15 Q. And for what, do you remember what months that he
16 would have been at your mother's house?

17 A. No, sir. Not clearly. I mean, uhm, it had just
18 been throughout the summer while we wasn't in school.

19 Q. Okay. And you knew that he was staying over at your
20 mother's house?

21 A. Yes, sir.

22 Q. Now, your child, your youngest child, I want to know
23 how to pronounce her name. Can you spell it to me.

24 A. A.M. .

25 Q. A.M. ?

1 A. A.M. .

2 Q. And in May of 2014 how old would she have been?

3 A. She had not been born May of 2014.

4 Q. When was she born?

5 A. December 2014.

6 Q. So your wife would have been pregnant; is that
7 correct?

8 A. That's correct.

9 Q. How many months pregnant would she have been in May
10 of 2014?

11 A. Three or four months.

12 Q. Now, you stated earlier that there was some sort of
13 depression or she is not as happy as she used to be?

14 A. Uhm --

15 Q. Or did you say more? Did you say nightmares and
16 scared, say all those things?

17 A. Yes, sir. There were times.

18 Q. When was that?

19 A. Uhm, I would say from the summer of 2014 on.

20 Q. Did you take your child to a doctor because of these
21 problems?

22 A. Yes, sir.

23 Q. Which doctor did you take her to?

24 A. I can't recall.

25 Q. On how many occasions did you take your daughter to

1 this doctor?

2 A. I think maybe once.

3 Q. What type of doctor did you take her to?

4 A. I believe it was our family doctor.

5 Q. You took your child to the family doctor one time,
6 correct?

7 A. Yes, sir.

8 Q. Did your child see another doctor through the
9 Dickerson Center?

10 A. Yes, sir.

11 Q. Did you go with them when they saw that doctor?

12 A. No, sir.

13 Q. Do you know the name of that doctor?

14 A. No, sir. I can't recall.

15 Q. What types of medication does your child take?

16 A. Generally she doesn't. At most normally it's
17 Tylenol.

18 Q. So the family doctor didn't give you any special
19 medications for anything?

20 A. No, sir.

21 Q. Didn't refer her for anymore treatment of any
22 kind?

23 A. No, sir.

24 MR. WILLIAMS: That's all the questions I have, Your
25 Honor.

1 THE COURT: Any redirect?

2 MR. FERNANDEZ: Nothing, Your Honor. Thank you.

3 THE COURT: You may step down.

4 MR. FERNANDEZ: Ask the Court permission to excuse
5 this witnesses from his subpoena.

6 THE COURT: Any objection?

7 MR. WILLIAMS: No objection, Your Honor.

8 THE COURT: You may be excused from the subpoena.
9 Thank you. This would be a good time to take an
10 afternoon break. Ladies and gentlemen, I'm going to
11 remind you the instructions that I have given to you. Do
12 not begin to discuss this matter among yourselves until
13 you have heard all the evidence that's presented. We'll
14 take our afternoon break and we'll bring you back shortly
15 and continue on.

16 (Whereupon, the jury entered the jury room at 3:27
17 p.m.)

18 THE COURT: Is there anything we need to take up
19 during this break?

20 MS. ABEE: No, Your Honor. The next witness is the
21 child so we ask that the courtroom be cleared of all
22 unnecessary individuals.

23 THE COURT: To our spectators with the exception of
24 my 403, that at the time we resume and the victim is
25 called to testify the courtroom should be cleared of all

1 non essential personnel. We will keep the bailiffs and
2 the Sheriff's deputies and the parties involved in this
3 case including the investigator. Everyone else will be
4 excused until she is finished testifying. If there is
5 nothing else, then we'll take a break and then we'll come
6 back.

7 MS. ABEE: Thank you, Your Honor.

8 (Short break.)

9 THE COURT: Is there anything we need to take up
10 before we bring the jury in?

11 MS. ABEE: Nothing from the State, Your Honor.

12 MR. WILLIAMS: Nothing from the defendant, Your
13 Honor.

14 THE COURT: You may ask for the jury to come in
15 please.

16 (Whereupon, the jury entered the courtroom at 3:47
17 p.m.)

18 THE COURT: You may call your next witness.

19 MS. ABEE: Your Honor, the State calls Minor Child

20 .
21 Thereupon,

22 Minor Child (A minor)
23 after having been first duly sworn, testified as follows,

24 DIRECT EXAMINATION

25 BY MS. ABEE:

- 1 Q. Can you tell us, all of us, what your name is?
- 2 A. Minor Child.
- 3 Q. Minor Child. What's your last name?
- 4 A. Minor .
- 5 Q. Is that your last name?
- 6 A. Mm-hmm.
- 7 Q. Your last name is Minor ?
- 8 A. Wait. Actually Minor .
- 9 Q. Minor . Okay. Thank you for correcting me.
- 10 A. I kind of forgot.
- 11 Q. You forgot. Okay. So your last name is Minor .
- 12 Minor Child, how old are you?
- 13 A. Six.
- 14 Q. Do you know when your birthday is?
- 15 A. Mmm-mmm.
- 16 Q. No. Okay. Well, Minor Child, remember when we were
- 17 just standing right there and you promised to tell the
- 18 truth?
- 19 A. (Witness nodding head.)
- 20 Q. You've got to answer out loud.
- 21 A. Yes, ma'am.
- 22 Q. Okay. Do you know what it means to tell the
- 23 truth?
- 24 A. (Witness nodding head.) Yes, ma'am.
- 25 Q. Okay. And if you're not telling the truth, what are

1 you telling?

2 A. You're telling a lie.

3 Q. Yeah. And is it a good thing or a bad thing to tell
4 the truth?

5 A. A good thing.

6 Q. Okay. Does anything happen if you tell a lie?

7 A. Yes, ma'am.

8 Q. What could happen if you tell a lie?

9 A. You could get in trouble or be sent to your room.

10 Q. Okay. So then do you know what it means to tell us
11 the truth today?

12 A. (Witness nodding head.) Yes, ma'am.

13 Q. Okay. Thank you. Minor Child, tell all of us, do you
14 go to school?

15 A. Yes, ma'am.

16 Q. Where do you go to school at?

17 A. [REDACTED].

18 Q. Do you know who your teacher is going to be this
19 year?

20 A. Yes, ma'am.

21 Q. Okay. Who is your teacher going to be this year?

22 A. Ms. Payne.

23 Q. Okay. Do you like school, Minor Child?

24 A. Yes, ma'am.

25 Q. What do you like about school?

1 A. That it's very good and teaches me how to learn.

2 Q. Yeah. What's your favorite thing to do at school?

3 A. My favorite thing to do at school is play outside
4 and learn how to read books.

5 Q. Do you like to read?

6 A. Yes, ma'am.

7 Q. Minor Child, what do you want to be when you grow up?

8 A. A police officer.

9 Q. Yeah? Can you tell us all who you live with?

10 A. My mommy and daddy and my grandma.

11 Q. Do you live with anyone else?

12 A. I sometimes spend the night with my dandy and my
13 friend Mary Ellen Patton.

14 Q. Minor Child do you have any brothers or sisters?

15 A. I have a little sister named Alynn.

16 Q. You said she's little. Do you know how old Alynn
17 is?

18 A. She's one year old.

19 Q. Okay. Minor Child, can you help me identify some body
20 parts?

21 A. Yes, ma'am.

22 MS. ABEE: Your Honor, permission for the witness to
23 step down and use the demonstrative?

24 THE COURT: Yes, ma'am.

25 MS. ABEE: This demonstrative has been shown to

1 defense counsel.

2 BY MS. ABEE:

3 Q. Come on and stand right here, okay? Minor Child, are
4 you a boy or a girl?

5 A. A girl.

6 Q. You're a girl. And you have to make sure you speak
7 real loud, okay?

8 THE COURT: Have her switch places with you, please.

9 BY MS. ABEE:

10 Q. Come right up beside me. Minor Child, is this a boy or
11 a girl?

12 A. A girl.

13 Q. Thank you for speaking so loud. I'm going to write
14 the word girl at the top of this, okay?

15 A. Okay.

16 Q. And can you tell me what this is?

17 A. Eyes.

18 Q. Okay. I'm going to write the word eyes beside what
19 you told me were eyes. What are those?

20 A. Nose.

21 Q. Nose. Okay. I'm going to write nose beside what
22 you told me was the nose. What about this part?

23 A. Mouth.

24 Q. Mouth. I'm going to write the word mouth beside
25 that, okay?

1 A. Okay.

2 Q. What about this part? What is that?

3 A. A bellybutton.

4 Q. Bellybutton. Okay. I'm going to write the word
5 bellybutton beside what you told me is the bellybutton. And
6 what about these things. What do you call those?

7 A. Hands.

8 Q. Hands. Thank you. I'm going to write the word
9 hands right there. And these?

10 A. Knees.

11 Q. Knees. I'm going to write the word knees right
12 beside what you told me were the knees. What are these?

13 A. Feet.

14 Q. Feet. I'm going to write the word feet right where
15 you told me were the feet. Minor Child, what do you call this on
16 a girl?

17 A. Kid bras.

18 Q. Kid bras. Okay. I'm going to write the word kid
19 bras right where you told me where that was, okay? What about
20 this part. What do you call that on a girl?

21 A. A hiney.

22 Q. Hiney. I'm going to write the word hiney right
23 where you told me this girl's hiney was. Minor Child, is this the
24 front or the back of the girl that I'm pointing to on the
25 right side?

1 A. Back.

2 Q. Okay. Can you tell me what that part is on a
3 girl?

4 A. A booty.

5 Q. A booty. All right. I'll write the word booty.
6 Can I show you another one?

7 A. Yes, ma'am.

8 Q. Okay. Now, Minor Child, is this a boy or a girl?

9 A. A girl.

10 Q. This one's a --

11 A. I mean a boy.

12 Q. This one is a boy. Okay. I'm going to write the
13 word boy at the top then. All right. What are these on a
14 boy?

15 A. Eyes.

16 Q. Eyes. Okay. What about that? What is that on a
17 boy?

18 A. A nose.

19 Q. Nose. I'm going to write nose beside where you told
20 me the nose was. What about that?

21 A. A mouth.

22 Q. A mouth. Okay. I'm going to write the word mouth.
23 And what are these?

24 A. Hands.

25 Q. Hands. I'm going to write the word hands. And what

1 are those on a boy?

2 A. Knees.

3 Q. I'm going to write the word knees. What about
4 these?

5 A. Feet.

6 Q. Feet. Okay. I'm going to write the word feet. And
7 what about this on a boy? What do you call that?

8 A. A bellybutton.

9 Q. Okay. I'm going to write the word bellybutton. And
10 what about this on a boy that I just circled. What do you
11 call that?

12 A. Boy bras.

13 Q. Boy bras. Okay. And what about this that I just
14 circled. What do you call that?

15 A. A peepee outer.

16 Q. A peepee outer. Okay. I'm going to write the word
17 peepee outer right beside that. And is this the front or the
18 back of the boy that I'm pointing to?

19 A. The back.

20 Q. The back. What do you call that on a boy?

21 A. A booty.

22 Q. A booty. I'm going to write the word booty right
23 there. Thank you, Minor Child. You can go back up to your seat
24 now, okay? Thank you for helping me with that. Minor Child, do
25 you know someone named Auston?

1 A. Mm-hmm.

2 Q. Yeah. How do you know him?

3 A. Because he's my friend.

4 Q. He's your friend. And is Auston little like you or
5 older?

6 A. Older.

7 Q. Older. Do you know who Auston lives with?

8 A. My aunt Shannon.

9 Q. Okay. Auston lives with your aunt Shannon. Do you
10 ever play with Auston?

11 A. Not anymore because he got sent to jail.

12 Q. Okay. Well, what types of things did you used to do
13 with Auston?

14 A. Swim with him and go to parties and play at the
15 water park.

16 Q. Okay. And, Minor Child, do you know all these body
17 parts you just helped me label what they are, have you ever
18 seen any of Auston's body parts?

19 A. Yes.

20 Q. Okay. What have you seen?

21 A. His peepee outer.

22 Q. Yeah. Where did you see that?

23 A. At my grandma's old house.

24 Q. Which grandma is that?

25 A. My grandma Linda.

1 Q. Do you know where you were in the house?

2 A. I was in the room where the baby crib and stuff
3 is.

4 Q. Okay. Minor Child, do you remember how old you were?

5 A. I'm six.

6 Q. You're six. How old are you right now?

7 A. Six still.

8 Q. Okay. Do you remember how old you were when you saw
9 Auston's peepee outer?

10 A. I think I was five or four.

11 Q. Okay. And what happened with his peepee outer?
12 What happened with it?

13 A. He made me put my mouth on it.

14 Q. Yeah. How did that feel?

15 A. Yucky.

16 Q. What happened when it was in your mouth?

17 MR. WILLIAMS: Objection. Leading.

18 BY THE WITNESS:

19 A. It choked me.

20 THE COURT: Overruled.

21 BY MS. ABEE:

22 Q. Sorry, Minor Child. What happened with it once it was
23 in your mouth?

24 A. It choked me.

25 Q. Did you tell anyone that that happened right then?

1 A. No.

2 Q. Why not?

3 A. Because I was scared to.

4 MS. ABEE: Your Honor, I have no further questions
5 for this witness at this time. Ms. Minor Child, can you
6 answer any questions that Mr. Theo has to ask you?

7 THE WITNESS: Yes, ma'am.

8 MS. ABEE: Thank you.

9 CROSS EXAMINATION

10 BY MR. WILLIAMS:

11 Q. Minor Child, I'm Theo Williams. I'm an attorney. Do
12 you know what an attorney does?

13 A. No.

14 Q. Okay. We're lawyers. We represent people in court.
15 Do you know that this is a courtroom?

16 A. Yes, sir.

17 Q. What happens in a courtroom?

18 A. Uhm, the lawyer - the lawyer tells the truth and
19 tells what really is happening.

20 Q. The lawyer tells the truth?

21 A. I think so.

22 Q. Well, some people may quibble with that. Do you
23 know what position -- I shouldn't use the word position.
24 You're six. I've got two daughters, too, Minor Child. One is a
25 lawyer. Do you know what you do when you sit in that chair?

1 A. No.

2 Q. All right. That makes you a witness which means
3 you're supposed to be asked questions and tell the truth and
4 lawyers and the Judge asks you questions. That's kind of
5 interesting, isn't it?

6 A. Yes, sir.

7 Q. Okay. If it's not, you can tell me it's not. You
8 don't have to please me. Let me ask you, you made the comment
9 that Auston made you put your mouth on his peepee outer and
10 then there was a question to you about in your mouth. Do you
11 remember something happening with Auston?

12 A. Yes.

13 Q. All right. Now, I want you to, you said it happened
14 at your grandmother's house?

15 A. My grandma's.

16 Q. Your grandma's house. Which grandma was this?

17 A. My grandma Linda.

18 Q. When did this happen?

19 A. Uhm, it was a long, long, long, long, very long time
20 ago.

21 Q. Could it have been more than two years ago?

22 A. Yes, sir.

23 Q. Who was there on -- Was it -- Do you remember
24 anything about whether it was daytime or nighttime?

25 A. It was daytime.

1 Q. Okay. Who was there?

2 A. My grandma and Laurel and Christian.

3 Q. Your grandmother and who?

4 A. And Laurel and Christian.

5 Q. Laurel and Christian?

6 A. Yeah.

7 Q. Who is Laurel and Christian?

8 A. They are my - They're big kids, of my friends.

9 They're my friends.

10 Q. Okay. So how old is Laurel? Is Laurel a girl or a
11 guy? Laura?

12 A. She's a girl. They're both girls.

13 Q. And how old are they?

14 A. I don't really know because I never been to their
15 birthday.

16 Q. All right. So they were having a birthday party at
17 your grandmother's house?

18 A. No. I said I never been to their birthday before.

19 Q. Okay. I was asking you who was there at your
20 grandmother's house when this happened with Auston and you
21 said Laurel and Christian. Were they there?

22 A. Yes, sir.

23 Q. Okay. Now, how old were they?

24 A. I don't know.

25 Q. They are older than you, aren't they?

1 A. Uh-huh.

2 Q. Are they in school?

3 A. I think so.

4 Q. Are they as old as Auston?

5 A. No, sir. They're, uhm, they're Auston's little
6 sisters, I think.

7 Q. Okay. And where were they when this thing happened
8 with Auston?

9 A. They were at grandma's with me and Auston.

10 Q. Okay. So y'all were all together in the same
11 room?

12 A. No. They were in the living room and me and Auston
13 were in a different room.

14 Q. Okay. And what were y'all doing in a different
15 room?

16 A. He made me suck on his peepee outer.

17 Q. All right. When was that? How did he do that?

18 A. Uhm, he just made me.

19 Q. How did he -- Did he take your clothes off or you
20 took his clothes off or he took his own clothes off?

21 A. He took his own clothes off.

22 Q. All right. And then how did he do that? What did
23 he say?

24 A. He said put your mouth on it, my peepee outer.

25 Q. He said put your mouth on my peepee outer. Is that

1 what he said?

2 A. Yes, sir.

3 Q. Those are the words he said?

4 A. Yes, sir.

5 Q. And then what happened after that?

6 A. Uhm, I don't really remember because it's been a
7 long time.

8 Q. You don't remember?

9 A. I don't remember a lot of it because it's been a
10 long time.

11 Q. What happened before that? What happened leading up
12 to that?

13 A. I don't remember.

14 Q. So you don't remember anything before or anything
15 after that; is that correct?

16 A. Yes, sir.

17 Q. And Laurel and Christian, did you talk to them about
18 what happened?

19 A. No. At least I don't think so.

20 Q. You don't know if you talked to them or not?

21 A. No. I said I don't think so.

22 Q. What does that mean? It means you're not sure?

23 A. I'm not sure.

24 Q. Okay. Where was your grandmother when this
25 happened?

1 A. We were all there. Even grandma was.

2 Q. So everybody was there?

3 A. Not everybody in the whole world. Just my grandma
4 and my mom and dad.

5 Q. Your mom and dad were there too?

6 A. Yes, sir.

7 Q. Where were they at the house?

8 A. They were in the living room.

9 Q. Everybody was in the living room?

10 A. Not everybody. Just mommy and daddy and grandma and
11 Laurel and Christian.

12 Q. And then you and Auston were in a room?

13 A. Mm-hmm.

14 Q. And this was whose room?

15 A. My grandma's room probably.

16 Q. Your grandmother's room?

17 A. At least I think.

18 Q. Okay. Uhm, when you came out of the room, did you
19 say anything to somebody?

20 A. No. No, sir.

21 Q. Okay. Is this the only time you ever saw his peepee
22 outer?

23 A. Yes, sir. I think.

24 Q. How many times have you talked about what we are
25 talking about today, do you know?

1 A. I think a lot of times.

2 Q. Who all have you talked to about this thing which we
3 are talking about today?

4 A. Her and, uhm - I don't remember anybody else a
5 lot.

6 Q. So you talked to the attorney. You talked to the
7 prosecutor? We call them prosecutors or Attorney Generals or
8 Solicitors and they represent the State and I represent
9 Auston. Do you know what represent means?

10 A. No, sir.

11 Q. It means that we do things for their benefit. Did
12 you talk to the police about this, somebody with a uniform
13 on?

14 A. No, sir.

15 Q. Did you talk to somebody in a room where they
16 videotaped you?

17 A. No, sir.

18 Q. When you were saying who lives with you, do you
19 remember when the prosecutor was asking you who lives with you
20 and you listed off the people who live with you?

21 A. Yes, sir.

22 Q. You said your momma, your daddy and your grandma and
23 you didn't list your sister. Why didn't you list your
24 sister?

25 A. Uh, I don't - I don't really know.

- 1 Q. She lives with you, doesn't she?
- 2 A. Yes, sir.
- 3 Q. Does she have her own bedroom?
- 4 A. Yes, sir.
- 5 Q. You got a cough?
- 6 A. Mm-hmm.
- 7 Q. You want some water?
- 8 A. Yes, sir.
- 9 Q. How do you feel about your sister?
- 10 A. I feel good about her but bad about her when she's
- 11 sick.
- 12 Q. Does she get sick sometimes?
- 13 A. Yes, sir.
- 14 Q. Are you glad you have a sister?
- 15 A. Yes, sir.
- 16 Q. Do you ever wish you were an only child?
- 17 A. No, sir.
- 18 Q. How do you get along in school? Do you do well in
- 19 school?
- 20 A. Yes, sir.
- 21 Q. Do you have any problems?
- 22 A. Sometimes.
- 23 Q. What kind of problems do you have?
- 24 A. Sometimes problems writing and reading and putting
- 25 puzzles together.

1 Q. I understand. What about, do you sleep well at
2 night?

3 A. Yes, sir.

4 Q. Are you normally happy?

5 A. Yes, sir.

6 Q. You don't seem real happy right now.

7 A. That's because I'm nervous.

8 MR. WILLIAMS: Okay. That's understandable. I get
9 nervous when I'm on the witness stand. That's all the
10 questions I have, Your Honor.

11 THE COURT: Any redirect?

12 MS. ABEE: No redirect, Your Honor.

13 THE COURT: You may step down.

14 MS. ABEE: Your Honor, we'll just ask that these be
15 marked as Court's exhibits.

16 THE COURT: We'll put stickers on them as Court's 1
17 and 2.

18 (Whereupon, Court's Exhibits #1 and #2 marked for
19 identification.)

20 THE COURT: Call your next witness.

21 MS. ABEE: The State calls April Sykes.

22 Thereupon,

23 APRIL SYKES

24 after having been first duly sworn, testified as follows,

25 THE CLERK: Please have a seat. After you're

1 seated, please state your full name spelling your last
2 name for the record.

3 THE WITNESS: April Sykes, S-y-k-e-s.

4 DIRECT EXAMINATION

5 BY MS. ABEE:

6 Q. And, April, are you employed?

7 A. I am.

8 Q. Where at?

9 A. The South Carolina Law Enforcement Division commonly
10 known as SLED.

11 Q. What do you do there?

12 A. I'm a field agent.

13 Q. Tell us what you do as a field agent.

14 A. As a field agent we conduct investigations on behalf
15 of the Attorney General's Office or on behalf of local law
16 enforcement. My particular region covers about ten counties
17 in the middle of the state so a little bit of everything and
18 anything that comes across our desk.

19 Q. Is there any particular subject matter that you
20 focus on?

21 A. Child abuse.

22 Q. How long have you been in law enforcement?

23 A. 14 years.

24 Q. How long have you been with SLED?

25 A. Almost three years. I started my career at SLED in

1 March of 2014.

2 Q. How long have you been focusing on child abuse
3 cases?

4 A. Pretty much the day I started. I was one of the
5 very first female officers at local PD and just being female
6 got kind of pushed into that arena and I loved it and stuck
7 with it.

8 Q. Do you have specialized training in the area of
9 child sexual abuse?

10 A. I do.

11 Q. Explain that to us please.

12 A. I conduct forensic interviews on behalf of SLED. I
13 work with one of the local advocacy centers so part of that
14 training was to go through, it's a program called Finding
15 Words. It teaches you how to speak with children. How to
16 interview children. I went through the basic course. The
17 advanced course. There's another course that's further than
18 the advanced course called Beyond Finding Words and then most
19 recently we updated our protocol in South Carolina and so I
20 attended that training as well. Additionally, any other
21 training that I'm allowed to attend I will sign up for.
22 Things such as interviewing children on an autism spectrum,
23 interviewing children with disabilities, interviewing pre-K
24 children. Those kind of things in addition to my regular
25 required law enforcement training that I get every year to

1 still stay certified as a police officer.

2 Q. Have you had an opportunity to conduct forensic
3 interviews with children?

4 A. Yes.

5 Q. Approximately how many children have you
6 interviewed?

7 A. I started keeping statistics on my interviews when I
8 started at SLED. Since SLED I have done 55 forensic
9 interviews. Prior to that I did do forensic interviews but it
10 wasn't on a regular basis and I didn't keep statistics.

