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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County

Eugene C. Griffith, Jr., Circuit Court Judge

KEITH DESUE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000542

APPENDIX

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COUNTY OF GREENVILLE	)	COURT OF GENERAL SESSIONS
	)	2009-GS-23-01490
	)	
STATE OF SOUTH CAROLINA	)	
	)	PLAINTIFF)
vs.	)	TRANSCRIPT OF RECORD
KEITH DESUE	)	
	)	DEFENDANT)

January 9-10, 2012
Greenville, South Carolina

B E F O R E:

THE HONORABLE C. VICTOR PYLE, JR., Judge; and a jury.

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

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Attorney for the Defendant

APRIL HERRON
Official Court Reporter

PENNY JOHNSON
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1 MR. ROBINSON: Your Honor, we have a motion
2 regarding a competency hearing of a witness.

3 MS. SEAY: Your Honor, may I be heard on that?

4 THE COURT: Sure. Wait a minute, I'll be right
5 back.

6 All right, Solicitor.

7 MS. SEAY: Thank you, Your Honor, may it please
8 the Court. Your Honor, pursuant to Rule 601 of The South
9 Carolina Rules of Evidence, every person is competent to
10 be a witness except otherwise provided by statute or the
11 rules. And there is no exception for a child witness.
12 Now, the previous law was that you had to hold this
13 competency hearing outside the presence of the jury, as
14 I'm sure you know. But that is no longer the case and I
15 do not believe that the Defense is entitled to examine the
16 witness prior to her testimony since she is presumed
17 competent. Thank you.

18 THE COURT: How about that, Mr. Robinson?

19 MR. ROBINSON: Your Honor, the biggest issue
20 with the competency that I have is the witness is five
21 years old, she's in foster care. She's had a lot of
22 different people talking to her and so forth. I'm not
23 sure how competent she is to testify. I know there's a
24 presumption, but I don't really know in this case whether
25 this kid is able to know right from wrong and whether

1 she's been coached in what she's supposed to say.

2 THE COURT: Well, I agree with the solicitor
3 that you're not entitled to cross-examine her. You want
4 me to --

5 MR. ROBINSON: Sir?

6 THE COURT: I said I agree with the solicitor,
7 you're not entitled to cross-examine her on that. It's my
8 determination.

9 MR. ROBINSON: Yes, sir. So no competency
10 hearing?

11 THE COURT: Right. Okay.

12 All right. Anything else?

13 MS. SEAY: The State just has a couple of
14 matters, Your Honor. I do need to give you that forensic
15 interview that we made you aware of. Let me do that
16 before I forget. And, Your Honor, we have redacted a
17 small, very small portion of this interview, where the
18 victim alludes to the fact that her older sister has been
19 abused by the Defendant. We've redacted that because I
20 did not feel that it would be admissible. And I have
21 given Mr. Robinson a copy of the redacted interview. So
22 I'll hand up a copy for the Court at this time.

23 And we will, at a later time in our case, seek
24 to introduce that forensic interview pursuant to code
25 section 17-23-175, provided that the Court makes the

1 necessary findings for that. And what I guess I would
2 like to know from the Court is, do you want to hear from
3 the forensic interviewer outside the presence of the jury
4 or would you just have me call her as a witness in my case
5 in chief?

6 THE COURT: I think we need to do that outside
7 the presence of the jury.

8 MS. SEAY: Okay. Okay.

9 THE COURT: We can do that before we get the
10 jury?

11 MS. SEAY: Well, I will need to get her here, it
12 won't take her but a few minutes to get here. We can call
13 her now.

14 THE COURT: I mean, we can do it -- I mean, I
15 can take a recess and do it before she testifies?

16 MS. SEAY: Okay.

17 THE COURT: If that's what you prefer.

18 MS. SEAY: That will be fine, too. We can just
19 do it that way.

20 Your Honor, I would make a motion at this time
21 to clear the courtroom for the victim's testimony. She is
22 eight years old and she will be talking about very
23 sensitive matters of a sexual nature. So I would ask that
24 all persons nonessential to this process not be in the
25 courtroom for her testimony. I would ask that my chief

1 investigating officer and her adoptive parents, who I
2 think are also defined by the statute as victims, be
3 allowed to remain in the courtroom.

4 THE COURT: Mr. Robinson, any comment?

5 MS. SEAY: I think those are the rules, Your
6 Honor. I do have the mother of the child. This is a case
7 where the kid is in foster care, now with adoptive
8 parents. But I just ask for a sequestration, I guess, of
9 all witnesses going to be called in this case.

10 MS. SEAY: Your Honor, the child is -- just to
11 correct Mr. Robinson, the child is not in foster care.
12 She has been legally adopted and the parental rights of
13 her biological mother and her father, Mr. Desue, have been
14 terminated.

15 THE COURT: Okay.

16 MS. SEAY: And I have no objection to
17 sequestration.

18 THE COURT: All right.

19 MS. SEAY: I have, again, a stipulation to the
20 chain of custody. Would you like for me to hand that to
21 you now or hold that until later?

22 THE COURT: No, you can just read that to the
23 juror.

24 MS. SEAY: Okay.

25 THE COURT: That's fine.

1 How long is your interview?

2 MS. SEAY: It is about 42 minutes long, Your
3 Honor. She discusses the sexual abuse for a period of
4 time, and then she does a demonstration with anatomical
5 dolls at the end of the interview.

6 THE COURT: Okay.

7 Counsel, approach just a minute.

8 (WHEREUPON, a bench conference was held.)

9 THE COURT: It's going to be a while before we
10 can get a jury panel because Judge Verdin is selecting
11 first, and he has not started. I think what I might do is
12 I'll just take this to my office and look at it on the
13 computer and maybe we can get a jury like in maybe 30
14 minutes. Then I can finish watching it over lunch. So
15 why don't you be ready in 30 minutes to get a jury.

16 MS. SEAY: Okay.

17 THE COURT: Okay.

18 (WHEREUPON, a short break was taken.)

19 THE COURT: So we'll go ahead and get a jury and
20 then let them go to lunch. Then I'll look at it. Then
21 we'll start this afternoon.

22 MS. SEAY: That will be fine. What time would
23 we be starting back so I can notify my other witnesses?

24 THE COURT: Well, I'll tell you as soon as we
25 get a jury.

1 MS. SEAY: Okay.

2 MR. ROBINSON: May it please the Court, Your
3 Honor. I looked at the witness list that Ms. Seay has
4 provided to me. There was a DSS action involving my
5 client. It appears the investigator in the DSS case is
6 assigned to this. I'm going -- I make a motion in limine
7 to prevent them from talking about the DSS case and
8 bringing that into this particular action. I think they
9 are two different cases. And I'd ask that they be limited
10 as far as testimony or testifying about the DSS case,
11 which has nothing to do with this particular case.

12 MS. SEAY: Your Honor, in response, I would
13 say -- I couldn't understand exactly what Mr. Robinson
14 said, but the DSS worker is not on the witness list.

15 Did you say she was on the witness list?

16 MR. ROBINSON: Lorraine Henderson?

17 MS. SEAY: That's from the -- that was an
18 investigator from -- she's a sheriff's office
19 investigator.

20 MR. ROBINSON: But she was in the DSS case?

21 MS. SEAY: So she was from an old case. That's
22 a possible rebuttal witness.

23 MR. ROBINSON: Okay. So that's what that is. I
24 wasn't sure what that was.

25 THE COURT: So the DSS worker is not on the

1 witness list. However, I would say to the Court that the
2 State's position would be that if the Defense somehow
3 opens the door to Family Court action or to the DSS
4 findings or anything like that that we would be allowed to
5 get into that.

6 THE COURT: Sure.

7 MR. ROBINSON: That's fine, but I'm just making
8 sure. Thank you, Your Honor.

9 THE COURT: Okay. We'll get this jury at 2:00.
10 We'll go ahead and do your interviewer, then I'll look at
11 the DVD.

12 MS. SEAY: Okay. Are you ready for me to call
13 this witness, Your Honor?

14 THE COURT: Sure.

15 MS. SEAY: The State calls Christine Carlberg.

16 CHRISTINE CARLBERG, after being duly sworn,
17 testified as follows:

18 THE CLERK: Ms. Carlberg, would you, please,
19 state your full name for the record?

20 THE WITNESS: Christine Carlberg.

21 MS. SEAY: I'm not sure that's working.

22 THE COURT: I had the voice off.

23 DIRECT EXAMINATION

24 BY MS. SEAY:

25 Q Where are you currently employed?

1 A I'm employed with the Greenville Department of Mental
2 Health.

3 Q All right. And as part of your duties at the
4 Greenville Department of Mental Health, do you
5 conduct interviews at the Julie Valentine Center, the
6 Advocacy Center for Children?

7 A Yes, ma'am, I'm contracted to work at the Julie
8 Valentine Center to conduct forensic interviews.

9 Q Okay. Can you please give us your work experience
10 and your training to conduct forensic interviews?

11 A I have been trained at several nationally known
12 facilities for conducting forensic interviews, at
13 Corner House in Minneapolis, and then, also, through
14 Finding Words, both in Mississippi and in South
15 Carolina. That name has been changed to Child First
16 now, that training, and just many other conferences
17 across the nation. My experience is I've been
18 conducting forensic interviews for over 11 years at
19 the Children's Advocacy Center in Jackson,
20 Mississippi, and then here for almost five years.

21 Q Okay. You've been here in Greenville for almost five
22 years?

23 A In February, it will be five years.

24 Q What is your educational background?

25 A I have a Bachelor's of Science degree in

1 rehabilitation services education with a minor in
2 psychology from the Pennsylvania State University,
3 and I have a Master's of Arts in marriage and family
4 therapy from Reformed Theological Seminary in
5 Jackson, Mississippi.

6 Q Okay. Do you have occasion to consult with other
7 professionals in your field related to child sexual
8 assault?

9 A Yes, ma'am.

10 Q Can you explain what a forensic interview is?

11 A A forensic interview is a nonleading, nonsuggestive
12 manner of just gathering information about an
13 incident from a child.

14 Q Do you adhere to nationally recognized protocols in
15 your field?

16 A Yes, ma'am.

17 Q Do you provide -- I believe you've already stated you
18 use nonleading questions; is that correct?

19 A Yes, ma'am.

20 Q Do you provide a child-friendly environment?

21 A Yes, ma'am.

22 Q Is your inquiry developmentally appropriate according
23 to the child's age?

24 A Yes, ma'am.

25 Q Is there a standard protocol or protocols that you

1 use when conducting forensic interviews?

2 A We use a semi-structured protocol called RATAc, which
3 stands for rapport, anatomy ID, touch inquiry, abuse
4 scenario and closure.

5 Q Okay. Is that method widely and generally accepted
6 in your field of expertise?

7 A Yes, ma'am.

8 Q Have you read articles on RATAc that are subject to
9 peer review?

10 A Yes, ma'am.

11 Q Have you received special training on this method?

12 A Yes, that's the training I received, both at Corner
13 House and through Finding Words.

14 Q Okay. In your past experience, I believe you said of
15 11 years as a forensic interviewer, can you tell us
16 approximately how many children you've seen and
17 conducted forensic interviews with?

18 A I've conducted 1,869 interviews.

19 Q Have you testified in the courts of this state
20 before?

21 A Yes, ma'am.

22 Q How many times have you testified?

23 A About 25.

24 Q In which courts have you testified?

25 A Greenville Family Court, Pickens Family Court and

1 Greenville General Sessions.

2 Q Okay. Did you have an occasion to conduct a forensic
3 interview of the victim, [REDACTED] [REDACTED]?

4 A Yes, ma'am.

5 Q Was she referred to you by a law enforcement agency?

6 A I think she first got to our center through the
7 hospital.

8 Q All right. Do you have a notation whether law
9 enforcement was involved with her?

10 A Yeah, both DSS and law enforcement was involved.

11 Q Okay. Why was she referred to you?

12 A There were allegations of sexual abuse regarding her
13 father.

14 Q When and where did your interview take place?

15 A It took place at what is now called the Julie
16 Valentine Center. It was then called the Greenville
17 Rape Crisis and Child Abuse Center. It was conducted
18 on January 14th, 2009.

19 Q How old was [REDACTED] at the time of the interview?

20 A She was five.

21 Q Okay. Do you have her date of birth there?

22 A [REDACTED]/03.

23 Q Okay. Did you make an audio and/or video recording
24 of the interview?

25 A It was video recorded.

1 Q All right.

2 MS. SEAY: Your Honor, may I borrow that DVD
3 from you? Do you have it?

4 THE COURT: Sure.

5 MS. SEAY: Okay. Thank you.

6 BY MS. SEAY:

7 Q Okay. Ms. Carlberg, do you recognize this?

8 A That's a copy of the interview.

9 Q Okay. And have you viewed this?

10 A Yes, ma'am.

11 Q Okay.

12 MS. SEAY: Thank you, Your Honor.

13 BY MS. SEAY:

14 Q Did the victim give an account of the sexual abuse in
15 the interview?

16 A Yes, ma'am.

17 MS. SEAY: Your Honor, those are all the
18 questions I have for purposes of this hearing.

19 THE COURT: All right.

20 MS. SEAY: So I would leave it to Mr. Robinson.

21 THE COURT: Okay, Mr. Robinson.

22 MR. ROBINSON: May it please the Court?

23 CROSS-EXAMINATION

24 BY MR. ROBINSON:

25 Q Ma'am, I'm a little confused as far as your special

1 training that you had for forensic interviews. What
2 was the special training that you had?

3 A Corner House in Minneapolis, Mississippi is a 40-hour
4 week training course, specifically for forensic
5 interviewing. Then they partnered with APRI to start
6 Finding Words, which is like a training facility in
7 each state. So I've gone through -- that's also a
8 40-hour week training course, specifically for
9 interviewing. And I've gone through that in
10 Mississippi and in South Carolina.

11 Q So when you talk about special training, you're
12 talking about two 40-hour classes, correct?

13 A Well, there's three. I went through Finding Words
14 twice, and I also helped teach students through that
15 course, and I went through it in Minneapolis, yes.

16 Q And that's the special training that you're speaking
17 of; is that correct?

18 A Well, also, various conferences across the nation
19 that had talked about forensic interviewing as well.

20 Q In terms of the RATAC, this procedure that you go
21 through, this nonleading procedure, what exactly is
22 this procedure that you go through that you're
23 talking about, this RATAC procedure?

24 A It's a semi-structured protocol that we follow for
25 each interview that we do.

1 Q Is that a nationally recognized procedure?

2 A It is.

3 Q Is it recognized in South Carolina?

4 A It is. Most every children's advocacy center in
5 South Carolina uses that protocol.

6 Q Okay. As far as the articles, though, that you're
7 talking about, have you written any articles on this
8 subject?

9 A I have not written any.

10 Q But you've read articles, correct?

11 A Read article, yes.

12 Q In terms of this contract that you have -- now you're
13 an employee of the Greenville Department of Mental
14 Health, correct?

15 A Yes, sir.

16 Q And your contract is through them to work for this
17 Julie Valentine Center, correct?

18 A Yes, sir.

19 Q And you have a Bachelor of Science in rehab -- what's
20 it called?

21 A Rehabilitation Services Education.

22 Q Is there anything in that that has anything to do
23 with children?

24 A Yes, it dealt with children and adults, yes.

25 Q Okay. Okay. And you have another, either BS or

1 Master's in Theological Studies; is that right?

2 A No, I have a Master's in marriage and family therapy.

3 Q Does that have anything to do with children at all or
4 any sort of counseling children?

5 A Yes. It was completely for counseling involving
6 children and the systems of the family, but we also
7 do a lot of child development through that degree.

8 Q Okay. Have you ever been on any interviews on behalf
9 of the defense or is it all just for the prosecution
10 or State, the 1,869 interviews you've done?

11 A Well, I've always worked for children advocacy
12 centers when I've conducted my interviews, so,
13 usually, those are all referred by law enforcement or
14 DSS.

15 Q How many times have you testified in Greenville
16 General Sessions court?

17 A I think three.

18 Q And you've never not been qualified in a case?

19 A No.

20 MR. ROBINSON: That's all I have, thank you.

21 THE COURT: Any redirect?

22 MS. SEAY: Nothing further.

23 THE COURT: Thank you, you may step down.

24 All right.

25 MR. ROBINSON: Your Honor, as to this witness,

1 it doesn't go to her qualifications, but it does go to how
2 the Solicitor is going to be asking questions per se.
3 Referring to [REDACTED] as a victim, I think is
4 inappropriate in this case. I think, again, that
5 mentioning DSS and law enforcement in terms of they're the
6 person that referred [REDACTED] to whatever it is as far
7 as how they got there. Also, to when the Solicitor talks
8 about sexual abuse and so forth, I think that -- I think
9 those kind of comments, victim, sexual abuse are
10 inappropriate. I don't think they should be put before
11 the jury. I think there should be more of a neutral way
12 of doing that. I think that's very prejudicial to the
13 Defendant in this case. Presuming that this is the victim
14 and presuming there's been sexual abuse in this case.

15 THE COURT: Solicitor.

16 MS. SEAY: Well, Your Honor, this child is the
17 victim in this case. She -- the allegations are -- the
18 indictment does allege that she has been sexually
19 assaulted by the Defendant. And I think that I'm within
20 my bounds to comment on those things in this case.

21 MR. ROBINSON: I don't think she's permitted to
22 give comments about sexual abuse and the victim. I think
23 that she can only go into what the evidence shows, not
24 make any comment as far as that goes.

25 THE COURT: Well, first of all, I find that

1 she's qualified in testifying as a qualified interviewer.
2 And I think she's got a right to answer the questions
3 elicited by the Solicitor.

4 All right, anything else?

5 (There was no response.)

6 All right. We'll get a jury at 2:00. And I'll
7 need to look at this DVD.

8 MS. SEAY: Yes, sir. You want to use this
9 computer?

10 THE COURT: Yeah.

11 MS. SEAY: The only thing, Your Honor, is going
12 to be that we don't need to shut it down when you're
13 finished. We need to keep it up and running because I
14 understand that the PC tech had to come over and sign on
15 as the administrator to get this thing up and running. So
16 if you'll just leave it up and running, it should be fine.

17 THE COURT: Well, you want to see if you can get
18 it on, Noel?

19 THE CLERK: You want to see if it will play on
20 this? It's fine with me.

21 MS. SEAY: This is going to work.

22 THE COURT: All right. Turn it around, I'll
23 come sit down there.

24 (WHEREUPON, a lunch break was taken.)

25 THE COURT: All right, I reviewed the DVD and

1 make the following findings. I find there were no leading
2 questions asked by the interviewer. She's already been
3 declared to be an expert in conducting interviews with
4 children. The alleged victim gave a detailed account of
5 the alleged offense. And under the totality of the
6 circumstances, it possessed a guarantee of trustworthiness
7 and therefore, it will be admissible.

8 All right, anything before I bring the panel of
9 jurors up?

10 MS. SEAY: Nothing further from the State.

11 MR. ROBINSON: Nothing, Your Honor.

12 THE COURT: Okay. Bring them up.

13 (WHEREUPON, the jury venire entered the
14 courtroom.)

15 THE COURT: If I can have your attention, at
16 this time, we will select a jury in the case of The State
17 v. Keith Antravus Desue. He is indicted for criminal
18 sexual conduct with a minor in the first degree. The
19 indictment alleges specifically that on or between the
20 24th day of December, 2008, and the 25th day of December,
21 2008, he committed a sexual battery upon [REDACTED]
22 who was less than 11 years of age.

23 Now, potential witnesses in the case will be
24 [REDACTED] Rena Bright, Carmen Johnson, Dr. Breann
25 Bailey, Jonathan Taylor, Jim Austin, Amie Heil, Adrienne

1 Hefney, Christine Carlberg, Dr. Mary Fran Crosswell, Megan
2 Barton, Lorraine Henderson, Ginny Moran, John
3 Vandermosten, Vicki Ramsey, Jill Dudley and Iola Desue.

4 I would inquire at this time if any member of
5 the jury panel is related by blood or marriage or
6 connected by employment to the Defendant or to any
7 potential witness in the case? Are you sensible or aware
8 of any bias or any prejudice with respect to the State, to
9 the Defendant or to the subject matter of the case, that
10 being an alleged criminal sexual conduct with a minor? Or
11 do you know of any reason why you could not give this
12 Defendant and the State a fair and impartial trial based
13 on the law and evidence to be presented? If so, would you
14 please stand and give me your name?

15 Yes, sir?

16 PROSPECTIVE JUROR: It's Chris Rivardo, 192.

17 THE COURT: Yes, sir. Why don't you come up so
18 I can talk with you.

19 Counsel, approach, please.

20 (WHEREUPON, a discussed ensued.)

21 THE COURT: Now, do I have any member of the
22 panel who has any connection family, business, social or
23 otherwise with Walt Wilkins, the Solicitor, or any member
24 of his staff, including Bryna Seay, who is handling this
25 case, or with law enforcement, whether that be Federal,

1 State, County or Municipal? If so, would you please stand
2 and give me your name?

3 Yes, sir?

4 PROSPECTIVE JUROR: My name is William Kiser.
5 My wife's employed by Greenville County Sheriff's Office.
6 She's the director of emergency communications.

7 THE COURT: Solicitor, is this a County case?

8 MS. SEAY: This is, yes, sir.

9 THE COURT: All right. Your name again, sir?

10 THE WITNESS: William Kiser.

11 THE COURT: Thank you, sir. We would not put
12 you on this case. I appreciate you telling me that.

13 Scott Robinson represents the Defendant. Do I
14 have any clients now or formerly of Mr. Robinson? If so,
15 please stand and give me your name.

16 (There was no response.)

17 All right. Any other questions, counsel?

18 MS. SEAY: No, sir.

19 THE COURT: All right. Strikes are five for the
20 State, 10 for the Defense.

21 Ladies and gentlemen, when your name is called,
22 I'd ask that you come forward to this podium up front,
23 turn around and face counsel, and await further
24 instruction. Thank you.