11 Q. What is the age range of children that you have
12 forensically interviewed?

13 A. Anywhere from three years old and up.

14 Q. Explain to us just very briefly or generically do we
15 mean when we say forensic interview?

16 A. That's a fancy term for a child friendly interview
17 by someone who is trained to talk with children and it's in
18 like a neutral setting.

19 Q. And are these video or audio recorded?

20 A. They are.

21 Q. Explain to us who all is in the room when you
22 conduct a forensic interview?

23 A. Just the interviewer and the child. We want to
24 elicit what happened based on the child's words in their own
25 words, so we don't want it contaminated with any outside

1 sources.

2 Q. Did you have an opportunity to perform a forensic
3 interview in this matter?

4 A. I did.

5 Q. On who?

6 A. Minor Child She was four years old at the time,
7 on February 16th, 2016 at the Dickerson Children's Advocacy
8 Center in West Columbia.

9 Q. Was that recorded?

10 A. Yes.

11 MS. ABEE: Your Honor, my I approach and retrieve
12 what's already been pre-marked as State's exhibit number
13 1?

14 THE COURT: Yes.

15 MS. ABEE: May I approach the witness?

16 THE COURT: Yes.

17 BY MS. ABEE:

18 Q. Agent Sykes, I'm handing you what has been
19 pre-marked as State's exhibit 1. Do you recognize that?

20 A. I do.

21 Q. What is that?

22 A. That's the DVD audio and video recording of my
23 forensic interview with Minor Child .

24 Q. And how do you know that that's the forensic
25 interview of Minor Child ?

1 A. I watched it and initialed the actual DVD.

2 Q. What are the initials that are on the DVD?

3 A. AS for April Sykes.

4 Q. Is this a true and accurate copy of the forensic
5 interview you performed on Minor Child ?

6 A. Yes.

7 MS. ABEE: Your Honor, at this time we seek to enter
8 State's exhibit 1 into evidence.

9 MR. WILLIAMS: Subject to the prior objections, Your
10 Honor.

11 THE COURT: Based upon the requirements of the
12 statute I believe the prerequisites have been fulfilled.
13 I'll admit the DVD.

14 MS. ABEE: Permission to publish to the jury, Your
15 Honor.

16 THE COURT: Yes.

17 MS. ABEE: Your Honor, may we approach briefly while
18 this is setting up?

19 THE COURT: Yes.

20 (Side bar off the record.)

21 THE COURT: Ladies and gentlemen, there will be
22 portions of the DVD that will be muted because they're
23 not relevant to the issues that we are discussing in this
24 particular case. I just want you to be aware of that.

25 (Whereupon, playing State's exhibit number 1, DVD of

1 forensic interview for the jury.)

2 BY MS. ABEE:

3 Q. Agent Sykes, how old was Minor Child during that
4 interview?

5 A. She was four years old at the time.

6 MS. ABEE: Your Honor, I have no further questions
7 for this witness at this time.

8 MR. WILLIAMS: Your Honor, I have a matter, if I
9 could discuss it at the bench with the prosecutor.

10 THE COURT: Yes.

11 (Side bar off the record.)

12 THE COURT: Ladies and gentlemen, we have a matter
13 we need to take up outside of your presence. I'll ask
14 that you to retire to the jury room. Again I instruct
15 you not to begin any discussions or deliberations as you
16 have certainly not heard all of the evidence yet to be
17 presented. If you will retire to the jury room, I'll
18 bring you back in just a few moments.

19 (Whereupon, the jury entered the jury room at 4:50
20 p.m.)

21 THE COURT: Mr. Williams, would you state for the
22 record again so there is a record of it.

23 MR. WILLIAMS: Yes, Your Honor. My client, the
24 video was stopped at 17:35 and was restarted at 18:47.
25 My client indicated that he thought the section which was

1 being redacted, that there was more than just that
2 redaction in that period of time that was stopped so
3 that's why I approached the bench with the prosecutor and
4 asked the Court if there was any way we could have the
5 jury out of the room to verify that that was the section
6 which was not played in front of the jury.

7 THE COURT: Yes, ma'am. Play it for us. I think
8 the question is whether or not it redacted more than just
9 the reference to the other person, the other child.

10 MR. WILLIAMS: Yes, ma'am.

11 (Whereupon, a portion of State's exhibit #1, video
12 of forensic interview played for the Court.)

13 MS. ABEE: Your Honor, that would be when it picked
14 back up, Your Honor, not talking about Jacob. The
15 question is who is Auston. It stated playing again at
16 18:47 which is where I just stopped it.

17 MR. WILLIAMS: Your Honor, we are satisfied with
18 that.

19 THE COURT: Okay. Anything else we need to take up
20 before we bring the jury back in?

21 MS. ABEE: Nothing from the State, Your Honor.

22 MR. WILLIAMS: No, Your Honor.

23 THE COURT: You can call for the jury.

24 (Whereupon, the jury entered the courtroom at 4:55
25 p.m.)

1 THE COURT: I'm sorry, ladies and gentlemen. As
2 soon as y'all were coming back in, Mr. Breazeale needed
3 to run to the restroom so that's where he's gone.

4 MR. WILLIAMS: May it please the Court.

5 THE COURT: Yes, sir.

6 MR. WILLIAMS: Thank you, Your Honor.

7 CROSS EXAMINATION

8 BY MR. WILLIAMS:

9 Q. Agent Sykes, this forensic interview which we have
10 viewed here was done on what date?

11 A. February 16th, 2015.

12 Q. Was there a referral to a doctor for a physical
13 exam?

14 A. I'm not sure. Referrals are usually made by law
15 enforcement.

16 Q. You were only involved in the evaluation of the
17 forensic interview?

18 A. Correct.

19 Q. You have no knowledge whatsoever as to what physical
20 exam, if any, was taken after this?

21 A. I do not.

22 MR. WILLIAMS: That's all the questions I have, Your
23 Honor.

24 THE COURT: Any redirect?

25 MS. ABEE: No, Your Honor. We would ask that this

1 witness be excused from her subpoena.

2 MR. WILLIAMS: No objection, Your Honor.

3 THE COURT: You may be excused. Thank you. Ladies
4 and gentlemen, at this time it's a good time to take a
5 break for the evening. I'm going to remind you of the
6 instructions that I have given to you, that is not to
7 begin to discuss this matter among yourselves as you have
8 still not yet heard all of the evidence that has to be
9 presented. Please remember as you come and go from the
10 courthouse not to listen to conversations that you may
11 hear in the hallways. Again for the reasons that you to
12 make decisions based upon the evidence that's been
13 presented here in this courtroom and not based upon
14 conversation that you may overhear.

15 Please remember not to allow anyone to approach you
16 to discuss this matter with you. Again if someone
17 attempts to discuss this case with you, please tell them
18 that you are a juror and that you cannot discuss it and I
19 ask that you report it to us as soon as possible.

20 Now, overnight, ladies and gentlemen, I'm going to
21 add a couple of additional instructions. I know your
22 family and friends will want to know what you're doing on
23 jury duty this week. Certainly you can tell them that
24 you have been selected as a juror in a criminal case
25 involving criminal sexual conduct, but I ask that you not

1 discuss what you have heard or seen thus far throughout
2 the course of this particular trial with your family and
3 friends. The reason I do that is because whenever you
4 have a conversation with family and friends, you talk
5 about the things that you consider to be the most
6 important, things that stuck out in your mind and I would
7 like for your fellow jurors to be able to hear that when
8 you first begin to talk about the case. You talk about
9 the things that stuck with you the most.

10 Additionally, your friends and family may make
11 comments to you that has the potential to impact how you
12 view the evidence or how you consider the evidence.
13 While they are not perfect strangers, it's still
14 inappropriate for them to have conversations with you
15 about this particular case. Please tell them that I
16 asked you not to discuss it with them and please tell
17 them that once the trial is concluded that you will be
18 free at that particular time to discuss what you have
19 heard and seen and will be happy to do that with them.
20 But until that time please tell them that I have asked
21 you not to discuss it with them.

22 Additionally, overnight and throughout the course of
23 this trial I ask that you not engage in any independent
24 research to the extent that you may have access to either
25 individuals or books or computers or other sources of

1 information about anything that you have heard throughout
2 the course of this trial. I ask that you not engage in
3 any independent research or investigation. That's not
4 evidence in this case. It cannot be considered by you in
5 reaching your verdict in this matter. So it's very
6 important that you not engage in any of that conduct
7 throughout the course of this trial, any independent
8 investigation throughout this matter.

9 Ladies and gentlemen, I'm going to ask that you
10 report back to the same jury room tomorrow morning at
11 9:30. When you have reported back at that time, then
12 we'll be ready to continue on with the trial of this
13 case. I hope that you have a very pleasant evening.
14 We'll see you tomorrow morning at 9:30. Thank you.

15 (Whereupon, the jury was released for the evening at
16 5:00 p.m.)

17 THE COURT: Is there anything that we need to take
18 up before we break for the day?

19 MS. ABEE: Nothing from the State, Your Honor.

20 MR. WILLIAMS: Nothing from the defendant.

21 THE COURT: Have you marked the video as State's
22 exhibit number 1?

23 MS. ABEE: Yes, Your Honor.

24 THE COURT: If you will return it to the custody of
25 the Clerk's Office.

1 MS. ABEE: It has been, Your Honor.

2 THE COURT: And I understand that you don't have any
3 specific requested charge. If overnight that you feel
4 there is something that you may need to submit, I ask
5 that you do that first thing in the morning so that I
6 will be able to prepare the instructions for the jury and
7 we'll see how the day goes tomorrow. Again, Mr.
8 Breazeale, you are still out on bond. You need to make
9 sure you're here in this courtroom tomorrow morning at
10 9:30. Again, if you fail to report and we are not able
11 to discern where you are or the reasons why you are
12 absent or there is not a good reason for your absence,
13 then the trial will continue on in your absence and a
14 bench warrant will be issued. Do you understand?

15 MR. BREAZEALE: Yes, ma'am.

16 THE COURT: Thank you. If there is nothing further,
17 then we'll see you all tomorrow morning at 9:30. Thank
18 you. The courtroom will be locked up overnight. If you
19 wish to leave materials here, you're certainly welcome to
20 do that.

21 (Whereupon, court was adjourned for the evening at
22 5:05 p.m.)

23

24

25

1 August 23, 2016.

2 BAILIFF: All rise. The Honorable Judge Alison Lee
3 presiding.

4 THE COURT: Good morning. Please be seated. Thank
5 you. Is there anything we need to take up before we get
6 started?

7 MS. ABEE: Nothing from the State, Your Honor.

8 MR. WILLIAMS: Nothing from the defendant, Your
9 Honor.

10 THE COURT: Ask the jury to come in please.

11 (Whereupon, the jury entered the courtroom at 9:50
12 a.m.)

13 THE COURT: Good morning, ladies and gentlemen. At
14 this time we are ready to carry on. You may call your
15 next witness.

16 MS. ABEE: Thank you, Your Honor. At this time the
17 State calls Dwayne Rice.

18 Thereupon,

19 HERSCHEL DWAYNE RICE
20 after having been first duly sworn, testified as follows,

21 THE CLERK: Please have a seat. After you're
22 seated, please state your full name spelling your last
23 name for the record.

24 THE WITNESS: Herschel Dwayne Rice, R-i-c-e.

25 DIRECT EXAMINATION

1 BY MS. ABEE:

2 Q. Go ahead and spell your first name for us as well,
3 sir.

4 A. H-e-r-s-c-h-e-l.

5 Q. Mr. Rice, what do you go by?

6 A. Dwayne.

7 Q. Mr. Rice, how old are you?

8 A. 69.

9 Q. Where are you from?

10 A. I live in Wagener, South Carolina.

11 Q. How long have you lived in Wagener, South
12 Carolina?

13 A. About two, maybe two and a half years.

14 Q. Where are you originally from?

15 A. Lexington.

16 Q. Have you pretty much grown up here in South
17 Carolina?

18 A. All my life.

19 Q. Mr. Rice, tell the jury a little bit about yourself,
20 a little bit about your background.

21 A. Well, I don't know where to begin with all that
22 now.

23 Q. Why don't you tell us, any military service,
24 anything like that?

25 A. Okay. I'm a Vietnam vet in the Marine Corps in the

1 middle '60s. Went in in '65, got out in '69 and when I got
2 out of the Marine Corps, I couldn't hardly find a job because
3 nobody liked veterans, especially Vietnam veterans. But I
4 tried a little bit of everything. Got into carpentry work.
5 Got into truck driving. Got into farming a little bit, you
6 know. Raised on a farm but raised horses, cows, things of
7 that nature. Then I got disabled through the VA and that's
8 it.

9 Q. Mr. Rice, do you know Linda Marsh?

10 A. Yes, ma'am.

11 Q. Explain to us how you know Linda Marsh?

12 A. I met Linda Marsh about, I think it might be 26
13 years ago. Not quite that. No. Because her oldest son was
14 still being potty trained, running around in them little what
15 you call them. I met her at the Skyline Club. We would like
16 to go dancing and carrying on and she became a dancing partner
17 of mine. That's how we met.

18 Q. Throughout the 20 something years that you and Linda
19 have known each other, have y'all stayed in contact and been
20 friends?

21 A. Off and on.

22 Q. Was there a point in time during the summer of 2014
23 that you stayed at Linda Marsh's house?

24 A. Yes, ma'am.

25 Q. Explain to us why you were staying at Linda Marsh's

1 house?

2 A. I had to have an operation over at the VA Hospital.
3 When they operate on you at the VA Hospital, you have to take
4 a driver because they gonna kick you out as soon as you come
5 to and come out from under the - right after the operation you
6 gone so I had to have a driver take me home.

7 Q. Was that driver Linda Marsh?

8 A. Linda Marsh.

9 Q. Where did you stay after your surgery?

10 A. At her house. Is that what you're asking?

11 Q. Yes, sir.

12 A. Okay.

13 Q. How long did you stay at her house?

14 A. I stayed approximately three days.

15 Q. While you were at her house, did anyone else come by
16 or anyone visit or stay?

17 A. There was a few people in and out that I didn't even
18 know, but her son came by, daughter came by and her grandkids
19 was there.

20 Q. When you say her grandkids, was Minor Child ever
21 there, her young granddaughter?

22 A. Yes.

23 Q. What about Auston her grandson?

24 A. Yes, ma'am.

25 Q. Was there any point in time when you saw something

1 occur between Auston and Minor Child?

2 A. Yes, ma'am.

3 Q. Explain to us where you were when that happened?

4 A. I was getting up off the couch to go sit on her
5 little front porch because she was outside going to try and
6 cut grass or doing something like that and as I was getting up
7 off the couch going that way I heard the little girl kept
8 telling Auston to leave her alone because he kept bothering
9 her anyway.

10 Q. Once you heard that, where did you go?

11 A. I just keep coming that way because I didn't see
12 anything yet, you know, because I was in the living room and
13 then you had to go through like a hallway and then straight
14 out the door and the bedroom is off to the right. She was in
15 there watching TV on Linda's bed.

16 Q. You said that Linda was outside?

17 A. Right. Yes, ma'am.

18 Q. Was Auston inside or outside throughout the day?

19 A. He was in and out because she kept telling him to
20 come out there and help her and he keep sneaking back in the
21 house.

22 Q. Did he say anything about why he was coming back
23 inside of the house?

24 A. Well, the last time I saw him right at that
25 particular time he said he was going to use the restroom.

1 Q. Now, is there only one restroom in this house or
2 more than one restroom?

3 A. There's two.

4 Q. Where did he go? Where did Auston go?

5 A. To the restroom.

6 Q. Where did he go once he came inside of the house?

7 A. He went to the bedroom where that little girl was.

8 Q. The other bathroom, is it outside of that bedroom?

9 A. That's on the left. Going down the hall to your
10 left and back down that way.

11 Q. But he went to the bedroom where you said the little
12 girl was?

13 A. The little girl was.

14 Q. So as you were walking out and after you heard
15 Minor Child, what did you do?

16 A. Well, you know, I looked to see what, you know,
17 naturally because I saw some commotion over there and she told
18 him to quit. That hurt. I looked. By that time I looked and
19 I saw him have his hands in her panties and he said he was
20 just tinkling her. I said well quit. She don't like it. She
21 said it hurt, and I went outside.

22 Q. Now, you said you saw his hands in her panties so
23 were his hands on top of her clothes or underneath her
24 clothes?

25 A. Inside of her panties.

1 MS. ABEE: Your Honor, I have no further questions
2 at this time.

3 THE COURT: Any cross?

4 MR. WILLIAMS: May it please the Court.

5 THE COURT: Yes, sir.

6 CROSS EXAMINATION

7 BY MR. WILLIAMS:

8 Q. Mr. Rice, when were you staying at Linda Marsh's
9 house?

10 A. Sir, would you speak a little louder? I'm hard of
11 hearing.

12 Q. When were you staying at Linda Marsh's house?

13 A. When?

14 Q. Yes.

15 A. I don't remember the exact date. I would have to
16 look it back up when I was there from that hospital.

17 Q. Well, do you think it could have been in July of
18 2014?

19 A. It's either July or September. One of those days.
20 I don't remember.

21 Q. Do you remember giving a statement to a police
22 officer about your staying at Linda Marsh's house?

23 A. Yes, sir.

24 Q. If I gave you this statement to refresh your memory,
25 would it refresh your memory?

1 A. Yes, sir.

2 MR. WILLIAMS: May I approach the witness, Your
3 Honor?

4 THE COURT: Yes, sir.

5 BY THE WITNESS:

6 A. That's what I said.

7 BY MR. WILLIAMS:

8 Q. Does that refresh your memory, sir?

9 A. Yes, sir.

10 Q. So when were you staying at Linda Marsh's house?

11 A. In July.

12 Q. July of what year?

13 A. '14.

14 Q. And you had actually had your surgery on July the
15 7th of 2014; is that correct?

16 A. I think so.

17 Q. And you stayed at Linda Marsh's house for
18 approximately three to four days which would have put you
19 leaving either the 10th or the 11th of July, 2014; is that
20 correct?

21 A. Possibly.

22 Q. You don't remember?

23 A. No, sir. I don't remember the exact date I left,
24 the date. I remember I stayed there two or three days just as
25 I have said.

1 Q. Do you remember when you gave the statement to
2 police officer?

3 A. Yes, sir.

4 Q. When did you give the statement to the police
5 officer?

6 A. Now, that's the date I don't remember either. It's
7 on that paper. I don't remember but he came to the house and
8 I gave it to him.

9 Q. (Proffering.) It would be on the bottom, wouldn't
10 it?

11 A. Well, I'm looking. It had my birth date up there.
12 March 15th. No. March 17th.

13 Q. Okay. All right. So as I understand your
14 testimony, you had surgery at the VA on July the 7th, 2014.
15 You stayed at Linda Marsh's house for several days, three to
16 four, you don't exactly know when, and you gave a report to
17 the police officer in March of 2015; is that correct?

18 A. Correct.

19 Q. So would it be safe to say that from July 2014 until
20 March of 2015 you didn't think anything unusual had
21 occurred?

22 A. Linda and I talked a few times and I asked if Auston
23 was still picking at the little girl, you know. Aggravating
24 her. And she said at that time, you know, of and on that they
25 still just playing and I didn't think nothing actually was

1 really going on because she said they play like that all the
2 time. Not necessarily what I saw, but I didn't think nothing
3 about it because they play.

4 Q. I didn't mean to cut you off. I just want to know
5 did you tell Linda Marsh that you saw his hands --

6 A. Yes. After a while I did because, you know, she's a
7 friend and how would you tell somebody something you saw
8 because you getting in a delicate area there.

9 Q. Did you have any conversation at all about seeing
10 anything inappropriate until after Auston Breazeale had been
11 arrested?

12 A. Say that again please.

13 Q. Did you have any conversation with anyone at all
14 about this allegation until after Auston had been arrested by
15 law enforcement?

16 A. Yes.

17 Q. And who did you say it to?

18 A. I mentioned it to a couple friends of mine, you
19 know, just in casual conversation.

20 Q. You talked about that information to your friends?

21 A. Well, we were just talking and, you know, just
22 something like that. I didn't think nothing inappropriate was
23 going on at the time.

24 Q. So because he was arrested you thought something
25 inappropriate was going on?

1 A. Not really. I didn't think nothing of it one way or
2 the other because that's Linda Marsh and her grandson.

3 Q. Let me ask you this: The surgery that you had back,
4 without I guess violating any HIPAA violations --

5 A. That's okay.

6 Q. -- it was surgery on your hip; is that right?

7 A. No, sir. A hernia.

8 Q. Hernia?

9 A. Yes, sir.

10 Q. That's kind of a painful thing?

11 A. You better believe it.

12 Q. And part of the reason why you were staying with
13 Linda Marsh was because, and part of the reason why they
14 didn't want you to drive is because they were giving you a
15 bunch of pain medication because of all the pain you were
16 in?

17 A. Correct.

18 Q. So during this time span that you were at Linda
19 Marsh's, you were taking all kind of pain medication for
20 that?

21 A. No. Not all kind. I just had two specific kind.

22 Q. What two specific kinds of medication were you
23 taking during this time span?

24 A. Gabapentin and Tramadol.

25 Q. That was to stop the pain?

1 A. Yes, sir.

2 Q. When did you stop taking them as a result of --

3 A. I still take Gabapentin now but I don't have any
4 more Tramadol. I'm on some other something I can't even
5 pronounce.

6 Q. Now, I believe you said that you had this
7 conversation with his grandmother, with Linda?

8 A. That's correct.

9 Q. And when was the first time you had this
10 conversation with Ms. Marsh?

11 A. I don't remember the date. We just, you know, talk
12 every so often on the telephone.

13 Q. How many months after you supposedly stayed there
14 did you have this conversation with Ms. Marsh?

15 A. Now that I don't exactly remember either because
16 like I say, we talk sometimes around once a month, once every
17 two months, something like that.

18 MR. WILLIAMS: I don't have any other questions,
19 Your Honor.

20 THE COURT: Any redirect?

21 MS. ABEE: Very briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. ABEE:

24 Q. Mr. Rice, did you say anything to Linda that day
25 after what you saw?

1 A. Did I say anything?

2 Q. Yes, sir. Did you say anything to Linda Marsh that
3 day after you saw what you saw in the bedroom?

4 A. No. Not that day. No.

5 Q. Why?

6 A. I didn't think nothing about it.

7 Q. And Mr. Williams talked about some pain medications
8 you were taking at that time. Do you recall him asking you
9 that?

10 A. Yes, ma'am.

11 Q. Did those pain medications make you hallucinate at
12 all?

13 A. No. They only half worked.

14 Q. Did they make you imagine what you saw?

15 A. No, ma'am.

16 Q. Are you sure you saw the defendant's hand down --

17 A. I'm positive of what I saw.

18 MS. ABEE: No further questions, Your Honor.

19 MR. WILLIAMS: Just one follow up question.

20 RECROSS EXAMINATION

21 BY MR. WILLIAMS:

22 Q. If you saw that, did you have any comment to
23 Mr. Breazeale in reference to that? Did you say something to
24 him?

25 A. To who?

1 Q. Auston Breazeale..

2 A. Oh, that the guy that came down there?

3 Q. Yes. Did you say something --

4 A. I can't see him from here. I don't remember his
5 name.

6 Q. You can't see him from there?

7 A. I can't see him from here. He's kind of blurry from
8 here.

9 Q. How far away were you from the location when you
10 said that you saw his hands on --

11 A. From me to that little thing right here. That
12 little desk right there.

13 Q. Do you have problems with your vision, sir?

14 A. No. I just got bifocals. That light is blurry up
15 there.

16 MR. WILLIAMS: No other questions, Your Honor.

17 THE COURT: You may step down. Thank you. You may
18 call your next witness.

19 MR. FERNANDEZ: Thank you, Your Honor. The State
20 calls Linda Marsh.

21 Thereupon,

22 LINDA MARSH

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

24 THE CLERK: Please have a seat. After you're
25 seated, please state your full name spelling your last

LINDA MARSH - DIRECT BY MR. FERNANDEZ

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1 name for the record.

2 THE WITNESS: Linda Elizabeth Marsh, M-a-r-s-h.

3 DIRECT EXAMINATION

4 BY MR. FERNANDEZ:

5 Q. Linda, why don't you tell the jury a little bit
6 about yourself. Where did you grow up? Where were you born
7 and raised?

8 A. I was born and raised in Hopkins, South Carolina.

9 Q. Throughout your life where have you lived in the
10 general area?

11 A. I lived in Hopkins until I was about 19, then I
12 moved over to Lexington County after that and I have been in
13 Lexington County ever since.

14 Q. Linda, are you employed?

15 A. I'm retired from the State Law Enforcement
16 Division.

17 Q. Tell us a little bit about your law enforcement
18 career.

19 A. Uhm, I was at SLED for 41 years. I was an agent
20 with them. I started as a secretary and then, uhm, became
21 supervisor of the missing person center at one time, then I
22 went back to the criminal intelligence section which is now
23 called the Skyack Center. I worked in there for most of my
24 career at SLED doing internal background investigations on the
25 cases that we were working on, that our agents were working

1 on.

2 Q. Linda, did you attend the Criminal Justice
3 Academy?

4 A. Yes. I did. In 1974.

5 Q. I think you mentioned you worked in the intelligence
6 center, the Skyack Center. Did you ever have an active case
7 load or did you primarily stay at the SLED buildings?

8 A. I would stay primarily at the SLED buildings.

9 Q. Would you tell me a little bit about your family and
10 your children and your grandchildren?

11 A. I have two children, Shannon Hardy. She is my
12 daughter. I have one grandson with her, Auston, and three
13 step grandchildren with she and John Hardy, Christian, Laurel
14 and Jay. And I have my son Trey, his wife Whitney and their
15 daughters Minor Child and Alynn.

16 Q. Linda, you understand why you are here today?

17 A. Yes. I do.

18 Q. Where is the house you lived in leading up to about
19 2015?

20 A. I was at [REDACTED] in Lexington.

21 Q. How long did you live at Parkhurst Lane?

22 A. Around 14 to 15 years.

23 Q. Linda, would you tell me a little bit about that
24 Parkhurst Lane house, just a little bit about the lay out of
25 the house, how many bedrooms, anything noticeable about some

1 of the bedrooms?

2 A. The home was a three bedroom home. When I
3 originally moved in, I just painted my bedroom, but we did
4 what we called the red room the living room. The living room
5 was on the front half of the house. The red room was on the
6 back half of the house. My bedroom was on the opposite side
7 of the house as you were facing it. My living room, as you
8 walk in there's a hallway, living room and there's a kitchen
9 on the left and a porch on the back.

10 Q. How many bathrooms were in your house Parkhurst?

11 A. Two bathrooms.

12 Q. Where were they located?

13 A. One was located in my bedroom and the other was
14 located in the hallway nearest what I call the red room, the
15 back bedroom.

16 Q. Did you ever have any roommates that would live with
17 you?

18 A. Yes. I did.

19 Q. Please tell us a little about some of the folks that
20 lived with you?

21 A. I have had two roommates. One Terry Butler lived
22 with me for a while, for about three years until she passed
23 away. That was in 2014. And I had a roommate after that also
24 named Terry. She lived with me until last July or August.

25 Q. What room would your roommates live in?

1 A. They - actually the original Terry stayed in the
2 front bedroom of the house and then the other Terry stayed in
3 the red room, what I call the red room.

4 Q. Okay. What date did you move out of the Parkhurst
5 Lane address?

6 A. I moved out of there in February of 2015.

7 Q. You mentioned that your grandson is Auston
8 Breazeale. Is he here today?

9 A. Yes. He is.

10 Q. What's he wearing?

11 A. He's wearing a dark outfit with a Steelers jacket.

12 Q. Thank you. Tell me a little bit about y'all's family
13 dynamic. How often would y'all get together? How often would
14 you see your grandchildren and your children?

15 A. Every week. We ate dinner on Sundays together most
16 of the time unless something else was going on. I kept my
17 granddaughter two days a week. Occasionally I would keep my
18 grandson. I got to see my other grandchildren when they were
19 with their father.

20 Q. When y'all would get together, the family would get
21 together, would the children ever play by themselves?

22 A. Uhm, yeah. Occasionally they would. I mean, when
23 we were all together, they like to get together and play games
24 in another room or whatever. A lot of times they were in the
25 same room we were in, but sometimes, and I had an organ back

1 in the blue room and they liked to play the organ and
2 different stuff there, you know.

3 Q. Now, you mentioned that you would take care of your
4 granddaughter. Is that Minor Child?

5 A. Minor Child.

6 Q. How often would you take care of her?

7 A. At that time I was taking care of her two days a
8 week on Thursdays and Fridays.

9 Q. You also mentioned that Auston would stay there.
10 How often would he be there and why would he be there?

11 A. Well, not that often, but he would be there
12 sometimes to help me out or just sometimes to get away from
13 home and come spend time at the house. A lot of times he
14 would come to help me cut the grass and do stuff like that.

15 Q. When he was there, how many hours would he be
16 there?

17 A. Sometimes all day long.

18 Q. And were there times when he and Minor Child would both
19 be there with you?

20 A. Yes.

21 Q. Now, are you aware of an incident that occurred that
22 required certain restrictions being placed on Mr. Breazeale?

23 A. Yes.

24 Q. And tell us what your understanding was about what
25 needed to be done?

1 A. That Auston would not be anywhere around Minor Child .

2 Q. And this came from who?

3 A. From his parents.

4 Q. Whose parents?

5 A. From her parents. From Trey and Whitney.

6 Q. Now, after that restriction was placed on
7 Mr. Breazeale, did he still - did you still have some times
8 Auston and Minor Child together?

9 A. Yes. I did.

10 Q. Why would that happen?

11 A. Generally there was a time frame they were there
12 when my friend Terry was helping to tutor Auston. There were
13 times when Auston would come help me to cut grass and do stuff
14 like that.

15 Q. Do you remember one incident that occurred in July
16 of 2014?

17 A. Yes. I do.

18 Q. Tell us a little bit about Mr. Dwayne Rice. Who is
19 he to you?

20 A. Dwayne is a friend of mine. He's been a friend of
21 mine for about 25, 26 years. We met when I used to go
22 dancing. We met way back then. We have been friends ever
23 since.

24 Q. Was there a time when you actually had to take care
25 of Mr. Rice?

1 A. When Dwayne had to go to the VA Hospital and I
2 volunteered to take him to the VA Hospital to have surgery and
3 then he came the night before and I took him to surgery the
4 next day and then I just asked him to go ahead and stay at the
5 house a few days so we could watch out for him and make sure
6 everything was okay.

7 Q. How did he do during the recovery period?

8 A. He was doing pretty good. He was slowly taking a
9 step with pain and everything, but he was doing pretty well.
10 He got up and got around himself and everything.

11 Q. Okay. During this time he stayed with you, was
12 **Minor Child** also there at any time?

13 A. Yes. She was.

14 Q. Also was Mr. Breazeale there at any time during this
15 stay?

16 A. Yes. He was on one particular day.

17 Q. On this particular day tell me what you were
18 doing?

19 A. We were outside, Auston and I outside supposedly
20 cutting the grass. I didn't like the way he was doing things
21 and got upset about it and I just told him to go ahead, leave
22 me alone. Get out of my sight. Just let me do it myself. I
23 told him to go inside, but I also told him not to bother
24 **Minor Child**. She was watching TV.

25 Q. You said you didn't like what he was doing. What

1 was happening?

2 A. He was cutting the grass all crooked and, you know,
3 just missing places and everything. Auston could push my
4 button sometimes with doing certain things. On that
5 particular day I got upset with him about that because I asked
6 him, told him how I wanted it cut and how to do that. And I
7 know that might seem minor to some. But anyway, but he really
8 wasn't doing the job he was supposed to be doing so I just
9 told him to leave. To just go away and I would do it
10 myself.

11 Q. Okay. Now, you said go inside. Continue. You told
12 him what to do?

13 A. I believe I told him to go inside. I remember I
14 told him to get out of my sight and just leave me alone and
15 also I told him not to bother Minor Child because she was watching
16 TV.

17 Q. Now, during the time of this 2014 incident in July,
18 where there restrictions in place that he not be around
19 Minor Child?

20 A. Yes, sir.

21 Q. And so why might have you sent him in there knowing
22 that there were restrictions on him?

23 A. I wasn't even thinking. I was just angry. I wasn't
24 even thinking what I was doing at the time. It did not occur
25 to me. Dwayne was there too, but it just did not occur to me

1 at that time that I was screwing up. I just didn't think
2 about it. I was just too angry with him I didn't think about
3 what I was doing.

4 Q. And then at some point after that did Dwayne come
5 and talk to you?

6 A. Yes. He did.

7 Q. Without saying what he told you, did he relay
8 something troubling?

9 A. Yes.

10 Q. What did you do after you heard that?

11 A. Uhm, basically when our conversation took place, I
12 didn't really - we didn't say too much and all he just made
13 a certain comment and I didn't think a lot about that comment
14 other than it was just a general thought. It just didn't
15 occur to me to think anymore about what he said.

16 Q. I'm going to fast forward to May of 2016.
17 Throughout this time you still had contact with your
18 granddaughter; is that correct?

19 A. Yes, sir. I keep her full-time.

20 Q. And in May of 2016 did she make a sexual assault
21 disclosure to you?

22 A. Yes. She did.

23 Q. And without saying what she said, it was a
24 disclosure of assault of a sexual nature?

25 A. Yes, sir.

1 Q. Did she say where it had happened?

2 A. Uhm, no. I don't remember her saying where it had
3 happened.

4 Q. Did she say when it had happened?

5 A. No. She did not.

6 MR. FERNANDEZ: No further questions. Thank you.
7 Please answer any questions that counsel may have.

8 MR. WILLIAMS: May it please the Court.

9 THE COURT: Yes, sir.

10 CROSS EXAMINATION

11 BY MR. WILLIAMS:

12 Q. Ms. Marsh, when did Mr. Rice have a conversation
13 with you?

14 A. It was sometime - the surgery he had I believe was
15 July 5th and it was after that when he was staying with me a
16 few days.

17 Q. Do you remember if the statement was made several
18 days after the event supposedly happened or if it had
19 happened?

20 A. No. It was made on that day.

21 Q. And obviously it didn't impress you in any way to
22 say anything about it to anyone?

23 A. I was -- I didn't even think at that time and I have
24 been sorry ever since then that I did not think about what
25 happened and it just didn't hit my mind at the time.

1 Q. Well --

2 A. I don't know how to explain it, but I have been
3 sorry everyday since I heard what has happened and it has
4 broken my heart. That's all I can say.

5 Q. Again, Ms. Marsh, you haven't seen anything occur,
6 have you?

7 A. No, sir. I have not.

8 Q. And everything that you are basing your decision on,
9 your testimony, is based on what somebody else has told you,
10 isn't it?

11 A. Yes, sir.

12 Q. Now, Ms. Marsh, you were living I think you said in
13 your house up until July -- I'm sorry. When did you move out
14 of your house?

15 A. I moved out of my house in February, about the
16 middle of February of 2015.

17 Q. All right. And I think you have already indicated
18 that you had three bedrooms; is that correct?

19 A. Yes, sir.

20 Q. You call one a red bedroom and you call one bedroom
21 a blue bedroom?

22 A. Mm-hmm.

23 Q. And those would not be your bedrooms? Don't let me
24 put words in your mouth. You had two Terrys that stayed
25 there?

1 A. Yes, sir.

2 Q. One Terry stayed in which bedroom?

3 A. She stayed in the front bedroom which was the blue
4 bedroom.

5 Q. Is that the one who is dead?

6 A. Yes, sir.

7 Q. All right. Then you had another Terry who stayed
8 there and she stayed in which bedroom?

9 A. She stayed in the other bedroom, the one I call the
10 red room.

11 Q. Where is that bedroom?

12 A. It's right adjacent to the blue room as you walk
13 down the right hallway you see both bedrooms, the first one,
14 the front one and the back one.

15 Q. Is this a trailer or is it a house?

16 A. A house.

17 Q. When you walk into your house, do you have a living
18 room when you walk into your house?

19 A. Yes, sir.

20 Q. And then you have a kitchen?

21 A. To the left. Yes, sir.

22 Q. The kitchen is to the left. Then you have a hallway
23 which is connected to the living room?

24 A. The hallway, as you come into the house the hallway
25 leads to the bedrooms on both sides and then you have the

1 living room and the kitchen is to the left of the living
2 room.

3 Q. Where is your bedroom?

4 A. My bedroom is on the left as you walk in the door.

5 Q. Where are the other bedroom?

6 A. To the right as you walk in the door.

7 Q. So both of the Terry bedrooms would be in the
8 opposite direction from your bedroom; is that correct?

9 A. Yes, sir.

10 Q. Now, bathrooms. The bathroom which is -- Do you
11 have a bathroom adjacent to your bedroom?

12 A. Yes, sir.

13 Q. Would you call that the master bedroom?

14 A. Yes, sir.

15 Q. That would be on the left-hand side, right?

16 A. Yes, sir.

17 Q. On the right-hand side would be the other two
18 bedrooms. Is there a bathroom between the two bedrooms or is
19 it across the hall?

20 A. It straight. The two bedrooms are here. There is a
21 hallway that leads into a bathroom here and the utility room
22 is right here.

23 Q. So the bathroom would be at the end of the hall?

24 A. Yes, sir.

25 Q. Both bedrooms would not have access to it. You

1 would have to come out of the bedrooms to go to the
2 bathroom?

3 A. Yes, sir.

4 Q. So if someone were going to the bathroom, they would
5 not be going through the bedroom; is that correct?

6 A. No, sir. They would not.

7 Q. Now, the left-hand side where your bedroom is, does
8 the bathroom connect to your bedroom?

9 A. Yes, sir. It's inside my bedroom. The bedroom is
10 here. The bathroom is right here in the bedroom.

11 Q. But certainly your bedroom is not the same as either
12 one of the Terrys' bedroom?

13 A. No, sir. You would pass both of those rooms to go
14 to the other bathroom.

15 MR. WILLIAMS: That's all the questions I have, Your
16 Honor.

17 THE COURT: Any redirect examination?

18 MR. FERNANDEZ: Nothing further, Your Honor.

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

20 MR. FERNANDEZ: Permission to release this witness
21 from her subpoena.

22 THE COURT: Any objection?

23 MR. WILLIAMS: No objection, Your Honor.

24 THE COURT: You are released from your subpoena.

25 Thank you.

1 MR. FERNANDEZ: Thank you, Your Honor.

2 THE COURT: You may call your next witness.

3 MS. ABEE: Your Honor, the State calls David Kellin.

4 Thereupon,

5 MAHLON DAVID KELLIN

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

7 THE CLERK: Please have a seat. After you're
8 seated, please state your full name spelling your last
9 name for the record.

10 THE WITNESS: Mahlon David Kellin, K-e-l-l-i-n.

11 DIRECT EXAMINATION

12 BY MS. ABEE:

13 Q. Mr. Kellin, how are you?

14 A. I'm doing all right.

15 Q. Go ahead and tell this jury a little bit about
16 yourself. Are you employed?

17 A. I am.

18 Q. Where at?

19 A. I have two jobs. I work as a forensic social worker
20 in private practice Kershaw Counseling in Kershaw, South
21 Carolina and I'm a trauma focus cognitive behavioral therapist
22 at Palmetto Citizens Against Sexual Assault in Lancaster.

23 Q. Tell us a little bit about your educational
24 background.

25 A. I have a Master's degree in social work from the

1 University of South Carolina. I have a Bachelor's of Science
2 degree in psychology from Lander University. I'm a trained
3 Finding Words forensic interviewer as well as a trained
4 extended forensic interviewer from the National Children's
5 Advocacy Center in Huntsville, Alabama.

6 Q. Do you take any sort of continuing education courses
7 or anything like that?

8 A. I do.

9 Q. Do you do any of those in the field of child sexual
10 abuse or sexual abuse?

11 A. Yes.

12 Q. Explain to us some of the courses that you take?

13 A. I regularly take an advanced child first course
14 every couple of years to update current awareness about rules
15 and procedures, that sort of thing coming through the child
16 first process. I also attended and continue to do continuing
17 education in the trauma focus cognitive behavioral area for
18 counseling children who have been traumatized.

19 Q. Tell us what actually that means.

20 A. Okay. Cognitive behavioral therapy looks at how we
21 think about things in relation to how we feel. Trauma focus
22 cognitive behavioral therapy does that same process but it's
23 specifically for children who have been traumatized either
24 through physical, sexual or neglect. We look at acute stress
25 disorders and PTSD symptoms within children.

1 Q. You explained to us where you were employed and what
2 your title is, but what do you actually do?

3 A. Most commonly what people think of is I'm a
4 therapist for children. I work with children, adolescence for
5 the last 24 years.

6 Q. What type of training do you have in counseling
7 children?

8 A. Well, I have the trauma focus counseling. I also
9 have the Master's in social work was a counseling program and
10 the continuing ed over the years.

11 Q. I think you just said it, but how many years have
12 you counseled children and even adults involved in sexual
13 abuse?

14 A. Specifically with sexual abuse the last eight years,
15 but I have been a child and adolescent therapist for the last
16 24 years.

17 Q. Have you ever testified in court before?

18 A. I have.

19 Q. Have you ever been qualified as an expert before?

20 A. I have.

21 Q. Approximately how many times?

22 A. In General Sessions Court about ten times. Within
23 family court I don't have a count.

24 MS. ABEE: Your Honor, at this time the State moves
25 to enter David Kellin as an expert in child maltreatment

1 and child abuse dynamics.

2 THE COURT: I'm sorry. What were those again?

3 MS. ABEE: Child maltreatment and child abuse
4 dynamics.

5 THE COURT: Any voir dire?

6 MR. WILLIAMS: Just a couple questions.

7 VOIR DIRE EXAMINATION

8 BY MR. WILLIAMS:

9 Q. In that you're being qualified in those two
10 particular areas, are you actively involved in the treatment
11 of individuals who you suspect child abuse?

12 A. Yes.

13 Q. And she's asked about two specific areas that she is
14 attempting to qualify you as an expert in, maltreatment and
15 sexual abuse. What is the differences in your mind in regards
16 to what you would be able to testify to?

17 A. Well, maltreatment I think is a broader term when we
18 talk about children who have been hurt in some way, could
19 either be sexual, physical or by neglect. Whereas child
20 sexual abuse is a specific area within those.

21 MR. WILLIAMS: Thank you for explaining that. Your
22 Honor, we have no other questions for him.

23 THE COURT: Any objection to the qualifications?

24 MR. WILLIAMS: No objections, Your Honor.

25 THE COURT: I find him qualified as an expert in the

1 field of child maltreatment and child abuse dynamics.

2 DIRECT EXAMINATION CONTINUED

3 BY MS. ABEE:

4 Q. Mr. Kellin, I want to talk a little bit about the
5 circumstances surrounding why you are here today. Do you know
6 anything about this case?

7 A. No.

8 Q. Have you ever met with or interviewed any of the
9 witnesses in this case?

10 A. No.

11 Q. What about reading any statements or reports or
12 reviewing videos, have you done any of that?

13 A. No.

14 Q. So do you know anything factually about this case?

15 A. No.

16 Q. I want to talk to you now about a few terms.

17 Explain to us the difference between, or explain to us what
18 delayed disclosure means?

19 A. Delayed disclosure is when a child or somebody who
20 has been hurt delays the release of information about
21 something that's happened to them. So if something happens on
22 Monday, that disclosure may not come Monday. It may come much
23 later.

24 Q. What are some factors that can contribute to a delay
25 in a child's reporting?

1 A. One, development of the child. How old the child is
2 and how developed they are. But also fear of what would
3 happen if something was said and embarrassment about something
4 happening that they were not comfortable with other people
5 knowing, uncomfortability, and then sometimes just not
6 understanding what really has happened.

7 Q. How common is delayed reporting?

8 A. It's very common.

9 Q. Would you say it's more common than not?

10 A. It's more common than not. Yes.

11 Q. Would the fact that a perpetrator is a family
12 member, could that contribute to a delayed reporting?

13 A. Absolutely.

14 Q. Can you explain to us what a partial disclosure
15 is?

16 A. Okay. Partial disclosure is when a person reveals
17 only a piece or a part of what's happened. Most disclosures
18 tend to be accidental. Somebody saying something that reminds
19 the child of something or the person who has been hurt and
20 they say a little bit out, but they don't say the whole thing.
21 They just say part of it and then close back up so that they
22 don't spill the beans anymore I guess is the way to put it.
23 So most disclosures start partial. Very few children come in
24 with a full disclosure of all the details when they first come
25 in.

1 Q. Can a child's age affect their ability to remember
2 details of a sexual assault?

3 A. Yes.

4 Q. Can that also play a part in their disclosure?

5 A. Absolutely.

6 Q. What are some common themes that young children
7 maybe don't recall during disclosures?

8 A. Depending on the age of the child, very young
9 children might remember what and who, but not know when or
10 why, and they frame things in their own terms so that what
11 they remember is based on what they know and how they see
12 things. So a child might come in and say somebody is being
13 mean but not understand that sexual abuse is more than mean.
14 They just see it as a mean activity. So what they recall and
15 share with us isn't always what we think of in the terms that
16 we think of.

17 Q. Do children always manifest some sort of external
18 signs that they have been sexually assaulted?

19 A. No. Actually very few would show a sign that you
20 could recognize as child abuse happening or sexual abuse
21 happening.

22 Q. Is it possible that a child would manifest signs of
23 being sexually assaulted later on in life?

24 A. Yes.

25 Q. What types of things are we talking about here?

1 A. There's three big classifications. One is intrusive
2 recall of events so remembering things without really wanting
3 them to happen. Avoidance of anything that would remind you
4 of what happened. And then physiological reactions around
5 triggers or around things that make you remember what
6 happened.

7 Q. So when you are talking about a physiological or a
8 physical manifestation of signs, you talked about triggers; is
9 that right?

10 A. Yes.

11 Q. What about a child finally coming forward and
12 disclosing, is that something that could then cause physical
13 signs to manifest?

14 A. We can see like the flight or fight responses.
15 Heartbeat picking up. Cold hands. Rapid breathing. That
16 sort of thing. Also we can see either a change in sleep
17 pattern. A change in appetite. Depending on the child we may
18 start to see an increase in nightmares or a decrease in
19 nightmares depending on how they feel about the disclosure.
20 So we are looking at different symptoms that by themselves
21 don't actually point to any one situation but as a cluster we
22 would indicate that there was, you know, reactions, trauma
23 reactions to something.

24 Q. Explain to us what grooming is?

25 A. Grooming is when a person who is intent on doing

1 something wrong with a child or wrong with a teenager will
2 start to do small things to get themselves closer to or to get
3 approval from the child for a particular behavior. So a
4 situation where a child might be meeting somebody for a first
5 time or might know somebody but the person wants to hurt them,
6 they may start getting the child to sit closer to them. When
7 the child is okay with sitting closer to them, then they might
8 say, okay, you can sit on my lap today and they get
9 comfortable with sitting on a lap and then they move forward
10 with behaviors. The child doesn't really see it as a
11 progression towards something. Grooming is that action of
12 moving towards an inappropriate act.

13 Q. Are there certain risk factors that can contribute
14 to someone being a victim of sexual abuse?

15 A. I think the younger the child is more likely.

16 Q. Why is that?

17 A. Because younger children don't have the ability to
18 understand what sexual behavior is and so they don't know that
19 that's something that's stopped. Especially if there is
20 grooming involved. They don't recognize that process of
21 getting closer and closer, of something happening. So the
22 younger child doesn't have that sense of, okay, I need to stop
23 this because this is really bad. Especially if there is a
24 relative or a family member or somebody they trust. What we
25 know is about 85 percent of abuse happens by someone knowing

1 and trusted to the child. So somebody that's trusting,
2 somebody that doesn't have a lot of ability to make
3 distinctions about behaviors, development and if there's been
4 prior abuse. If there's been prior sexual abuse or prior
5 other types of abuse that puts the child more at risk.