25 THE CLERK: Juror No. 58, Mark Coburn.

1 (Mark Coburn, a white male, came forward.)

2 What says the State?

3 MS. SEAY: Please present the juror.

4 THE CLERK: What says the Defendant?

5 MR. ROBINSON: Please excuse the juror.

6 THE CLERK: Thank you, you may be seated.

7 You're excused from the trial of this case.

8 Juror No. 25, Frank Bibek.

9 (Frank Bibek, a white male, came forward.)

10 What says the State?

11 MS. SEAY: Please present the juror.

12 THE CLERK: What says the Defendant?

13 MR. ROBINSON: Please seat the juror.

14 THE CLERK: Thank you. You may be seated in the
15 jury box.

16 Juror No. 15, Patricia Ballew.

17 (Patricia Ballew, a white female, came forward.)

18 What says the State?

19 MS. SEAY: Please present the juror.

20 THE CLERK: Thank you.

21 MR. ROBINSON: Please excuse the juror.

22 THE COURT: Thank you. You may be seated.

23 You're excused from the trial of this case.

24 Juror No. 183, Vickie Propst.

25 (Vickie Propst, a white female, came forward.)

1 THE CLERK: What says the State?
2 MS. SEAY: Please present the juror.
3 THE CLERK: What says Defendant?
4 MR. ROBINSON: Please excuse the juror.
5 THE CLERK: Thank you. You may be seated.
6 You're excused from the trial of this case.
7 Juror No. 120, Gail Hodgden.
8 (Gail Hodgden, a white female, came forward.)
9 THE CLERK: What says the State?
10 MS. SEAY: Please present the jury.
11 MR. ROBINSON: Please excuse this juror.
12 THE CLERK: Thank you. You may be seated.
13 You're excused from the trial of this case.
14 Juror No. 176, Darlene Parker.
15 (Darlene Parker, a white female, came forward.)
16 THE CLERK: What says the State?
17 MS. SEAY: Please excuse her from the case.
18 THE CLERK: Thank you. You may be seated.
19 You're excused from the trial of this case.
20 Juror No. 81, Walter Dreesen.
21 (Walter Dreesen, a white male, came forward.)
22 THE CLERK: What says the State?
23 MS. SEAY: Please present the juror.
24 THE CLERK: What says the Defendant?
25 MR. ROBINSON: Please seat the juror.

1 THE CLERK: Thank you. You may be seated in the
2 jury box.

3 Juror No. 172, Mohamed Nehdi.

4 (Mohamed Nehdi, an Indian male, came forward.)

5 THE CLERK: What says the State?

6 MS. SEAY: Please present the juror.

7 THE CLERK: What says the Defendant?

8 MR. ROBINSON: Please excuse the juror.

9 THE CLERK: Thank you. You may be seated.
10 You're excused from the trial of this case.

11 Juror No. 195, Joey Satterfield.

12 (Joey Satterfield, a white male, came forward.)

13 THE CLERK: What says the State?

14 MS. SEAY: Please present the juror.

15 THE CLERK: What says the Defendant?

16 MR. ROBINSON: Please excuse the juror.

17 THE COURT: Thank you. You may be seated.

18 You're excused from the trial of this case.

19 Juror No. 89, Michael Fallat.

20 (Michael Fallat, a white male, came forward.)

21 THE CLERK: What says the State?

22 MS. SEAY: Please present the juror.

23 THE CLERK: What says the Defendant?

24 MR. ROBINSON: Please excuse this juror.

25 THE COURT: Thank you. You may be seated.

1 You're excused from the trial of this case.

2 Juror No. 12, Ronnie Baker.

3 (Ronnie Baker, a white male, came forward.)

4 THE CLERK: What says the State?

5 MS. SEAY: Please present the juror.

6 THE CLERK: What says the Defendant?

7 MR. ROBINSON: Please seat the juror.

8 THE CLERK: Thank you. You may be seated in the
9 jury box.

10 Juror No. 200, Cherie Scruggs.

11 (Cheri Scruggs, a white female, came forward.)

12 THE CLERK: What says the State?

13 MS. SEAY: Please excuse her from the case.

14 THE COURT: Thank you. You may be seated.

15 You're excused from the trial of this case.

16 Juror No. 26, Denise Blakely.

17 (Denise Blakely, a white female, came forward.)

18 THE CLERK: What says the State?

19 MS. SEAY: Please present the juror.

20 THE CLERK: Thank you.

21 MR. ROBINSON: Please seat the juror.

22 THE CLERK: Thank you. You may be seated in the
23 juror box.

24 Juror No. 238, Marianne Wilson.

25 (Marianne Wilson, a white female, came forward.)

1 THE CLERK: What says the State?
2 MS. SEAY: Please present the juror.
3 THE CLERK: What says the Defendant?
4 MR. ROBINSON: Please excuse the juror.
5 THE CLERK: Thank you. You may be seated.
6 You're excused from the trial of this case.
7 Juror No. 117, Ingrid Henderson.
8 (Ingrid Henderson, a black female, came
9 forward.)
10 THE CLERK: What says the State?
11 MS. SEAY: Please present the juror.
12 THE CLERK: What says the Defendant?
13 MR. ROBINSON: Please seat the juror.
14 THE CLERK: Thank you. You may be seated in the
15 jury box.
16 Juror No. 6, Stephanie Anderson.
17 (Stephanie Anderson, a white female, came
18 forward.)
19 THE CLERK: What says the State?
20 MS. SEAY: Please present the juror.
21 THE CLERK: What says the Defendant.
22 MR. ROBINSON: Please seat the juror.
23 THE CLERK: Thank you. You may be seated in the
24 jury box.
25 Juror No. number 203, Phil Silas.

1 (Phil Silas, a white male, came forward.)

2 THE CLERK: What says the State?

3 MS. SEAY: Please present this juror.

4 THE CLERK: What says the Defendant?

5 MR. ROBINSON: Please excuse this juror.

6 THE COURT: Thank you. You may be seated.

7 You're excused from the trial of this case.

8 Juror No. 148, Larance Loftis.

9 (Larance Loftis, a white male, came forward.)

10 THE CLERK: What says the State?

11 MS. SEAY: Please present the juror.

12 MR. ROBINSON: Please seat the juror.

13 THE COURT: Thank you. You may be seated in the
14 jury box.

15 Juror No. 206, Stephen Snyder.

16 (Stephen Snyder, a white male, came forward.)

17 THE CLERK: What says the State?

18 MS. SEAY: Please present the juror.

19 THE CLERK: What says the Defendant?

20 MR. ROBINSON: Please excuse the juror from the
21 trial of this case.

22 THE CLERK: Thank you. You may be seated.

23 You're excused from the trial of this case.

24 Juror No. 40, Kristyn Burrell.

25 (Kristyn Burrell, a white female, came forward.)

1 THE CLERK: What says the State?

2 MS. SEAY: Please present the juror.

3 THE CLERK: What says the Defendant?

4 MR. ROBINSON: Please seat the juror.

5 MS. SEAY: Thank you. You may be seated in the
6 jury box.

7 Juror No. 47, Mary Ann Carroll.

8 (Mary Ann Carroll, a white female, came
9 forward.)

10 THE CLERK: What says the State?

11 MS. SEAY: Please present the juror.

12 THE CLERK: Thank you.

13 MR. ROBINSON: Please the seat the juror.

14 THE CLERK: Thank you. You may be seated in the
15 jury box.

16 Juror No. 60, Dana Cockman.

17 (Dana Cockman, a white female, came forward.)

18 THE CLERK: What says the State?

19 MS. SEAY: Please present the juror.

20 THE CLERK: What says the Defendant?

21 MR. ROBINSON: Please seat the juror.

22 THE CLERK: Thank you. You may be seated in the
23 jury box.

24 THE COURT: Ms. Cockman, take that first seat
25 and serve as foreperson for me, please, ma'am.

1 THE CLERK: Juror No. 43, John Cajka.

2 (John Cajka, a white male, came forward.)

3 THE CLERK: What says the State?

4 MS. SEAY: Please present the juror.

5 THE CLERK: What says the Defendant?

6 MR. ROBINSON: Please seat the juror.

7 THE CLERK: Thank you. You may be seated in the
8 jury box.

9 Juror No. 207, Michael Spencer.

10 (Michael Spencer, a white male, came forward.)

11 THE CLERK: What says the State?

12 MS. SEAY: Please present the juror.

13 THE CLERK: Thank you. You may be seated in the
14 jury box.

15 THE COURT: I want two alternates. Strikes are
16 one for the State and two for the defense.

17 THE CLERK: Juror No. 55, Vickie Taylor.

18 (Vickie Taylor, a white female, came forward.)

19 THE CLERK: What says the State?

20 MS. SEAY: Please present the juror.

21 THE CLERK: Thank you.

22 MR. ROBINSON: Please excuse this juror.

23 THE CLERK: Thank you. You may be seated.
24 You're excused from the trial of this case.

25 Juror No. 234, Suzanne Western.

1 (Suzanne Western, a white female, came forward.)

2 THE CLERK: What says the State?

3 MS. SEAY: Please present the juror.

4 THE CLERK: What says the Defendant?

5 MR. ROBINSON: Please seat the juror.

6 THE CLERK: Thank you. You may be seated in the
7 jury box.

8 Juror No. 128, Carol Jones.

9 (Carol Jones, a white female, came forward.)

10 PROSPECTIVE JUROR: I might need to reveal
11 something. Can I talk to you?

12 THE COURT: Sure.

13 PROSPECTIVE JUROR: My husband is a volunteer at
14 the law enforcement center. Does that count as
15 employment?

16 THE COURT: Okay.

17 THE CLERK: What says the State?

18 MS. SEAY: Please present the juror.

19 THE CLERK: What says the Defendant?

20 MR. ROBINSON: Please excuse the juror from the
21 trial of this case.

22 THE CLERK: Thank you. You may be seated.
23 You're excused from the trial of this case.

24 Juror No. 159, Joan McCarter.

25 (Joan McCarter, a white female, came forward.)

1 THE CLERK: What says the State?

2 MS. SEAY: Please present the juror.

3 THE CLERK: What says the Defendant?

4 MR. ROBINSON: Please seat this juror.

5 THE CLERK: Thank you. You may be seated in the
6 jury box.

7 THE COURT: And the balance of the panel, we can
8 excuse you at this time and ask you to call in after
9 6 p.m. today the number that you were given this morning.
10 So call in after 6. Thank you.

11 (WHEREUPON, the jury left the courtroom at
12 approximately 2:45 p.m.)

13 THE COURT: Okay. Swear the jury.

14 THE CLERK: Would you please stand and raise
15 your right hand to be sworn. The response to the oath is
16 I will.

17 (WHEREUPON, the jury was sworn.)

18 THE CLERK: Thank you.

19 THE COURT: Ladies and gentlemen, I'm having
20 some difficulty with my voice today, as you can tell, I'm
21 sure, so please bear with me. I need to read to you at
22 this time an order issued by Jean Toal, who is the chief
23 justice of our Supreme Court. And if you would give me
24 your attention, I'll read it to you at this time. The use
25 of personal communication devices has continued to

1 increase dramatically. Accordingly, I find it necessary
2 to supplement my order of August 25, 2000, related to the
3 use of pagers, cell phones and other personal
4 communication devices in courtrooms, to include the
5 following direction to the Court. The Court shall
6 instruct juries selected to serve on a jury that until
7 their jury service is concluded, they shall not A, discuss
8 the case with others, including other jurors, except as
9 otherwise authorized by the Court. B, read or listen to
10 any news reports about the case. C, use a computer,
11 cellular phone or other electronic device with
12 communication capabilities while in attendance at trial or
13 during deliberations. These devices may be used during
14 lunch breaks, but may not be used to obtain or disclose
15 information prohibited in subsection D below.

16 And subsection D reads, use a computer, cellular
17 phone or other electronic device with communication
18 capabilities or any other method to obtain or disclose
19 information about the case when they're not in court.
20 Information about the case includes, but is not limited to
21 the following, information about a party, witness,
22 attorney or court officer, news accounts about the case,
23 information collected through juror research on any topics
24 raised or testimony offered by any witness, information
25 collected through juror research on any other topic the

1 juror might think would be helpful in deciding the case.
2 Notice of the contents of this order shall be given to
3 jurors.

4 All right. Brief opening statement, Solicitor.

5 OPENING STATEMENT

6 MS. SEAY: Thank you, Your Honor, may it please
7 the Court.

8 MR. ROGERS: Your Honor, she has to use the
9 restroom.

10 THE COURT: Sure. We'll give you a short recess
11 before we start. The whole jury can go out. Anyone else
12 need to take a recess? Okay.

13 (WHEREUPON, a juror left the courtroom.)

14 THE COURT: Okay, Solicitor.

15 MS. SEAY: Thank you, Your Honor.

16 Madam forelady, ladies and gentlemen of the
17 jury, my name is Bryna Seay. I'm one of the assistant
18 solicitors here in Greenville County. It is my privilege
19 to represent the people of Greenville County in criminal
20 matters here in the Greenville County Courthouse. We
21 appreciate you being here. I know that you all have other
22 lives outside of this case, and that it is a sacrifice on
23 your part, whether that be business, personal or
24 otherwise, for you to be here. This is a very important
25 case to both [REDACTED] and to Keith Desue, so it is

1 very important that you're here. Our system would not
2 work otherwise. You are the glue that holds the system
3 together because you're going to make the final decision
4 in this case as to the Defendant's guilt or innocence.

5 [REDACTED] [REDACTED], who is seated here on the
6 front is eight years olds. She came into this world with
7 the right to be loved and nurtured and protected. She,
8 like all children, is naturally trusting. But her father
9 betrayed that trust when he sexually assaulted her.

10 The evidence in this case is going to show you
11 that around Christmastime of 2008, when [REDACTED] was
12 five years old, that she went to her father's house -- or
13 her father's apartment to spend Christmas with him. The
14 evidence will further show that while she was there, he
15 sexually assaulted her. You're going to here from
16 [REDACTED], who is going to take the stand and testify
17 here in court about what happened to her.

18 You will also here an interview that was
19 conducted shortly after the incident happened by a trained
20 forensic interviewer who talked to [REDACTED] to gather
21 facts about what had happened. You're going to get to
22 hear that interview later in the case. You're also going
23 to hear from several other witnesses that the State is
24 going to present, some doctors who examined her and some
25 other people who have information to bring you about this

1 situation.

2 The Defendant, as you've been told by Judge
3 Pyle, is indicted for criminal sexual conduct with a minor
4 first degree. The State has to prove the elements of
5 those offenses beyond a reasonable doubt -- of that
6 offense, excuse me, there's one offense. We must prove
7 the elements of that offense beyond a reasonable doubt to
8 your satisfaction. And the elements are twofold. First,
9 the child must be under the age of 11. And there will be
10 evidence put forth that will tell you that [REDACTED] was
11 five years old at the time this happened to her. The
12 second element is that the Defendant must have committed a
13 sexual battery on [REDACTED].

14 A sexual battery is defined -- and the Judge
15 will give you this law again at the conclusion of the
16 case. But a sexual battery is defined as any intrusion,
17 however slight, of a person's bodily opening. Criminal
18 sexual conduct with a minor in the first degree is a crime
19 in South Carolina. It is unlawful to have or attempt to
20 have sexual relations with a child. By it's very nature,
21 it is a secret crime. People who do things like this
22 don't do it in front of witnesses. But you're going to
23 here from the one witness who knows what happened, and
24 that's this child.

25 Unfortunately, more often than not, this kind of

1 crime is also committed by someone that the child knows
2 and trust. In this case, her biological father. This
3 kind of evidence that you're going to hear, ladies and
4 gentlemen, may be unpleasant for you. It may cause you to
5 feel some discomfort. And I say that because you have
6 taken an oath to listen to the evidence with an open mind
7 and to render a just verdict in this case. So as
8 unpleasant as it may be, I ask you to please pay close
9 attention to it and to render a just verdict in the case
10 at the conclusion of all the evidence.

11 One thing that I want to point out to you at
12 this time is something that the State does not have to
13 prove. The State does not have to prove a motive for a
14 crime like this. The State does not have to prove why a
15 grown man would take advantage of a young child for his
16 own sexual desires. That is not something we have to
17 prove. And we can't prove that, we won't be proving that.

18 But after you hear all the evidence in this
19 case, I submit to you that you will be firmly convinced of
20 this Defendant's guilt. And at the conclusion, I will
21 have a chance to speak to you again in closing argument.
22 And I will ask you to hold him accountable for this crime.
23 Thank you.

24 THE COURT: Mr. Robinson.

25 OPENING STATEMENT

1 MR. ROBINSON: May it please the Court.

2 Ms. Seay.

3 Good afternoon. My name is Scott Robinson. I
4 practice here in Greenville. Just like Ms. Seay, it is my
5 pleasure to be before you. Keith Desue is not guilty of
6 this crime. Keith Desue is the biological father of this
7 child, but he is not guilty of this crime. There's a
8 saying in Texas, which is big hat, no cattle. Which,
9 basically, means the allegation is a big disgusting
10 allegation, but the State cannot prove to you that there's
11 any evidence in this case, no cattle that would establish
12 to you beyond a reasonable doubt that Keith Desue
13 committed this crime.

14 Now, this may be a little different than most of
15 you are used to in the sense that a lot of times you hear
16 things on the news, like a lot of us, the internet, the
17 newspaper, then you see that law enforcement has arrested
18 someone. You see someone sitting in court. And there's a
19 normal presumption and assumption that law enforcement got
20 the right person. They got the person who is guilty.
21 Well, that's great outdoors and outside this courthouse,
22 but that's not the law of this case nor is it the law that
23 you took an oath to uphold. The standard is that the
24 State must prove to you beyond a reasonable doubt that
25 Keith Desue is guilty of this heinous crime.

1 There's reasonable doubt. The assumption is and
2 the presumption is is that Keith Desue is innocent.
3 That's the presumption. The Judge, when he gives you some
4 instructions later, he's going to tell you what the law is
5 in South Carolina. He's going to tell you that there's a
6 presumption of innocence. And that the State must prove
7 to you beyond a reasonable doubt each and every element of
8 their case. They can't do it. Keith Desue is innocent of
9 this charge.

10 Again, big hat, no cattle. It's a big
11 allegation, a disgusting, heinous allegation, but they
12 cannot prove that Keith Desue, the biological father of
13 the child, did this crime. I ask you to look at this case
14 carefully using your common sense. Because y'all come in
15 here, all of you come in here with different life
16 experiences, different things that have happened to you,
17 but in this courtroom, you bring all those collective
18 ideas and experiences. But y'all have common sense and
19 you can see when something isn't right. And the State
20 cannot prove to you beyond a reasonable doubt Keith Desue
21 is guilty of this crime. Thank you.

22 THE COURT: Okay, Solicitor.

23 ██████████ ██████████ after being duly sworn,
24 testified as follows:

25 THE CLERK: Okay. Thank you. You can be

1 seated. Will you please tell us your full name?

2 THE WITNESS: It's [REDACTED] [REDACTED] [REDACTED].

3 THE CLERK: Thank you.

4 DIRECT EXAMINATION

5 BY MS. SEAY:

6 Q Good afternoon, [REDACTED]. How are you doing?

7 A Good.

8 Q Okay. Can you speak up just a little bit? I want to
9 make sure that call the jurors way back here can hear
10 everything that you say, okay?

11 A Yes, ma'am.

12 Q And your name is [REDACTED] [REDACTED] [REDACTED] is that
13 right?

14 A Yes, ma'am.

15 Q How old are you [REDACTED]?

16 A I'm eight.

17 Q When is your birthday?

18 A [REDACTED] [REDACTED] [REDACTED].

19 Q Okay. So did you just turn eight years old in
20 December?

21 A Yes, ma'am.

22 Q What grade are you in?

23 A I'm in 2nd.

24 Q All right. Where do you go to school?

25 A I do home school.

- 1 Q You're home schooled?
- 2 A Yes, ma'am.
- 3 Q Okay. What kind of subjects do you take at home
- 4 school?
- 5 A I do math, science, English and social studies.
- 6 Q What are your favorite subject?
- 7 A Mine is science and social studies.
- 8 Q Social studies?
- 9 A Yes, ma'am.
- 10 Q You like that?
- 11 A Yes, ma'am.
- 12 Q Who do you live with?
- 13 A I live with my mommy and my daddy.
- 14 Q Do you have any brothers and sisters?
- 15 A Yes, ma'am.
- 16 Q How many?
- 17 A Three little sisters and a big brother.
- 18 Q Okay. What do you like to do? You like to play?
- 19 A Yes, ma'am.
- 20 Q I see that you have a doll with you. Do you like
- 21 playing with your doll?
- 22 A Yes, ma'am.
- 23 Q Do you like to play outside?
- 24 A Yes, ma'am.
- 25 Q Okay. What else do you like to do?

[REDACTED] DIRECT BY MS. SEAY

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- 1 A I like to draw.
- 2 Q You like to draw?
- 3 A Yes, ma'am.
- 4 Q All right. Let's talk a little bit about telling the
- 5 truth.
- 6 A Yes, ma'am.
- 7 Q Do you understand what it means to tell the truth?
- 8 A Yes, ma'am.
- 9 Q Okay. It is good to tell the truth?
- 10 A Yes, ma'am.
- 11 Q Is it good to tell a lie?
- 12 A No, ma'am.
- 13 Q What would happen to you if you told a lie?
- 14 A I would get in trouble.
- 15 Q Okay. And do you understand that just a minute ago,
- 16 you promised to tell the truth in court today?
- 17 A Yes, ma'am.
- 18 Q Okay. Do you promise that everything you say will be
- 19 true?
- 20 A Yes, ma'am.
- 21 Q All right. Who is your real dad, [REDACTED]?
- 22 A He is.
- 23 Q Okay.
- 24 MS. SEAY: Let the record reflect that she has
- 25 pointed to the Defendant.