6 Q. Explain to us the concept or the idea of coaching.
7 What does that mean?

8 A. What coaching is is when somebody who wants to
9 change somebody's testimony or wants to move somebody's
10 testimony to a less harmful way, they might encourage the
11 child to say less than what happened or try to change the
12 demeanor of what happened or just to deny it altogether.

13 Q. Can that work in the opposite direction as well?

14 A. Yes.

15 Q. So what are some things you look for when trying to
16 see if a child has been coached or if a child is making a
17 false allegation?

18 A. One of the things that I look for first is what is
19 the first thing that the child says to me. So if the child is
20 coming into my office, if the child immediately comes in and
21 fills out a whole story, that's suspicious to me. Children,
22 especially younger children don't hold onto things long. So
23 if there is this desire to change a story, then the child is
24 going to need to get it out fairly quickly because they don't
25 hold onto it or hold onto details. Also if the details remain

1 the same consistently each and every time the child tells me,
2 that's a concern for me because children typically have some
3 variation in what they say.

4 Q. Finally I want to talk to you about perpetrators
5 themselves and children's reactions to them. Do children
6 always have a hatred towards the perpetrator?

7 A. No.

8 Q. And why not?

9 A. Because younger children tend to see people not as
10 just one act. The final act doesn't necessarily determine a
11 relationship. That relationship may have been good for many
12 years and then turned into an abusive relationship. That
13 child may still want that relationship with that person
14 because what they had was pleasurable. Especially if there is
15 a grooming process going on, that relationship may have been
16 very positive for the child up until the point of something
17 bad happening.

18 Q. As you were previously telling us sometimes children
19 don't understand the sexualized nature. Can you kind of
20 explain that to us a little bit more in regards to their
21 affection for their perpetrator?

22 A. Okay. Most children really don't begin to start to
23 understand what sexual behavior is until about 12 or 13.
24 Usually about the onset of puberty. Before that children look
25 at private parts really as just bathroom parts. So when

1 somebody starts to mess with a young child under the age of
2 puberty, they don't have a concept that this is material that
3 would be related to sex or related to procreation. They just
4 know somebody is messing with their private parts. So there
5 isn't -- In my experience and my practice most kids under 12
6 really don't have a clue as to what sex is and why somebody
7 would be messing with them.

8 Q. Mr. Kellin, is all this information you have
9 provided to us, is this based on studies or just based on what
10 you came up with in your head?

11 A. No. This is based on studies and 24 years of
12 practice.

13 MS. ABEE: Your Honor, I have no further questions
14 for Mr. Kellin at this time.

15 MR. WILLIAMS: If it please the Court.

16 THE COURT: Yes, sir.

17 CROSS EXAMINATION

18 BY MR. WILLIAMS:

19 Q. Mr. Kellin, am I pronouncing your name correctly?

20 A. Yes, sir.

21 Q. K-e-l-l-i-n?

22 A. Right.

23 Q. You have your Master's in social work?

24 A. I have a Master's in social work.

25 Q. But no Ph.D.?

1 A. No Ph.D.

2 Q. In regards to Master's in social work, would that
3 amount to, I guess when you get your formal education like
4 getting a major in psychology and then doing work in the
5 social field, social worker field and then maybe taking a
6 test?

7 A. What my role is as a social worker is primarily as a
8 counselor. I have a clinical practice specialty within my
9 social work field which my training was to do what in the
10 social work field is called micro work. That's with people.
11 I don't work with corporations or agencies. I just work with
12 families and children and people and my primary work there is
13 as a counselor.

14 Q. Are you married?

15 A. I am not married.

16 Q. Do you have any children?

17 A. Both of my children passed.

18 Q. Now, I think you have already stated that you have
19 had absolutely no contact in regards to this particular case
20 in regards to the facts or anything like that, know nothing
21 about those things?

22 A. That's correct.

23 Q. So essentially what your testimony is is basic
24 elements about trauma?

25 A. Yes, sir.

1 Q. And child abuse?

2 A. Yes.

3 Q. Let me take you back to some questions. You
4 indicated that sometimes if there was to be some sort of
5 testimony by someone who is a subject of child abuse or
6 trauma, would that be the same? Because you said that you
7 were qualified in two different areas.

8 A. Child abuse is a form or trauma.

9 Q. Right. So it doesn't necessarily mean child
10 abuse?

11 A. Right.

12 Q. But some trauma. Something that affects a child?

13 A. Yes.

14 Q. That sometimes when they come to court to testify
15 that they would have things like their heartbeat would
16 increase. They would have cold hands. Maybe they would have
17 changes in their sleep patterns. Are all those correct?

18 A. That's correct.

19 Q. And one of the other things you said was that they
20 might have an increase in nightmares or they might have a
21 decrease in nightmares?

22 A. Yes. If I can explain.

23 Q. Okay.

24 A. For some children keeping a secret and keeping it
25 quiet doesn't result in a lot of nightmares and the disclosure

1 coming out and everything starting may cause more emotional
2 trauma. For some, especially for the older children getting a
3 disclosure out and not being that secret anymore lessens some
4 of those nightmares so it depends on the child.

5 Q. So are you saying that the age is the determining
6 factor that as the child gets older if she is disclosing
7 something, she should have more nightmares as a result of
8 disclosure?

9 A. It really just depends on the child and the
10 situation a child is in. I can't do a blanket statement that
11 says all children five to seven have this reaction. It really
12 depends on the child but it can be either way.

13 Q. And the only way which you can make a determination
14 on that would be years and years of analysis and treatment
15 with the child?

16 A. Actually when I would do an assessment we would talk
17 with them about nightmares and about the prevalence of
18 nightmares in their life and look at if there are any patterns
19 there.

20 Q. Now, obviously you have dealt with children who have
21 been sexually abused?

22 A. Yes.

23 Q. Are you familiar with the Dickerson Center?

24 A. I am.

25 Q. After there is a forensic exam --

1 A. Yes.

2 Q. -- is there normally a physical exam?

3 A. There is a physical exam. Yes.

4 Q. Now, let me ask you about, I guess you said
5 something called triggers?

6 A. Yes.

7 Q. Triggers is just a natural phenomenon, isn't it?
8 It's something that reminds you of something, doesn't it?
9 That's what you mean by trigger?

10 A. What I mean by triggers is those things that cause
11 us to have a memory or a reaction. You know, the smell of
12 cinnamon rolls would cause people to have a reaction. When I
13 mention that, people think about that. When things like
14 remind us of negative events, that's mostly what we think of
15 is called triggers. But yes, triggers can be a positive
16 reaction, too.

17 Q. So when you were giving the discussion about
18 triggers, that is not a discussion about anything that
19 directly relates to either maltreatment of a child or child
20 abuse? It could be me smelling a perfume and it reminded me
21 of an old girlfriend?

22 A. It could be that way. It is one of the factors we
23 look at within the treatment of children who have been
24 abused.

25 Q. So when it comes to triggers, that is just a logical

1 way of remembering things? Everything is a trigger, isn't
2 it?

3 A. Well, we think of triggers as those things which we
4 are not looking for to happen. So if you are walking down a
5 street and you smell perfume of somebody that was familiar to
6 you but you had not intended on remembering that person that
7 day, that's what I think of as a trigger. Now, you going home
8 and you know that there is always a smell of perfume at your
9 house, that's not necessarily what we think of as a trigger.
10 That's just a reaction. Triggers for us are those things that
11 cause an unanticipated or unexpected reaction.

12 Q. Something you are not anticipating which affects
13 you?

14 A. Right.

15 Q. Whether it be vision, smell, taste?

16 A. Any of the five senses can have triggers.

17 Q. Now, I believe you said that very few people show
18 any external signs referencing child abuse. Very few people
19 show any external signs of being disturbed by something. Is
20 that what you said?

21 A. If people are looking for - if you are looking at a
22 child and saying is this child abused, within physical abuse
23 we look for bruises, we look for marks. But sexual abuse
24 there aren't those things. There aren't those immediate
25 things that we can see on a person's face or on a person's

1 presence or actions that would immediately identify as sexual
2 abuse. So no. There is not a lot of external symptoms or
3 signs that we would look at immediately and say, if you are
4 walking down the street or walking through Wal-Mart, you can't
5 look across the aisle and say, okay, that child is abused.

6 Q. So the absence of external signs means nothing. And
7 does presence of external signs mean anything?

8 A. What kind of external signs would you be thinking
9 there would be?

10 Q. You said, you stated that very few people show signs
11 of external so I'm using your words.

12 A. Right. Okay.

13 Q. What are external signs to you?

14 A. Well, I think when we are looking at like children
15 who are crying or children who are shying away from somebody,
16 there are signs that in disclosures we see that not wanting to
17 be around somebody or crying in the presence of somebody. But
18 those by themselves are not necessarily indicators, okay?
19 They are an adjunctive part of an assessment.

20 Q. So if a child wants to be with someone, that doesn't
21 necessarily mean that that person is not an abuser. But is
22 the child doesn't want to be with someone, that doesn't
23 necessarily mean that that child has been abused?

24 A. That's right. It all depends upon context in that
25 person's assessment.

1 Q. So it really doesn't mean anything really by
2 itself?

3 A. In and by itself, no, it doesn't.

4 Q. You have to add it all with all of these things?

5 A. You have to look at the whole picture. Yes.

6 Q. And I believe you said that if there were a full
7 disclosure, you would be suspect of that?

8 A. If a child just walked into a parent and said, spent
9 half an hour, 45 minutes of disclosing, that's one thing. If
10 they walk into my office and it's a five year old and they
11 start in with, okay, this is what Johnny did, this is what,
12 blah, blah, blah, and it goes all the way and there is a whole
13 disclosure within the first two minutes, that's a little
14 suspect for me because most kids when they first meet me, we
15 have to spend some time getting to know each other in order to
16 communicate and talk before, and I generally have to ask some
17 non direct questions to get a disclosure in my practice. So
18 if somebody walks in and suddenly just blurts it all out,
19 that's suspect. Does it mean that there is coaching? Does it
20 mean that there is anything going on? No. It's just
21 something that would raise an issue for me to look a little
22 closer as to why this suddenly came out.

23 Q. But you have indicated when you were questioned
24 about the coaching aspect that that would tend to indicate to
25 you coaching if they were repetitive in regards to the

1 statements and didn't move off those statements?

2 A. Yes.

3 Q. So does it mean coaching or does it not mean
4 coaching?

5 A. It's one of those things that would cause me to have
6 a concern and I would look at it. It's more often for me when
7 somebody is coaching a child what to say that the child
8 repeats what that person who is coaching and not coming from
9 them.

10 Q. What is the effect of constant questioning on
11 someone about what occurred? If you were an interviewer,
12 forensic interviewer and you continually asked the same
13 question, what effect does that have in regards to shaping the
14 child's testimony?

15 A. Uhm, it's not an advisable practice for us. I don't
16 know how it would affect that particular child but within
17 forensic interviewing we don't tend to ask repeated questions
18 or don't do repeated interviews and try not to. It's part of
19 how we do interviews is to be as non direct as possible or
20 indirect as possible and ask open questions. If it's a
21 younger child, sometimes you have to ask more direct
22 questions. But when I do a forensic interview, I'm not asking
23 the same question over and over and over again. It's not
24 considered in my forensic interviewing to be a good practice.
25 Now, how that impacts any one particular child I can't say

1 because that depends on the child.

2 Q. Does the reaction of the interviewer have any
3 influence on how the child testifies?

4 A. I would say yes. I can't say as to what it would be
5 with that particular child but we try to stay as neutral as
6 possible.

7 Q. Such as you ask a question. The child answers the
8 question. The interviewer says very good or good or that's
9 right. Is that an indication that the child has said the
10 right thing?

11 A. I don't know if that's indicated that way. I have
12 not seen that forensic interview. I can't say. We are
13 trained not to do a lot of those rewarding statements after a
14 question or a response.

15 Q. What effect, if any, does changes in the family unit
16 have to do with how the child gets along in the family unit
17 such as the birth of a new baby? Does that influence
18 sometimes anxiety or changes in the behavior of the child
19 that's already in the family unit?

20 A. Could be. Could be any number of reactions.
21 Families are systems. Any time there is a new member coming
22 into the system there is a change in everybody within the
23 system. Each person's change and each person's reaction would
24 be linked to that. I can't speculate on any one particular
25 child. But as general, any time there is a change in the

1 family dynamics because it's a system, it changes everybody
2 involved.

3 Q. And that's -- You say everybody involved. You're
4 not only referencing parental units, and I don't want to use a
5 Conehead expression, but you're also referencing maybe the
6 children also?

7 A. Yes.

8 Q. And how they interact together changes when there is
9 another unit?

10 A. There could be another unit. When I think of a
11 system, it's like if one parent lost their job. Everybody in
12 the family has an impact with that whether it be the parents
13 or the children. It's a system.

14 Q. And that change may be good or bad?

15 A. That's right.

16 MR. WILLIAMS: I don't have any other questions,
17 Your Honor.

18 THE COURT: Any redirect?

19 MS. ABEE: No, Your Honor. We ask that this witness
20 be excused from his subpoena.

21 THE COURT: Any objection?

22 MR. WILLIAMS: No objection, Your Honor.

23 THE COURT: You may step down. You may be excused.
24 You may call your next witness.

25 MS. ABEE: Your Honor, at this time the State

1 rests.

2 THE COURT: Ladies and gentlemen, we have some legal
3 issues which we need to take up outside of your presence.
4 I'm going to ask that you retire to the jury room. Do
5 not discuss this matter among yourselves. You have not
6 heard all of the evidence. And even if you have heard
7 all of the evidence, you have not heard my instructions
8 to you as to the law. I'll ask that you step back to
9 your jury room and we'll bring you back shortly.

10 (Whereupon, the jury entered the jury room at 10:55
11 a.m.)

12 THE COURT: Are there any motions at this time?

13 MR. WILLIAMS: Yes, Your Honor. A motion for
14 directed verdict. The evidence taken in a light most
15 favorable to the State is insufficient as a matter of law
16 for the jury to return a verdict of guilt in reference to
17 my client for the charge and allegation of criminal
18 sexual conduct with a minor.

19 THE COURT: Any response from the State?

20 MS. ABEE: Your Honor, as Mr. Williams stated, this
21 motion is reviewed in a light most favorable to the
22 State. At this point in time we would contend that there
23 is sufficient evidence for a question of fact for the
24 jury to determine whether or not a sexual battery has
25 occurred between Minor Child and the defendant Auston

1 Breazeale who has been identified several times, Your
2 Honor. The minor herself stated that he placed his penis
3 in her mouth and she choked on it indicating that there
4 was penetration, Your Honor. That was also echoed by the
5 forensic interview and as I stated the defendant was
6 identified as Auston. He was also identified as Shannon
7 Hardy's son which the victim said Auston lived with her,
8 Shannon. That is his mom. So he has been properly
9 identified. The jurisdiction has been established in
10 Lexington County. The minor is currently only six years
11 old, therefore we have met the element that she has to be
12 under the age of 11 for CSC first with a minor. Again
13 there is enough evidence to support a finding of a sexual
14 battery for the jury, therefore, we ask that the
15 defense's motion be denied at this time.

16 THE COURT: Any response from the defense?

17 MR. WILLIAMS: No response, Your Honor.

18 THE COURT: For the reasons stated by the State I'll
19 deny the motion. I think that there is evidence in the
20 record from which the jury could make a decision as to
21 the guilt of the defendant. I'm only concerned with the
22 existence of the evidence and not what weight to give to
23 it. But I believe that the elements of the offense have
24 been met in the evidence that has been presented here
25 this week.

1 MR. WILLIAMS: Thank you, Your Honor. Your Honor, I
2 would request the Court to interview my client as to his
3 testimony. It's my understanding he does wish to testify
4 but I request the Court to interview him.

5 THE COURT: Okay.

6 Thereupon,

7 AUSTON BREAZEALE

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

9 EXAMINATION

10 THE COURT: Mr. Breazeale, at this time we have now
11 reached that point in the trial where you may present a
12 defense. As part of that defense you may decide whether
13 or not you wish to testify in your own behalf and the
14 decision as to whether or not you wish testify is up to
15 you. It's entirely your decision. You can certainly,
16 and I encourage you to discuss the matter with your
17 attorney. You can also discuss it with your family but
18 ultimately the decision is yours as to whether or not you
19 wish to testify in your own behalf.

20 If you decide that you wish to testify and you have
21 a criminal record which involves a crime of dishonesty or
22 involves a conviction for a crime that carries a possible
23 term of imprisonment of more than one year, those crimes
24 can be used to impeach your testimony and we can
25 certainly determine from the State whether or not any of

1 those crimes exist in helping you make your decision.

2 If, however, you decide that you do not wish to
3 testify, the fact that you have not taken the witness
4 stand to testify in your own behalf would not be used
5 against you in any manner whatsoever. Specifically the
6 jury would be instructed that you have the constitutional
7 right to remain silent and the fact that you do not take
8 the witness stand to testify in your own behalf cannot
9 even be discussed by them during the course of their
10 deliberations. They would also be told that they can
11 draw no inference whatsoever from the fact that you did
12 not take the witness stand to testify.

13 Again your decision as to whether or not you wish to
14 testify or present any evidence is entirely a decision
15 that you must make with your attorney and as I have
16 stated you can also seek counsel from your family, if
17 that's what you wish to do. But again ultimately that
18 decision is yours.

19 In a few moments I will ask you as to whether or not
20 you wish to take the witness stand or you wish to present
21 any other evidence in your defense.

22 Do you understand what I have stated?

23 MR. BREAZEALE: Yes, ma'am.

24 THE COURT: Okay. I'll give you -- We'll take a
25 break and I'll give you a few moments to discuss it with

1 your attorney further. When we come back from the break,
2 we'll go from there.

3 (Short break.)

4 THE COURT: Mr. Breazeale, have you made a decision?

5 MR. BREAZEALE: Yes.

6 THE COURT: Do you wish to testify?

7 MR. BREAZEALE: Yes.

8 THE COURT: I have asked Mr. Breazeale if he had
9 made a decision. He said yes. And I confirmed that he
10 wished to testify and there is no record to settle and
11 there is nothing else that we need to take up before
12 bringing the jury in.

13 (Whereupon, the jury entered the courtroom at 11:17
14 a.m.)

15 THE COURT: Mr. Williams indicated that this would
16 be his only witness. At this time we may hear from the
17 defense. You may call your witness.

18 MR. WILLIAMS: Your Honor, we call Auston Breazeale
19 to the stand.

20 Thereupon,

21 AUSTON BREAZEALE

22 after having been first duly sworn, testified as follows,

23 THE CLERK: Please have a seat. After you're
24 seated, please state your full name spelling your last
25 name for the record.

1 THE WITNESS: Auston Breazeale, B-r-e-a-z-e-a-l-e.

2 THE COURT: Will you spell your first name please.

3 THE WITNESS: A-u-s-t-o-n.

4 DIRECT EXAMINATION

5 BY MR. WILLIAMS:

6 Q. Auston, how old are you?

7 A. I'm 18 years old.

8 Q. What's your date of birth?

9 A. [REDACTED]

10 Q. Where do you live?

11 A. I live off Longs Pond Road.

12 Q. And are you in school?

13 A. No. I went to military school.

14 Q. Did you get your GED?

15 A. Yes, sir.

16 Q. Now, do you work?

17 A. I do.

18 Q. Where do you work?

19 A. I've been working in retail for three years. But I
20 work at the new Wal-Mart down the road. It's like a
21 neighborhood market or whatever.

22 Q. Did you work somewhere before that?

23 A. I did. I worked at Publix for like six months and
24 then Wal-Mart. They offered me more money.

25 Q. What are your plans when this trial is over with?

1 A. I want to go in the Air Force. I already got
2 several calls from the Marines and I want to do combat control
3 in the Air Force. If I don't do that, I want to go in the
4 Marines.

5 Q. You indicated that you had your GED. Before you got
6 your GED, what school did you go to?

7 A. I went to White Knoll High School.

8 Q. Then what grade did you -- Did you drop out of White
9 Knoll?

10 A. No. I completed ninth grade and went to home
11 schooling with my mom. She did that for two years and she
12 just got kind of tired of it because she's doing nursing
13 school and stuff so...

14 Q. So that's why you went ahead and got the other
15 education?

16 A. Yes, sir.

17 Q. Now, you have heard some allegations about your
18 cousin. What's your cousin's name?

19 A. Minor Child .

20 Q. How long have you known her?

21 A. I've known her since she was born.

22 Q. What would you say your relationship is to your
23 cousin?

24 A. Uhm, I love Minor Child. I have never actually met the
25 other one, but every time she would see me, she would yell my

1 name and give me a hug and I would pick her up and give her a
2 hug. They would come to see me at work, give them hugs and
3 hanging out with her and she would want me to play with her
4 and stuff.

5 Q. Let me ask you this: You said you don't really know
6 the other one. Who are you referring to?

7 A. Alynn. I have never actually met her.

8 Q. How old would Alynn be?

9 A. I'm guessing a year old now maybe. Not even a year
10 maybe.

11 Q. But you have a good relationship with her, with
12 Minor Child?

13 A. I did.

14 Q. Well, there have been some allegations that you have
15 touched her inappropriately or that you have done something
16 sexually to her.

17 A. Yes, sir.

18 Q. Have you ever touched her inappropriately?

19 A. No. I have never touched my little cousin.

20 Q. How do you feel about people who do that type of
21 thing?

22 A. I mean, I don't know how to say that because, I
23 mean, I deserve - they deserve what they get but, I mean, I've
24 never really came across anything like that so I don't know.
25 Family has always been, you know, quiet and calm.

- 1 Q. Do you have a girlfriend?
- 2 A. I do.
- 3 Q. What's her name?
- 4 A. Her name is Sophie. I have known her for three
- 5 years.
- 6 Q. How old is she?
- 7 A. She is 17, almost 18.
- 8 Q. This allegation about, and there is no other
- 9 delicate way to put this, about your having your penis out and
- 10 it going into Minor Child mouth, did this happen?
- 11 A. No. No, sir.
- 12 Q. Have you ever had your penis out and given it to her
- 13 or --
- 14 A. No.
- 15 Q. You have never messed with her in any way?
- 16 A. No. Never.
- 17 Q. Do you know of any more ways in which you can tell
- 18 this jury that this just didn't happen?
- 19 A. I mean, it's just people saying I did. I mean, it's
- 20 a little girl saying I did and, I mean, I don't know what else
- 21 to say 'cause it's just people saying stuff.
- 22 Q. It just didn't happen?
- 23 A. No. It didn't happen.
- 24 Q. How do you feel about her now?
- 25 A. I haven't seen her since, well, like I just seen her

1 the other day. That was the first time in like a year or
2 so.

3 Q. Have you ever hugged her?

4 A. Not since then.

5 Q. Before a year ago, did you ever hug her?

6 A. Oh, yeah. Like every time I saw her.

7 Q. Did you ever tickle her?

8 A. Yeah. I have tickled her before. I mean, a couple
9 times. She didn't like it so... She always laughed.

10 Q. What did you tell me yesterday when I asked you if
11 you did this? You said you're not something. What did you
12 say you weren't?

13 A. I said I wasn't a pedophile because that's the only
14 word I really know how to call that. I don't like little
15 children so I don't know what else to say.

16 MR. WILLIAMS: Answer any questions the Solicitor
17 may have for you.

18 THE COURT: Any cross?

19 MS. ABEE: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MS. ABEE:

22 Q. Auston, in 2014 you were 16, right?

23 A. Yes, ma'am.

24 Q. Going on 17, right?

25 A. Yes, ma'am.

1 Q. And during that time your family would kind of do
2 Sundays dinners at your grandmother's house, right?

3 A. About every Sunday.

4 Q. And that's your grandma Linda, right?

5 A. Yes.

6 Q. You would be there?

7 A. My whole family.

8 Q. And that included Minor Child as well, right?

9 A. Yes.

10 Q. And when you were at these Sunday dinners, people
11 weren't always watching just you, right?

12 A. They were just -- I mean, they would watch us, but
13 they would let us do our own thing so...

14 Q. So there were times when people weren't watching
15 you, right?

16 A. No. There would always be someone there. But I
17 guess you could say that. I mean, the whole family is there
18 so I don't see how that's possible but you could say that.

19 Q. There are times when you could go off by yourself;
20 is that fair say?

21 A. Yeah. That's fair.

22 Q. And there were times when Minor Child could go off by
23 herself; is that fair to say?

24 A. Yeah.

25 Q. And you were in here in the courtroom when Trey

1 testified, right?

2 A. Yes.

3 Q. And Trey is your uncle?

4 A. My uncle.

5 Q. And you heard Trey talk about an incident in April
6 or May of 2014 when you were at his house. Do you recall him
7 talking about that?

8 A. Yes. I do.

9 Q. Okay. Do you recall that incident?

10 A. I do.

11 Q. Okay. And what did you say happened during that
12 incident?

13 A. Well, I remember uncle Trey had went - we were
14 watching, I think we were watching one of **Minor Child** shows and,
15 uhm, he went to the bathroom. He closed the door and, uhm, I
16 mean, a few moments went by. She was eating at the time and
17 then I was sitting there on the little chair they had in there
18 and she came down. She'd always - she'd always want to sit in
19 that little chair so I got up and a few moments passed so
20 I went to the bathroom. I went to go to the bathroom. I
21 didn't know she had followed me into the bathroom. It wasn't
22 into the bathroom. I hadn't - I hadn't - I don't shut the
23 door when I use the bathroom. I probably should. But I kind
24 of just let it shut because I use the bathroom pretty quick
25 and she - she barges in on me. I had - I mean, I had - I

1 mean, I had everything out so I was using the bathroom so I
2 didn't know what to do. I just pulled my pants up and I went
3 in the living room. She just started running after me and a
4 few moments went by. I sat down on the little chair they
5 have. It's like a recliner or whatever. And, uhm, my mom
6 came in and then my uncle came out and then she started saying
7 that she had seen my finger hiney or whatever. And I didn't
8 know what to say. So, I mean, it's just what it was.

9 Q. Okay. So you said a lot there. I want to make sure
10 we got it straight. So you were over at Trey and Whitney's
11 house, right?

12 A. Yes, ma'am.

13 Q. And Minor Child was there?

14 A. Yes, ma'am.

15 Q. And Trey was there?

16 A. Yes.

17 Q. And you were there?

18 A. Yes.

19 Q. And Trey went to the bathroom, right?

20 A. Yes, ma'am.

21 Q. And you were sitting on what you call the little
22 chair, right?

23 A. Yes. The little chair.

24 Q. Minor Child liked sitting on this little chair, didn't
25 she?

1 A. Yes, ma'am.

2 Q. Okay. So Minor Child got done from eating and she went
3 to sit in the little chair, right?

4 A. Because she wanted to. Yes, ma'am.

5 Q. And so you got up and went to bathroom, right?

6 A. Yes.

7 Q. And you knew Minor Child was there, right?

8 A. Yes. She was watching TV.

9 Q. And you knew Trey was in the bathroom, right?

10 A. Mm-hmm.

11 Q. And so you went to I'm assuming another bathroom?

12 A. Yeah. There's a bathroom -- Her bedroom is down the
13 hall. There's a bathroom right beside that. It's my old
14 house so there's a bathroom, a bedroom and another bedroom and
15 there's a hallway and then the living room and there's another
16 living room, whatever they call it, and I went to use that
17 bathroom because my uncle was in the other one.

18 Q. Okay. So you went to the other bathroom and you
19 said you didn't shut the door?

20 A. I just - I just kind of pushed it because, I mean, I
21 do it all the time, like just push it and it kind of shuts,
22 but it doesn't shut all the way.

23 Q. And according to you Minor Child then walked in on you
24 using the bathroom, right?

25 A. Yeah. She did.

1 Q. And that's how she saw I think you called it a hiney
2 finger, right?

3 A. Yeah. That's what she called it.

4 Q. Because she walked in on you peeing?

5 A. Yes.

6 Q. And you said your mom came home after that, right?

7 A. Uhm, yeah. Right after I sat down, she came home.

8 Q. And there was some sort of conversation between your
9 mom and your uncle Trey, right?

10 A. Yeah. My uncle came out and they started talking.
11 Well, first Minor Child yelled she had seen - seen that and then
12 she said that to my mom and then my uncle came out and then my
13 mom was shocked so she didn't know what to say.

14 Q. Okay. And then your mom and your uncle had some
15 sort of conversation, right?

16 A. Yes, ma'am.

17 Q. And at that point in time were you still at school
18 at White Knoll?

19 A. No. That -- I don't actually -- I think I was, uhm,
20 out of school. I think it was summer. I'm not sure.

21 Q. Okay. So it was summer?

22 A. Yes.

23 Q. But previously were you attending school at White
24 Knoll?

25 A. No. I was home schooled then.

1 Q. Okay. So you were home schooled. And as a result
2 of this conversation between your mom and your uncle Trey, did
3 anything change in your life?

4 A. Say that again. Anything change in my life?

5 Q. Yeah.

6 A. What do you mean? Like --

7 Q. Did you continue to be home schooled?

8 A. No. After -- I mean, I went to military school in
9 November to February.

10 Q. So after this, you went to military school?

11 A. Yes.

12 Q. And after this did you go to counseling?

13 A. I did. I actually -- Not after military. Yeah. It
14 was after military school. I went to --

15 MR. WILLIAMS: Objection, Your Honor. I have a
16 matter of law to take up with the Court outside of the
17 presence of the jury.

18 THE COURT: Ladies and gentlemen, we have a matter
19 which we need to take up. I would ask that you retire to
20 the jury room and not to engage in any deliberations or
21 discussions at this time.

22 (Whereupon, the jury entered the jury room at 11:27
23 a.m.)

24 THE COURT: Yes, sir.

25 MR. WILLIAMS: Your Honor, I would move for a

1 mistrial. The question by the Attorney General as to
2 whether or not he went to military school and then
3 started taking counseling is an indication that perhaps
4 he was guilty of some sort of crime or some sort of
5 sexual misconduct which is inappropriate because
6 obviously he hasn't been convicted of anything and this
7 counseling may be an indication that somehow he's
8 admitted his guilt in some sort of crime. So we think
9 it's an inappropriate question and it would taint the
10 jury in regards to whether or not he can be given a fair
11 trial or not by raising the issue of whether or not he
12 went to counseling.

13 THE COURT: Mr. Williams, can you repeat that again
14 just to make sure I understand exactly what you're
15 saying?

16 MR. WILLIAMS: Yes, ma'am. The objection goes to
17 the question from the prosecutor to the defendant. He
18 had already testified that he got his GED by going to
19 military school. Then she asked him and after that,
20 you went ahead and got some counseling; is that correct?
21 And this was in direct relationship to the sexual event
22 which supposedly happened where someone was allowed to
23 see his private parts. Your Honor, our proposition is
24 that by connecting these two things there's an indication
25 that perhaps he may be guilty of some sort of sexual

1 assault or some sort of sexual misconduct. He hasn't
2 been convicted. If it were a crime of moral turpitude,
3 obviously they could bring something up to indicate his
4 ability to tell the truth or not. But that type of
5 question, Your Honor, is an indication that the jury may
6 not be able to separate the trial in this particular case
7 where he is accused of performing a sexual act versus the
8 fact that he had to go to some sort of counseling which
9 is an indication he had some sort of sexual problem.
10 It's an inappropriate question, Your Honor.

11 THE COURT: Yes, sir. Response from the State.

12 MS. ABEE: Yes, Your Honor. During Trey Marsh's
13 testimony he testified that after this incident both he
14 and the defendant's mother talked and set parameters on
15 what would be happening as far as **Minor Child** and the
16 defendant's contact with one another as well as other
17 sort of parameters. This is the same line of questioning
18 that I was just asking the defendant about a conversation
19 between his mother and **Minor Child** mother and as a result
20 of that things changed in his life. He then was in
21 military school at that point in time and then also
22 sought counseling. It's not a conviction, Your Honor.
23 It's counseling. This was appropriate Lyle testimony to
24 bring in this situation and to talk about it and the fact
25 that the defendant sought counseling is just a fact in

1 the case, Your Honor. That this happened and then he
2 went and had counseling after that as a result of the
3 conversation between his mother and the victim's mother,
4 Your Honor. Although, I mean, I hear what Mr. Williams
5 is saying but it's not suggesting an inappropriate result
6 in this case. It's just flat out a fact in this case
7 that after this first scenario, they tried to limit
8 contact. He went to military school and he sought
9 counseling.

10 THE COURT: What, if any, additional questions do
11 you intend to ask him about counseling?

12 MS. ABEE: Nothing, Your Honor. Just that it was
13 part of that conversation between the defendant's mother
14 and the victim's father and that he went to counseling
15 and then I'm moving on. I'm not going into the nature of
16 the counseling, the substance of the counseling, how long
17 it was, nothing like that. Just merely that that was one
18 of the parameters and conditions that was set by the
19 defendant's mother and the victim's father.

20 THE COURT: Anything further, Mr. Williams?

21 MR. WILLIAMS: Your Honor, I forward the
22 relationship of counseling in this particular vignette as
23 to a police officer asking a defendant to give his
24 testimony or his statement and the defendant refuses to
25 give his statement. It's the same idea. There is an

1 implication by merely saying those words that he may be
2 guilty of something. Counseling by necessity indicates
3 that someone has a problem.

4 THE COURT: I guess my problem with the question is
5 that it implies that, and I don't know the answer to the
6 question one way or the other even implies that any
7 counseling that he sought was voluntary and that doesn't
8 -- I think the way the question has been asked is
9 misleading under the circumstances. It doesn't discuss
10 the context in which whatever agreement was reached
11 between the two adults as to what would occur and so I
12 don't think it's -- I understand, Mr. Williams, your
13 comment and your motion. I'm going to deny the motion
14 because I think it is part and parcel of what was
15 testified to by Mr. Marsh and I think it goes to those
16 particular issues and so it's relevant. I understand how
17 -- I understand what you assert as a characterization of
18 the counseling, but I think the question needs to be
19 phrased differently than the way it is currently
20 phrased.

21 MR. WILLIAMS: All right.

22 THE COURT: Any questions about that?

23 MS. ABEE: No, Your Honor.

24 THE COURT: So I will deny your motion for a
25 mistrial. You may ask the jury to come back.

1 MR. WILLIAMS: Thank you, Your Honor.

2 (Whereupon, the jury entered the courtroom at 11:37
3 a.m.)

4 THE COURT: Yes, ma'am. You may continue.

5 MS. ABEE: Thank you, Your Honor.

6 BY MS. ABEE:

7 Q. We were talking about some changes after Minor Child
8 walked in on you going to the bathroom, right?

9 A. Yes.

10 Q. You said you went to military school, right?

11 A. Yes, ma'am.

12 Q. When did you start military school?

13 A. That was in November 10th.

14 Q. Okay. And what is the name of that school?

15 A. Wil Lou Gray.

16 Q. Wil Lou Gray?

17 A. Mm-hmm.

18 Q. And I want to talk a little bit now, I know we just
19 kind of talked about November when you started military
20 school. But I want to backtrack some until July of 2014. Do
21 you recall July of 2014?

22 A. It's a while ago but yes.

23 Q. Let's talk specifically. I think today you heard
24 Mr. Dwayne Rice testify; is that correct?

25 A. Oh, yeah. I did. Definitely.

1 Q. Okay. And during July of 2014 were you spending
2 time at your grandmother Linda's house?

3 A. Yes. I went over there to help her. She always
4 gets me to cut her grass even though it's not right sometimes
5 but, I mean, to help her out around the house and stuff.

6 Q. And when you would go over there, Minor Child would be
7 there sometimes, wouldn't she?

8 A. Yeah.

9 Q. And sometimes when you went there or at least one
10 specific time when you went there, Dwayne Rice was there,
11 right?

12 A. Yes, ma'am.

13 Q. Okay. And you remember Mr. Rice being there?

14 A. Oh, yeah.

15 Q. And do you remember this particular day helping your
16 grandmother cut the grass?

17 A. I do.

18 Q. And do you remember your grandmother getting
19 somewhat irritated with the way you were cutting the grass?

20 A. Yes. I do.

21 Q. Okay. And so she sent you inside, right?

22 A. Yes, ma'am.

23 Q. And you went inside, right?

24 A. Mm-hmm.

25 Q. And did you go into the room with Minor Child?

1 A. I did.

2 Q. Okay. And at this point in time did you know that
3 you weren't supposed to be around Minor Child ?

4 A. I did not actually. I was just talking to them
5 about it.

6 Q. Okay. So you never knew you were never supposed to
7 be around Minor Child?

8 A. Never knew that.

9 Q. Okay. And so you went into the room with her
10 anyway, right?

11 A. Yeah.

12 Q. And you went into the room why?

13 A. There is a bathroom in the room and I was using the
14 bathroom and she was watching TV and Trey Dwayne was in the
15 other room watching TV. He was watching some show and I
16 couldn't change it because my grandmother told me not to
17 bother him. So I went in the room with Minor Child to watch her
18 show.

19 Q. Okay. So you confused me just a little bit there,
20 Auston, because you said that you were going there for the
21 bathroom, right?

22 A. Yes. I did.

23 Q. And now you're telling --

24 A. I went to the bathroom.

25 Q. Okay. I'm sorry. I didn't mean to cut you off.

1 What did you say?

2 A. I said I did go to the bathroom.

3 Q. Okay. So you went into that bedroom for the
4 bathroom, right?

5 A. Yes, ma'am.

6 Q. And there's other bathrooms in the house, aren't
7 there?

8 A. Yes.

9 Q. But you didn't go to those bathrooms, did you?

10 A. I did not because that's the closest one.

11 Q. Okay. So you just went to the closest bathroom that
12 was there?

13 A. My grandmother's. Yes.

14 Q. And then you stayed in the room with **Minor Child**,
15 right?

16 A. I went out - I went to the living room to see what
17 Dwayne -- I mean, I wanted to watch TV in there because it's a
18 bigger TV in the living room. But Dwayne was watching some I
19 think it was an animal show and my grandmother told me not to
20 bother him and I wasn't asked to change the show telling him
21 so I went back in the room with **Minor Child** to watch her show with
22 her.

23 Q. Okay. And y'all just sat there and watched the show
24 together?

25 A. She's hyper. I mean, she was jumping around the bed

1 and stuff. I would play with her. We were watching -- I
2 think -- I don't even remember what the show was. I think it
3 was, might have been some puppy show. I don't even remember.
4 It was a cartoon.

5 Q. So you went into the room and she was hyper jumping,
6 on the bed, right?

7 A. Oh, yeah.

8 Q. And then Mr. Rice said he saw your hands down her
9 pants.

10 A. Yes. He did.

11 Q. Okay. Did you put your hands down her pants?

12 A. I did not.

13 Q. You didn't put your hands down here pants at all?

14 A. Did not.

15 Q. You didn't tickle her at all?

16 A. I was playing with her. I was tickling her. She
17 was jumping around the bed. I mean, she would say stop but
18 she would always come back and jump on me so we would play.
19 That was about it.

20 Q. Okay. So she would jump on the bed, you would
21 tinkle her, she would say stop and then she would come back
22 for more, right?

23 A. Yes.

24 Q. And Mr. Rice just didn't see what he saw is what
25 you're telling us?

1 A. Definitely.

2 Q. And you know Mr. Rice, don't you?

3 A. I do not actually. I've met him twice.

4 Q. Okay. So y'all don't even really know each other,
5 right?

6 A. Nope.

7 Q. Y'all don't have any bad blood with one another,
8 right?

9 A. Oh, yeah. We do. Because, uhm, the first time we
10 met -- I think it was three times we met. The first time was
11 when he came over. He always calls my grandma baby which I
12 never liked. I always told him to stop because I didn't like
13 that. My grandma, I guess, I don't know, I guess she didn't
14 mind it, but I didn't and that was the first time we met. And
15 then the second time was we went out to his place to help him
16 do some stuff, me and my uncle and my grandma was there, me
17 and grandma were there first that day and then me and my uncle
18 came out there to help him and, I mean, Dwayne is just always
19 like, I mean, I don't know how to describe Dwayne. He's
20 different, you know?

21 Q. So your bad blood is because he calls your grandma
22 baby?

23 A. I guess you can say that. But, I mean, most of it
24 was because the first time me and my grandma went, we got in
25 kind of an argument. I don't remember what it was about. But

1 I could tell he didn't like me, I guess. I don't know. But
2 there's definitely some kind of altercation there. I guess, I
3 think he asked me to do something and I didn't do it because I
4 was what, 16 at the time, and I think that's how I guess we
5 started off.

6 Q. Okay. So Dwayne Rice just doesn't like you,
7 right?

8 A. I guess so.

9 Q. And what, Whitney, Whitney just doesn't like you
10 either?

11 A. No. Whitney, I was always at her house. Help her
12 out. Cut her grass. She didn't mind if I did it wrong, I
13 guess. I don't know. But, uhm, I cut her grass. I mean --

14 Q. So she doesn't have any ill will toward you, right?
15 That you know of?

16 A. Not back then. No.

17 Q. Okay. And how about your grandmother Linda. She
18 doesn't have any bad blood toward you, right?

19 A. No.

20 Q. Okay. And Trey. Trey doesn't have any bad blood
21 towards you, right?

22 A. Not that I know.

23 Q. In fact, he said he was like a brother towards you,
24 right?

25 A. Definitely.

1 Q. Would you agree with that?

2 A. Yeah. Like a dad.

3 Q. And Minor Child. Minor Child doesn't have any bad blood
4 towards you, right? That you know of?

5 A. Nope.

6 Q. In fact, you said that you love Minor Child, right?

7 A. I do.

8 Q. And that y'all would always play together, right?

9 A. Yes.

10 Q. That you would always hug, right?

11 A. Mm-hmm.

12 Q. That you liked being around each other?

13 A. Mm-hmm.

14 MS. ABEE: No further questions, Your Honor.

15 MR. WILLIAMS: Just one follow up question, Your
16 Honor.

17 THE COURT: Yes, sir.

18 REDIRECT EXAMINATION

19 BY MR. WILLIAMS:

20 Q. Do you want to change your comment about when I
21 asked you whether or not you put your penis in her mouth or
22 not? Do you want to change that answer?

23 A. Definitely not. No.

24 Q. Did you?

25 A. No. I didn't.

1 MR. WILLIAMS: That's all the questions I have, Your
2 Honor.

3 THE COURT: You may step down.

4 MR. WILLIAMS: That's the defendant's case, Your
5 Honor.

6 THE COURT: Ladies and gentlemen, we have some
7 additional legal issues which we need to take up outside
8 of your presence. Given the time, although it's a little
9 early for lunch, instead of keeping you back in the jury
10 room, I'm gonna go ahead and send you to lunch and then
11 we'll come back a little early. Please remember the
12 instructions I have given to you. Even though now that
13 you have heard all of the evidence, you're still not in a
14 position to be able to discuss this matter among
15 yourselves. You have not heard my instructions to you as
16 to the law. So I ask that you not begin any
17 deliberations during this particular time.

18 Additionally, as you come and go from the courthouse
19 remember not to listen to conversations that you may
20 overhear again for the reasons that you have to make the
21 decisions based upon the evidence that's been presented
22 here in this courtroom and not based upon conversations
23 you overhear. Please remember also not to allow anyone
24 to approach you to discuss this case with you. If
25 someone attempts to do that, please tell them that you

1 are a juror and you cannot discuss it, and I ask that you
2 report it as soon as possible.

3 Ladies and gentlemen, I'm going to ask that you
4 report back about 1:15 to the same jury room. When you
5 report back at that time, then we should be ready
6 at that point for you to hear the closing arguments of
7 the attorneys and then you can begin your deliberations
8 after I have instructed you on the law. I hope you have
9 a good lunch and we'll see you back at 1:15. Thank you.

10 (Whereupon, the jury was released for lunch recess
11 at 11:45 a.m.)

12 THE COURT: Are there any motions at this time?

13 MR. WILLIAMS: Your Honor, in that this is the end
14 of all of the testimony, we would renew the prior
15 motions, and that being in a different standard since all
16 the evidence is in and the evidence as a whole is
17 insufficient as a matter of law for this jury to return a
18 verdict of guilt as to my client as to my client in
19 regards to criminal sexual conduct.

20 THE COURT: From the State.

21 MS. ABEE: Your Honor, we just contend that there is
22 sufficient evidence for the jury to consider in
23 determining whether or not the defendant is guilty of
24 criminal sexual conduct with a minor in the first degree.
25 There's been evidence of each element of that crime

1 presented to the jury for them to consider and weigh in
2 their deliberations.

3 THE COURT: At this time I think it's clearly a
4 factual issue for the jury to make a decision. They have
5 heard the testimony that is conflicting and so they will
6 have to weigh that testimony and weigh that evidence and
7 determine credibility of the witnesses and then after
8 determining that credibility, then to weigh the evidence
9 to determine whether or not the State has met that
10 burden. So I will deny the motion at this particular
11 time because it is a factual issue. Are there any other
12 motions?

13 MS. ABEE: Nothing from the State, Your Honor.

14 MR. WILLIAMS: Nothing from the defendant, Your
15 Honor.

16 THE COURT: Let me tell you what I will charge the
17 jury and then if there is anything I need to add or
18 change or correct, you can let me know.

19 First of all, I'll tell them that they have to
20 determine the facts based upon the evidence. I will tell
21 them about the credibility of the witnesses. They have
22 to determine that credibility. I will also tell them
23 about expert witness.

24 I will also talk to them about testimony of
25 children. That they have heard the testimony from a

1 child. Where a witness is a child you must determine as
2 with any witness whether that testimony is believable.
3 In deciding the believability you may consider not only
4 the matters that I have already discussed with you but
5 you may also consider the age of the child, the child's
6 ability to observe and remember facts, the child's
7 ability to understand and answer questions. Because
8 young children may not fully understand what is
9 happening, it's up to you to decide whether the child
10 understood the seriousness of appearing as a witness in
11 this trial, whether the child understood the questions,
12 whether the child has a good memory and whether she child
13 understands the difference between lying and telling the
14 truth. In addition, young children may be influenced by
15 what questions are asked and it's up to you to decide
16 whether the child understood the questions asked.

17 I will also charge them on circumstantial evidence.
18 There are two types of evidence which are generally
19 presented during a trial. Direct evidence and
20 circumstantial evidence. Direct evidence directly proves
21 the existence of a fact and does not require deduction.
22 Circumstantial evidence is proof of a chain of facts and
23 circumstances indicating the existence of a fact. Crimes
24 may be proven by circumstantial evidence as well as
25 direct evidence. The law makes no distinction between

1 the weight or value to be given to direct or
2 circumstantial evidence. To the extent that the State
3 relies upon circumstantial evidence, all the
4 circumstances must be consistent with each other and when
5 taken together point conclusively to the guilt of the
6 accused beyond a reasonable doubt. If these
7 circumstances merely portray the defendant's behavior as
8 suspicious, then the proof has failed.

9 The State has the burden of proving the defendant
10 guilty beyond a reasonable doubt and that burden rests
11 with the State regardless of whether the State relies on
12 direct evidence, circumstantial evidence or a combination
13 of the two.

14 I'll charge them the fact that the defendant was
15 arrested, charged and indicted is not evidence. Simply
16 the charging document. It does not create any
17 presumption or inference of guilt. It's simply the
18 document which allows us to come into court for trial.