1 BY MS. SEAY:

2 Q What is your real dad's name, [REDACTED]?

3 A Keith Desue.

4 Q All right. Does he have a nickname that you know

5 about?

6 A It's Smurf.

7 Q Smurf?

8 A Yes, ma'am.

9 Q And who is your real mom?

10 A She's out in the hall.

11 Q What is her name?

12 A It's Jill Dudley.

13 Q Jill Dudley?

14 A Yes, ma'am.

15 Q Okay. Do you know a lady named Rena?

16 A Yes, ma'am.

17 Q Okay. Who is Rena?

18 A In my real family, she's my Godmomma.

19 Q Your Godmomma?

20 A Yes, ma'am.

21 Q Okay. Did Rena take you to the hospital one time?

22 A Yes, ma'am.

23 Q Why did Rena take you to the hospital?

24 A Because Jill called her over there and told her to

25 take me.

██████████ DIRECT BY MS. SEAY

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1 MR. ROBINSON: Objection, Your Honor, I think
2 this is going to hearsay.

3 THE COURT: That's all right so far.

4 Go ahead.

5 BY MS. SEAY:

6 Q And why did you have to go to the hospital?

7 A Because when I stinkied -- this is when Jill first
8 found it out. When I stinkied, there was blood in
9 it.

10 Q When you stinkied, there was blood in it?

11 A Yes, ma'am.

12 Q Okay. Did you go to hospital for that?

13 A Yes, ma'am.

14 Q Okay. Did you go to the hospital after something
15 else bad happened to you?

16 A No, ma'am, not that I know of.

17 Q Okay. Let me ask you this, has anybody ever done
18 anything to make you feel bad?

19 A No, ma'am.

20 Q Has your daddy ever done anything to make you feel
21 bad?

22 A He has.

23 Q Okay. Can you -- I know -- is it embarrassing for
24 you to talk about?

25 A In front of all these people, it is.

1 Q In front of all these people. Okay. Well, they just
2 want to hear the truth, okay?

3 A Yes, ma'am.

4 Q So I know that it's hard to talk about, but it's very
5 important that you tell us the truth.

6 A Yes, ma'am.

7 Q What did your dad do to you?

8 A He put ice cream on my private spot, and then he put
9 his private spot in mine. And then he smeared the
10 ice cream down in there and then he -- and then he --
11 and then he -- he -- he --

12 Q It's okay. Just stop and think about what you're
13 trying to say.

14 A Yes, ma'am.

15 Q Do you have a name that you call your private spot?

16 A Yes, ma'am.

17 Q What do you call your private spot?

18 A We call it our cat.

19 Q I'm sorry, I didn't understand you.

20 A We call it our cat.

21 Q Your cat?

22 A Yes, ma'am.

23 Q Okay. And your dad put ice cream on your private
24 spot?

25 A Yes, ma'am.

- 1 Q Okay. Where did the ice cream come from?
- 2 A All I know is he got a spoonful of it. I don't know
- 3 where it came from.
- 4 Q Okay. A spoonful of it?
- 5 A Yes, ma'am.
- 6 Q And he put that on your private spot?
- 7 A Yes, ma'am.
- 8 Q And then what happened?
- 9 A And then -- and then Jill found it out and she called
- 10 Rena over there to take me to the hospital.
- 11 Q She called Rena to take you to the hospital?
- 12 A Yes, ma'am.
- 13 Q Did your dad touch your private spot with any part of
- 14 his body?
- 15 A He did, his private spot.
- 16 Q Okay. Do you have a name that you call his private
- 17 spot?
- 18 A Yes, ma'am.
- 19 Q What is it?
- 20 A Tootie.
- 21 Q I'm sorry, I didn't understand.
- 22 A We call it Tootie.
- 23 Q Okay. And he touched your private spot with his
- 24 private spot?
- 25 A Yes, ma'am.

- 1 Q Okay. Did that hurt you?
- 2 A Yes, ma'am.
- 3 Q Did you cry?
- 4 A Yes, ma'am.
- 5 Q Where were you when this happened?
- 6 A I was at his studio.
- 7 Q At his studio?
- 8 A Yes, ma'am.
- 9 Q How did you get over to his studio?
- 10 A Jill sent me to his momma's and his momma sent me
- 11 over to his house.
- 12 Q Okay. Jill took you to his momma's and his momma
- 13 took you to his studio?
- 14 A Yes, ma'am.
- 15 Q What is his momma's name, do you know?
- 16 A It's Ola.
- 17 Q Ola?
- 18 A Yes, ma'am.
- 19 Q Okay. When this happened to you at your dad's
- 20 studio, were your clothes off or on or something
- 21 else?
- 22 A My pants was off, my panties were halfway off.
- 23 Q Okay. What about your dad, did he have clothes off
- 24 or on or something else?
- 25 A His was halfway off.

[REDACTED] DIRECT BY MS. SEAY

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1 Q Okay. Did your dad say anything to you when this
2 happened?

3 A No, ma'am.

4 Q Did he tell you not to tell?

5 A He did say that.

6 MR. ROBINSON: Objection, Your Honor, asked and
7 answered.

8 THE COURT: No, it's all right.

9 Go ahead.

10 BY MS. SEAY:

11 Q Did he tell you not to tell anybody what had
12 happened?

13 A He did say that.

14 Q Okay. Do you know about what time of year it was
15 this took place?

16 A It was at Christmas.

17 Q Okay. Did you spend the night with your dad?

18 A No, ma'am, I just went over to spend Christmas with
19 him.

20 Q How did you get home?

21 A Jill come and picked me up from there.

22 Q Okay. Did you tell anybody what your dad had done?

23 A I told Jill.

24 Q Okay. What did Jill do?

25 MR. ROBINSON: Objection, Your Honor, calls for

1 speculation, hearsay.

2 THE COURT: No, she can testify as to what she
3 did, not what she said.

4 THE WITNESS: Jill and Keith got in an argument.
5 BY MS. SEAY:

6 Q Okay. [REDACTED] has anyone else ever done anything
7 like this to you?

8 A No, ma'am.

9 Q Okay. [REDACTED], what you just talked about, had
10 that ever happened to you before with your dad?

11 A Not until them three days.

12 Q Not until what, I'm sorry?

13 A Not until them three days.

14 Q Those three days?

15 A Yes, ma'am.

16 Q Did this kind of thing happen one time or more than
17 one time?

18 A It was three times.

19 Q Three times?

20 A Yes, ma'am.

21 Q Where did it happen the other times?

22 A They were all at his studio.

23 Q Okay. Was anybody else at his studio when this
24 happened?

25 A No, ma'am.

██████████ DIRECT BY MS. SEAY

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1 Q It was just you and your dad there?

2 A Yes, ma'am.

3 Q Okay. So after this happened, your mom -- you went
4 home to your mom's house; is that right?

5 A Yes, ma'am.

6 Q Okay. Did Rena take you to the hospital?

7 A Yes, ma'am.

8 Q Okay.

9 MS. SEAY: ██████████, those are all the
10 questions that I have for you. Would you please answer
11 any that your dad's lawyer has for you?

12 THE WITNESS: Yes, ma'am.

13 CROSS-EXAMINATION

14 BY MR. ROBINSON:

15 Q You know, social studies was my favorite subject,
16 too, when I was in school. Which part of the social
17 studies do you like best?

18 A I like to read.

19 Q Do you?

20 A Uh-huh.

21 Q Okay. What do you work on in school right now?

22 A Now, I'm doing social studies, math, English and
23 science.

24 Q Okay. And social studies is your favorite class?

25 A Uh-huh.

1 Q Is that right?

2 A Yes, sir.

3 Q Is there any part of the social studies that you
4 like, like do you like American history or European
5 history, anything like that? Do you get to write a
6 lot?

7 A Uh-huh.

8 Q Okay. [REDACTED], you have a problem going to the
9 bathroom, don't you?

10 A Sometimes I do now.

11 Q And you've had that since birth, haven't you? Is
12 that right?

13 A I think so.

14 Q You have a hard time going to poo, don't you?

15 A Yes, sir.

16 Q And you actually have to take medication for that,
17 don't you?

18 A Sometimes I do.

19 Q Do you? And you've gone to the North Hills
20 Pediatrics to get taken care of since you were born;
21 isn't that right?

22 A Now I'm going to Dr. Jones.

23 Q Okay. And they give you medicine for your bowel --
24 for your poo issues?

25 A Yes, sir.

- 1 Q Is that right?
- 2 A Yes, sir.
- 3 Q Okay. Now, the night before you went to your dad's,
- 4 you had eaten a bottle of cranberry sauce, hadn't
- 5 you?
- 6 A No, sir.
- 7 Q You hadn't eaten cranberry sauce?
- 8 A No, sir.
- 9 Q Did you eat anything like that before?
- 10 A No, sir.
- 11 Q Okay. Had you been having problem with your bowels
- 12 before, with your going to the bathroom before?
- 13 A Before that, I had it sometimes.
- 14 Q And you had blood in your panties from your problems
- 15 with your bowels or going to the bathroom before,
- 16 hadn't you?
- 17 A Not really.
- 18 Q I'm sorry?
- 19 A Not really.
- 20 Q You hadn't had a problem one time that you had to be
- 21 taken to the doctor because you couldn't go to the
- 22 bathroom, and when you went to the bathroom, you had
- 23 blood in your stool?
- 24 A Not that I know of.
- 25 Q Don't remember that, okay. Do you remember talking

1 to your dad, Keith, the night that you made this
2 statement that he had messed with you? Do you
3 remember talking to him after you had spoken to your
4 mom?

5 A No, sir.

6 Q Do you remember telling him that it was diarrhea? Do
7 you remember telling him that?

8 A I told Jill.

9 Q That it was diarrhea?

10 A Yes, sir.

11 Q And you had suffered from bouts of diarrhea before,
12 hadn't you? Is that a yes?

13 A When I used the bathroom, I did.

14 Q That you'd get diarrhea?

15 A Uh-huh.

16 Q How often did you get diarrhea?

17 A Not very often.

18 Q Huh?

19 A Not very often.

20 Q Okay. [REDACTED], prior to coming into court today,
21 you met with your stepparents to prepare for this
22 case, prepare for your testimony? You talked about
23 it with them, didn't you?

24 A Yeah.

25 Q And you actually also talked to the Solicitor prior

██████████ CROSS BY MR. ROBINSON

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1 to coming in here several times, didn't you?

2 A Yes, sir.

3 Q Okay. And you also talked to Rena several times
4 before you came in here today as well, didn't you?

5 A No, sir.

6 MS. SEAY: I'm sorry, I didn't understand her
7 answer to that question.

8 THE WITNESS: I said no.

9 MS. SEAY: You said no?

10 BY MR. ROBINSON:

11 Q Did you say yes or no?

12 A No, sir.

13 Q So you didn't meet out here with them?

14 A No, sir.

15 Q That wasn't you in the conference room down there?

16 A In the conference room? I didn't talk to them.

17 Q I'm sorry?

18 A I didn't talk to them.

19 Q Okay. ██████████, who told you to say what you
20 testified to today about this? Did someone tell you
21 to say something today about this?

22 A No, sir.

23 Q No, sir? No one talked to you prior to coming today
24 about what to say?

25 A Well, she -- my -- she -- she did and my mommy and

1 daddy did.

2 Q So your stepmom and your stepdad and the Prosecutor
3 talked to you before you came here today, right?

4 A Yes, sir.

5 Q Okay.

6 MR. ROBINSON: Beg the Court's indulgence.

7 BY MR. ROBINSON:

8 Q And, [REDACTED], at the beginning of your testimony
9 to the Solicitor a second ago, you said that there
10 was blood in your pants; is that correct?

11 A Yes, sir.

12 Q And that was from when you pooped; isn't that correct?

13 A It was from when he did it and then after that, I
14 pooped. That's what happened in my panties.

15 Q So the blood in your panties was from where?

16 A It was from -- it was from where he did it when I
17 pooped.

18 Q She did it when you pooped?

19 A It was from when he did it. It's just when I pooped,
20 the blood was from him doing all that stuff to me.

21 Q So you're saying it was from when he was doing all
22 that stuff to you; is that right?

23 A When he was doing all that stuff to me down in my
24 private spot.

25 Q Your private spot would be where? Where is your

1 private spot?

2 A My -- it's my --

3 Q Okay.

4 MR. ROBINSON: Thank you.

5 THE COURT: Any redirect?

6 MS. SEAY: No, sir, Your Honor. May she be
7 excused from the courtroom at this time?

8 THE COURT: Yes, ma'am.

9 Thank you. You can step down.

10 MS. SEAY: Your Honor, I have a matter that
11 we'll need to take up.

12 THE COURT: Okay.

13 Take the jury out.

14 (WHEREUPON, the jury left the courtroom at
15 approximately at approximately 3:20 p.m.)

16 THE COURT: All right. All right, Solicitor.

17 MS. SEAY: Your Honor, may it please the Court,

18 I want to pass up a case, State v. Jeffcoat. You're

19 probably familiar with it. I'll provide a copy to the

20 Defense as well. This case is very specific as to a

21 situation like this where the Defense suggest in

22 cross-examination of the victim that she has been coached

23 by parents or coached by the solicitor, which is what he

24 was implying with his cross-examination. I think he,

25 specifically, asked if I had told her what to say, and had

1 she met with me several times, and did she meet with her
2 parents to prepare. This case stands for the fact that if
3 a defense attorney does that, that any prior consistent
4 statements of the victim are admissible to rebut that
5 allegation of recent fabrication or improper influence.

6 So the State's position would be that from this
7 point forward, her prior consistent statements to other
8 persons would be admissible in their entirety. That is
9 what this case stands for.

10 MR. ROBINSON: I have not read this case, Your
11 Honor. I think what's good for the goose is good for the
12 gander. We have people that will say the exact same
13 thing, that she had inconsistent statements prior to this
14 time.

15 THE COURT: Well, I will give you a little time
16 to study this and you can let me know what your argument
17 is as to whether or not the questions you asked this
18 witness are covered in the case the Solicitor just gave
19 me.

20 Do you need an answer right now?

21 MS. SEAY: Well, I will need an answer before I
22 get to my third witness because -- or my third and fourth
23 witnesses because she made statements to them.

24 THE COURT: Okay. After your next witness, you
25 can let me know how you distinguish your comment from this

██████████ CROSS BY MR. ROBINSON

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1 case. All right.

2 THE BAILIFF: Some people outside want to know
3 if they can come in now?

4 THE COURT: Well, the witnesses have been
5 sequestered.

6 THE BAILIFF: It's not a witness.

7 THE COURT: People are wanting to know if they
8 can come in now?

9 MS. SEAY: I guess anyone who is not a witness.
10 The witnesses are sequestered.

11 THE COURT: All right. Solicitor.

12 MS. SEAY: The State calls Rena Bright.

13 THE CLERK: Ms. Bright, if you would come
14 forward and be sworn in, please. Place your left hand on
15 the Bible, raise your right.

16 RENA BRIGHT, after being duly sworn, testified
17 as follows:

18 THE CLERK: Thank you. You may be seated.
19 Would you state your full name for the record?

20 THE WITNESS: Full name is Elizabeth Rena
21 Bright.

22 THE CLERK: Thank you.

23 DIRECT EXAMINATION

24 BY MS. SEAY:

25 Q Good afternoon, Ms. Bright, how are you doing?

1 A All right.

2 Q Okay. And you go by Rena; is that correct?

3 A Yes, ma'am.

4 Q Okay. Ms. Bright, do you know [REDACTED] [REDACTED]?

5 A Yes, ma'am.

6 Q How do you know her?

7 A Through a friend of mine, her mother. Her mother and
8 I are good friends.

9 Q And what is her mother's name?

10 A Jill Dudley.

11 Q Did you have an occasion back in 2008 to take
12 [REDACTED] to the hospital?

13 A Yes, ma'am.

14 Q And without saying what another person said, why did
15 you take [REDACTED] to the hospital?

16 A I got a phone call that said she needed to go to the
17 doctor. And I took her -- North Hills was closed, so
18 I took her to Greenville Memorial.

19 Q Was this at her mother's request?

20 A Yes, ma'am.

21 Q Okay. And was it at her mother's request that you go
22 to North Hills first?

23 A Yes, ma'am.

24 Q Okay. What happened when you got to North Hills?

25 A They was closed because it was Christmas holidays.

RENA BRIGHT-DIRECT BY MS. SEAY

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- 1 Q So where did you go next?
- 2 A To Greenville Memorial.
- 3 Q Who was in the car?
- 4 A Me, [REDACTED] and her mother.
- 5 Q All right. Did you all three go into the hospital?
- 6 A Yes, ma'am.
- 7 Q All right. When you got into the hospital, where did
- 8 you go?
- 9 A I went to triage and signed [REDACTED] in, and then
- 10 they took us straight to the back.
- 11 Q Where did her mother go?
- 12 A She sit on the adult side for a little bit, then she
- 13 left.
- 14 Q She left the hospital?
- 15 A Yes, ma'am.
- 16 Q And you were there with [REDACTED] in charge of her?
- 17 A Yes, ma'am.
- 18 Q Okay. Did you give the nurses and the people there
- 19 information about why [REDACTED] was there?
- 20 A Yes, ma'am.
- 21 Q Okay. Did you also take in a pair of panties to the
- 22 hospital?
- 23 A Yes, ma'am.
- 24 Q Okay. Where did you get those?
- 25 A From Jill, her mother.

1 Q All right. And did you look at these panties?

2 A Jill had showed them to me when I got to her home.
3 She had showed them to me before she had put them in
4 a bag.

5 Q Did you notice anything about them?

6 MR. ROBINSON: Objection, Your Honor, calls for
7 speculation. She's not the proper witness --

8 THE COURT: Overruled.

9 Go ahead.

10 BY MS. SEAY:

11 Q Did you notice anything about the panties.

12 A There was blood on the panties.

13 Q Where was the blood?

14 A In the crotch area, in the middle part.

15 Q Okay. And so you took these into the hospital. Did
16 you turn them over to the appropriate people there?

17 A Yes, ma'am.

18 Q Okay. Did anybody tamper with those or anything like
19 that that you're aware of?

20 A No, ma'am, not to my knowledge.

21 Q Did you stay with [REDACTED] the entire time while
22 she had her examination and they did everything that
23 they had to do to her?

24 A Yes, ma'am.

25 Q Okay.

1 MS. SEAY: Those are all the questions I have.
2 Please answer any that Mr. Robinson may have.

3 THE COURT: Okay, Mr. Robinson.

4 MR. ROBINSON: I have no questions for this
5 witness, Your Honor.

6 THE COURT: Thank you, you can step down.
7 Take the jury out in the hallway just for a
8 moment for me, please.

9 MS. SEAY: May this witness excused at this
10 time?

11 THE COURT: Yes, ma'am, you're excused.

12 (WHEREUPON, the jury left the courtroom at
13 approximately 3:30 p.m.)

14 THE COURT: Mr. Robinson, can you distinguish
15 your questions from Jeffcoat?

16 MR. ROBINSON: As far as distinguishing, I have
17 no ability to do a Shepardizing on this case, whether it's
18 current law or not. But I think that if she plans on
19 doing that, then I have the same -- I think this is going
20 to stand from the idea that statements made prior to any
21 sort of contact with law enforcement or anything like that
22 would be something that can be brought into to rebut any
23 sort of thing. I think that I agree with Ms. Seay without
24 Shepardizing of this.

25 THE COURT: All right. I'm going to allow her

1 to rebut.

2 Okay. Bring the jury in.

3 (WHEREUPON, the jury entered the courtroom.)

4 THE COURT: Okay. Solicitor.

5 MS. SEAY: The State calls Carmen Johnson.

6 THE CLERK: Place your left hand on the Bible,
7 raise your right.

8 CARMEN JOHNSON, after being duly sworn,
9 testified as follows:

10 THE CLERK: Thank you. Please be seated. Would
11 you please state your full name for the record?

12 THE CLERK: Carmen Dorendorf Johnson.

13 THE CLERK: Thank you.

14 DIRECT EXAMINATION

15 BY MS. SEAY:

16 Q Ms. Johnson, I want you to state your name one more
17 time so I can make that all the jurors back here can
18 hear you.

19 A Carmen Dorendorf Johnson.

20 Q Thank you. Where are you currently employed?

21 A I am a pediatric ER nurse in the Greenville Memorial
22 Hospital emergency room in the pediatric section.

23 Q How long have you been employed there?

24 A I have been there a little over four years. This
25 year will be my fifth year. It will be five years in

CARMEN JOHNSON-DIRECT BY MS. SEAY

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1 April.

2 Q What is your educational background and your training
3 to perform your duties?

4 A I have a Bachelor's Degree in nursing from Clemson.

5 Q So you are a registered nurse; is that correct?

6 A Yes, ma'am.

7 Q Okay. Were you working in the Greenville Memorial
8 Hospital pediatric emergency room on December 26th of
9 2008?

10 A Yes, ma'am.

11 Q During that time, did you have an opportunity to
12 assist in the treatment of a patient by the name of
13 [REDACTED]?

14 A Yes, ma'am.

15 Q What time did she come to the hospital?

16 A I don't recall exactly what time she came in.

17 Q Okay. If I show you your records, could you look at
18 them and tell me?

19 A Yes.

20 Q Okay.

21 MS. SEAY: Mark these for identification
22 purposes only.

23 (WHEREUPON, State's Exhibit No. 4 was marked for
24 identification only.)

25 BY MS. SEAY:

1 Q This is State's Exhibit No. 4 for identification
2 purposes. Are those the medical records of
3 [REDACTED] from December 26th, 2008?