19 I will charge them on the presumption of innocence.
20 I will charge them on the Victor versus Nebraska
21 reasonable doubt which is the government has the burden
22 of proving each and every element of the crime charged
23 beyond a reasonable doubt. Some of you may have served
24 as jurors in civil cases where you were only told that it
25 was necessary to prove that a fact is more likely true

1 than not true. In criminal cases the government's proof
2 is more powerful than that. It must be beyond a
3 reasonable doubt. Proof beyond a reasonable doubt is
4 proof that leaves you firmly convinced of the defendant's
5 guilt. There are very few things in the world that we
6 know with absolute certainty. In criminal cases the law
7 does not require proof that overcomes every possible
8 doubt.

9 If based upon your considerations of the evidence
10 you are firmly convinced that the defendant is guilty of
11 the crime charged, then you must find him guilty. If on
12 the other hand you think that there is a real possibility
13 that he is not guilty, then you must give him the benefit
14 of the doubt and find him not guilty.

15 The State has charged the defendant with criminal
16 sexual conduct with a minor first degree. The State must
17 prove beyond a reasonable doubt that the defendant
18 engaged in a sexual battery with the victim. Sexual
19 battery is defined as sexual intercourse, cunnilingus,
20 fellatio, anal intercourse or any intrusion however
21 slight of any part of a person's body or of any object
22 into the genital or anal opening of another person's body
23 except when the intrusion is accomplished for medically
24 recognized treatment or diagnostic purposes.

25 The state must prove beyond a reasonable doubt that

1 the victim was less than 11 years old at the time of the
2 sexual battery. Consent, willingness, indifference or
3 ignorance on the part of the minor, if any, as to what
4 was taking place does not in any way affect the charge of
5 criminal sexual conduct with a minor because a woman
6 under the age of 14 cannot legally consent to sexual
7 intercourse.

8 I will charge them two possible verdicts in this
9 case. One verdict is guilty. The other verdict is not
10 guilty. There is no significance to the order in which I
11 state them. I have to state one first and I have to
12 state one second. I will tell them that their verdict
13 has to be unanimous.

14 And I don't have anything further at this particular
15 time. Is there anything else that I need to add or
16 change or correct?

17 MS. ABEE: Nothing from the State, Your Honor.

18 MR. WILLIAMS: Nothing from the defendant, Your
19 Honor.

20 THE COURT: Would you all also take a look at the
21 indictment and make sure that everything that's on the
22 front of the indictment, that's contained in the
23 indictment is correct and if there is nothing prejudicial
24 because the indictment will be sent back with the verdict
25 form. Is there anything else?

1 MS. ABEE: Nothing from the State, Your Honor.

2 MR. WILLIAMS: Nothing from the defendant, Your
3 Honor.

4 THE COURT: If there is nothing further, then we can
5 take a lunch break.

6 DEPUTY: Excuse me, Your Honor. Are you going to
7 allow him to remain on bond?

8 THE COURT: Yes, sir. I am. He still remains
9 innocent until the jury returns a verdict of guilt and so
10 he will still continue to be on bond. Again, Mr.
11 Breazeale, you must report back to this courtroom by
12 1:15. If you are not in this courtroom by 1:15, then the
13 trial will continue in your absence and a bench warrant
14 will be issued for your arrest.

15 MR. BREAZEALE: Yes, ma'am.

16 THE COURT: Is there anything further?

17 MR. WILLIAMS: Thank you, Your Honor.

18 MS. ABEE: No, Your Honor.

19 THE COURT: We'll see you back at 1:15.

20 (Lunch recess.)

21 BAILIFF: All rise.

22 THE COURT: Thank you. Be seated please. Is there
23 anything we need to take up before we bring the jury in?

24 MS. ABEE: Nothing from the State, Your Honor.

25 MR. WILLIAMS: Nothing from the defendant, Your

1 Honor.

2 THE COURT: Ask the jury to come in please.

3 (Whereupon, the jury entered the courtroom at 1:20
4 p.m.)

5 THE COURT: Good afternoon, ladies and gentlemen.
6 At this time we are now ready to hear the closing
7 arguments of the attorneys. As I told you at the
8 beginning of the trial, their closing arguments are not
9 evidence but what they will do is they will pick out
10 portions of the evidence that you have heard and make
11 arguments to you to try to try to sway you to find the
12 facts in accordance with their view of what occurred. So
13 I ask that you to listen very carefully to those closing
14 arguments. Sometimes they may cause you to think about
15 the evidence in a different light or they may raise
16 questions that you will want to talk about among
17 yourselves when it's time for you all to begin your
18 deliberations.

19 Once they have made their closing arguments, then I
20 will instruct you on the law that is to be applied and
21 then you may begin your deliberations at that particular
22 point. Ms. Abee.

23 MS. ABEE: Your Honor, I'm going to defer to
24 Mr. Williams closing first.

25 THE COURT: All right. Mr. Williams.

1 MR. WILLIAMS: May it please the Court.

2 THE COURT: Yes.

3 MR. WILLIAMS: Mr. Foreman, ladies and gentlemen of
4 the jury, I kindly want to thank you for your attention
5 today. I didn't know what I was going to say to you.
6 Normally when you have a trial, there is a procedure in a
7 trial and normally the State goes first. The defense
8 goes second, and the State gets their return at reply
9 when it comes to putting up witnesses and if the defense
10 puts up any witnesses or any evidence whatsoever, then
11 the order of the argument changes and you probably saw a
12 little of that going on right there. If the defendant
13 had not taken the stand and testified, then what would
14 happen would be that they would be required to go first
15 and then we would go last. So as a defense lawyer I like
16 going last because you get to hear what the other guy is
17 going to say and you get the last word and stuff like
18 that.

19 But then sometimes, sometimes it's necessary to have
20 your client testify. To have your client tell you his
21 version of the story and what his testimony should be.
22 The Judge has already told you at the beginning of this
23 trial that there is no proof that a defendant has to
24 prove meaning the burden of proof is always on the State
25 and because of that I guess that makes sense with what I

1 just said. That's why a lot of times you will see a
2 defense lawyer not put up a defendant. It doesn't mean
3 he's guilty or not guilty, but a lot of times you won't
4 put him up there because he has no burden of proof and he
5 still doesn't have a burden of proof when he testifies.

6 There are some cases where the defendant wants to
7 testify because clearly in some types of cases it's
8 somebody's word and then there is somebody else's word
9 and you're left with a haggling or you're left with the
10 determination of figuring out what the truth is. So
11 that's what we are here to do today.

12 These types of cases are always hard. I told you at
13 the beginning that there is an emotional content with
14 these types of cases where you immediately jump to a
15 conclusion or you have an emotional trigger. I'm glad we
16 talked about triggers today because that's exactly what a
17 lot of things that happen in arguments are. They are
18 triggers. Things will be said by attorneys that would
19 hope to trigger a response, would trigger you to believe
20 a certain way or believe another way. And you know what
21 I'm talking about clearly. Certain things make you think
22 about something else. They get your mind set in
23 a certain way. Certain types of alleged crimes will get
24 you thinking in a certain way because if a crime is so
25 bad, then you feel like, well, there's got to be a remedy

1 to this. There's got to be a vindication of this.
2 There's got to be a solving of this crime or this bad
3 thing which has happened. But that's not the type of
4 feeling that a 12 plus one alternate jury should have
5 because your job is to find out if there is sufficient
6 evidence to find the defendant guilty and what the truth
7 is in the case. You're not here to punish anyone.
8 You're not here to reward anyone. It's hard to pull
9 yourselves from your everyday beliefs and to realize that
10 that's what your job is.

11 I think a lot of people don't realize how tough it
12 is to be on a jury. If you really do your job, and I
13 think all of you are sworn and will do it, then you
14 really have to fight with yourself sometimes. You have
15 to sit outside yourself sometimes to balance things up.
16 And for that reason I thank you for being here. A lot of
17 you have different jobs. You have different experiences
18 in your life. Many of you have sons. Many of you have
19 daughters. We are all parental units to a certain extent
20 but you still have to base your decisions on your common
21 sense, what you gained as to what you believe to be the
22 truth and whether or not that evidence is there. It's
23 the best system we have because nobody, I say nobody,
24 very seldom do you have a charge or a crime that is
25 actually committed where there are actually jurors

1 present who can observe it. So you're having to base
2 your decision based on third hand, second hand, what have
3 you, knowledge.

4 Now, the charge that we have today is obviously
5 criminal sexual conduct with a minor first degree. The
6 Judge at the conclusion of this argument will give you an
7 instruction as to what that means because you're only
8 trying that charge. That's it. You're not trying
9 criminal sexual conduct of any other degree. You're not
10 trying any other charge besides that charge so that's
11 what you have to focus on. And the Judge will give you
12 the instructions of what that charge entails and
13 essentially it involves a sexual battery. If the victim
14 is under the age of 11 and there is a sexual battery and
15 if they prove that case beyond a reasonable doubt, then
16 it's your job as a juror to find the defendant guilty.

17 So what's a sexual battery? Because that is defined
18 in the statute. A sexual battery as alleged in the
19 indictment is fellatio. That's the battery. That is the
20 only sexual battery which is alleged in the indictment.

21 So we have narrowed things down to a certain extent.
22 So now we know that the State has to prove beyond a
23 reasonable doubt that the defendant and the defendant
24 alone committed a sexual battery of this young lady.

25 Now, an indictment. I feel like I should talk about

1 an indictment. I'm sure the Judge will talk to you about
2 an indictment. An indictment is a piece of paper just
3 like -- Well, it's like a traffic ticket. It's kind of
4 like a traffic ticket. If you get a traffic ticket,
5 that's a piece of paper that brings you to traffic court
6 and it says what you did wrong. If there is a warrant,
7 it's an allegation about that you did something wrong and
8 may bring you to magistrate's court or General Sessions
9 or what have you. An indictment is simply those
10 allegations repeated again which bring you to court so
11 that your case can be tried by 12 jurors. It doesn't
12 mean it's true. It just means that those are the
13 allegations that are involved.

14 Now, when you get to the standard of beyond a
15 reasonable doubt because I mentioned that we would have
16 to talk about beyond a reasonable doubt, it's not a car
17 wreck. You don't sit around and you say, well, we have
18 got six witnesses on one side, one witness on the other.
19 It's not about - really it's not about the number of
20 witnesses or what the witnesses say. It's whether or not
21 the testimony that you deem to be, testimony or evidence
22 that you see convinces you to such a degree that you feel
23 that the person is guilty. That you are firmly convinced
24 that the person is guilty. And if there is a real
25 possibility that the person is not guilty, it is your job

1 to find the person not guilty. And you have this
2 standard obviously because of the types of charges that
3 you are dealing with because this is something which is
4 different from, I don't know, negligence. It's different
5 from civil cases because of the impact that it has. So
6 you're expected to apply that standard.

7 Now, when you determine what you believe or don't
8 believe, I mean, this is kind of silly because I don't
9 know if we really break it down to when we make these
10 decisions in our mind but you connect the witnesses. You
11 see how they testify. You see whether or not they are
12 consistent. You see whether or not the witnesses forget
13 to tell you something. Whether or not they appear to be
14 forthcoming. Whether or not they appear to - there are
15 gaps in their testimony. All of these great number of
16 things that you use to make a determination as to whether
17 or not you believe to be the truth of the case. It's
18 that simple. Doesn't it sound simple? It's not. It's
19 not simple. And when you make these determinations,
20 again you have to weigh it and you have got to be sure.

21 Now, having talked about what the standards are and
22 burden of proof, some of the things that you consider is
23 not only the evidence as presented but the lack of
24 evidence that is presented. What should the State have
25 provided to you that would indicate the guilt or the

1 innocence, if you will, of the person charged? And I
2 hope that there is one thing that you were paying
3 attention to from yesterday as well as today that you're
4 missing in this case. And I'm sure you're thinking in
5 your minds what was it? What piece of evidence was not
6 discussed that there was talk about? There was talk
7 about something that was done, but that evidence wasn't
8 brought before you for you to determine the truth of it,
9 the lack of truth of it, how it impacts this case.

10 Do you remember? There was a forensic examination
11 which was done. There was another examination done. You
12 make your decision based on all of the evidence that
13 pertains to the matter. You have a right to expect to
14 know all of the facts that apply to this case. You know,
15 I have done this a long time. Wouldn't do anything else.
16 Yet when you get older, when you get -- And I'm older.
17 I'm 65. I don't know if I look older or not, but I learn
18 how important I wish I knew then what I knew now. Kind
19 of a good name for a song, isn't it? But the more you
20 practice law in this area you learn how important it is
21 to have all the facts, to know everything, to make those
22 decisions carefully. I wish I could impart that to you
23 some other way other than just use the words, but it is.
24 It's important.

25 And then there's sometimes -- I don't know how to

1 convey this to you either. You would think after 40
2 years I would know how to convey everything to everybody.
3 My wife tells me I don't convey a lot of things to her.
4 But I don't know how you convey the idea that when
5 someone is accused of doing something and his defense is
6 I didn't do it, that's all he can say. It's a negative.
7 You know? How do you prove a negative?

8 You know, I wanted to be able to put this young 18
9 year old boy on the stand and have him just go through
10 all kind of testimony about this and that and this and
11 that and this and that. All he can say is I didn't do
12 it. You want me to find some more witnesses? I don't
13 have anymore witnesses. Indeed, the only two people who
14 have any comment at all about whether it happened or
15 didn't happen is the young girl and him. All this other
16 stuff, all this other stuff is just people talking about
17 stuff. And I hope we learned a long time ago that you
18 can't always trust that to be a hundred percent true.

19 You know, I think a good example of this, I'm not
20 trying to be mean, but the witness who testified who was
21 like the social worker who was like the, had his Master's
22 in social work, and he started talking. He had never
23 interviewed the defendant. Doesn't know anything about
24 the defendant and never interviewed the alleged victim.
25 Knows nothing about the alleged victim. So he proceeds

1 to give you an instruction that you would get if you were
2 in college in a psychology or sociology class about
3 trigger points. About, well, sometimes you would see
4 evidence of nightmares if you were concerned about
5 testimony and sometimes you would see lack of evidence
6 about nightmares because you were testifying. I don't
7 want to characterize what that is, but if you have ever
8 taken a psychology course, I think you kind of get the
9 idea. I don't know what that means. Does it prove
10 anything? He's just telling you about, well, and then
11 sometimes if you tell the story straightforward at the
12 first time, then more than likely it's not true and you
13 have to be suspect of that. But then if you change it,
14 then maybe that's a better idea that you are telling the
15 truth. Maybe if you have physical hot and cold or you
16 have palpitations, that's an indication. What does it
17 mean?

18 You know, you will get an instruction from the Judge
19 about what an expert witness is. An expert is some
20 witness who by their profession, by their education has
21 earned the right to tell you about things that occur
22 meaning differences between trigger points, differences
23 between delayed disclosure, between partial disclosure,
24 between full disclosure. But does that tell you anything
25 about this case? Was there anything that he said that

1 tells you about this case?

2 You see, this is one of the things which I always
3 worry about. You know, well, yeah, this is an expert
4 witness. He testified and gave you this information so
5 there must be something there. Again, you have to listen
6 to what they say. You have to evaluate what they say.
7 You have to determine whether or not it's credible and
8 you have to determine whether or not it proves to you
9 beyond a reasonable doubt the guilt of the person
10 charged.

11 I made some notes only because I'm old and stupid
12 and I wanted to make a list of at least some of the
13 things that occurred in the testimony. And again,
14 obviously the video was important to you because it was
15 recorded. It was recorded. And there was some question
16 about things you use to determine whether or not the
17 person, I guess, understood the terms, whether or not
18 there were repeated questions, stuff like that. I would
19 like to point out some things in the video, the foliage
20 deal. I mean, clearly the child didn't know what foliage
21 was. You know, I thought it was kind of cute to begin
22 with because when I thought of foliage, then I thought
23 maybe the child was talking about foldage. And maybe the
24 child didn't not understand it. Maybe she misheard it.

25 And see, that tells you something. That tells you

1 that we all look at something and kind of pick out what
2 we want from it whether or not it applies to the case or
3 not. There was one time where she yelled for her mother
4 for a question or an answer. And the one thing which
5 comes through is a thin small layer that comes through
6 this entire case because, you know, I'm on that search
7 for the truth. I'm looking for it. I don't have that
8 obligation but I'm trying to figure it out because I want
9 to figure out why some people say things and some person
10 says it didn't happen. I want to figure those things
11 out. The child said that her sister was five years old
12 and that Auston was 50 years old. I don't know. Is that
13 just something which she misspoke? Is that something she
14 didn't understand?

15 Children do not know everything that adults do
16 because they're children and they make mistakes and there
17 will be an instruction about children and when you make
18 your determination in listening to a child you consider
19 the fact that they are children. I mean, they're
20 children. But you still have to evaluate their
21 testimony.

22 One of the more interesting things was we were
23 talking about grooming. Do you remember the grooming
24 deal? And the doctor was talking about how you're real
25 nice to them and you get them because it's the old candy

1 bar deal, I guess. You know, you're gonna be real nice
2 to them and get what you want. The child in the video
3 says my daddy scares me and makes me cry (indicating.)
4 Kind of funny. Kind of funny because she was being funny
5 about it. She wasn't being ugly. I don't think she
6 meant that in any way. Well, she said the same thing
7 about Auston. Auston scares me (indicating.) You know,
8 if you take that out of context, do you say that Auston
9 has scared her? No. It's a child talking about being
10 scared.

11 She also said, remember we're dealing with this
12 allegation of fellatio, she said that he tore his clothes
13 off and she made this expression (indicating.) And I say
14 that to you because I want you to remember that. And
15 then the question was, the question from the interviewer
16 was, "did he say anything?" Choke. Go back and listen
17 to it yourself.

18 Then she said, then she says, "it choked me." Did
19 she understand what the question was? Is she describing
20 what she felt? Is she repeating a word that she's heard.

21 You know, you never know how far to go with a jury.
22 Let me tell you what I mean by that. You risk, you risk
23 offending a jury by asking certain questions because of
24 the types of cases that we try and I guess I have been
25 doing this so long it's kind of analytical. It's kind of

1 like a doctor. You know, when he treats you, he doesn't
2 think about these things. I wanted to know the answer at
3 the risk of offending everybody in this courtroom as to
4 whether or not why didn't someone ask the question as to
5 the status, if I can say that delicately, of this thing
6 which she was referring to. That's as nice as I can be
7 about that. Because I think that makes a difference.
8 Why not ask that question? I know it's offensive to ask
9 a jury that. But, you know, you're being asked to decide
10 an offensive case where a lot depends on it.

11 She also said that Auston never touched her. I
12 don't know what that means. Then she described this item
13 as being something where peepee and poops out of it.
14 She's a child. Did you -- Didn't smell anything. Didn't
15 taste anything. And it all occurred in Ms. Terry's old
16 room. There's a reason why Ms. Terry's old room is
17 important. Because once Linda Marsh took the stand we
18 learned that there were actually two Ms. Terrys. We
19 learned that the grandmother had her bedroom and that the
20 Terrys had a different room. What did she say when she
21 was on the stand as to where it had occurred? Do you
22 remember? Did she say it occurred in Ms. Terry's room?
23 Or did she say it occurred in grandmother's room?

24 You know, here's the other thing, too. I can make a
25 mistake. Your collective minds determine the facts in

1 this case. That's strange isn't it? You get to remember
2 what you want to remember. And when the Judge told you
3 not to make notes, that's really a good idea because if
4 somebody else is writing down something, you see them and
5 you go back in the jury room and you say, well, I wrote
6 down such and such. And you say, well, I didn't remember
7 it that way. That's good because that means that y'all
8 get to make a determination as to what actually occurred.
9 But you think about that.

10 All right. First witness up. Detective Kemfort.
11 In essence he was the arresting officer who did
12 everything. Did the forensic interview. And then I
13 asked him about that doctor's report. Remember that
14 coming out? And he said it was in June of 2015 and then
15 the Attorney General's Office quickly corrected it as
16 being April 2015. That doctor's report. That physical
17 examination. That information which would have told you
18 what occurred. He was there during the forensic exam.
19 Then mama comes up and she testifies that she had been
20 having trouble with her child and she said that she felt
21 that with the new child that she didn't want her to be
22 left out, wanted the child to feel like she was not
23 missing attention. The child had some nightmares. Some
24 low self esteem.

25 You know, you just try to weigh this stuff up. That

1 child didn't look like she had low self esteem in the
2 forensic interview. That child didn't look like she had
3 -- Opinions. Everybody's got one. Did the child look
4 like she had low self esteem when she was here in the
5 courtroom? She's cute as a button. I mean, we might as
6 well own up to it. She's cute as a button. That's not
7 what we are making a determination on. Anyway.

8 She said that she had these problems but she had
9 been doing well in school. [REDACTED] [REDACTED] [REDACTED]
10 She's like in her third year of kindergarten. She's
11 doing fine. Dad testifies -- It always amazes me when
12 you listen to the testimony of two witnesses how
13 consistent they are. Dad testifies that she was bed
14 wetting. She had nightmares. She was scared. She had
15 confidence issues. So I asked a logical question. I
16 have got children. Well, did you take her to a doctor?
17 Well, yeah. To a family doctor. Well, who was that? I
18 don't know. Did he give you a prescription? No.

19 If your child was having nightmare, was having
20 issues, would you do something about it? And who was the
21 doctor that she saw after the forensic interview? One of
22 the questions I asked the police officer, I asked him
23 about whether or not they talked to the teachers.
24 Whether or not he had done notes. They got the notes
25 from the school. Because, you know, children are

1 different with other people than they are around their
2 parental units. They react with other children. And
3 teachers keep all kind of records about how children are
4 doing in school. How they get along with others. But we
5 all get this idea that they were not supposed to be left
6 alone because of some episode that happened when
7 Mr. Marsh came in and he went to the bathroom and he had
8 some pizza and my client was there and my client's mother
9 came there and something sexual in nature happened.

10 Did you hear the child on the stand say anything
11 about that? No. He was asked about it. In his long
12 lengthy testimony he was asked about it by the Attorney
13 General's Office. He said, yeah. I went to the
14 bathroom, closed the door behind me or let the door close
15 behind me. The next thing I know she comes popping in
16 behind me and I'm going to the bathroom. You know,
17 you're not guilty of this crime because some child walks
18 in on you when you're going to the bathroom. They didn't
19 think anything about it. About, well, maybe, you know,
20 that shouldn't happen again. But because of that they're
21 not supposed to be left alone. Where is there any
22 evidence that anybody interpreted that to be something
23 happened? The father didn't think anything happened. He
24 said he was confused about the whole thing. They spent
25 time at grandma's house. You heard my client say he

1 didn't know that that was an issue. But they want to
2 bring something out because mama quit home schooling him
3 and he went to go ahead and get his GED so that he could
4 leave home and start his life in the Air Force or in the
5 Marines. Got a job working at Wal-Mart going about his
6 life and then these charges arise and he can't go forward
7 until after these charges are resolved.

8 **Minor Child**, when she took the stand, it's almost too
9 small to talk about, but she was kind of nervous, I
10 guess. She couldn't remember her last name for a minute.
11 Didn't know her birthday. She was asked an important
12 question though about who lives at her house. She left
13 off the fact that her sister lives in the house. You
14 know, I'm one of those guys that always looks for the
15 thing that seems to slide right through the whole time.
16 One thing I did note, she changed her names about what
17 she was referring to. She changed the word butt to
18 booty. She changed the name from squeezer outer to
19 peepee outer. Somebody had to be talking to her about
20 all these things for her to be changing the names for
21 what she's calling these pieces, particles, parts of the
22 body.

23 She brought up something else which is really,
24 really interesting which nobody, I mean, just passed
25 right on. She said it happened and Laurel and Christian

1 were there. Well, who the heck is Laurel and Christian?
2 Does anybody know the answer to that question? They were
3 there. She brought them up. Said it happened in
4 grandma's room, not Terry's room, and that was the only
5 time she had ever seen his peepee outer. Well, now, that
6 didn't make any sense because remember supposedly she saw
7 his peepee outer when he was going to the bathroom. I
8 asked her, I said, are you happy? She said, yeah. I'm
9 happy.