4 A Yes, ma'am.

5 Q All right. Can you look at them and tell me what
6 time she arrived?

7 A She arrived at 1654, was the actual time of triage.

8 Q So that would be 4:54 in the afternoon?

9 A Yes.

10 Q Okay. Do you have a specific protocol that you use
11 when treating a patient for a sexual assault?

12 A Yes, ma'am.

13 Q Okay. Let me show you --

14 MR. ROBINSON: Your Honor, I'm again to object
15 to the characterization by the Solicitor as far as a
16 sexual assault goes in this case.

17 THE COURT: Subject to your objection.

18 Go ahead.

19 MS. SEAY: Okay. Thank you.

20 For now, let's just mark this box for
21 identification purposes.

22 (WHEREUPON, State's Exhibit No. 5 was marked for
23 identification only.)

24 BY MS. SEAY:

25 Q All right. This is State's Exhibit No. 5 for

1 identification purposes. Can you tell me what this
2 box is?

3 A This is the sexual assault evidence collection kit
4 that we use for any sexual assault cases that come
5 in.

6 Q And is this the kit that you used when [REDACTED]
7 [REDACTED] came in?

8 A Yes.

9 Q Okay. Did you fill out the information on the front
10 of this box?

11 A Yes.

12 Q Okay. Is there also a specific form protocol that
13 you use when you're examining a patient for a sexual
14 assault?

15 A For our records?

16 Q No, for the sexual assault kit. Is there a specific
17 form that you use?

18 A There's paperwork -- when we first open the box,
19 there's paperwork that comes in the box with all the
20 envelopes and swabs and everything that we do for the
21 evidence collection, yes, there's paperwork.

22 Q All right. We'll go through those in just a minute.
23 What was [REDACTED] emotional state when you came
24 in contact with her?

25 A I took care of [REDACTED] after she had been sedated

1 to collect the evidence that needs to be collected
2 for the kit.

3 Q Okay. And what was her emotional state in terms of
4 how was she acting?

5 A She was crying, combative, fighting the staff during
6 the evidence collection.

7 Q Okay. All right. Let's go over the evidence
8 checklist. Can you refer to that in your records?

9 A Okay. Uh-huh. Okay.

10 Q Okay. All right. And it gives several things in it.
11 It ask you to check off all the items you collected;
12 is that right?

13 A Yes, ma'am.

14 Q Okay. I'm going to ask the court reporter to number
15 these packets, and then we'll go through them.

16 (WHEREUPON, State's Exhibit Nos. 6-19 were
17 marked for identification only.)

18 BY MS. SEAY:

19 Q Ms. Johnson, when you're referring to all the
20 materials that come in this box, are these the
21 packets that you're referring to?

22 A Yes.

23 Q Okay. Now, just going down the evidence checklist,
24 did you collect [REDACTED] outer clothing?

25 A Yes.

- 1 Q Okay. And did you collect her underwear?
- 2 A Yes.
- 3 Q Okay. Did you also collect a pair of underwear that
- 4 was brought in by her Godmother?
- 5 A Yes.
- 6 Q Okay. Okay. This is State's Exhibit No. 8, can you
- 7 tell me what that is, if you recognize it?
- 8 A Underwear, pink, taken off patient prior to evidence
- 9 collection.
- 10 Q Is that the underwear she was wearing when she came
- 11 into the hospital?
- 12 A Do I need to open it up and look at it or?
- 13 Q Well, I'll open it for you.
- 14 A Yes.
- 15 Q Okay. So that's what she had on when she came in?
- 16 A Yes.
- 17 Q Okay. And then you also collected another pair of
- 18 underwear that was brought in by her Godmother, you
- 19 stated?
- 20 A Yes.
- 21 Q Okay. All right. And this is item -- State's
- 22 Exhibit No. 12. Is that the underwear you collected?
- 23 A Yes.
- 24 Q Okay. Did you observe anything about this underwear?
- 25 A The underwear had a quarter-sized clot of blood in

1 the crotch part of the panties.

2 Q Did you notice any type of fecal material or anything
3 that looked like a bowel movement or anything like
4 that in the underwear?

5 A Not that I recall.

6 Q Okay. What did you do with this underwear? Did you
7 do anything with it to preserve it?

8 A When we obtain evidence, we -- our swabs, any items
9 that may be wet, we dry them. I put the underwear in
10 a dryer. It's a little machine that we have that
11 has -- you can stick the swabs in there. We do the
12 oral swabs, the vaginal, penile swabs, the rectal
13 swabs and dry them. And I dried the underwear in the
14 dryer for about an hour and a half because the clot
15 was wet. And it has like a fan underneath it that
16 blows air on it.

17 Q So it's more of a fan as opposed to a tumbling kind
18 of dryer?

19 A Yeah, it's a little mobile device like this. The lid
20 comes off and you can put the swabs in there. And it
21 has like a little grate area that you can lay items
22 on.

23 Q So you dried the blood prior to placing the panties
24 in this envelope?

25 A Yes.

- 1 Q And you secured these panties in this envelope?
- 2 A Yes.
- 3 Q Okay. This is State's Exhibit No. 11. And I know
- 4 those are not in any particular order, but if you'll
- 5 just see if you recognize that?
- 6 A Yes, these are head hairs.
- 7 Q Okay. Who are those head hairs from?
- 8 A From [REDACTED]
- 9 Q And is that part of the standard protocol to take
- 10 known head hairs and preserve them?
- 11 A It is. You pull certain pieces of hair from certain
- 12 different parts of the head.
- 13 Q Okay. This is item 10, known pubic hairs. Would you
- 14 see if you recognize that?
- 15 A Yes, but I didn't collect any pubic hair.
- 16 Q Why not?
- 17 A Because she was five at the time. Most
- 18 five-year-olds don't have pubic hair.
- 19 Q And this is State's Exhibit No. 19. Do you recognize
- 20 it?
- 21 A Yes.
- 22 Q Okay. What packet is that?
- 23 A This is miscellaneous body fluids.
- 24 Q Okay. This is State's Exhibit No. 18?
- 25 A This -- I did not collect -- it's the exhibit for

- 1 bite marks.
- 2 Q Did you observe any bite marks on [REDACTED]?
- 3 A I did not.
- 4 Q So you did not collect anything in relation to bite
- 5 marks?
- 6 A No.
- 7 Q This is State's Exhibit 17. Do you recognize it?
- 8 A Yes, fingernail scrapings, and I did collect those.
- 9 Q And how do you go about doing that?
- 10 A There's two packets -- two pieces of paper that come
- 11 in the packet, one right, one left. You put the
- 12 victim's hand over the piece of paper, and it comes
- 13 with a scraper, and you scrape underneath their
- 14 fingernails. You put the scraper back in there, fold
- 15 it all back up and put it back in the envelope.
- 16 Q And is that what you did?
- 17 A Yes, ma'am.
- 18 Q All right. And State's Exhibit No. 16?
- 19 A Oral swabs. And, yes, I collected those.
- 20 Q Okay. State's Exhibit No. 15?
- 21 A Rectal swabs. Yes, we collected those.
- 22 Q Okay. State's Exhibit No. 14?
- 23 A Vaginal swabs. And, yes, we collected those.
- 24 Q Okay. This is State's Exhibit No. 9?
- 25 A This is pubic hair combings.

CARMEN JOHNSON-DIRECT BY MS. SEAY

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- 1 Q Did you collect that?
- 2 A We combed, but there's no pubic hair to actually
3 comb. We just combed over that area. And it, also,
4 is a piece of paper you comb over with a comb, fold
5 it back up and you put it in the envelope.
- 6 Q All right. And this is State's Exhibit No. 7. Do
7 you recognize it?
- 8 A Known blood sample. Yes, we collected blood from
9 her.
- 10 Q All right. State's Exhibit No. 13?
- 11 A These are slides that we do that are from the mouth,
12 the vagina and the rectum. And after we collect the
13 swabs there, we put them on the slide.
- 14 Q Okay.
- 15 A Yes, we collected those.
- 16 Q All right. And then State's Exhibit No. 6?
- 17 A This is debris collection. And that -- we did not
18 collect that. There was no debris.
- 19 Q Okay. All right. And did you take all these packets
20 and secure them in this box?
- 21 A Yes.
- 22 Q Okay. Do you seal the box?
- 23 A We seal the box with these biohazard, the red
24 evidence stickers.
- 25 Q And that's what you did in this case?

1 A Yes.

2 Q All right. How was the victim behaving for her
3 pelvic examination?

4 A During the exam, she was combative, crying, trying to
5 hit the staff.

6 Q Was your collection difficult?

7 A Yes.

8 Q Okay. Now, there was also a doctor involved in
9 [REDACTED] treatment; is that correct?

10 A Yes, sir.

11 Q What was her name?

12 A Dr. Breann Bailey.

13 Q Were you present when she did her part of the sexual
14 assault exam?

15 A Yes.

16 Q Okay. What part of the exam does she conduct?

17 A She conducts the actual vaginal swabs that were done,
18 the actual exam of the rectum and the vagina and
19 collects those swabs.

20 Q All right. All right. After you secured this kit
21 and you said you taped it up, did you turn it over to
22 the law enforcement officer who was there on the
23 scene?

24 A Yes.

25 Q Okay.

1 MS. SEAY: Those are all the questions I have.
2 Please answer any Mr. Robinson may have for you.

3 THE COURT: Mr. Robinson.

4 MR. ROBINSON: May it please the Court.

5 CROSS-EXAMINATION

6 BY MR. ROBINSON:

7 Q Ma'am, you're a registered nurse; is that correct?

8 A Yes, sir.

9 Q And how many years of school did you go for that?

10 A Four.

11 Q Did you -- are you familiar with issues that children
12 have with bowel -- problems with bowel movements?

13 A Yes, sir.

14 Q You are. Isn't it true that bowel movements -- if
15 someone has difficulty with bowel movements, it can
16 cause blood in the rectum; isn't that true?

17 A I guess, yes.

18 Q Now, do you keep up with the latest nursing -- are
19 you required to go to classes and so forth?

20 A Yes, sir.

21 Q Things like that on a yearly basis; is that correct?

22 A Yes, sir.

23 Q Would it be fair to say that bowel problems -- I just
24 want to make sure I'm clear on this, that bowel
25 problems that kids have, what is that related to

1 exactly? Is it hereditary, is it diet, what is it
2 exactly? Why would children have bowel problems such
3 as passing and so forth?

4 A I don't know.

5 Q You don't know. But you do know that bowel problems,
6 such as passing and so forth, can cause blood to come
7 out; isn't that correct?

8 A If there's damage in the rectum, I guess there could
9 be blood that comes out, yes.

10 Q From difficult bowel movements?

11 A I guess it could.

12 MR. ROBINSON: Thank you.

13 THE COURT: Any redirect?

14 MS. SEAY: Nothing further from this witness.

15 THE COURT: Thank you. You can step down.

16 Can we excuse this witness?

17 MS. SEAY: Yes. Thank you.

18 The State calls Dr. Breann Bailey.

19 THE CLERK: Dr. Bailey, would come forward to be
20 sworn in, please. Would you please your left hand on the
21 Bible and raise your right hand to be sworn.

22 BREANN BAILEY, after being duly sworn, testified
23 as follows:

24 THE CLERK: Thank you. You may be seated.

25 State your full name for the record.

1 THE WITNESS: Breann Lynn Bailey.

2 DIRECT EXAMINATION

3 BY MS. SEAY:

4 Q Dr. Bailey, where are you currently employed?

5 A I am with the Virginia Osteophytic School in
6 Blacksburg, Virginia.

7 Q Okay. How long have you been employed there?

8 A Two and a half years.

9 Q All right. What type of medicine do you practice
10 there?

11 A General pediatrics.

12 Q Okay. And did you say two years, I'm sorry?

13 A Two and a half years.

14 Q Two and a half years, okay. And how long have you
15 been practicing medicine in total?

16 A Including residency or since residency?

17 Q Including your residency?

18 A Seven years.

19 Q Seven years?

20 A Uh-huh.

21 Q Would you please briefly describe what your training
22 and education are to qualify you as a medical doctor?

23 A I attended medical school at Marshall University in
24 West Virginia. I did my pediatric residency here in
25 Greenville, South Carolina.

1 Q Okay. And what were your duties as a pediatric
2 resident here at Greenville Memorial Hospital?

3 A As a resident, we took care of patients in the
4 hospital on the pediatric floor and the ICU and the
5 neonatal intensive care unit and in an outpatient
6 clinic in the emergency room under the supervision of
7 attending physicians.

8 Q Okay. Were you were working in the pediatric
9 emergency room of Greenville Memorial Hospital on
10 December 26th, 2008?

11 A Yes, ma'am.

12 Q And what role did you play in the sexual assault
13 examination and collection of evidence of [REDACTED]
14 [REDACTED]?

15 A I was the pediatrician who initially saw the patient
16 when she presented to the emergency room with the
17 complaints.

18 Q Okay. Do you have your records with you today
19 concerning her sexual assault exam?

20 A Yes, ma'am.

21 Q Okay. And whose handwriting was used to document the
22 pelvic examination?

23 A That was my handwriting.

24 Q All right. And did you have to administer medication
25 to [REDACTED] on that date?

BREANN BAILEY-DIRECT BY MS. SEAY

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- 1 A Yes, ma'am.
- 2 Q What did you give her?
- 3 A Versed orally.
- 4 Q Okay. What is the affect of that medicine?
- 5 A It's generally used for anxiolytic, meaning anxiety,
- 6 and sometimes for sedation, depending on the dose.
- 7 Q Why were you trying to sedate [REDACTED]?
- 8 A Just to make her more calm and cooperative during the
- 9 exam, making it easier for her to have it done.
- 10 Q All right. And, in fact, how was she behaving?
- 11 A She was actually quite combative, fighting with us to
- 12 get the exam. Difficult to hold still, just moving
- 13 around a lot on the bed and not cooperative.
- 14 Q Okay. Did you interview [REDACTED]?
- 15 A Yes, ma'am.
- 16 Q Would you please -- you can refer to your notes if
- 17 you need to. Would you please tell the Court what
- 18 [REDACTED] told you?

19 MR. ROBINSON: Your Honor, I'm going to make the

20 objection that it's hearsay and improper bolstering.

21 THE COURT: All right. Subject to your

22 objection.

23 Go ahead.

24 MS. SEAY: And, Your Honor, this is pursuant to

25 State vs. Jeffcoat.

1 THE COURT: Yes. Go ahead.

2 BY MS. SEAY:

3 Q You can read what [REDACTED] told you, please.

4 A [REDACTED] told me that her father had touched her
5 two different times. Once near Christmas and once
6 when it wasn't Christmas. And that he had touched
7 her in the bottom and he had touched her on the butt
8 and touched her with both his hands and his face,
9 that he had sat on her and stepped on her bottom area
10 and it hurt when he did so. She was able to describe
11 the father's genitalia as a worm and states that he
12 touched her with his worm in the bottom area. And he
13 also put ice cream on her bottom, that she had to
14 take a bath to wash off.

15 Q What specific area of her body did you examine?

16 A I did a general exam, meaning just listening to her
17 heart and lungs and looked at her skin and her
18 general state. Then we, specifically, examined her
19 external genitalia and her rectal area.

20 Q Okay. And did you note any form of possible injury
21 or trauma to that area of her body?

22 A She had a small laceration as part of her external
23 genitalia exam.

24 Q Where was that laceration located?

25 A May I refer to my notes?

- 1 Q Yes.
- 2 A The laceration was -- the laceration was on the right
3 side of the labia minora -- between the labia majora
4 and the labia minora where the mucus membrane starts.
- 5 Q Okay. And did you document that on your records
6 there?
- 7 A Yes, ma'am.
- 8 Q All right. Were able to get a good look at her
9 external genitalia?
- 10 A We were able to visualize her external genitalia
11 pretty easily, but we were unable to get an internal
12 exam because of her combativeness during the
13 procedure.
- 14 Q Okay. And so what, if anything, did you observe
15 about her external genitalia?
- 16 A She did have some mild to moderate erythema around
17 the vaginal opening and then the laceration I stated,
18 but no --
- 19 Q Would you explain what erythema is?
- 20 A It's just redness. The color of the skin kind of
21 looks red, irritated.
- 22 Q And a laceration is a scratch; is that correct?
- 23 A Or a cut, an opening to the skin, uh-huh.
- 24 Q Okay. Did you -- were you aware of her being brought
25 in with a pair of panties?

1 A Yes, ma'am.

2 Q Did you observe those panties?

3 A Yes, ma'am.

4 Q What did you observe about them?

5 A There was a thick clot of blood in the panty area, in
6 the crotch area.

7 Q All right. Did you notice any fecal matter or
8 anything that appeared to be like a bowel movement or
9 anything like that in the panties?

10 A Not that I recall, no.

11 Q Did you note that in your records?

12 A No.

13 Q Could, in your opinion, the clot that you saw in the
14 panties, could it have come from the laceration that
15 you observed?

16 A Unlikely. It was a small laceration.

17 Q So you think that would be unlikely?

18 A Yes, ma'am.

19 Q Okay. Did you make any recommendations for her to be
20 further evaluated?

21 A Yes, ma'am. We definitely wanted her to be evaluated
22 by the advocacy center. And then, also, probably
23 just needed a general pediatric exam for some hair
24 findings that we had seen during the exam.

25 Q Would you describe what you're talking about when you

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1 say that?

2 A We just noted that she had some fine, maybe some
3 darker-colored hair over the pubic area and around
4 the rectal area that is not always seen in a child of
5 her age. So I felt that she probably just needed a
6 general exam to make sure that that was normal for
7 her.

8 Q Okay. So you referred her to the child advocacy
9 center?

10 A Yes, ma'am.

11 Q Okay. And at the time you examined her, did you note
12 whether [REDACTED] had any breast tissue or breast
13 development at that time?

14 A She did not.

15 Q Okay. And did you have any information as to whether
16 this blood could be related to a menstrual cycle?

17 A I didn't have any information that supported that,
18 no.

19 Q Okay. And in your opinion, how likely would that be
20 for a five-year-old female?

21 A Highly unlikely.

22 Q Okay. Are you aware or have you reviewed records
23 from the advocacy center as to their findings in
24 regard to [REDACTED]?

25 A I have not reviewed any records from the advocacy

1 center.

2 Q Okay. Are you aware that the doctor there made an
3 additional finding?

4 A Yes, ma'am.

5 Q Okay. And is this something that you noted on your
6 exam?

7 A No, ma'am.

8 Q Do you know why not?

9 A I would theorize because we did not get a very good
10 look at the internal parts of her genitalia area
11 because she was being so combative and making it very
12 difficult for us to get a relaxed exam.

13 Q Okay. Do you know what a colposcope is?

14 A Yes, ma'am.

15 Q Can you tell the jury what a colposcope is?

16 A It's just a device that's used to look at the
17 internal parts of the female genitalia, including the
18 cervix.

19 Q Is it -- is my understanding correct, is it kind of a
20 magnification device?

21 A Yes.

22 Q Okay. Did you have one of those available to you to
23 perform your exam?

24 A Not to my knowledge.

25 Q Okay. And do you have any training in using that?

- 1 A No, ma'am, I don't.
- 2 Q Okay. Do you have any specialized training in
- 3 conducting sexual assault examinations?
- 4 A No, ma'am.
- 5 Q And was that just something you were asked to do as
- 6 part of your residency?
- 7 A I'm sorry?
- 8 Q You were asked to do sexual assault exams as part of
- 9 your residency?
- 10 A We certainly learned about them, but I wasn't asked
- 11 to specifically do any sexual assault exams as part
- 12 of residency.
- 13 Q But you did, in fact, conduct this one, correct?
- 14 A Yes, ma'am.
- 15 Q Okay. Are there any -- well, let me ask you this
- 16 first. The whole exam that we've been talking about,
- 17 what is the purpose of that exam?
- 18 A The sexual assault exam?
- 19 Q Uh-huh.
- 20 A That is to look for any evidence, including forensic
- 21 evidence that a child has been sexually abused.
- 22 Q Okay. And are there any factors that would
- 23 compromise the ability to collect evidence in a case
- 24 like -- of a sexual assault exam?
- 25 A Certainly, time frame plays a part, also, whether or

1 not the child has had a bath or has changed clothing
2 and, also, the cooperative nature of the child.

3 Q Okay. What about if the child has gone to the
4 bathroom, would that also be a factor that could
5 compromise --

6 A Certain specimens --

7 Q -- collection?

8 A Yes, ma'am.

9 Q And Dr. Bailey, I'll just show you State's Exhibit No
10 5. We won't go through all the packets because we've
11 already done that with Nurse Carmen Johnson, but is
12 this, in fact, the standard protocol kit that you use
13 for sexual assault collection?

14 A Yes, ma'am.

15 Q Okay. And is this the one that was used in this
16 case?

17 A Yes, ma'am.

18 Q Okay. And it has her name there?

19 A Yes.

20 Q Okay.

21 MS. SEAY: Thank you. Dr. Bailey, those are all
22 the questions that I have. Please answer any that Mr.
23 Robinson may have for you.

24 THE COURT: Mr. Robinson.

25 MR. ROBINSON: May it please the Court..

CROSS-EXAMINATION

BY MR. ROBINSON:

Q Good afternoon, Doctor.

A Good afternoon.

Q Now, you did the examination of this child; is that correct?

A Yes, sir.

Q And the hymen was intact according to your exam; is that correct?

A As best as I could tell.

Q And, also, there were no lacerations you included in your report?

A Of the hymenal area.

Q So nothing that would indicate any sort of intrusion of the hymen area, correct?

A Not on my exam.

Q I think in your report as far as the child, you described the child as being happy, smiling and playful; is that correct?

A Yes.

Q As far as this laceration that we're talking about, it's a scratch, is that what it is, a scratch?

A Yes.

Q You don't know what that's related to, do you?

A No.

1 Q Ma'am, in terms of this particular child, the child
2 had been -- I think your report talks about the child
3 had been to North Hills Pediatrics; is that correct?