10 April Sykes. She was the interviewer. Essentially
11 she ran the interview. That's basically her testimony
12 was that. Then you got to look at the video. Dwayne
13 Rice, the smoking gun. He is the independent witness to
14 some sort of sexual thing that occurred. You know, I
15 believe sometimes when you try a case, which is why I
16 love this, that things happen in the middle of a case
17 that you just don't have any idea is going to happen. As
18 a lawyer you have no idea they are going to happen. Mr.
19 Rice is up there testifying and we learn, he was a little
20 hesitant about when the dates were, we understood he had
21 some sort of surgery, and he was testifying that he saw
22 my client with his hand in an inappropriate position on
23 this young girl. And he looked down at my client. Well,
24 who he couldn't see him. It's only happened to me the
25 second time in 40 years that I have had that on the

1 stand.

2 I said you can't see? And I said, how far away was
3 she? Well, she was about that far. So you take a guy
4 with a hernia who is taking narcotic drugs, who can't
5 see, who months later goes to the police and tells them
6 some story that he saw something. That's your eyewitness
7 testimony.

8 Then you had Linda Marsh who testified. She is the
9 one who gave you where all the bedrooms were. The only
10 thing really that she brought to the, I guess, to the
11 picture is that she didn't think anything had occurred
12 really and now she is all upset. And who wouldn't be? I
13 mean, if something had happened to your grandchild or if
14 you were having to testify against another grandchild,
15 who wouldn't be upset? You feel, everybody feels
16 responsible for everything that happens. I mean, you do.
17 My wife says and turns it around on me a different way.
18 If I start saying I feel bad. Maybe I should have done
19 that. She says, Theo, it's not all about you. I don't
20 know what that means. But maybe we take it for what it
21 is. Maybe it doesn't mean that anything really happens
22 but she's just really upset that she's having to go
23 through this. That her grandchildren are going through
24 this. She's had 41 years with SLED. You can't tell me
25 that someone who spent 41 years with the law enforcement

1 division doesn't have deductive reasoning. You can't
2 convince me. We could spend all day here and you
3 couldn't convince me that somebody with SLED wouldn't be
4 able to deduce something had happened. Then she says in
5 May of 2016, that there was some sort of allegation. May
6 of 2016 there is some sort of sexual allegation that was
7 brought forward to her.

8 I don't know how many times this child was talked
9 to. I don't know what was said to this child. I know
10 there are inconsistencies. I know that you 12 jurors are
11 asked to make a decision based on facts. Your decision
12 is the most important decision that will occur in this
13 courtroom today, I promise you that. I am sorry you're
14 having to do this. I shouldn't say that. I'm not sorry.
15 I think we've got good jurors. We couldn't have picked
16 better jurors.

17 Please do not be swept away by some sort of
18 emotional ties that you can't evaluate evidence. You
19 must be convinced beyond a reasonable doubt of the guilt
20 of the person charged and if there is a real likelihood
21 the person didn't do it, if there is evidence which is
22 missing, if there are things which do not convince you
23 beyond a reasonable doubt, it's your job as a jury to
24 find him not guilty because you can't change that once
25 you leave. You can't call me up tomorrow and say, God,

1 I've changed my mind, Theo. I do thank you.

2 THE COURT: Thank you. Ms. Abee.

3 MS. ABEE: Thank you, Your Honor. May it please the
4 Court.

5 THE COURT: Yes.

6 MS. ABEE: The innocent nature of a child is
7 something that's precious. It's something that can't be
8 learned. It's something that can't be taught. And
9 Minor Child is a great example of that innocence. She
10 knows how to wear a dress like a princess. She knows how
11 to shoot a bb gun with her daddy. But Minor Child knows a
12 lot more than normal six year olds. Because of the
13 defendant Minor Child knows what a penis in her mouth feels
14 like at age six and I know that is not easy to hear and
15 it has not been easy to listen to these last two days,
16 but it's the facts in this case. And what will be both
17 simple and easy is finding the defendant guilty of this
18 crime.

19 Now, Judge Lee at the end of this is going to
20 instruct you on the law and ask you to return a verdict
21 of guilty or not guilty. And we are asking that you find
22 Auston Breazeale guilty of the crime of criminal sexual
23 conduct with a minor in the first degree. Mr. Williams
24 told you about the crime. About how there's really two
25 main things we have to prove to you. One, that there is

1 a sexual battery between the defendant and Minor Child. And
2 sexual battery is defined as any sort of penetration no
3 matter how slight or how little or how long it lasted and
4 this includes what we call oral sex. And then secondly,
5 we have to prove to you that this sexual battery occurred
6 when Minor Child was under the age of 11. That was our
7 burden throughout this case.

8 In order to meet that burden we called several
9 witnesses to the stand but most importantly you got to
10 meet Minor Child. Minor Child is six years old and she was six
11 when she got up there on that stand. She was a little
12 nervous but you could still tell she was full of
13 personality. She told you how she likes school. She
14 likes reading. Sometimes she has trouble with puzzles
15 putting them together.

16 But she told you about a lot more. She told you
17 about things that she shouldn't even know about. She
18 told you about her cousin Auston. How she likes Auston.
19 She liked playing with him. They played together. They
20 did things together. But how that Auston did something
21 and now she's not allowed to be around him anymore. And
22 she told you about that and the defense just said when
23 she got up here it's so small, it's not even worth
24 mentioning, but she got up here and she told you what
25 happened. She told you that it was at grandma's house.

1 She was in a room with Auston and that he put his peepee
2 outer, that's her word for penis, in her mouth and it
3 made her choke. You heard her say that on the stand.
4 You heard her say it when she was just four in that
5 forensic interview with April Sykes.

6 Now, you also heard from David Kellin and David
7 Kellin is who we refer to as a blind expert in this case.
8 He doesn't know anything about it. He hasn't met
9 Minor Child. Hasn't met Whitney or Trey or anyone else in
10 the family. He hasn't read any reports, watched any of
11 the videos. He knows nothing about this case. But what
12 he told us is that Minor Child shares common characteristics
13 with children who have been sexually abused. And I want
14 to talk through some of those. He told us about delayed
15 disclosure and how children don't always immediately
16 disclose after a sexual assault and that a factor that
17 plays into this is when the perpetrator is a family
18 member like the defendant. And he told us about grooming
19 and how grooming is this incremental increase in
20 behavior. It's like when you go to jump into a pool.
21 Some people jump right in. Some people take a step on
22 the first step and they wait and then they take another
23 step down and another step down into the water. That's
24 the concept of grooming and that is exactly what the
25 defendant did here in this case. Started small, waited

1 for a reaction.

2 You heard it from the defendant himself about his
3 penis being exposed to Minor Child. How she just walked in
4 on him in the bathroom and saw it. But regardless, it
5 was bad enough for both Trey and the defendant's own
6 mother to decide that Minor Child and Auston shouldn't be
7 around each other anymore. But besides that there was no
8 real reaction. No real trouble. So then the defendant
9 took the next step into the pool and this is where Dwayne
10 Rice comes into the picture. And he told you that he saw
11 the defendant's hand down Minor Child pants. No real
12 reaction. No real trouble. And then that's what lead to
13 what we are here for today, that oral penetration that
14 Minor Child told you about.

15 Each time throughout the year that Minor Child was four
16 years old the defendant continued to escalate his
17 behavior again and again. And now you might be sitting
18 here wondering why Minor Child wasn't crying when she was up
19 on that stand or why she wasn't upset or how she could
20 even talk about this with the defendant in the room if
21 she was sexually assaulted. But David Kellin explained
22 that to you. He explained to you that kids Minor Child
23 age, they don't get it, right? They don't understand the
24 sexualized nature behind what it is that the defendant
25 did. She doesn't understand just how bad that act was.

1 Kind of like playing on a playground, right? When little
2 kids get knocked down by their friends, they cry, they
3 tell the teacher but then they go back to playing.
4 That's what MinorChild did. She got knocked down. She
5 told. Now she is ready to play again because she doesn't
6 understand the sexualized nature behind what the
7 defendant did to her.

8 And I want to talk about her disclosure, her telling
9 because this disclosure came completely unprompted.
10 Whitney told you that it was a Saturday morning. They
11 were watching cartoons. She was getting ready to go to
12 the zoo to have a daddy/daughter day with her dad.
13 That's when MinorChild told her.

14 Now, the defense, when they were cross examining
15 Mr. Kellin, they brought up a lot of things. They said,
16 well, if it's a full disclosure, that would concern you,
17 wouldn't it? Mr. Kellin said yes. And they wanted to
18 paint this as a full disclosure by MinorChild but it wasn't.
19 Whitney told you that MinorChild didn't tell her when it
20 happened or where it happened. Trey told you that
21 MinorChild didn't tell him when it happened or where it
22 happened. Bare bones. Basic facts. That's all that
23 MinorChild was sharing at that point in time. And look at
24 the words that she used. She doesn't use the word penis.
25 She doesn't use the word oral sex. She doesn't use the

1 word fellatio because she is not being coached. She is
2 using child friendly words. And did her name for penis
3 change? Yeah. In the video it's squeezer outer and in
4 here it's peepee outer. But those are very much her
5 words and very much what she calls those areas. That's
6 not someone else coaching her as to what happened.

7 And she also knows how it feels. This isn't
8 something that you coach on. She knows how it feels not
9 because she was told how it feels or told that it
10 happened to her. She knows it because she lived it.
11 Because she experienced it.

12 The forensic interview that you saw wasn't Minor Child
13 coming in and immediately disclosing. The video, it
14 takes 17 and a half minutes before Minor Child even mentions
15 Auston's name. 17 and a half minutes before she brings
16 him up. This isn't a child that was coached or was told
17 to come in and immediately talk about Auston. In the
18 forensic interview April Sykes asks several times, do you
19 know why you are here today? She doesn't say yes. I
20 know exactly why I'm here today. Because of Auston. She
21 doesn't say that because she's not being coached. She
22 only remembers what was happening to her at that specific
23 point in time and when she was comfortable enough with
24 April Sykes, she talked about it.

25 Now, Mr. Williams is correct in that they don't have

1 any burden of proof in this case. That burden rests here
2 with us. They could have sat back at that table and
3 kicked up their heels and not said a single word
4 throughout the course of this trial because that burden
5 rests with us. But when they do decide to say things to
6 you, to present evidence, you get to ask yourself if it
7 makes sense. So think about it. Does it make sense that
8 Minor Child would lie about this? Does it make sense that
9 she would live this lie for two years of her life? A lie
10 that keeps her away from someone she presumably loves?
11 Someone she remembers having fun with? Would she
12 continue living that lie? And why? Because she had a
13 new baby sister? I mean, is that the reason why Minor Child
14 is making all of this up and going through all of this
15 because she has a new baby sister and wanted attention?

16 Trey and Whitney told you that they continued to pay
17 attention to Minor Child when Alynn was born. That they
18 didn't want to disrupt her life. That they continued
19 having one on one time with her. In fact, that's what
20 they were doing that day was having a one on one time
21 with Minor Child and that's when she disclosed was that
22 morning. And what, do you to think that this, this is
23 the type of attention that she wants? Sitting here in
24 front of a room full of strangers talking about private
25 parts. Being asked big questions by the defense. Asking

1 her if she knows what the word Solicitor means or the
2 word prosecutor means? Yeah, she's six. She didn't know
3 that. A lot of people don't. A lot of adults don't know
4 that. Is this the type of attention that this six year
5 old wants, is this? Sitting up here and constantly being
6 asked question after question after question in front of
7 strangers?

8 And, yeah, you know what? She doesn't remember
9 everything. She's six. And she got up here and she said
10 I don't remember everything when she was being asked
11 those questions. And when Mr. Williams asked her, are
12 you generally happy? She said yes. He said, well, you
13 don't look happy. She said I'm nervous. She's nervous
14 and she doesn't remember everything. So she wasn't able
15 to tell you everything and some of her statements were
16 inconsistent. She talked about in the video being in Ms.
17 Terry's bedroom. And then when she was here she said I
18 was in grandma's bedroom. And I found it very
19 interesting that Mr. Williams didn't finish that sentence
20 where she said I was in grandma's bedroom, at least I
21 think. Because that's what she said.

22 She doesn't remember everything. And if she did,
23 that would be a cause for concern. That would be one of
24 those causes for concerns that Mr. Kellin talked about.
25 When a child comes in and discloses the exact same thing

1 every single time in the same way, same manner, same
2 method, that's when you're concerned. That's when you're
3 looking for coaching. That's not what **Minor Child** did.
4 Sometimes it changes. It's always at grandma's house,
5 but one time it was in Terry's room and then the next
6 time she said it was in grandma's room maybe. Probably
7 she thinks.

8 And she talked about Christian and Laurel, people
9 that Linda Marsh told you are also her step
10 grandchildren. So it changes. But it doesn't change
11 because she is making it up. It changes because she's
12 six. That's normal.

13 And she did describe some things that didn't make
14 sense, right? She said Alynn was five. She told you now
15 that she's a little bit older that Alynn is one. Whitney
16 and Trey told us that Alynn is about one and a half. She
17 said that Auston is 50 something, right? And he's
18 clearly not 50 something. But she was four at that time.
19 Four year olds aren't good with ages. They are not good
20 with times. What Mr. Kellin told you was that they are
21 good with the who. They are good with the what. They
22 are not good with the why. They are not good with the
23 when.

24 And the who and the what have been consistent this
25 entire time from **Minor Child**. Who is the defendant. And

1 what is his him putting his penis in her mouth. And
2 these are things that no four year old should know. No
3 six year old should know. But she knows it because she's
4 felt it. She knows it because she's experienced it.

5 And there is no DNA in this case. There are no maps
6 that come down from the sky. This isn't CSI. This isn't
7 Law and Order. Mr. Williams talked about the medical
8 report. A medical report that happened months after the
9 forensic interview. The forensic interview happened in
10 February. The medical report happened in April so
11 several months have passed and what was the disclosure?
12 The disclosure was oral penetration. So what could a
13 medical report even show from that? Yeah. This is DNA,
14 or there is no DNA. There's no eyewitnesses. But we
15 don't get to pick our witnesses. We don't get to pick
16 our eyewitnesses. We don't get to pick the location. We
17 don't get to pick the act. Auston did that. Auston
18 picked that for us. He picked that for us when he
19 isolated that child in a bedroom by herself and sexually
20 assaulted her. So no, we don't have that.

21 But even with him getting to pick the who, the what,
22 the when, the where, the how and the why, he still messed
23 up one time because of Dwayne Rice. Still messed up.
24 And Dwayne Rice walked in and saw him with his hand down
25 the front of Minor Child pants.

1 Let's talk about Mr. Rice. This is a Marine. He's
2 known Linda Marsh for about 26 years of his life. He was
3 there recovering from surgery. This is someone without a
4 dog in this fight, right? He's not for Whitney and Trey.
5 He's not against Auston. He's here to tell you what he
6 saw. Came up here today to court with his walker and
7 testified about what he saw. And the defense wants to
8 draw a line about some inaccuracies in his testimony.
9 That he's somehow wrong because from sitting up on that
10 stand looking through this light with his bifocals all
11 the way to the defendant he can't quite see him, right?
12 That is supposed to be what completely discredits Mr.
13 Rice. Mr. Rice told you he was from there to about here
14 pointing at this podium. That is a big difference in
15 space. And he's very certain about what he saw. He told
16 you no matter what pain pills he was on, no matter what
17 was happening, he absolutely saw his hands down Minor Child
18 pants. He was sure of that.

19 The defense wanted to refer to him as our smoking
20 gun and, folks, where there is smoke, there is fire. He
21 knows exactly what he saw. And if not, why would he even
22 make this up? The defendant got up there and told you
23 that, yeah, there's some bad blood between me and Mr.
24 Rice. He called my grandma baby and I didn't like that.
25 Or I cut his yard one time and he didn't like the way

1 that I did that. That's the bad blood? That is what is
2 taking Mr. Rice and getting him all the way up on the
3 stand and make up this lie against the defendant is
4 because he doesn't like the way his yard was cut? This
5 guy has no dog in this fight, y'all. He has no reason to
6 sit up there and make up these allegations against the
7 defendant. And especially not because he cut his yard
8 wrong one time.

9 You know, it might be easier to just want to believe
10 that **Minor Child** is confused. Might be easier to just want
11 to think that she made this up. But in this place and in
12 this courtroom we are not concerned with what is easy.
13 We are concerned with the facts and we are concerned with
14 the truth no matter how hard of a pill that is to
15 swallow. They want you to just think that **Minor Child** is
16 confused. And you know what? She probably is. She is
17 confused as to why she can't play with someone that she
18 used to have fun with. She is confused as to why someone
19 she loves and someone she used to have so much fun with
20 would do something like that to her.

21 So yes. She might be confused, but she's been
22 crystal clear on two things this entire time. One, lying
23 is bad. That's what she said when she got up on the
24 stand. And two, Auston put his penis in her mouth.
25 She's been crystal clear on that the entire time and they

1 want you to think -- I don't know. I'm assuming this is
2 what Mr. Williams was hinting at was that Minor Child's own
3 parents didn't believe her. If they did, why wouldn't
4 they take her to the doctor more often. Linda Marsh has
5 41 years of experience with SLED. Why wouldn't she have
6 sniffed this out, right? When Linda Marsh is at home,
7 she's not agent Marsh. She's grandma Linda, right? Who
8 wants to sit there and think that their own grandchild
9 would do this to their other grandchild?

10 And Trey and Whitney told you that they tried to
11 keep Minor Child's life as normal as possible, right? They
12 tried to make sure that nothing changed. That she didn't
13 feel like she did something bad for coming forward and
14 disclosing. That they tried to keep her life normal and
15 steady. That's not them not believing her. That's them
16 being good parents. And even so, even with them trying
17 to keep everything normal and Linda telling you how
18 terrible she felt by allowing Minor Child to be around
19 Auston, Minor Child has still ended up being another
20 statistic because of the defendant. She's part of that
21 85 percent of sexual assaults that occur by someone
22 inside of the home as Mr. Kellin told you.

23 The defense is just telling you that there is not
24 enough evidence, right? But I want you to listen as
25 Judge Lee instructs you on the law because what you will

1 not hear her say is that there has to be DNA evidence.
2 What you will not hear her say is that there has to be
3 medical evidence or forensics. And what you will not
4 hear her say is that there has to be eyewitnesses. But
5 what you will hear her say is that you, you are the sole
6 determiners of the credibility of each witness and the
7 facts in this case. You decide what to believe and what
8 not to believe. You decide whether or not you think
9 **Minor Child** is telling the truth. You should believe her.
10 You should believe her because there is no way a four
11 year old should know what she knew at that point in time.
12 There is no way a four year old should be able to
13 describe what she described in that video and sit here as
14 a six year old in front of you and describe it in front
15 of you now.

16 Even though the majority of this case rests on
17 **Minor Child**, her testimony doesn't stand alone. You heard
18 about this escalating pattern of behavior that the
19 defendant had just taking another inch into the water
20 again and again and again. You heard what Dwayne Rice
21 saw with his own two eyes. And you heard from David
22 Kellin. And you heard how **Minor Child**'s disclosure and
23 things that happened to her since then share so many
24 characteristics with other children that are sexually
25 abused. So either **Minor Child** is this master manipulator and

1 fantastic liar and great guesser at child abuse dynamics
2 at the age of four, or all of this happened because it
3 happened to her. That's why these things share common
4 characteristics. This isn't just a coincidence.

5 Yes. This case rests on Minor Child's word. But do not
6 let the defense tell you that that child's word is not
7 good enough. That child's word told you exactly what
8 happened in this case.

9 Our burden is that beyond a reasonable doubt and a
10 reasonable doubt is not some imaginary doubt or some
11 fantasy you can come up with in your head. It is not a
12 doubt that just allows the defendant to escape penalty of
13 law for what he did. It is based on reason. It is based
14 on common sense. If you can stand with your two feet
15 firmly planted on the ground and say that you believe
16 that Auston Breazeale put his penis in that child's mouth
17 when she was four, you should find him guilty. The law
18 demands it.

19 And the defense tried to throw up a lot of
20 reasonable doubt and that was nothing but the Wizard of
21 Oz effect. You know at the end of the Wizard of Oz when
22 they go and they finally meet the great and powerful Oz
23 and Toto runs back and he pulls back the curtain and he
24 exposes the man that's Oz and there's fire and there's
25 smoke and there's loud crashes and the loud bangs and he

1 says pay no attention to the man behind the curtain,
2 right? That's what they did. They got up here and threw
3 out loud flashes and banging and smoke and they said pay
4 no attention to a six year old that got up there on the
5 stand and told you what happened to her.

6 This case has been proven beyond a reasonable doubt
7 and just because the facts in this case are emotional
8 doesn't mean that they are not still facts. Minor Child's
9 testimony is facts. There is no way that she should know
10 what she knew but she does because of him. Through the
11 defendant's smoke and mirrors when he got up on the stand
12 trying to explain away everything that happened, he and I
13 did agree on one thing. He said that people that do this
14 type of thing should get what they deserve. Give him
15 what he deserves. Find him guilty.

16 THE COURT: During this trial, ladies and gentlemen,
17 you and I have certain duties to perform. As the trial
18 Judge it's my responsibility to preside over the trial of
19 this case and to rule upon or pass upon the admissibility
20 of evidence that's been presented throughout the course
21 of this trial. And you are to accept only the competent
22 evidence which is before you. To any evidence to which
23 there was an objection sustained you must not speculate
24 as to what the evidence might have been or the reasons
25 for the objection. Again, you should consider only the

1 evidence along with any stipulations, if any, that have
2 been made by counsel.

3 Now, I have the additional duty and responsibility
4 to instruct you on the law that applies in this case. As
5 the trial Judge I'm the sole judge of the law that
6 applies. If you have any preconceived ideas as to what
7 the law is or your interpretation of the law or what
8 you want the law to be, you must set all of that aside
9 for under your oath as jurors you are sworn to accept the
10 law as I instruct you. If by chance there is some error
11 in my instructions, there's another court at another time
12 that can correct those errors of law. But for purposes
13 of this trial right now this moment you must accept the
14 law as I instruct you as being the correct statement of
15 the law.

16 Now, in every case tried before a jury you the
17 jurors become the sole exclusive judges of the facts of
18 this case. No one can tell you what the facts of this
19 case are. And if I have done anything throughout the
20 course of this trial that's given you any impression that
21 I'm commenting on the facts or telling you what facts to
22 find, I ask that you set that aside as well. I assure
23 you I don't have any opinion about the facts of this
24 case. That's not my job here. It's not my role. That's
25 your duty, your responsibility as jurors to determine the

1 facts of this case.

2 Now, in order to do that you have to analyze and
3 evaluate the evidence and determine what evidence
4 convinces you of its truth. In order to do that you have
5 to judge the credibility or believability of the
6 witnesses who have testified and in judging the
7 credibility or believability of the witnesses you may
8 consider the following factors. What was the manner and
9 appearance of the witness who testified. Was he or she
10 hesitant or straightforward in answering the questions.
11 Was the witness consistent or inconsistent. How did the
12 witness come to know the facts that he or she testified
13 to. What was his or her ability to know these facts.
14 And was the testimony of a witness strengthened or
15 weakened by other testimony or other evidence.

16 Now, during this trial, ladies and gentlemen, you
17 have heard the testimony from a child. Where a witness
18 is a child you must determine as with any witness whether
19 that testimony is believable. In deciding believability
20 you should consider not only the matters that I have
21 discussed with you but you may also consider the age of
22 the child, the child's ability to observe and remember
23 facts, the child's ability to understand and answer
24 questions. Because young children may not fully
25 understand what is happening here, it's up to you to

1 decide whether the child understood the seriousness of
2 appearing as a witness in the criminal trial and whether
3 the child understood the questions. Whether the child
4 had a good memory. And whether the child understands the
5 difference between lying and telling the truth.

6 In addition, ladies and gentlemen, young children
7 may be influenced by the way that the questions are asked
8 and so it's up to you to determine whether the child
9 understood the questions that were asked.