4 A That's the primary care provider.

5 Q Did you get a chance to look at their records prior
6 to examining this child?

7 A No.

8 Q You didn't, okay. Now, as far as you're training
9 goes on and so forth, let's talk about bowel
10 movements of children. Isn't it true that some
11 children have problems with bowel movements?

12 A Yes.

13 Q And that's related to both hereditary and diet; is
14 that correct?

15 A Yes.

16 Q Okay. Now, what kind of treatment would be given to
17 a child who had that kind of problem with bowel
18 movements?

19 A Depending on the severity, usually starting with a
20 stool softener.

21 Q Then what else?

22 A Sometime laxatives and suppositories are used.

23 Q Okay. Isn't it true that if there's a bad bowel
24 movement problem, there can be blood; is that
25 correct?

1 A Yes, sir.

2 Q And that blood clot could be related to a bowel
3 movement, couldn't it?

4 A Specifically, this blood clot?

5 Q Yes.

6 A It would be unlikely.

7 Q But you're not sure what it's from; is that correct?

8 A Correct.

9 MR. ROBINSON: That's all I have, thank you.

10 THE COURT: Any redirect?

11 MS. SEAY: Nothing further. Oh, there is one
12 question that I did have. May I ask her that one
13 question?

14 THE COURT: Yes.

15 REDIRECT EXAMINATION

16 BY MS. SEAY:

17 Q At what point was [REDACTED] -- I believe you
18 described her as happy and smiling. At what point
19 was that?

20 A That was on our initial encounter with her, meaning
21 in the room before we had started to do the genital
22 exam, she was a very happy, pleasant young lady to
23 talk to. It wasn't until after we had asked her to
24 get undressed and tried to calm her with sedation
25 medication that she became combative.

1 Q Thank you. I just wanted to clear that up.

2 MS. SEAY: May this witness be excused?

3 THE COURT: Any objection?

4 MR. ROBINSON: I have just one re-cross, Your
5 Honor.

6 RECROSS-EXAMINATION

7 BY MR. ROBINSON:

8 Q So it's true that when she was brought in to you,
9 when you first examined her, she was playful and
10 happy and smiling?

11 A When we were doing the interview, yes.

12 MR. ROBINSON: Thank you.

13 THE COURT: Thank you. You can be excused.

14 Okay. We'll take a short recess.

15 Take the jury out, please.

16 (WHEREUPON, the jury left the courtroom at
17 approximately 4:15 p.m.)

18 (WHEREUPON, a short break was taken.)

19 THE COURT: Okay, bring the jury.

20 (WHEREUPON, the jury came into open court at
21 approximately 4:25 p.m..)

22 THE COURT: Okay. Solicitor.

23 MS. SEAY: Thank you. Your Honor, the State
24 calls Officer Jonathan Taylor.

25 THE CLERK: Officer Taylor, if you would please

1 come forward and be sworn. Please place your left hand on
2 the Bible, raise your right hand.

3 JONATHAN TAYLOR, after being duly sworn,
4 testified as follows:

5 THE CLERK: Thank you. Would you, please, state
6 your full name for the record.

7 THE WITNESS: My name is Jonathan Morris Taylor.

8 THE CLERK: Thank you.

9 DIRECT EXAMINATION

10 BY MS. SEAY:

11 Q Officer Taylor, are you comfortable?

12 A I am.

13 Q Okay. Where are you currently employed?

14 A I'm currently employed at Springdale Police
15 Department.

16 Q Where is that located?

17 A It's located in West Columbia, South Carolina.

18 Q How long have you been employed there?

19 A Been there now about a year and a half.

20 Q And prior to that, where were you employed?

21 A I was employed at the Greenville County Sheriff's
22 Office.

23 Q How long were you employed with the Greenville County
24 Sheriff's Office?

25 A Approximately two and a half years.

1 Q What were your duties when you were with the
2 Greenville County Sheriff's Office?

3 A I worked uniform patrol. My primary duty was to
4 answer calls for service.

5 Q Okay. And what is your training and education to be
6 a law enforcement officer?

7 A I have my Bachelor of Arts degree in criminal justice
8 from the Citadel.

9 Q Okay. And have you also completed courses at the
10 Criminal Justice Academy?

11 A That's correct.

12 Q So you are a certified law enforcement officer?

13 A Yes, ma'am.

14 Q Okay. When you were employed with the Greenville
15 County Sheriff's Office, were you employed on
16 December 26th, 2008?

17 A That's correct.

18 Q Did you have an occasion to respond to Greenville
19 Memorial Hospital on that date in inference to

20 [REDACTED]?

21 A I did.

22 Q And do you know about what time you got there?

23 A I believe I got there -- I believe around 8 o'clock
24 that night.

25 Q Okay. And did you meet with anybody when you got

1 there?

2 A When I got there, I met with [REDACTED] herself as
3 well as Elizabeth Rena Bright.

4 Q Okay. And did you speak briefly with [REDACTED]
5 about why she was there?

6 A I did.

7 Q Would you please tell us what she told you the reason
8 she was there for?

9 MR. ROBINSON: Objection, Your Honor, hearsay
10 and improper bolstering.

11 THE COURT: Overruled.

12 BY MS. SEAY:

13 Q [REDACTED] stated that she had been sexually
14 assaulted by her father. Did she tell you where that
15 happened?

16 A That's correct.

17 Q Did she tell you where it happened?

18 A Yes, ma'am.

19 Q Where did she say it had happened?

20 A She stated her father's studio.

21 Q Okay. And did she say when it had happened?

22 A That's correct.

23 Q When did she say it happened?

24 A She stated it happened on Christmas Eve.

25 Q Did she tell you anything else about the assault?

1 A That's correct. She described many details about
2 what happened.

3 Q Okay. You're permitted to go ahead if you want to
4 and refer to your report and tell us what she told
5 you?

6 A In [REDACTED]'s words, she stated that her dad took
7 her panties off and put ice cream on her butt as well
8 as he also put ice cream on her twat, which she was
9 referring to her vaginal area, and that he stuck his
10 pee-pee in her pee-pee.

11 Q Okay. Did she tell you anything else?

12 A She also stated that this had happened to her before
13 by him.

14 Q Okay. Did you call in Investigator James Austin from
15 the sex crimes unit to come to the hospital?

16 A That's correct.

17 Q All right. Did he respond to the hospital to meet
18 with you?

19 A Yes, ma'am.

20 Q Was the standard procedure that you would call in a
21 sex crimes investigator in a case of this nature?

22 A Yes, ma'am.

23 Q Did you -- without saying what she said, did you
24 speak with the child's mother, Jill Dudley, on the
25 telephone?

JONATHAN TAYLOR-DIRECT BY MS. SEAY

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1 A I did.

2 Q Okay. And did you collect the sexual assault kit
3 that is right here, State's Exhibit No. 5, did you
4 collect this from the nurse?

5 A That's correct. That was collected and placed in
6 property and evidence.

7 Q And your initials appear here, I believe?

8 A Yes, ma'am.

9 Q Okay. When you collected this box, was it sealed up?

10 A That's correct.

11 Q All right. And then you took it and you said you put
12 it into property and evidence, is that a secure
13 location?

14 A That's correct.

15 Q Okay.

16 MS. SEAY: And those are all the questions that
17 I have for you, Officer Taylor. Please answer any
18 questions Mr. Robinson may have.

19 THE COURT: Mr. Robinson.

20 MR. ROBINSON: May it please the Court.

21 CROSS-EXAMINATION

22 BY MR. ROBINSON:

23 Q Didn't the child also say that she had her period?

24 A That's correct. Well, I believe she may have told
25 her mom that.

1 Q Okay. Didn't you also learn that she had been to the
2 doctors at North Hills Pediatrics before? You
3 learned that as well; is that correct?

4 A That's what the mother had said on the phone.

5 Q Did you also learn that when she went there, that the
6 blood from her panties had come from diarrhea?

7 A That's what was said by the mother.

8 MR. ROBINSON: Thank you.

9 THE COURT: Step down.

10 MS. SEAY: May Officer Taylor be excused, Your
11 Honor?

12 THE COURT: Any objection?

13 MR. ROBINSON: No objection, Your Honor.

14 MS. SEAY: The State calls James Austin.

15 THE CLERK: Mr. Austin, if you would please
16 place your left hand on the Bible and raise your right
17 hand to be sworn.

18 JAMES AUSTIN, after being duly sworn, testified
19 as follows:

20 THE CLERK: Thank you. Please be seated. Would
21 you state your name for the record?

22 THE WITNESS: James Raleigh Austin.

23 DIRECT EXAMINATION

24 BY MS. SEAY:

25 Q Mr. Austin, I believe you are currently retired; is

- 1 that correct?
- 2 A Yes, ma'am.
- 3 Q From what agency did you retire?
- 4 A From Greenville County Sheriff's Office.
- 5 Q How long were you employed with the Greenville County
- 6 Sheriff's Office?
- 7 A Twenty-one years with the sheriff's office, 35 with
- 8 law enforcement.
- 9 Q Okay. So you have 35 years in law enforcement?
- 10 A Yes, ma'am.
- 11 Q Okay. And what was your previous law enforcement
- 12 experience prior to the sheriff's office?
- 13 A Ten years with the City, Greenville City, and I was
- 14 with the Housing Authority in the capacity of a law
- 15 enforcement officer, also.
- 16 Q Okay. Would you briefly describe what your training
- 17 and education was to make you a certified law
- 18 enforcement office?
- 19 A Yes. I'm a graduate of South Carolina Police
- 20 Academy. Numerous training hours in sex crimes,
- 21 homicide, auto theft, a lot. Plus, we get annual
- 22 training every year.
- 23 Q Back in 2008, what department were you working in?
- 24 A I was in the sex crimes unit.
- 25 Q How many years did you work in the sex crimes unit?

1 A Thirteen.

2 Q Okay. Did you have -- did you have experience -- I
3 mean, excuse me, did you have specific training to be
4 a sex crimes investigator?

5 A Yes. I was sent to Louisville, Kentucky, for
6 specific training in sex crimes.

7 Q And during the course of your 13 years in the sex
8 crimes division, did you have an opportunity to
9 interview lots of children?

10 A Yes, I did.

11 Q Okay. Do you have any idea as to the number of
12 children you may have dealt with?

13 A Well, it was over a thousand, yes.

14 Q Okay. Did you respond to Greenville Memorial
15 Hospital on December 26th, December 27th of 2008?

16 A Yes, I did.

17 Q Okay. Approximately, what time did you arrive?

18 A I think it was close to midnight, it was somewhere
19 between 11:30 and midnight.

20 Q And were you aware that [REDACTED] [REDACTED] had been
21 there since about 4:00 that afternoon?

22 A Yes. The uniform patrol officer advised me how long
23 they had been there.

24 Q Okay. And what was [REDACTED] -- did you try to talk
25 to [REDACTED] at the hospital?

1 A Yes, I did.

2 Q What was her condition at that time?

3 A Well, she had been given a sedative, so she was kind
4 of out of it.

5 Q Okay. Did she give you -- was she able to give you
6 any information at that time about what happened to
7 her?

8 A Yeah, she gave me a little bit of information.

9 Q What did she tell you?

10 MR. ROBINSON: Your Honor, I'm going to make the
11 same objection, hearsay and improper bolstering.

12 THE COURT: Okay.

13 Proceed. Go ahead.

14 THE WITNESS: I drew a stick figure of a female
15 and a male and asked her to name the body parts. And she
16 named the belly button. She called the vaginal area a
17 twat. She named the leg, foot. That was on the female
18 figure. Then she named on the male stick figure a worm
19 for penis, leg, foot and the head.

20 BY MS. SEAY:

21 Q Okay. Did she give you any information about what
22 happened to her?

23 A I asked her why she was in the hospital, and she
24 stated she was there because of what her dad had done
25 to her. She said her daddy put ice cream on her

1 twat, and then she started talking about something
2 else. So I think because of the sedative, she kind
3 of lost concentration.

4 Q All right. Did you make arrangements to interview
5 her at a later date?

6 A Yes, I did.

7 Q Okay. While you were at the hospital, was her mother
8 there to take custody of her?

9 A No, she wasn't. DSS was there and --

10 MR. ROBINSON: Objection, Your Honor. Hearsay
11 and irrelevant.

12 THE COURT: I'm going to sustain that.

13 BY MS. SEAY:

14 Q Okay. So you made arrangements to interview
15 ██████████ again at a later date?

16 A Yes.

17 Q What date did you interview her again?

18 A Monday, that following Monday.

19 Q All right. Do you know the date?

20 A It was the 29th, I think.

21 Q Okay. December 29th, 2008?

22 A Yes.

23 Q All right. Where did that interview take place?

24 A ██████████ was at the Children's Center on Pendleton
25 Street.

1 Q Okay. How old was she at that time?

2 A She was five.

3 Q All right. Did she give you any information at that
4 interview about what had happened to her?

5 A Yes, she did.

6 Q Can you please tell us what she told you?

7 MR. ROBINSON: Your Honor, same objection,
8 hearsay, bolstering.

9 THE COURT: Okay. Go ahead.

10 THE WITNESS: She -- I asked her how old she
11 was. She said she was five. I asked her who she lived
12 with. She said her mom. What was her momma's name. She
13 said Jill Dudley. What was her dad's name. She Keith
14 Desue. And I asked where her daddy lived, and she said at
15 the studio. Where did she live. She said [REDACTED]
16 [REDACTED]. Did she go to school. She said no. I showed her
17 some figures of a preschool adolescent and asked her to
18 name some body parts. And she named on the body parts,
19 the preschool black female, eyes, nose, lips, nipple,
20 belly button, twat, vaginal area, knee, foot, hair, ear
21 and neck. On the black adult male, she named the
22 depiction of a male penis a worm.

23 BY MS. SEAY:

24 Q Okay. Did she tell you that she had been to her
25 dad's house?

- 1 A Yes. I asked her did she ever go over to her dad's
2 house, and she stated sometimes. She was asked could
3 she remember the last time she was at her dad's, and
4 she said Christmas. She stated she spent the night.
5 She was asked what did she do while she was at her
6 dad's house, she said watched TV. I asked her did
7 anything else happen. She stated her dad put ice
8 cream on her twat and licked it off. She stated he
9 put ice cream on his worm and had her to lick it off.
10 She stated that her dad sat on her and stepped on
11 her. And she stated that her dad touched her butt
12 and put his worm in her twat.
- 13 Q Did she tell you anything else?
- 14 A Yes. She stated that her dad told her not to tell
15 anybody what happened with the ice cream because he
16 would get in trouble and he would have to kill her
17 and himself.
- 18 Q Did she tell you anything --
- 19 A She stated he had knife in the room at the time.
- 20 Q All right --
- 21 A And she stated --
- 22 Q I'm sorry, go ahead.
- 23 A She stated it took place in the bedroom of the
24 studio.
- 25 Q All right. Did she tell you anything about how she

1 got to her dad's house?

2 A Well, when I asked her that day, she told me that her
3 dad came to her house and picked her up and took her
4 to the studio.

5 Q Okay. All right. Did she say that she had told her
6 mother about what happened?

7 A Yes, she did.

8 Q Okay. Did she say she thought she had her period?

9 A I got that information. She didn't tell me that. I
10 think I got that from Ms. Bright.

11 Q Okay. I'm referring to your report, the last
12 paragraph of page two of two?

13 A Okay. Oh, yeah, okay. Stated she told her momma
14 what had taken place and she saw blood in her
15 panties. She states she thought she had a period.
16 She told her momma and her momma asked had anybody
17 touched her down there and she told her momma what
18 had happened with her dad.

19 Q Okay. All right. Investigator Austin, did you --
20 were you able to determine where this studio was that
21 her dad lived at?

22 A Yes. It was [REDACTED].

23 Q And is that in Greenville County?

24 A Yes, it is.

25 Q Okay. Did you refer [REDACTED] for a follow-up

1 medical exam at the Children's Advocacy Center?

2 A Yes. I think the hospital had already did it, but we
3 followed up and made sure that they had it scheduled
4 over there.

5 Q Did you also refer her for a forensic interview?

6 A Yes.

7 Q And was that standard procedure in your capacity as a
8 sex crimes investigator?

9 A Yes, we did that.

10 (WHEREUPON, State's Exhibit Nos. 2 & 3 were
11 marked for identification and received into
12 evidence.)

13 BY MS. SEAY:

14 Q Okay. I want to show you what has been marked as
15 State's Exhibit No. 2 and No. 3 for identification
16 purposes. Do you recognize those photographs?

17 A Yes, that's the bed at the studio.

18 Q Okay. That's No. 2. And then No. 3, what is that?

19 A This was taken out of the refrigerator at the studio.

20 Q So that's a photograph of the refrigerator at Keith
21 Desue's house.

22 A Yes.

23 Q Okay. And let me show you another item.

24 MS. SEAY: First of all, I'd like to back up and
25 offer State's Exhibit 2 and 3 into evidence at this time.

JAMES AUSTIN-DIRECT BY MS. SEAY

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1 THE COURT: Any objection?

2 MR. ROBINSON: No objection, Your Honor.

3 THE COURT: Without objection.

4 (WHEREUPON, State's Exhibit Nos. 2 & 3 were
5 admitted into evidence.)

6 BY MS. SEAY:

7 Q All right. Let me show you this, which we'll get
8 marked for identification.

9 (WHEREUPON, State's Exhibit No. 20 was marked
10 for identification only.)

11 BY MS. SEAY:

12 Q Let me show you State's Exhibit No. 20 for
13 identification. It's item DES-4. Let me ask if you
14 recognize this?

15 A Yes, that was in the little kit that was in the
16 refrigerator.

17 Q This was in Keith Desue's refrigerator?

18 A Yes.

19 Q Were you present when this was collected?

20 A Yes, I was.

21 MS. SEAY: I would offer this into evidence at
22 this time, Your Honor.

23 THE COURT: Any objection?

24 MR. ROBINSON: No objection.

25 MS. SEAY: State's Exhibit No. 20.

1 (WHEREUPON, State's Exhibit No. 20 was admitted
2 into evidence.)

3 MS. SEAY: Investigator Austin, those are all
4 the questions I have for you. If you'd please answer any
5 that Mr. Robinson may have.

6 THE COURT: Mr. Robinson.

7 MR. ROBINSON: May it please the Court.

8 CROSS-EXAMINATION

9 BY MR. ROBINSON:

10 Q Investigator, you did a search of the premises; is
11 that correct?

12 A That's correct.

13 Q Of Mr. Desue; is that right?

14 A Yes.

15 Q And that was pursuant to a search warrant; isn't that
16 correct?

17 A That's correct.

18 Q And you have your file there with you, don't you?

19 A Yes.

20 Q When you did a search of Mr. Desue -- Keith's
21 residence, you didn't find a knife, did you?

22 A No, I didn't.

23 Q Okay. And, also, at this residence, in terms of all
24 these items that you took and so forth, as far as
25 this particular residence goes, there was a TV; is

1 that right? There was a TV there? There was a TV,
2 right?

3 A I can't recall.

4 Q Don't recall?

5 A May have been.

6 Q And it's your testimony then that this child said her
7 father sat on top of her; is that right?

8 A I didn't understand if she said stepped on her, then
9 he sat on her. I didn't understand what she was
10 saying.

11 Q But you saw her and you didn't see any bruising or
12 any sort of thing like that, did you?

13 A No, I didn't.

14 Q And you had information that she had told someone,
15 either you or someone else in your office that she
16 had had her period; isn't that right?

17 A Yes, but she was five. She was bleeding. I don't
18 know where she got that from.

19 Q So what she was talking about didn't make any sense,
20 did it?

21 A Well, it could have to a five-year-old. She was
22 bleeding. She had blood in her panties. She might
23 have thought she had a period, I don't know.

24 Q So she may have thought she had a period. Okay. You
25 also say in your report -- and this is -- you said at

1 one point that she kind of -- you kind of lose -- or
2 she kind of lost her train of thought; isn't that
3 correct?

4 A Yes.

5 Q She kind of went off in the distance; is that right?

6 A Yes.

7 Q That was after you asked some of these questions; is
8 that right?

9 A Well, I ask her a few questions, but, like I said,
10 they had given her a sedative, so I think the
11 sedative was taking effect on her.

12 Q She didn't appear to be in any trauma or anything
13 like that, did she?

14 A No, no, no. She just seemed like -- she just looked
15 like the sedative was taking effect on her.

16 MR. ROBINSON: Thank you.

17 MS. SEAY: Briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MS. SEAY:

20 Q Mr. Austin, on what date did you go to Mr. Desue's
21 residence and collect the items we entered into
22 evidence?

23 A It was December the 30th.

24 Q Of 2008?

25 A Yes.

1 Q Okay.

2 MS. SEAY: Thank you. Those are all the
3 questions I have.

4 MR. ROBINSON: Your Honor, I have a follow-up.

5 RECROSS-EXAMINATION

6 BY MR. ROBINSON:

7 Q So when you came to this house, it was actually five
8 days after Christmas, right?

9 A Yes.

10 Q You don't know how long those sheets had been like
11 that or how long that ice cream was in the
12 refrigerator, correct?

13 A No, I don't.

14 THE COURT: Thank you. You can step down.
15 Do you have a short witness?

16 MS. SEAY: I do have one short one.

17 The State calls Amie Heil.

18 THE CLERK: Would you please come forward to be
19 sworn? Please place your left hand on the Bible and raise
20 your right.

21 AMIE HALL, after being duly sworn, testified as
22 follows:

23 THE CLERK: Thank you. You may be seated.
24 State your full name for the record.

25 THE WITNESS: Amie Goodwin Heil.

1 THE CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MS. SEAY:

4 Q Ms. Heil, how are you doing today?

5 A Fine.

6 Q Okay. [REDACTED] in your care and custody?

7 A Yes, ma'am.

8 Q Okay. And when did she come into your care and
9 custody?

10 A December of '08. The very end of December '08.

11 Q Okay. And since she came into your care, has she had
12 any vaginal bleeding?

13 A No, ma'am.

14 MR. ROBINSON: Objection, Your Honor, relevance
15 in this case.

16 THE COURT: Overruled.

17 BY MS. SEAY:

18 Q Okay. So she has not had any vaginal bleeding?

19 A No, ma'am.

20 Q And do you know if she has started her menstrual
21 cycle?

22 A No, ma'am, she has not.

23 Q And do you know if she has any breast development at
24 this time?

25 A No, she doesn't.

1 Q Do you know if she has any pubic hair at this time?

2 A She does.

3 Q Okay. And she is eight years old right now?

4 A She just turned eight.

5 Q Okay. Since she's been in your care and custody, has
6 she had any problems with having blood in her stool?

7 A No, she has not. She has had problems with being
8 constipated, but it was -- the doctor just put her on
9 MiraLax.

10 Q Okay.

11 MS. SEAY: Thank you. Those are all the
12 questions I have. Please answer any Mr. Robinson may
13 have.

14 MR. ROBINSON: May it please the Court.

15 CROSS-EXAMINATION

16 BY MR. ROBINSON:

17 Q So she has constipation problems, would that be fair
18 to say?

19 A I'm sorry?

20 Q She has some constipation problems?

21 A That was at the beginning. She is no longer on
22 medicine or anything like that. She don't have that
23 problem any longer.

24 Q So back in 2008, she was having problems with bowels;
25 is that correct?

1 A It was caused -- we was told this it was caused from
2 a virus, so he put her on MiraLax.

3 Q This virus caused her to be constipated; is that
4 correct?

5 A That's what we was informed.

6 Q And, also, it could also give her diarrhea; is that
7 correct?

8 A She didn't have diarrhea.

9 Q But she had problems with bowels; is that right?

10 A The one episode.

11 Q Okay. Where was she taken?

12 A I'm sorry?

13 Q What doctor did you take her to?

14 A She goes to Dr. Kent Jones in Easley.

15 Q Back then, back in 2008, where did you take her?

16 A Kent Jones.

17 MR. ROBINSON: Thank you.

18 THE COURT: Thank you, you can step down.

19 Have another short one? Another short witness?

20 MS. SEAY: I do not have another short witness
21 at this time. My next witness will be the SLED analyst,
22 and she is scheduled to be here at 9 o'clock in the
23 morning. Will that be all right?

24 THE COURT: All right. Ladies and gentlemen, we
25 will suspend at this time for today. We'll pick back up

1 tomorrow morning at 9 o'clock.

2 Now, please, remember when you leave the
3 admonitions that I read to you from the order of the Chief
4 Justice. I'll ask that you keep your badges on, have your
5 badges on when you come back in the morning. I ask that
6 you do that because it would be highly improper for anyone
7 connected with this case to talk about it in your
8 presence. So, please, have your badges on when you come
9 back. Keep them on until you get home tonight.

10 With that, I'll see you back tomorrow morning at
11 9 o'clock. Please be prompt. Thank you.

12 (WHEREUPON, the jury left the courtroom at
13 approximately 4:50 p.m.

14 THE COURT: All right. See you back at
15 9 o'clock?

16 (WHEREUPON, Court was adjourned for the day to
17 reconvene on Tuesday, January 10, 2012.)
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1 Tuesday, January 10, 2012

2 MR. ROBINSON: Your Honor, yesterday, Ms. Seay
3 brought in the case of State V. Jeffcoat.

4 THE COURT: Uh-huh.

5 MR. ROBINSON: In further reading of the case
6 yesterday, it appears that it stands for the proposition
7 of once you start questioning the veracity in terms of
8 coaching and so forth, that the State may go into it. But
9 it looks like in the last part of the case, though, it
10 talks about that it has to be before actual proceedings
11 and so forth starts in terms of taking into whatever it
12 would be, like a doctors and things like that. It doesn't
13 necessarily have to be law enforcement, I think. And the
14 witnesses they have coming up are going to be talking
15 again about what she said to them and so forth. My
16 position is that that is not admissible under State V.
17 Jeffcoat because I believe that the process had already
18 started because the report was from Greenville Memorial
19 Hospital. And they sent her to a therapist, whoever it
20 was. I think at that point, anything she said after that
21 point to anybody is inadmissible. We ask that the Court
22 limit what the prosecution --

23 THE COURT: Your Honor, the case says that, in
24 this case, the victim's disclosure was made prior to being
25 in contact with the judicial system and, thus, could not

1 have been the result of either the mother or the
2 solicitor's alleged coaching of her court testimony. So
3 it's almost identical to what Mr. Robinson cross-examined
4 the victim about yesterday, which was did she talk with
5 her -- he called them her stepparents, meaning her
6 adoptive parents, and did she talk with me. So this case
7 talks about contact with the judicial system. So I don't
8 think that that would cover her initial disclosures to law
9 enforcement and to the physicians and so forth.

10 THE COURT: I agree with you, Solicitor, but how
11 many witnesses have you had already who testified? It
12 seems to me that any more would be cumulative, so why do
13 you need to go any further with it?

14 MS. SEAY: Well, I have only one additional
15 witness physician who she gave a statement to, and I think
16 it would be admissible under Jeffcoat.

17 THE COURT: You just have one more?

18 MS. SEAY: Yes, sir.

19 THE COURT: Okay.

20 MR. ROBINSON: Your Honor, just to -- and I'm
21 not questioning anything the Court's doing, but at some
22 point, as the Court's recognizing, it gets not only
23 cumulative, but it's extremely prejudicial. I've made
24 objections every time to it. And it's just one after
25 another. I mean, it seems like it's just extremely

1 prejudicial.

2 THE COURT: All right. You're protected.

3 All right. Anything further?

4 MS. SEAY: Nothing further.

5 THE COURT: Bring them on, please.

6 (WHEREUPON, the jury entered the courtroom.)

7 THE COURT: Good morning. I understand you
8 asked about taking notes and that is perfectly all right.
9 But when you begin deliberating this case, you can use
10 those notes only to refresh your recollection as to what
11 the testimony was. In other words, the only transcript
12 being made is that by the court reporter, that is the
13 official transcript. So you can use your notes only to
14 refresh your recollection. Okay.

15 All right. Solicitor, you may proceed.

16 MS. SEAY: Thank you, Your Honor. The State
17 calls Adrienne Hefney.

18 THE CLERK: Place our left hand on the Bible,
19 and raise your right.

20 ADRIENNE HEFNEY, after being duly sworn,
21 testified as follows:

22 THE CLERK: Thank you. You may be seated.
23 State your full name for the record.

24 THE WITNESS: Adrienne Riley Hefney.

25 THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. SEAY:

Q Good morning, Ms. Hefney.

A Good morning.

Q Where are you employed?

A With the South Carolina Law Enforcement Division,
more commonly known as SLED.

Q In what capacity are you employed at SLED?

A Forensic DNA analyst.

Q What are your duties as a forensic DNA analyst?

A My primary duty is the comparison of biological
evidence that was left behind at a crime scene and
making the comparison to known standards that we
received. And those known standards would be blood
or buccal swabs or saliva swabs from the victim
and/or suspect in the cases involved.

Q What educational background and training do you have
that prepared you for your position?

A I have a Bachelor of Science degree in biology from
the University of South Carolina. I also have a
Master of Business Administration and BA degree from
Winthrop University. I have taken post-graduate
courses in the field of population genetics, cell
molecular biology and molecular biology, just to name
a few. And since joining SLED, I was trained at SLED

1 by court-qualified analyst. And since joining, each
2 year, we are required to attend a continuing
3 education class to stay abreast of any changes in the
4 field of DNA analysis.

5 Q How long have you been employed in your current
6 position?

7 A Since November of 1997 -- well, current position,
8 since March of 1999, so that's a little over about 12
9 years.

10 Q Okay.

11 MS. SEAY: Your Honor, at this time, I would
12 offer Ms. Hefney as an expert in forensic DNA analysis.

13 THE COURT: Any voir dire, Mr. Robinson?

14 MR. ROBINSON: I have none, Your Honor.

15 THE COURT: She's qualified.

16 MS. SEAY: Thank you.

17 BY MS. SEAY:

18 Q Ms. Hefney, what is DNA?

19 A DNA stands deoxyribonucleic acid. And what that is
20 is, essentially, it's a chemical that we each have
21 that makes us who we are. We inherit half of our DNA
22 from our mother and half of our DNA from our father.
23 Now, a lot of us have the same DNA. It's the DNA
24 that comes from us being human that gives us two eyes
25 and two arms and two legs. But, of course, we look

1 around this courtroom, everyone looks different. So
2 everyone's DNA is unique to each individual. No two
3 people will have the same DNA with the exception of
4 identical twins.

5 And how we use that in forensics is that because
6 everybody has a unique DNA profile, we're going to
7 develop a DNA profile from any evidence or question
8 sample that was left behind at a crime scene and make
9 a comparison to someone or a known standard of
10 someone that we think may or may not have been
11 involved in the case. And that's the gist of what
12 forensic DNA analysis is.

13 Q Did you have occasion to exam evidence related to the
14 case of [REDACTED] [REDACTED]?

15 A Yes, ma'am, I did.

16 Q What type of evidence was submitted to you?

17 A I had a sexual assault evidence collection kit from
18 [REDACTED] [REDACTED] submitted. Within that sexual
19 assault kit, there was a blood standard, smears,
20 vaginal, oral and rectal smears, vaginal swabs,
21 rectal swabs, miscellaneous body fluid, fingernail
22 scrapings, panties, known head hairs, pubic hair
23 combings, pink underwear and oral swabs.

24 Q Okay. Thank you. And did you analyze each of those
25 items?

1 A I did. I either did DNA analysis and/or serology
2 analysis on each of the items. And what serology is
3 is a scientific body fluid identification. So we
4 first want to see what we're working with. In sexual
5 assault cases, we'll test for the presence of semen.
6 In homicide and also in sexual assault cases, we'll
7 test for the presence of blood as well. So in this
8 case, I did that with each one of the swabs that I
9 received from the kit.

10 Q Okay. Thank you. Would you please go through each
11 of those items and tell us what the results of your
12 analysis were?

13 A Sure. The blood standard is just a known standard
14 that I received from [REDACTED], and I
15 performed DNA analysis on that. The smears, which
16 were the vaginal, oral and rectal smears that were
17 collected at the hospital during the kit collection,
18 there was no sperm identified on those or no
19 spermatozoa identified. Vaginal swabs, there was no
20 semen identified, but I performed DNA analysis on
21 those. Rectal swabs, no semen identified, but I
22 performed DNA analysis on those as well.
23 Miscellaneous body fluid, which was fluid that was in
24 a bed pan, there was urine indicated in that fluid.
25 Fingernail scrapings, I performed DNA analysis on

1 those. Panties, there was blood indicated. No semen
2 identified and I performed DNA analysis on that. I
3 did not perform DNA analysis on the known head hair,
4 which is just another known standard that we
5 sometimes receive. Pubic hair combings, there were
6 on hairs found. Pink underwear, there was nothing of
7 apparent serological evidentiary value found. And
8 oral swabs, there was no semen identified, but I
9 performed DNA analysis on that as well.

10 And my DNA results was that there was no DNA
11 profile foreign to the victim, [REDACTED] [REDACTED],
12 developed from items 1.3, which were the vaginal
13 swabs, 1.6, the fingernail scrapings, 1.8, the
14 panties, and 1.12, the oral swabs. There was a
15 partial DNA profile developed from item 1.4, which
16 were the rectal swabs, but it was insufficient for
17 reliable interpretation.

18 Q And when you say there was no DNA profile foreign to
19 the victim, can you explain what that means?

20 A Sure. All the DNA profile -- all of the items that I
21 analyzed, the DNA profile that was developed from
22 these items matches [REDACTED] [REDACTED].

23 Q Ms. Hefney, I want to specifically ask you about one
24 of these items that you analyzed. Well, first of
25 all, this is State's Exhibit No. 7, do you recognize

1 this?

2 A Yes. This in a known blood sample from [REDACTED]
3 [REDACTED].

4 Q And you performed DNA analysis on that and developed
5 a profile.

6 A Yes, ma'am, I did.

7 Q And you said that -- so that is from [REDACTED]?

8 A Yes, ma'am.

9 Q Okay.

10 MS. SEAY: Your Honor, I would offer this into
11 evidence at this time.

12 THE COURT: Any objection?

13 MR. ROBINSON: No objection, Your Honor.

14 (WHEREUPON, State's Exhibit No. 7 was admitted
15 into evidence.)

16 BY MS. SEAY:

17 Q This is State's Exhibit No. 12, Ms. Hefney, which is
18 underwear, your number 1.8. Do you recognize this
19 item?

20 A Yes, ma'am, I recognize it with item No. 1.8 there
21 and initials and date right here.

22 Q And what is contained in that envelope?

23 A A pair of underwear. They are -- excuse me. Item
24 1.8 is described as a pair of striped size 2T/3T
25 panties with a large blood clot/clump present. And I

ADRIENNE HEFNEY-DIRECT BY MS. SEAY

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1 noted in my notes that the victim is prepubescent.

2 Q And when you analyzed that blood you, I believe,
3 stated that that is [REDACTED] blood; is that
4 correct?

5 A That's correct.

6 Q Okay. When you analyzed this item, did you find any
7 other substance other than blood in these panties,
8 any other substance, such as fecal matter or anything
9 to indicate that there was a bowel movement involved
10 or anything like that?

11 A No, ma'am.

12 Q Okay.

13 MS. SEAY: Your Honor, I would move State's
14 Exhibit No. 12 into evidence at this time.

15 THE COURT: Any objection?

16 MR. ROBINSON: No objection.

17 (WHEREUPON, State's Exhibit No. 12 was admitted
18 into evidence.)

19 MS. SEAY: Your Honor, at this time, I would
20 request permission to publish a stipulation related to
21 this evidence.

22 THE COURT: Sure, go right ahead.

23 MS. SEAY: Ladies and gentlemen of the jury, the
24 State and the Defense in this case stipulate or agree to
25 the following: The chain of custody for items JT-1,

1 sexual assault collection kit and its contents and DES-4,
2 a T Marzetti cream cheese fruit dip cup is proper and the
3 evidence has not been tampered with in any way.

4 Should we make this part of the Court record,
5 Your Honor?

6 THE COURT: Yes.

7 (WHEREUPON, Court's Exhibit No. 1 was marked for
8 identification and received into evidence.)

9 MS. SEAY: Ms. Hefney, those are all the
10 questions I have. Thank you. Please answer any that
11 Mr. Robinson may have for you.

12 MR. ROBINSON: May it please the Court.

13 CROSS-EXAMINATION

14 BY MR. ROBINSON:

15 Q Good morning.

16 A Good morning.

17 Q Ma'am, in response to the -- just to followup some
18 questions from Ms. Seay, regarding Exhibit 12, which
19 is 1.8, there was no foreign substance, such as semen
20 or any foreign substance in the panties; isn't that
21 correct?

22 A There was blood in the panties and that blood matched
23 [REDACTED].

24 Q But there was no other foreign body, no other DNA or
25 semen in the panties, correct?

1 A No, sir.

2 Q Now, this was a blood clot; isn't that correct?

3 A It was -- I described it as a large blood clot/clump
4 present. And I made note of that because the victim
5 was prepubescent.

6 Q What does that mean?

7 A She hadn't reach puberty age yet at that time.

8 Q Okay. Is it normal for a child that age to have --
9 if you know, for a child that age to have blood
10 clots?

11 A That's beyond my area of expertise, but I would have
12 to say I wouldn't think so.

13 Q Okay. But again, there's nothing that you found in
14 your report that would link anything to Mr. Desue as
15 far as semen, any sort of substance, DNA, nothing
16 that would link anything to Mr. Desue; is that
17 correct?

18 A That's correct.

19 Q Thank you.

20 THE COURT: Thank you, step down.

21 MS. SEAY: Thank you. May this witness be
22 excused to return to Columbia?

23 MR. ROBINSON: No objection.

24 MS. SEAY: Thank you, Ms. Hefney.

25 Your Honor, the State calls Christine Carlberg.

1 THE CLERK: Place your left hand on the Bible,
2 raise your right.

3 CHRISTINE CARLBERG, after being duly sworn,
4 testified as follows:

5 THE CLERK: Thank you. You may be seated.
6 State your full name for the record.

7 THE WITNESS: Christine Carlberg.

8 THE CLERK: Thank you.

9 DIRECT EXAMINATION

10 BY MS. SEAY:

11 Q Good morning, Ms. Carlberg. Where are you employed?

12 A I'm employed with the Greenville Department of Mental
13 Health.

14 Q What does your job entail?

15 A I am a forensic interviewer. I am contracted to work
16 at the Julie Valentine Center to conduct forensic
17 interviews.

18 Q All right. And the Julie Valentine Center is what?

19 A It was formerly known as the Greenville Rape Crisis
20 and Child Abuse Center. It deals with sexual
21 assaults of children and adults in the Greenville
22 area.

23 Q All right. How long have you been employed in your
24 current position?

25 A Almost five years. In February, it will be five

1 year.

2 Q Can you please explain your work experience and
3 training?

4 A I've been conducting forensic interviews for over 11
5 years. I was working at a children's advocacy center
6 in Mississippi, and then I moved to Greenville and
7 started working at the Julie Valentine Center about
8 five years ago.

9 Q What type of education and training do you have?

10 A I have a Bachelor's of Science degree in
11 rehabilitation services education and a minor in
12 psychology from the Pennsylvania State University.
13 And I have a Master's of Arts in marriage and family
14 therapy from Reformed Theological Seminary in
15 Jackson, Mississippi.

16 Q Did any of your degree work involve the area of child
17 development?

18 A Both my undergraduate work and my graduate work dealt
19 with child development.

20 Q Do you have any special training in the area of
21 forensic interviewing?

22 A I've been trained at Corner House, which is a
23 nationally recognized training facility for forensic
24 interviewing. It's a 40-hour week course that
25 specifically deals with forensic interviewing. And I

1 have also been trained in Finding Words, which is
2 also 40-hour week courses, both in Mississippi and in
3 South Carolina. And then various other conferences
4 across the nation.

5 Q Okay. Do you have occasion to consult with other
6 professionals in your field related to child sexual
7 assault.

8 A Yes, ma'am.

9 Q Can you explain what a forensic interview is?

10 A It's a nonleading, nonsuggestive developmentally
11 appropriate method of gathering information from a
12 child or a developmentally delayed adult about
13 something that has occurred.

14 Q Okay. What are the scientifically based standards
15 used to conduct a forensic interview of a child who
16 has been sexually assaulted?

17 A Well, each part of our protocol is based on
18 scientific research, but we deal a lot with
19 linguistics, age-appropriate questions and so forth.

20 Q Okay. Is there a standard protocol or protocol that
21 you use when conducting a forensic interview?

22 A We use a semi-structure protocol called RATAAC.

23 Q RATAAC?

24 A Yes, which stands for rapport, anatomy ID, touch
25 inquiry, abuse scenario and closure.

1 Q Is the RATAC method widely and generally accepted in
2 your field of expertise?

3 A Yes, ma'am.

4 Q Have you read articles on RATAC that are subject to
5 peer review?

6 A Yes, ma'am.

7 Q Have you received special training on this RATAC
8 method?

9 A Yeah, those courses that I've gone through
10 specifically teach the RATAC method.

11 Q Okay. In your experience as a forensic interviewer,
12 I believe you stated 11 years or so, can you tell us
13 how many children you have seen and conducted
14 forensic interviews on?

15 A I've interviewed 1,869 children.

16 Q Okay. Have you ever testified in the courts of this
17 state?

18 A Yes, ma'am.

19 Q Do you know how many times you've testified?

20 A About 25 times.

21 Q Okay. Did you have an occasion to conduct a forensic
22 interview of [REDACTED] [REDACTED]?

23 A Yes, ma'am.

24 Q Why was she referred to you?

25 A She was referred because of allegations of sexual

1 abuse.

2 Q Okay. When and where did your interview take place?

3 A It took place at what was then the Greenville Rape
4 Crisis and Child Abuse Center, which is now the Julie
5 Valentine Center, on January 14th, 2009.

6 Q Okay. How old was she at the time of your interview?

7 A She was five.

8 Q All right. And did you make a notation of her date
9 of birth?

10 A Her date of birth is [REDACTED].

11 Q Did you make an audio and/or video recording of the
12 interview?

13 A It was video recorded.

14 Q Ms. Carlberg, let me show you State Exhibit No. 1.
15 Do you recognize this?

16 A Yes, ma'am.

17 Q What is this?

18 A That's a copy of the interview I conducted with
19 [REDACTED].

20 Q Okay. And have you watched this recently?

21 A Yes, ma'am.

22 Q And during your interview, did you utilize nonleading
23 questions with [REDACTED]?

24 A Yes, ma'am.

25 MS. SEAY: Your Honor, I'm going to offer this

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1 into evidence at this time and request that when
2 Ms. Carlberg has completed her testimony that we be
3 allowed to publish this to the jury.

4 THE COURT: All right.

5 MR. ROBINSON: No objection.

6 (WHEREUPON, State's Exhibit No. 1 was marked for
7 identification and received into evidence.)

8 BY MS. SEAY:

9 Q Ms. Carlberg, in your 11 years of experience and the
10 1,869, I believe you said, forensic interviews that
11 you've conducted, is it common or uncommon for
12 children to be abused by someone they know?

13 A It's very common.

14 Q Okay. And based on your training and your
15 experience, is it common or uncommon for children to
16 be able to give an exact number of times that they've
17 been abused if it has been more than one time?

18 A It's pretty uncommon. Children have a hard time with
19 time frames and how -- exactly how many times things
20 happen. They can often say if it's one time or more
21 than one time, but the exact number is usually pretty
22 hard for them to say.

23 Q Okay. What about, is it common or uncommon for them
24 to be able to give a specific date and time of the
25 abuse that happened to them?