10 Additionally, ladies and gentlemen, under our rules
11 of evidence they ordinarily do not allow witnesses to
12 testify as to opinions or conclusions. An exception
13 exists for those that we call expert witnesses. Those
14 are witnesses who because of their education or training
15 profess to be an expert in some art or science and they
16 can give the opinion in the area in which they profess to
17 be an expert. You should consider any expert opinion
18 that was offered in this case and give it the weight that
19 you think that it deserves. If you feel that an expert's
20 opinion was not based upon sufficient education or
21 training or whether the reasons given to support the
22 opinion were not sound or that the opinion is outweighed
23 by other evidence, then you may disregard the opinion in
24 its entirety. An expert's opinion is entitled to no
25 greater weight than that of any other witness simply

1 because that person professes to be an expert and you are
2 not required to accept an expert's opinion even though it
3 may be uncontradicted.

4 These factors, ladies and gentlemen, you should
5 consider and you should not exercise arbitrarily. If you
6 feel that in your good reason and judgment there's reason
7 for you to consider these factors, then you should do so.
8 Your objective, ladies and gentlemen, is to seek the
9 truth.

10 In determining the credibility of the witnesses you
11 may believe one witness against several witnesses or you
12 may believe several witnesses against one witness. You
13 may believe a portion of a witness' testimony and
14 disregard other portions of that same witness' testimony.
15 As I stated, you may exercise these factors and in your
16 good judgment determine what you consider to be truthful
17 evidence. Your objective, ladies and gentlemen, is to
18 seek the truth whether it comes from a witness or
19 witnesses for the State or a witness or witnesses for the
20 defendant. You do not determine the truthfulness of the
21 testimony by counting the number of witnesses who have
22 testified for one side or the other. The truth isn't
23 determined by counting witnesses. What the law simply
24 requires is that when you exercise your mental processes
25 in coming up with what you consider to be truthful

1 evidence, you should use your good common sense. Your
2 sense of logic and reasoning. Use your experiences in
3 life. You then apply these attributes to the evidence
4 and determine what you the jury consider to be truthful
5 evidence as determined by you and then you will apply the
6 law as I will instruct you and when you have done that,
7 then you will be able to arrive at your verdict.

8 Ladies and gentlemen, your verdict should not be
9 based upon sympathy, passion or prejudice. By your
10 verdict you have no friends to reward and you have no
11 enemies to punish. Your verdict should simply speak the
12 truth.

13 Now, in the course of a trial, ladies and gentlemen,
14 there are two types of evidence that are generally
15 presented. One is direct evidence and one is
16 circumstantial evidence. Direct evidence directly proves
17 the existence of a fact and does not require deduction.
18 Circumstantial evidence is proof of a chain of facts and
19 circumstances that indicate the existence of a fact.
20 Crimes can be proven by circumstantial evidence. The law
21 makes no distinction between the weight to be given to
22 direct evidence or circumstantial evidence. To the
23 extent that the State relies upon circumstantial evidence
24 all of the circumstances must be consistent with each
25 other and when taken together those circumstances must

1 point conclusively to the guilt of the accused beyond a
2 reasonable doubt. If these circumstances merely portray
3 the defendant's behavior as suspicious, then the proof
4 has failed. The State has the burden of proving that the
5 defendant is guilty beyond a reasonable doubt and that
6 burden rests with the State regardless of whether the
7 State relies upon direct evidence, circumstantial
8 evidence or some combination of the two. Now,
9 conjecture, speculation, suspicion or possibilities do
10 not constitute circumstantial evidence.

11 Ladies and gentlemen, I instruct you now as I have
12 previously done the fact that the defendant was arrested,
13 charged and indicted is not evidence in this case and
14 cannot be considered by you as evidence of guilt in this
15 case nor does it create any presumption or inference of
16 guilt. The fact that there was an indictment that was
17 presented is simply the charging document by which we are
18 able to come into court and have a trial on this
19 particular case. And again, to this indictment the
20 defendant has pleaded not guilty and that plea casts the
21 burden upon the State to prove that the defendant is
22 guilty because a person who is charged with committing a
23 criminal offense in South Carolina is never required to
24 prove that they are innocent.

25 Now, ladies and gentlemen, I charge you that it is a

1 very important cardinal - important rule of law that the
2 defendant in a criminal trial no matter how serious the
3 charge against him may be is always and will always be
4 presumed innocent of the crime for which he's indicted
5 until his guilt has been proven by evidence that
6 satisfies you of that guilt beyond a reasonable doubt.

7 Now, the presumption of innocence is not just - it
8 doesn't cease when you go into the jury room. It remains
9 with the defendant from the time that he appears in court
10 throughout the trial until you reach a verdict of guilt
11 that is based upon evidence that convinces you of that
12 guilt beyond a reasonable doubt.

13 Now, our Supreme Court has stated that the
14 presumption of innocence is like a robe of righteousness
15 that is placed about the shoulders of the defendant and
16 that robe of righteousness casts him in that class which
17 is the innocent until that robe is stripped from him by
18 evidence that convinces you of his guilt beyond a
19 reasonable doubt.

20 Again, ladies and gentlemen, I can't emphasize
21 enough that the presumption of innocence is not some nice
22 legal theory. It's not just some lofty idea but it is an
23 extremely important and cardinal rule of law which our
24 constitution is based upon which every individual is
25 entitled and that is that he or she is innocent of that

1 charge until his or her guilt is proven beyond a
2 reasonable doubt.

3 So what is reasonable doubt? The government has the
4 burden of proving each and every element of the offense
5 that's charged beyond a reasonable doubt and some of you
6 may have been jurors in civil cases in which you were
7 told that it was only necessary to prove that a fact was
8 more likely true than not true. Well, in criminal cases
9 the government's burden is more powerful than that. It's
10 proof beyond a reasonable doubt. Proof beyond a
11 reasonable doubt is proof that leaves you firmly
12 convinced of the defendant's guilt.

13 Now, there are very few things that we know in this
14 world with absolute certainty and the law does not
15 require in criminal cases proof that overcomes every
16 possible doubt. But if, based upon your consideration of
17 all of the evidence in this case, you are firmly
18 convinced that the defendant is guilty of the crime of
19 which he has been charged, then you must find him guilty.
20 But if on the other hand you think that there is a real
21 possibility that he is not guilty, then you must give him
22 the benefit of that doubt and find him not guilty.

23 In this particular case, ladies and gentlemen, the
24 defendant has been charged with first degree criminal
25 sexual conduct with a minor. The State must prove beyond

1 a reasonable doubt that the defendant engaged in a sexual
2 battery with the victim. Sexual battery is defined as
3 sexual intercourse, cunnilingus, fellatio, anal
4 intercourse or any intrusion however slight of any part
5 of a person's body or of any object into the genital or
6 anal openings of another person's body except when the
7 intrusion is accomplished for medically recognized
8 treatment or diagnostic purposes.

9 The State must also prove beyond a reasonable doubt
10 that the victim was less than 11 years old at the time of
11 the sexual battery. Consent, willingness, indifference
12 or ignorance on the part of the minor, if any, as to what
13 was taking place does not in any way affect the charge of
14 criminal sexual conduct with a minor because an unmarried
15 female under the age of 14 cannot legally consent to
16 sexual intercourse.

17 Now, ladies and gentlemen, when you have considered
18 all of the evidence in this case and you have determined
19 the facts and you have applied the law as I have
20 instructed you, then you will be able to arrive at your
21 verdict and at that time your foreperson will complete
22 the verdict form. This is the front of the indictment.
23 There is a place here, Mr. Foreman, that says "verdict."
24 There are two possible verdicts in this case. Guilty or
25 not guilty. There is no significance to the way I say

1 them. I have to say one first. I have to say one
2 second. If after considering all of the evidence, if you
3 determine your verdict, then, Mr. Foreman, you would
4 simply write on the line here whatever your verdict is.
5 There is a space here that says foreperson of the petit
6 jury. That would mean that you would need to sign your
7 name right above that. And then there is a space for the
8 date and you would write in today's date.

9 Ladies and gentlemen, your verdict must be
10 unanimous. That is it must be the verdict of all 12 of
11 you. You have been sworn as fair and impartial jurors in
12 the trial of this case to determine the facts of this
13 case and to apply the law as I have instructed you and
14 when you have done that, then you will arrive at your
15 verdict and you will have fully discharged your duty and
16 your responsibility as jurors in this matter.

17 Ladies and gentlemen, again, your verdict should not
18 be based upon sympathy, passion or prejudice. Your
19 verdict should simply speak the truth.

20 Now, at this time, ladies and gentlemen, I'm going
21 to ask that you retire to your jury room. Before you do
22 that, I need to do a couple of additional instructions.

23 Mr. Young, as the alternate your role has also been
24 extremely important. If one of your fellow jurors had
25 been unable to complete service, then you would have

1 stepped into that person's shoes. I ask that when they
2 go into the jury room, if you would just wait outside of
3 the jury room. Do not go in with them and I'll come and
4 excuse you in just a few moments.

5 Additionally, ladies and gentlemen, when you retire
6 to the jury room, the law requires that I consult with
7 the attorneys to see if I have omitted anything from my
8 charge. If I have not omitted anything from my charge,
9 then at that particular time any exhibits that are part
10 of the record will be brought to you as well as the
11 indictment in this matter. Mr. Foreman, if during the
12 course of your deliberations there are any questions that
13 arise, if you will write the question on a sheet of
14 paper, sign your name, knock on the door and give it to
15 the bailiff and we'll try to answer it. I can tell you
16 that I do not have a written charge that I can give to
17 you to take with you into the jury room. If you need to
18 rehear portions of my instructions to you, just let me
19 know what portions. I will be happy to bring you back
20 and reinstruct you on those parts that you may need
21 clarification on.

22 So at this time, ladies and gentlemen, I'm going to
23 ask that you retire to the jury room and await further
24 instructions. Thank you.

25 (Whereupon, the jury entered the jury room at 2:37

1 p.m.)

2 THE COURT: Are there any exceptions to the charge
3 by the State?

4 MS. ABEE: No, Your Honor.

5 THE COURT: By the defense?

6 MR. WILLIAMS: None by the defendant, Your Honor.

7 THE COURT: If you will come and take another look
8 at the indictment. I know you looked at it once, just to
9 make sure, and I think the only exhibit is the State's
10 exhibit number 1, the CD. We can send it back to them
11 but they will need to come back out if they need to watch
12 it.

13 MS. ABEE: I'll go ahead and set up the computer
14 just in case they come back and want to have it heard.

15 THE COURT: And you have got the exhibit?

16 MS. ABEE: Right here.

17 MR. WILLIAMS: Right here, Your Honor.

18 THE COURT: We'll go ahead and instruct the jury to
19 begin deliberations.

20 (Whereupon, the jury began deliberations at 2:39
21 p.m.)

22 THE COURT: Mr. Breazeale, the fact that the trial
23 is now concluded and the jury is beginning its
24 deliberations, I'm going to ask that you not leave the
25 courthouse. Certainly you can go to the restroom. I

1 would prefer that you stay in the courtroom. You can
2 certainly go to the restroom. Please let one of the
3 sheriff's deputies or one of the court personnel if you
4 need to leave the courtroom for some reason. Otherwise,
5 I'll expect you to remain here. We'll stand in recess
6 until we hear from the jury further. If by chance you
7 need to leave the courtroom for some reason, please make
8 sure that my law clerk has a number where you can be
9 reached. For 403s I will not sign them until a verdict
10 is returned so you if you need to leave before, you also
11 need to provide a telephone number where you can be
12 reached. With that we'll stand in recess until we hear
13 from them further.

14 (Short break.)

15 (Verdict at 3:35 p.m.)

16 BAILIFF: All rise. Court is now in session.

17 THE COURT: Be seated please. I understand that the
18 jury has reached a verdict. Is there anything that we
19 need to take up before we bring them back in?

20 MS. ABEE: Nothing from the State, Your Honor.

21 MR. WILLIAMS: Nothing from the defendant, Your
22 Honor.

23 THE COURT: And I will remind you that when the
24 verdict is read, that there should be no outbursts. If
25 you think that you may not be able to handle what the

1 verdict is, I ask that you excuse yourself from the
2 courtroom. No sighs. No screams. No gasps. Are we
3 clear? Ask the jury to come in.

4 (Whereupon, the jury entered the courtroom at 3:36
5 p.m.)

6 THE COURT: Mr. Foreman, I understand that you have
7 reached a verdict; is that correct?

8 MR. FOREMAN: We have and it's unanimous.

9 THE COURT: Please pass it to the bailiff.

10 MR. FOREMAN: (Complies.)

11 THE COURT: Thank you. Madam Clerk, please publish
12 the verdict.

13 THE CLERK: Indictment number 2015-GS-32-6031.
14 State versus Auston Lee Breazeale, indicted for criminal
15 sexual conduct with a minor in the first degree. Verdict
16 is guilty. So signed by the foreperson August 23rd,
17 2016. Ladies and gentlemen of the jury, if this is your
18 verdict please indicate each of you by raising your right
19 hand. All hands raised, Your Honor.

20 THE COURT: Do the parties wish to poll the jurors
21 further?

22 MS. ABEE: Not from the State, Your Honor.

23 MR. WILLIAMS: The defendant does, Your Honor.

24 THE COURT: Ladies and gentlemen, the clerk will
25 call your name or number. She will ask you two

1 questions. The questions are was this your verdict? And
2 is it still your verdict? And I ask that you answer
3 according to your conscious.

4 THE CLERK: Please hold your hand up when I call
5 your number so I can recognize you, okay?

6 Number 108. As to the verdict, was this your
7 verdict? Is it still your verdict?

8 DOMINIC JONES: Yes.

9 THE CLERK: 188. As to the verdict, was this your
10 verdict? Is it still your verdict?

11 BRENT SIRES: Yes.

12 THE CLERK: 22. As to the verdict, was this your
13 verdict? Is it still your verdict?

14 TIMOTHY BREEN: Yes, ma'am.

15 THE CLERK: 58. As to the verdict, was this your
16 verdict? Is it still your verdict?

17 JEREMY FALLAW: Yes, ma'am.

18 THE CLERK: 67. As to verdict, was this your
19 verdict? Is it still your verdict?

20 PAMELA GANTT: Yes.

21 THE CLERK: 121. As to the verdict, was this your
22 verdict? Is it still your verdict?

23 CATHERINE MAPLES: Yes.

24 THE CLERK: 95. As to the verdict, was this your
25 verdict? Is it still your verdict?

1 RICKEY HIERS: Yes.

2 THE CLERK: 96. As to the verdict, was this your
3 verdict? Is it still your verdict?

4 JEFFREY HOFFMAN: Yes.

5 THE CLERK: 21. As to the verdict, was this your
6 verdict? Is it still your verdict?

7 DAWSON BRANTLEY: Yes, ma'am.

8 THE CLERK: Number 16. As to the verdict, was this
9 your verdict? Is it still your verdict?

10 ZACHARY BARNES: Yes.

11 THE CLERK: 203. As to the verdict, was this your
12 verdict? Is it still your verdict?

13 HIRAM TEXIDOR GUZMAN: Yes.

14 THE CLERK: 159. As to the verdict, was this your
15 verdict? Is it still your verdict?

16 CHRISTINE PRICE: Yes.

17 THE CLERK: All jurors polled, Your Honor.

18 THE COURT: Thank you. Ladies and gentlemen, the
19 Court is not concerned with the verdict so much as I'm
20 concerned with the process by which you reach a verdict.
21 You listened to the evidence as it was presented
22 throughout the course of this particular trial. You also
23 listened to my charge and instructions to you as to the
24 law. You determined the facts in accordance with your
25 view of what that evidence showed and you applied the law

1 as I instructed you and you were able to arrive at your
2 verdict and having done so then no one can complain about
3 the verdict that you have reached and you fully
4 discharged your duty and your responsibility as jurors in
5 this matter. On behalf of Lexington County and the
6 State, I would like to thank you for your service.

7 I am pleased to report to you that your service has
8 concluded for the week so you do not need to call back
9 after 6:00 p.m. You do not need to come back tomorrow.
10 If you will simply put your buttons in the bucket and
11 there are return to work forms for you to take to your
12 employers if you need them and if you will just step
13 outside. I will tell you that the attorneys may want to
14 talk to you about your verdict. You are free to discuss
15 it with them or not. If you decide that you do not wish
16 to discuss it with them, tell them that you don't want to
17 discuss it with them and they shouldn't bother you any
18 further. But again, I would like to thank you again for
19 your service here in Lexington County for this week.
20 Thank you.

21 (Whereupon, the jury was released from further jury
22 duty at 3:40 p.m.)

23 THE COURT: Are there any post trial motions at this
24 time?

25 MR. WILLIAMS: Yes, Your Honor. On behalf of the

1 defendant we would move to set aside the jury's verdict
2 and grant the defendant a new trial in that the evidence
3 as a whole should have been insufficient as a matter of
4 law for this jury to return a verdict of guilty.

5 THE COURT: After hearing the evidence in this
6 matter, I think that there was sufficient evidence to go
7 to the jury as I indicated earlier. I believe that there
8 was a factual question to be determined and the jury
9 considered that evidence and made the decision according
10 to their view of what the evidence showed and how they
11 weighed the evidence and so I'll respectfully deny your
12 request at this time.

13 MR. WILLIAMS: Your Honor, I have a sentencing sheet
14 which is has been handed to me by the Attorney General's
15 Office. Does the Court require the defendant to sign the
16 sentencing sheet?

17 THE COURT: Yes. There is a place on there that
18 says that it was after a trial and so...

19 MR. WILLIAMS: May I approach, Your Honor?

20 THE COURT: Yes, sir.

21 MR. WILLIAMS: (Proffering.)

22 THE COURT: Thank you. Does the State wish to be
23 heard in reference to the sentencing?

24 MS. ABEE: Your Honor, from the State you have heard
25 the allegations in this case. You have heard the

1 egregious nature of the allegations and the facts that
2 Mr. Breazeale was just convicted of. The minor was four
3 years old, Your Honor, at the time of the allegations or
4 at the time of these acts and she even testified today at
5 six. We spoke with the parents. Neither of them would
6 like to address you at this point in time. Neither of
7 the parents of the victim would like to address you at
8 this time, Your Honor. We just ask that you take into
9 consideration the egregious acts committed by the
10 defendant as well as the age of the minor victim at that
11 time as well her age right now when sentencing him. He
12 does have no prior record, Your Honor.

13 THE COURT: Mr. Williams.

14 MR. WILLIAMS: Your Honor, I assume you wish myself
15 to get behind the podium here and the defendant?

16 THE COURT: You can indeed.

17 MR. WILLIAMS: Your Honor, because of his age
18 obviously he doesn't have many life experiences. He's 18
19 now. He was 16 at the time of these alleged violations.
20 You have heard that he was going to high school and then
21 he was home schooled and he went to Wil Lou Gray and got
22 his GED and over the last few months he has actually been
23 working with Wal-Mart. Obviously he doesn't agree with
24 the sentence of the jury but we can't contest what the
25 jury comes back and makes its decision on. He has no

1 prior arrests or convictions for anything. I would ask
2 the Court to be as lenient as possible. I certainly
3 understand what the minimum sanctions are in this
4 particular case. He does also. You know, it's really -
5 there's nothing good you can really say about this case,
6 Your Honor, for either the victim or the defendant. It's
7 a terrible situation for everyone. We would request the
8 Court to be as lenient as possible in this case.

9 THE COURT: Mr. Breazeale, do you understand that
10 the sentence is a mandatory minimum of 25 years up to
11 life. Do you understand that?

12 MR. BREAZEALE: Yes, Your Honor.

13 THE COURT: And do you also understand that as a
14 result of the conviction that you will be required to
15 register on the sex offender registry and I believe also
16 through the federal registry, I believe, which may
17 require GPS monitoring. I cannot tell you that one
18 hundred percent. But I can tell you that you will be
19 required to register as a sex offender and that there may
20 be some other implications and Mr. Williams can explain
21 those to you. I will also tell you that understand the
22 statute I'm required to designate and indicate as part of
23 the verdict whether the conduct that constituted the
24 sexual battery involved sexual or anal intercourse by a
25 person or intrusion by an object and obviously the basis

1 that's contained in the indictment and what was argued to
2 the jury was that it involved oral intrusion by your
3 penis into the mouth of the victim and so that would be
4 in the finding and the designation for this particular
5 case. Is there anything that you wish to say? You don't
6 have to say anything if you don't wish to.

7 MR. BREAZEALE: (Shaking head.)

8 THE COURT: Okay. I understand the State's request.
9 I also understand the age of Mr. Breazeale and the age
10 when the acts occurred. I always hold out hope that a
11 person can be rehabilitated and can receive counseling.
12 I think 18 is an awful young age to have to end up in
13 prison for a lengthy period of time and with a mandatory
14 25 year sentence I don't see a reason to go beyond the
15 mandatory minimum. So, Mr. Breazeale, I'll sentence you
16 to the Department of Corrections for a period of 25
17 years. That is a sentence in which there is no parole.
18 You will be eligible for release after service of 85
19 percent of that sentence. Whether or not you are
20 actually released at that particular time would be
21 contingent upon what occurs while you are incarcerated
22 within the Department of Corrections.

23 Additionally, upon your release you will be required
24 to attend a supervision program, community supervision in
25 which you would be required to live in the community with

1 certain requirements placed upon you for a period of two
2 years before you would be eligible to be released from
3 any further incarceration period. However, your sex
4 offender registry would be for life unless there is some
5 other particular statutes that would control that
6 condition. And so you will be required to -- Failure to
7 register is a separate criminal offense for which you
8 could receive additional jail time. Do you understand.

9 MR. BREAZEAL: (Nodding head.)

10 THE COURT: Good luck to you, sir.

11 MR. WILLIAMS: Thank you, Your Honor.

12 MS. ABEE: Thank you, Your Honor.

13 WHEREUPON, THE TRIAL WAS CONCLUDED.

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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of General Sessions in and for the
10 State of South Carolina on the 22nd and 23rd day of August,
11 2016.

12 I FURTHER CERTIFY that the forgoing 279 pages
13 constitute a true and accurate record of said proceedings.

14 I FURTHER CERTIFY that I am neither related, counsel
15 to, nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand at
17 Lexington County, this 16th day of November, 2016.

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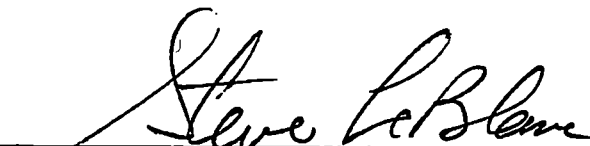
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Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

WITNESSES

J. Kemfort-Lexington County Sherriff's
Department

ARREST WARRANT/TICKET NUMBER

2015A3210200449

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 6/6/16

VERDICT

guilty

Foreperson of Petit Jury

Date: 8/23/16

Docket Number 2015-GS-32-6031
amended

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

June 2016 Term

THE STATE

vs.

Auston Lee Breazeal

DEFENDANT

Indictment for

Criminal Sexual Conduct with a Minor in
the First Degree

SC Code: 16-3-655(A)(1)
CDR Code: 0385

Felony

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury

Defendant

I, _____
hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. Pls. And G.S.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

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IN THE COURT OF GENERAL SESSIONS

INDICTMENT

At a Court of General Sessions, convened on June 2016 the Grand Jurors of Lexington County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE FIRST DEGREE

That in Lexington County, South Carolina, between the dates of April 2, 2014 and February 7, 2015, the Defendant, Auston Lee Breazeal, did commit a sexual battery upon a minor, C.M., DOB 4/2/2010, who was less than eleven years of age, by putting his penis in her mouth. In violation of §16-3-655(A)(1) 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.


ALAN WILSON/ KBA
SOUTH CAROLINA ATTORNEY GENERAL

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,

A handwritten signature in cursive script that reads "Laura R. Baer". The signature is written in dark ink and is positioned above a horizontal line.

Laura R. Baer

Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 23rd day of June, 2017.

RECEIVED

JUN 23 2017

SC Court of Appeals