1 A Unless they've -- like it falls -- sometimes they can
2 remember like if it happens on a birthday or
3 Christmas or something that they're associating with,
4 but, usually, it's kind of hard to remember an exact
5 date.

6 Q Okay.

7 MS. SEAY: Okay. Thank you. Please answer any
8 questions Mr. Robinson has for you.

9 THE COURT: Mr. Robinson.

10 MR. ROBINSON: May it please the Court.

11 CROSS-EXAMINATION

12 BY MR. ROBINSON:

13 Q Ma'am, of the 1869 times you've testified, all that's
14 been on behalf of the State; is that correct? It's
15 been testifying for the State; is that correct?

16 MS. SEAY: Your Honor, I'm going to object. She
17 did not testify that she's testified 1869 times.

18 MR. ROBINSON: Approximately 1869 times.

19 THE COURT: She can answer the question.
20 Go ahead.

21 THE WITNESS: I've only testified about 25
22 times.

23 BY MR. ROBINSON:

24 Q I'm sorry. Okay, 25 times. In that 25 times, it's
25 been on behalf of the State; is that correct?

1 A Well, I was called for a deposition by the defense,
2 but actual testimony, yes.

3 Q For the State?

4 A Yes.

5 Q Okay. Let me ask you, when you do your -- before you
6 do your interview, do you go back through a case file
7 as far as the medical information?

8 A If they've had a medical at our center, then I would,
9 most of the time, look through kind of like the
10 outcome and recommendations that the doctor made.
11 But --

12 Q Okay. In --

13 A I'm sorry. But other case files, no.

14 Q In this case, did you -- you didn't look at the
15 report of Dr. Bailey, who was the physician? You
16 didn't look at that report?

17 A No, sir.

18 Q Okay. Would it have made a difference to you if the
19 doctor had reported that the hymen was intact? Would
20 that have made a difference to you as far as your
21 interrogation?

22 A No, sir.

23 Q Would it have made a difference that SLED, when they
24 did their report and examination of any blood and so
25 forth that nothing came back with Mr. Desue's DNA or

1 semen, it wouldn't have made a difference to you?

2 A No, sir.

3 Q It wouldn't make a difference if the doctor and the
4 SLED person described the blood as in a blood clot,
5 it wouldn't make a difference to you?

6 A No, sir.

7 Q So you don't really pay attention to the physical
8 evidence in the case as far as medical evidence?

9 A No. My job is just to talk to the child and to allow
10 her to tell what happened.

11 Q Okay.

12 A And that's then part of the investigation.

13 Q Okay. And so the medical evidence that's presented
14 is not part of the way you do your interview,
15 correct?

16 A I think that can be brought up. If there had been
17 blood or something else, that might be part of an
18 interview. But normal -- you know, I would ask --
19 but that's just a general question I usually ask
20 during every interview, did anything come out or
21 anything like that.

22 Q All right.

23 MR. ROBINSON: That's all I have. Thank you.

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

25 MS. SEAY: Your Honor, at this time, I would ask

1 we be allowed to publish the DVD.

2 THE COURT: All right, you can publish it.

3 (WHEREUPON, State's Exhibit No. 1 was played.)

4 THE COURT: Okay, Solicitor.

5 MS. SEAY: Your Honor, I need to check and see
6 if my next witness is out here.

7 THE COURT: Okay.

8 MS. SEAY: State calls Dr. Mary Fran Crosswell.

9 THE CLERK: Dr. Crosswell, if you'd come forward
10 to be sworn in. Please place your left hand on the Bible,
11 raise your right.

12 MARY FRAN CROSSWELL, M.D., after being duly
13 sworn, testified as follows:

14 THE CLERK: Thank you. You may be seated.
15 State your name for the record.

16 THE WITNESS: Mary Fran Ratchford Crosswell.

17 DIRECT EXAMINATION

18 BY MS. SEAY:

19 Q Dr. Crosswell, would you please state your name for
20 the record.

21 A I'm Dr. Mary Fran Ratchford Crosswell.

22 Q What is your occupation?

23 A I'm a pediatrician with the Children's Hospital in
24 Greenville in the division of forensic pediatrics
25 child abuse and neglect.

1 Q Okay. What is your educational background?

2 A I received a Bachelor of Arts from Wake Forest
3 University. I received my medical degree from the
4 University of Louisville, and I did a pediatric
5 residency with the Greenville Hospital System.

6 Q All right. What about your work experience?

7 A After residency, I worked for a period of time, for a
8 few years as a general pediatrician. For the past
9 five and a half years, I've been employed as a child
10 abuse pediatrician with the Children's Hospital.

11 Q Okay. Do you have specialized training in the field
12 of child sexual assault examinations?

13 A I do. I have attended numerous continuing medical
14 education courses, both nationally and
15 internationally, focused on child maltreatment,
16 including sexual abuse.

17 Q How many years of experience do you have specifically
18 in this area?

19 A About five and a half years.

20 Q Okay. Approximately, how many of those types of
21 exams have you performed?

22 A I would estimate I do probably 175 exams a year, so
23 multiply that.

24 Q Okay. Have you previously been qualified as an
25 expert in the field of child sexual assault

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1 examinations?

2 A Yes, I have.

3 Q Have you testified in court before?

4 A Yes, I have.

5 Q Approximately how many times?

6 A Approximately 12 times.

7 Q Okay.

8 MS. SEAY: Your Honor, at this time, we would
9 offer Dr. Crosswell as an expert in the field of
10 pediatrics and child sexual assault examinations.

11 THE COURT: Any voir dire?

12 MR. ROBINSON: No voir dire, no objection, Your
13 Honor.

14 THE COURT: She is qualified.

15 BY MS. SEAY:

16 Q Dr. Crosswell, did you have an opportunity to examine
17 [REDACTED] [REDACTED]?

18 A Yes, I did.

19 Q How many times did you examine her?

20 A I examined her on two different occasions.

21 Q Okay. What was the date of your first examination?

22 A The date of the first examination was December 29th,
23 2008.

24 Q All right. Where did that examination take place?

25 A At Pendleton Place Children's Shelter.

1 Q Why were you examining her?

2 A As part of my job, I perform foster care assessments
3 and do the primary care for the residents of
4 Pendleton Place Children's Shelter. So I was
5 requested to do a foster care assessment on her.

6 Q What type of exam was performed?

7 A A general head to toe examination.

8 Q All right. Can you give the results of your general
9 head to toe first?

10 A Yes. Abnormalities included that she had signs of an
11 ear infection in both ears. She had a little bit of
12 drainage from one of her eyes. On her genital exam,
13 she had a few dark, course hairs around her rectum
14 and she also had a concerning finding on her genital
15 exam, a notch versus a transection of her hymen that
16 I couldn't assess at that time.

17 Q What is a notch?

18 A A notch -- the hymenal tissue is a piece of thin
19 issue that partially covers the vagina. A notch can
20 occur just as a normal finding. It's just kind of a
21 variation in the edge of the hymen. So that would be
22 what a notch is.

23 Q Would it assist you to draw a diagram of that?

24 A Yes, it would.

25 Q Okay.

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1 THE COURT: You're welcome to step down.

2 BY MS. SEAY:

3 Q Let me get you a marker.

4 A Just to orient you on female genital anatomy, the
5 first layer of skin that you move aside to see the
6 anatomy are two layers called the labia majora. Then
7 the next layer of tissue, fold of tissue is called
8 the labia minora. Here, we would have the urethra,
9 which is where the urine comes out. Then underneath
10 the urethra, you have the opening to the vagina.
11 Covering the vagina is a piece of thin tissue and
12 this is called the hymen.

13 As far as my concerns about what I had seen,
14 sometimes you can see a notch, which would be kind of
15 a dip in the hymen like this versus a transection,
16 which would be a complete tear of the hymenal tissue.

17 Q All right. So did you see this with your -- just
18 your visional inspection?

19 A Yes. Just with the naked eye.

20 Q You were not sure which one of the those it was?

21 A Correct.

22 Q So what did you do as a result of that?

23 A I recommended that she be referred to the Julie --
24 well, what was then known as the Greenville Rape
25 Crisis and Child Abuse Center, where we have

1 specialized equipment to do these examinations.

2 Q Okay. What type of special equipment do you have to
3 do those examinations?

4 A We use a colposcope, which is -- serves to one,
5 provide a good light source so you can adequately
6 visualize these tissues, which are kind of deep set.
7 It also has a magnification system that has a series
8 of different levels of magnification of which to view
9 the anatomy. And then it also allows us to document
10 any findings with photographs.

11 Q Okay. And just let me -- if you bear with me just a
12 minute. Before we move on, let me refer you back to
13 the drawing that you made of the hymen. What are
14 some common myths or misconceptions about that part
15 of the female anatomy?

16 A Well, first of all, there's a myth that there will
17 always be an abnormality if something has happened to
18 a child, and that is not necessarily the case. Most
19 of our sexual abuse exams are normal, up to 85 to
20 90 percent is represented as normal. Other -- it
21 takes some type of penetrating injury. This is not
22 something that is easily broken from, say, doing a
23 split or jumping on a trampoline. Usually, there is
24 some type of impaling injury if we see an abnormality
25 to the hymen from accidental injuries and it can be

1 seen from injuries just from penetration from other
2 reasons.

3 Q Okay. And can you explain how a child might confuse
4 attempted penetration and actual penetration?

5 A Sure. As I demonstrated, the entrance to the vagina
6 is actually deep set as compared to the -- relative
7 to the other anatomical components of the genitals.
8 So to get to the hymen, any type of penetrative
9 object would have to pass through the labia majora,
10 labia minora and into this space that we call the
11 vestibule in order to reach the vagina.

12 Q Okay. Let me ask you, when you were dealing with
13 ██████████ at this first exam on -- did I ask you the
14 date of that exam?

15 A Yes, you did.

16 Q Okay. I'm sorry. December 29th, 2008. Did you
17 interview her?

18 A I did.

19 Q Okay. And who was present in the room when you
20 interviewed her?

21 A My nurse assistant, Vickie Adams.

22 Q Okay. Did she speak freely with you about what had
23 happened to her?

24 A Yes, she did.

25 Q Did she tell you she had been sexually assaulted?

1 A Yes, she did.

2 Q Did she tell you when it had happened?

3 A Yes, she did.

4 Q Did she tell you where it had happened?

5 A Can I get my notes?

6 Q Certainly.

7 A Yes, she did.

8 Q Okay. How was her emotional state or her demeanor
9 when you examined her on December 29th?

10 A She was apprehensive, but very cooperative. She
11 talked very freely about what had happened to her,
12 but felt some apprehension about her body.

13 Q Okay. Did you have an occasion to review what had
14 been done as far as an exam in the emergency room
15 previously?

16 A Yes, I did.

17 Q Okay. So were you aware that Dr. Bailey had found a
18 laceration to her genitalia?

19 A Yes, I was.

20 Q Okay. Did you see that when you examined her on
21 December 29th?

22 A No, I did not.

23 Q Okay. What did that indicate to you, if anything?

24 A It indicates that the area had healed and it wasn't
25 evident several days later at the time of my

1 inspection.

2 Q Okay. All right. And you said that you felt that
3 she needed an additional examination using your
4 colposcope to help you better visualize the area. So
5 did you, in fact, examine her again?

6 A Yes, I did.

7 Q What date did you do that?

8 A That was on January 8th, 2009.

9 Q All right. And that took place, I believe you said,
10 at the Greenville Rape Crisis Child Abuse Center?

11 A That's correct.

12 Q Now known as the Julie Valentine Center. What type
13 of exam did you perform on that date?

14 A Again, we do -- all children who are referred there
15 are referred there for concerns of child
16 maltreatment, but that includes a head to toe
17 physical exam, which I did then repeat on [REDACTED].

18 Q Did you have any findings on her general physical
19 exam?

20 A Yes. I did notice that she had some cavities in her
21 teeth. And then on the genital exam, I did visualize
22 a transection of her hymenal issue with the
23 colposcope.

24 Q Can you please explain what a transection is?

25 A A transection is a complete separation of the hymenal

1 tissue so that there is an absence of the hymen at a
2 certain location. So we describe it by the position
3 on a clock. So looking at a clock, it would be on
4 the 7 o'clock position. There was an absence of
5 hymen from the rim down to the vaginal wall. And
6 this is suggestive of some type of blunt force trauma
7 to that area.

8 Q Thank you. Would you mind drawing the transection on
9 your diagram as well, please?

10 A Sure. So again, if we are kind of replicating, this
11 is the urethra right here and this is the vagina
12 here, her hymen up here like this.

13 Q Is that what you meant by the 7 o'clock position?

14 A That's correct.

15 Q Visualizing that as a clock?

16 A Visualize this as a clock and this would be the 12
17 and this would be the 6, that would be the 7.

18 Q Thank you. If you would, please, resume the witness
19 stand.

20 MS. SEAY: Your Honor, at this time, I would
21 offer this diagram into evidence as a State's Exhibit?

22 THE COURT: Any objection?

23 MR. ROBINSON: No objection, Your Honor.

24 THE COURT: Without objection.
25

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1 (WHEREUPON, State Exhibit No. 21 was marked for
2 identification and received into evidence.)

3 BY MS. SEAY:

4 Q So Dr. Crosswell, transection is the complete tear of
5 that area; is that correct?

6 A That's correct. It's a complete tear that has
7 healed. If I had seen it in the acute setting, it
8 would have appeared as a laceration. But a
9 transection is a healed laceration of that tissue.

10 Q Okay. And would -- you said it would be caused by
11 some sort of blunt force trauma or impaling type of
12 injury; is that correct?

13 A Correct.

14 Q Would an injury of that nature be painful for a
15 child?

16 A Yes.

17 Q Okay. Were you aware that [REDACTED] had gone to the
18 emergency room with blood in her panties?

19 A Yes, I was.

20 Q Okay. And in your professional experience and your
21 opinion, could that blood have come from a
22 penetrating injury to her vagina?

23 A Yes, it could.

24 Q The laceration that Dr. Bailey noted, was it on the
25 same side as the transection that you noted?

1 A I believe she described that the laceration was to
2 the right labia minora, and the hymenal transection
3 was on the anatomical right of the patient as well.

4 Q Okay. So the laceration and the transection were on
5 the same side?

6 A Yes.

7 Q Of her vagina?

8 A Yes.

9 MS. SEAY: Your Honor, may I have just a moment?

10 THE COURT: Sure.

11 MS. SEAY: Dr. Crosswell, I think those are all
12 the questions that I have. Would you please answer any
13 questions that Mr. Robinson has for you.

14 CROSS-EXAMINATION

15 BY MR. ROBINSON:

16 Q I want to ask you a little background about blood
17 clots and so forth. In a child of five, is it normal
18 for her to have pubic hair?

19 A No, it is not normal.

20 Q Is that what they call it? I think it's -- there's a
21 term for that, isn't there?

22 A Adrenarche.

23 Q Yes, that's right. How do you spell that?

24 A A-D-R-E-N-A-R-C-H-E.

25 Q What exactly is that? Is it just premature puberty,

1 is that what that is?

2 A It's not premature puberty, it's premature pubic hair
3 development.

4 Q And what is that a sign of in terms of testosterone
5 and things of that nature?

6 A It's a sign of excess of androgen development of the
7 adrenal gland.

8 Q Right. Okay. Now, as far as the blood that was
9 found in the panties that Ms. Seay talked about, is
10 it your understanding -- do you realize it was a
11 blood clot in the panties, do you understand that?

12 A Yes.

13 Q Isn't a blood clot something that occurs in puberty,
14 like in periods and things like that?

15 A Blood outside of the body clots because of the nature
16 of the factors in the blood that make it clot. So
17 blood in the panties that's clotted just means that
18 that blood has clotted. I do not think this is
19 related to pubertal blood because she didn't have any
20 signs of estrogen. And in order to have a period,
21 you have to have signs of estrogen. So she had no
22 breast development, she had no -- the hymen changes
23 with the presence of estrogen and her hymen was a
24 prepubertal hymen. So I think the presence of the
25 very few pubic hairs was related to just premature

1 adrenarche, not premature pubertal development.

2 Q All right. Now, did you determine where the blood
3 came from, either the vagina or the rectum?

4 A No, because there was no blood on my examination.

5 Q There was no blood on your examination. You just got
6 a history of there was blood in the panties?

7 A Correct.

8 Q So you don't know where the blood came from?

9 A Correct.

10 Q As far as your examination that you did of the child,
11 you would agree with me that the anus part of the
12 body is a very sensitive part of the body; is that
13 correct?

14 A Correct.

15 Q Did you notice any sort of penetration to the anal
16 part of the body?

17 A No, I did not.

18 Q So that would rule out any sort of anal penetration
19 or touching, correct?

20 A It does not rule out any anal penetration or
21 touching. Because the anus can enlarge for natural
22 purposes to accommodate an object that is coming out
23 of the body, it can also dilate to accommodate a
24 penetrating object as well.

25 Q So it can be either when someone defecates or

1 something passes, correct?

2 A I'm sorry, I didn't hear the latter part?

3 Q So if someone passes -- it could be something
4 passing, correct?

5 A Correct.

6 Q Regarding the diagram that you put up there in terms
7 of this notch that you talked about and so forth, you
8 can't say with a hundred percent certainty that notch
9 came from sexual abuse, can you?

10 A I called it a transection, not a notch, when I was
11 able to evaluate it definitively. And I can say that
12 it's from some sort of penetrating injury. The
13 history that I was given of that penetrating injury
14 was that it was sexual abuse.

15 Q But without that history, you could also attribute
16 that to other things as well?

17 A If she had a history of some type of impaling object
18 in that area, then I could attribute it to that.

19 Q Give an example of impaling or blunt force trauma.

20 A Like a bicycle accident where a female ends up on the
21 bars of the bicycle would be an example of that type
22 of injury.

23 Q Where she falls or something or falls or something?

24 A Correct.

25 MR. ROBINSON: Beg the Court's indulgence.

1 THE COURT: Any redirect?

2 MR. ROBINSON: No.

3 THE COURT: Excuse me.

4 MR. ROBINSON: That's all I have. Thank you,
5 Doctor.

6 THE COURT: Any redirect?

7 MS. SEAY: May I have just a moment, please,
8 Your Honor?

9 THE COURT: All right.

10 MS. SEAY: I have nothing further. May this
11 witness be excused?

12 THE COURT: Any objection?

13 MR. ROBINSON: No objection.

14 THE COURT: Thank you, Doctor. You're excused.
15 All right. Take the jury out for a recess.

16 (WHEREUPON, the jury left the courtroom at
17 approximately 10:50 a.m.)

18 MS. SEAY: Your Honor, the State is prepared to
19 rest.

20 THE COURT: Okay.

21 MS. SEAY: And I know I need to do that in the
22 presence of the jury.

23 THE COURT: Yeah.

24 MS. SEAY: And then I'm not sure what
25 Mr. Robinson's plans are, but if he's planning on

1 presenting any evidence, I just have a couple of matters
2 to take up with the Court. And I want to make sure all my
3 exhibits are entered into evidence except for State's
4 Exhibit No. 4 which were the medical records.

5 THE COURT: Okay, without objection, they're in.
6 I'm just trying to decide when to order lunch for the
7 jury.

8 MS. SEAY: Yes, sir.

9 THE COURT: How long does it take?

10 THE BAILIFF: It takes an hour from right now,
11 an hour after you order.

12 THE COURT: Okay. Bring them on when they're
13 ready.

14 (WHEREUPON, State's Exhibit Nos. 5, 6, 8-11,
15 13-19 were admitted into evidence.)

16 (WHEREUPON, the jury entered the courtroom at
17 approximately 11:05 a.m.)

18 THE COURT: All right. Solicitor.

19 MS. SEAY: Your Honor, at this time, the State
20 rests.

21 THE COURT: All right.

22 Mr. Robinson, you may proceed.

23 MR. ROBINSON: We have some motions outside the
24 presence of the jury.

25 THE COURT: All right.

1 Take the jury out, please.

2 (WHEREUPON, the jury left the courtroom at
3 approximately 11:07 p.m.)

4 THE COURT: All right, sir.

5 MR. ROBINSON: May it please the Court, at this
6 time, Your Honor, we make a motion for a directed verdict
7 for acquittal, Your Honor, based on the fact that the
8 State has not presented any evidence on the charge of
9 criminal sexual conduct of a minor in the first degree.

10 According to the evidence in the case, the SLED
11 person who testified this morning said there was no DNA,
12 no physical evidence in terms of DNA, blood, semen that
13 tied this crime to Mr. Desue. Secondly, Your Honor, the
14 doctor that testified this morning testified it could have
15 been other things besides an intrusion or some sort of
16 penetration. If you go back to Dr. Bailey, who testified
17 yesterday, she testified the hymen was completely intact,
18 but she was concerned about the blood clot that was found
19 in the panties that is indicative of some sort of
20 prepuberty kind of matter.

21 But, Your Honor, we believe that there's been no
22 evidence in this case of any kind of penetration or any
23 sort of intrusion, however slight, on this particular
24 person. Thank you.

25 THE COURT: And your motion is denied.

1 All right. You ready to go?

2 MR. ROBINSON: Your Honor, I'd like to talk to
3 my client for one second as far testimony goes.

4 THE COURT: All right, sure. You want me to put
5 him under oath and question him?

6 MR. ROBINSON: Yes, that will be fine, Your
7 Honor.

8 THE COURT: Put him under oath, please.

9 KEITH DESUE, after being duly sworn, testified
10 as follows:

11 EXAMINATION

12 BY THE COURT:

13 Q Now, Mr. Desue, we have reached the point in your
14 trial where you will make a decision as to whether or
15 not you, yourself, will testify or otherwise present
16 other testimony or evidence, okay? Do you understand
17 that?

18 A Yes, sir.

19 Q Now, I tell you that you do not have to take the
20 stand and testify yourself or present any other
21 testimony. And that's because our law says that you
22 don't have to take the stand, you don't have any
23 burden whatsoever to prove anything in this case
24 because that's the burden on the State. The burden
25 on the State is to prove you guilty beyond a

1 reasonable doubt.. Now, do you understand those
2 rights?

3 A Yes, sir.

4 Q With that understanding, I tell you that you've got a
5 perfect right to take the stand and tell this jury
6 your side of the story or to present other testimony,
7 okay?

8 A Yes, sir.

9 Q If you take the stand, then you become like any other
10 witness in the case. You become subject to being
11 cross-examined by the State. Do you understand that?

12 A Yes, sir.

13 Q I don't know whether you have any prior record for
14 which you could be impeached, but if you do, then the
15 State could go into that. Do you understand that?

16 A Yes, sir.

17 Q Now, have you at this time yet made the decision as
18 to whether you will testify or present other
19 testimony?

20 A I need time to think about it.

21 Q All right.

22 MR. ROBINSON: Your Honor, if I can explain.
23 He's nervous. He's stuttering, that's the reason.

24 BY THE COURT:

25 Q Let me ask you this. Right at this time, are you

1 under the influence of any alcohol, drug or any other
2 substance right at this moment?

3 A No, sir.

4 Q Has Mr. Robinson put any pressure on you one way or
5 the other to take the stand or not to take the stand?

6 A No, sir.

7 Q So the decision that you will make is your decision?

8 A Yes, sir.

9 Q And yours alone?

10 A Yes, sir.

11 Q Okay.

12 THE COURT: All right, we'll take a short recess
13 and let me know.

14 MR. ROBINSON: Thank you, Your Honor, very
15 shortly.

16 (WHEREUPON, a short break was taken.)

17 MS. SEAY: Your Honor, after the short recess, I
18 just have a couple matters to bring to the Court's
19 attention.

20 THE COURT: Okay.

21 You need to step out with him?

22 MR. ROBINSON: He's in custody. I can go in
23 there.

24 THE COURT: That's fine.

25 (WHEREUPON, a short recess was taken.)

1 THE COURT: Mr. Desue, you've made a decision?

2 MR. DESUE: Yes, sir.

3 THE COURT: And what is that decision?

4 MR. DESUE: I'm not going to --

5 THE COURT: I can't hear you.

6 MR. DESUE: I'm not going to testify.

7 THE COURT: You're not going to testify?

8 MR. DESUE: No, sir.

9 THE COURT: You're not going to present any
10 other testimony?

11 MR. ROBINSON: No, sir.

12 THE COURT: All right. That's fine. Because of
13 that, then your lawyer gets the final argument, okay?

14 MR. ROBINSON: Yes, sir.

15 THE COURT: All right.

16 Solicitor, you had something else or?

17 MS. SEAY: I think everything that I had was
18 related to if they were going to put up a case. I just
19 had some matters to take up about that, but if they're not
20 going to, then those issues are moot.

21 THE COURT: Then you had further motions at this
22 time?

23 MR. ROBINSON: Your Honor, since I made the
24 motion and I'm not putting up a case, I renew the motion
25 again that I just made as far as directed verdict.

1 THE COURT: And I deny your motion.

2 All right. All right.

3 Counsel, possible verdicts, what is your
4 position on possible verdicts in this case?

5 MS. SEAY: Your Honor, I think the jury should
6 be charged on criminal sexual conduct with a minor first
7 degree and the two possible verdicts would be guilty or
8 not guilty.

9 THE COURT: Mr. Robinson.

10 MR. ROBINSON: I think there could be a lesser
11 included charge, Your Honor, as far as lewd act on a minor
12 in this case.

13 THE COURT: I don't think lewd act --

14 MR. ROBINSON: I'm not sure that's a lesser
15 included --

16 THE COURT: Aggravated assault and battery is.

17 MR. ROBINSON: Yeah. But it's not -- the age is
18 right in the criminal sexual conduct first degree.
19 Obviously, I can't ask for a charge later than that. But
20 I have no other observations or requests.

21 THE COURT: So you're saying he's either guilty
22 or not guilty?

23 MR. ROBINSON: Yes.

24 THE COURT: All right. Then by defining sexual
25 battery, what offenses do I need to define for the jury?

1 MS. SEAY: Your Honor, the State's position
2 would be that you need to define -- that you need to read
3 the criminal sexual conduct with a minor statute 16-3-655,
4 subsection A(1).

5 THE COURT: I'm going to do that.

6 MS. SEAY: Okay. Then we would ask that you
7 define sexual battery, 16-3-651(h).

8 THE COURT: Which is what?

9 MS. SEAY: Which is sexual battery means sexual
10 intercourse, cunnilingus, fellatio, anal intercourse, or
11 any intrusion, however slight, of any part of a person's
12 body or of any object into the genital or anal openings of
13 another person's body except when such intrusion is
14 accomplished for medically recognized treatment for
15 diagnostic purposes.

16 THE COURT: What's your position, Mr. Robinson?

17 MR. ROBINSON: Your Honor, I just think there's
18 statutes and laws that have to be applied to this case,
19 Your Honor.

20 THE COURT: Well, I mean, do you agree with that
21 charge?

22 MR. ROBINSON: I agree, yes.

23 THE COURT: Okay. Okay. I think it's probably
24 going to be probably 30 more minutes before we get lunch
25 for the jury.

1 THE BAILIFF: Yes, sir, at least that long, yes,
2 sir.

3 THE COURT: All right. How about be prepared to
4 argue this case in an hour, okay.

5 All right. We'll stand in recess until one
6 hour.

7 (WHEREUPON, a lunch break was taken.)

8 (WHEREUPON, jury entered the courtroom at
9 approximately 12:43 p.m.)

10 THE COURT: Ladies and gentlemen of the jury, in
11 the trial of a criminal case, a defendant has absolutely
12 no burden. A defendant does not have to take the stand
13 and testify or otherwise present testimony or evidence.
14 That's because the burden is always on the State to prove
15 a defendant guilty beyond a reasonable doubt.

16 The Defendant in this case has exercised his
17 constitutional right not to take the stand and testify or
18 otherwise present testimony. So the testimony in this
19 case is complete. The time has arrived for the attorneys
20 to make their closing arguments. And when they have
21 concluded their arguments, I'll charge you the law with
22 respect to this case.

23 All right, Solicitor.

24 CLOSING STATEMENT

25 MS. SEAY: Thank you, Your Honor, may it please

1 the Court.

2 Madam Forelady, ladies and gentlemen of the
3 jury, it is now my opportunity to speak to you for the
4 final time in the trial of this case in what is known as
5 closing arguments. And what I would like to do first is
6 thank you for your attention to this case. I know that
7 you have paid close attention to all the testimony and the
8 evidence that has been presented. And we appreciate that
9 and, again, we appreciate your being here. It is an
10 important case.

11 When I first spoke to you, I told you that the
12 law in this case is going to be relevant. It's criminal
13 sexual conduct with a minor in the first degree. And I
14 told you that there were two elements that the State has
15 to prove to you beyond a reasonable doubt. The first
16 element is that the child being under the age of 11.
17 Well, there's been undisputed testimony that the child was
18 under the age of 11. Her date of birth and her age were
19 given to you by several witnesses who testified on the
20 stand. That she was five years old at the time that this
21 came to light. And I believe that her date of birth was
22 [REDACTED] is what was stated.

23 So the other element that the State has to prove
24 is that the Defendant committed a sexual battery on this
25 child. And I told you a little bit about sexual battery,

1 and the Judge is going to charge you on the law, so you
2 need to take the law as the Judge gives it to you. But
3 I'll just again reiterate that a sexual battery, according
4 to our law, means sexual intercourse, cunnilingus,
5 fellatio, anal intercourse or any intrusion, however
6 slight, of any part of a person's body or of any object
7 into the genital or anal openings of another person's body
8 except when such intrusion is accomplished for medically
9 recognized treatment for diagnostic purposes. So that is
10 a sexual battery.

11 Now, the State told you that you were going to
12 here from [REDACTED] [REDACTED]. And we presented [REDACTED]
13 [REDACTED], who came in here at the age of eight and took the
14 witness stand. She took an oath to tell the truth. She
15 put her hand on the Bible and she swore to tell the truth.
16 She took the stand and she testified about what her dad
17 did to her. She did so in a courtroom full of strange
18 adults that she doesn't know, a judge, court personnel,
19 and in front of the person who did it to her. I submit to
20 you that she showed bravery well beyond what some adults
21 might even be able to do at the age of eight. You are the
22 sole judges of her credibility and her believability.
23 You're the sole judges of that.

24 She told you in her own way, in her own
25 eight-year-old way that her dad at Christmas of 2008

1 sexually assaulted her by putting his private part into
2 her private part. And she told you that she was there
3 alone with him. She told you that this had happened
4 before.

5 And what happened next is a chain of events that
6 I submit to you that no child ever imagines is going to
7 happen to them. She was thrown into this, if you think
8 about it, because when she got home, she had blood in her
9 underwear. And according to [REDACTED], she went to her
10 mother and told her mother that she had blood in her
11 underwear. And her mother got Ms. Bright, the lady who
12 testified up here, Rena Bright, she was a friend of
13 [REDACTED]'s mother, to take her to the hospital. And her
14 mother went to the hospital, but left. Left [REDACTED]
15 there with Ms. Bright to go through a traumatic pelvic
16 examination at the age of five. The panties were given to
17 Ms. Bright and Ms. Bright turned those panties over to the
18 hospital personnel. And the hospital personnel put them
19 into this rape kit as was described and they were
20 analyzed. I will come back to that.

21 But what I want to emphasize to you is that
22 [REDACTED] sat up here and told you what she told you
23 because that's what happened, because it was the truth.
24 Did it have the ring of truth is what you need to ask
25 yourself. And you also need to ask yourself what motive

1 did she have for testifying like she did? What does she
2 have to gain by taking the stand and saying that her dad
3 did this to her? I submit to you that she has nothing
4 whatsoever to gain by that.

5 She went through very difficult experiences, and
6 then she went through one pelvic examination at the
7 hospital. She went through two other examinations, one at
8 Pendleton Place Children's Shelter by Dr. Crosswell, and
9 then another one at the Child Advocacy Center by Dr.
10 Crosswell. And then has to go to a forensic interview and
11 tell another stranger what happened to her. Meanwhile,
12 before that, she had to tell Deputy Taylor, who came to
13 the hospital. She had to tell Investigator James Austin,
14 who came to the hospital. She had to tell Dr. Bailey, the
15 emergency room doctor who testified. She told all of
16 these people what her dad had done to her. And you heard
17 from all of those people. She never wavered in her
18 account. There may be minor inconsistencies, but that
19 doesn't mean that it didn't happen.

20 I say to you that if she had taken the stand or
21 if you had heard from these other witnesses that she told
22 a verbatim story every single time, then you would have
23 cause for concern. Then you might say this child has been
24 coached or rehearsed. And the Defense suggested in
25 cross-examination that she had somehow been coached and

1 rehearsed by her caregivers or by me. And I say to you
2 that I wouldn't be much of a prosecutor if I didn't meet
3 with a potential witness for trial to talk about what
4 they're going to say, to find out what they have to say.

5 But she told you on the stand that she
6 understood the difference between telling the truth and
7 telling a lie, and she promised to tell the truth. And
8 you saw in the forensic interview that occurred when she
9 was five years old that she understood the difference
10 between truth and a lie. The forensic interviewer went
11 through various scenarios with her and she understood
12 about truth and a lie. And she understands that there are
13 consequences for that. And this interviewer, as you could
14 see, used nonleading questions and just let her tell what
15 happened. And she tried in her own way at five years old
16 to tell what her dad had done to her. And she said things
17 like he sat on me. And you kind of think, well, what does
18 that mean? But then at the conclusion of the interview or
19 towards the end of the interview, she is given those
20 anatomical dolls and she shows you what happened. She
21 shows you how he sat on her and tried to penetrate her or
22 penetrated her.

23 And you have to consider the developmental
24 level of a five-year-old, and how they don't know about
25 these things. So they express what happened in the only

1 words they know how to express it. And I submit to you
2 that that's what she did. And that's what she did
3 yesterday for you at the age of eight. She came in here
4 and she talked about things of a sexual nature and very
5 intimate sensitive things that the Defense asked her on
6 cross-examination about her bathroom habits and things
7 like that and she had to answer those questions. And she
8 did and she told the truth.

9 The Defense may suggest to you that this has
10 somehow been put into her mind and that she's just run
11 with it. And ladies and gentlemen, I submit to you that a
12 child of this age is not sophisticated enough to pull off
13 some grand conspiracy as the Defense might suggest to you.
14 She had blood in her underwear and was taken to the
15 hospital as a result of it.

16 And to further support what she said happened,
17 there's blood in her underwear. And ladies and gentlemen,
18 it was not from a problem with going to the bathroom. It
19 was not from a problem with bowel movements as the Defense
20 tried to suggest through their cross-examinations. There
21 is no evidence of that. That was a blood clot in the
22 crotch of her panties. And it was nothing but blood. You
23 heard from the SLED analyst, the scientist who analyzed
24 the blood. She said it was only [REDACTED]'s blood.
25 There was no fecal matter or any other material in those

1 panties. So it wasn't from a bathroom problem. There is
2 no evidence of that. Purely speculation.

3 It is not puberty as the Defense has suggested
4 through cross-examination. You heard from the doctors,
5 they do not think this is connected with puberty. She has
6 no breast development. She has a prepubertal hymen,
7 according to Dr. Crosswell. There was no estrogen there.
8 According to her caregiver, she has not started her
9 periods yet. According to her caregiver, she hasn't had
10 any more problems with bleeding from her vagina since she
11 came into her care in December of 2008, nor has she had
12 any problems with blood in her stool. So those are just
13 speculative theories that have been put forth by the
14 Defense to try to throw you off to keep you from looking
15 at what evidence is right here for you.

16 Dr. Bailey, the emergency room doctor, testified
17 that it was very difficult for her to get a good look and
18 she just did a visual inspection of the external
19 genitalia. She couldn't get a good look at the internal
20 genitalia, meaning the hymen. And as best she could tell,
21 the hymen was smooth. But she said, this child was
22 struggling, combative, crying and upset. We had to hold
23 her down, you heard the nurse, to try to get these samples
24 that we had to collect from her. It's a terrible visual
25 image if you think about it. And Dr. Bailey found that

1 there was a laceration, or scratch, to her labial area and
2 then there was also redness there on the right side. She
3 also told you she doesn't have any specialized training in
4 conducting sexual assault examinations. So she referred
5 her to the child advocacy center by a doctor who does have
6 specialized training.

7 And you heard from Dr. Mary Fran Crosswell this
8 morning. She saw [REDACTED] on December 29th, 2008, which
9 was three days after she had been seen in the emergency
10 room. And you heard her qualifications, she is well
11 training in doing what she does and she has conducted
12 numerous examinations. And when she saw [REDACTED] on
13 December 29th, she said I saw with the naked eye what
14 appeared to be either a notch or a transection, but I
15 needed my equipment to better visualize it, to magnify it
16 so that I could tell exactly what it was.

17 So she examined her again on January 8th of
18 2009, using what she told you is called a colposcope,
19 which is, essentially, a device to allow her to get a
20 better look at the hymen, the internal part of the vagina,
21 with a magnifying device. And she told you that she found
22 not a notch, which she said could be a normal thing in
23 anybody, she found a transection, which is a tear in the
24 hymen. And she drew that here for you and she explained
25 that to you. She said it's a tear all the way down to the

1 vaginal wall of the hymen that is caused by blunt force
2 trauma, a penetrating injury or an impaling injury, and
3 that it would be painful for the child. That it could
4 cause bleeding. She said the history was that there had
5 been a sexual assault. The Defense cross-examination
6 threw out some more speculation about well, she could have
7 fallen off a bicycle or she could have fallen down or
8 something like that. There's no evidence of that, ladies
9 and gentlemen, none whatsoever. Pure speculation.

10 [REDACTED] has reiterated over and over that her
11 dad penetrated her. She described that it hurt her. She
12 described that she bled. She described ice cream that was
13 put on her. And as disgusting as it is, perhaps, the
14 Defendant was using that as some kind of a lubrication in
15 this case. I don't know. It's just -- it's a horrible
16 thought, but it's something you have to consider. And you
17 have in evidence what was collected at his house, which
18 was a cup with fruit dip. And then you also have a
19 refrigerator. And she said it came out of the
20 refrigerator. And here's the picture of the fruit cup
21 dip. In her interview with the forensic interviewer, she
22 said it was red. She said it was red. Well, here's some
23 red substance right here. So you have to consider that it
24 could have been that substance or it could have been that
25 [REDACTED] saw blood after this happened because she said

1 she bled. And we know she bled because you have the
2 panties to prove it.

3 Now, one thing the Defense is going to talk to
4 about, I feel certain, is that there is no DNA in this
5 case. There is no semen in this case. Ladies and
6 gentlemen, [REDACTED] never described any kind of
7 ejaculation. The interviewer asked her about that and she
8 asked her if anything came out of her or him. She never
9 described that. He knew what he was doing. He wasn't
10 going to leave that kind of evidence. How do we know he
11 wasn't wearing a condom? I think that's something you
12 have to consider.

13 [REDACTED] said that he threatened her not to
14 tell. You and I know that that is not that big of deal to
15 say not to tell, but we're adults. Children take that
16 seriously. But she did, she told. She told her momma and
17 she said momma -- or she calls her Jill. Jill and Keith
18 had an argument, so it would appear that Jill confronted
19 Keith about it and that there was an argument. [REDACTED]
20 remembered that. I guarantee you that the Defendant did
21 not think that this child would tell what he did. Because
22 that's what people who abuse children count on, that they
23 won't tell. And then they think well, if they do, nobody
24 will believe them because they're just a kid.

25 Ladies and gentlemen, you cannot ignore the

1 physical evidence in this case that supports what this
2 child said happened. The blood, the medical findings all
3 support what this child said happened. She did not come
4 into this sexual knowledge that was apparent that a
5 five-year-old with sexual knowledge well above what you
6 would expect of a child of that age. She didn't come into
7 that by pornography, as the Defense may try to suggest to
8 you. She told the interviewer yeah, I found a naked butt
9 movie that my daddy had when I was looking Scooby-Doo.
10 The interviewer asked her, did you see it, did you watch
11 it? No. She didn't come into this information and then
12 continue to tell the same story over and over again by
13 watching pornography. That's pure speculation.

14 The State has to prove this case to you beyond a
15 reasonable doubt. The Judge has told you and the Judge
16 will tell you more about what reasonable doubt means. The
17 Defense is probably going to talk to you about reasonable
18 doubt. Because they're going to say something along the
19 lines of, you know, this could have been from constipation
20 and bathroom problems, that's where the blood could have
21 come from. She was really in puberty. This could have
22 been menstrual related to that. This could have come from
23 some other kind of injury. There's no DNA. All that
24 stuff adds up to reasonable doubt. They're going to say
25 something like that.

1 But, ladies and gentlemen, reasonable doubt must
2 be reasonable, not speculative. It doesn't mean that you
3 can't have a doubt or any doubt because if that were the
4 case, no Defendant would ever be convicted in any court
5 anywhere. The Judge will tell you more about reasonable
6 doubt. You must be firmly convinced of the Defendant's
7 guilt.

8 So what you have to ask yourself is after you
9 heard [REDACTED], did you believe her? Because you took
10 an oath to render a verdict that speaks the truth in this
11 case. You heard her tell what happened. You heard the
12 history of this whole thing. You got the medical
13 evidence. And she deserves to be vindicated for what the
14 Defense described in their opening statement as a heinous,
15 disgusting act. And I agree with that. It is heinous and
16 disgusting. And as I told you at the beginning, the State
17 does not have to prove why a grown man, a father, would do
18 this to a child. We do not have to prove that. We cannot
19 prove that. It is unfathomable.

20 So in conclusion, ladies and gentlemen, I am
21 asking you to vindicate this child, to apply the law that
22 you're given to the evidence that you have here in front
23 of you and that you heard from this witness stand and hold
24 him responsible. Thank you very much for your time.

25 THE COURT: All right, Mr. Robinson.

CLOSING STATEMENT

MR. ROBINSON: May it please the Court.

Thank you very much for listening to us the last couple of days. I injured myself running and I'm limping a little bit. You know I was struck with the prosecutor's closing statement because this idea of reasonable doubt is what this whole case is about. If you apply the law of this case to the facts that the State has presented in this matter, Keith Desue is not guilty. But see the State is -- what they're saying is what I'm going to do is try to put a red herring out there or something like that, some sort of odd issue and things like that. I don't have to do that. Because their own testimony, their own witnesses said the same thing that I'm going to say to you.

Now, we all know a few things about children. This is a five-year-old child. We all know that kids have imaginations, that kids lie. That kids will sometimes not tell the truth to get something they want. That kids can be manipulative and they can be manipulated by persons, adults. And it was interesting to me that the prosecutor admitted in her closing statement that she had met and prepared for this case. And it's interesting even further that the stepparents were in the courtroom with this little girl and they were here when she testified. So

1 think about -- she talked about motive in this matter.
2 Think about the motive that this little girl has. She has
3 people, parents that want to make sure everything stays
4 like it is. She has a prosecutor that's also talking to
5 her. She has a lot of pressure on her.

6 Well, let's do this. Let's take away for the
7 moment the emotional aspect of this case. Take away the
8 disgusting nature of the allegations. Because when you
9 hear the allegations, as I told you in the beginning, it's
10 heinous, it's disgusting. It's all these things. But if
11 you take away the emotions that are going to be running
12 through each of you in this case as far as, you know, they
13 got this guy, the bad guy, he's the father, all these kind
14 of things, if you take those things away and look at the
15 facts in the case, then you have a clearer picture of what
16 you have.

17 Let's start with the medical testimony that we
18 have because -- and we can start with the SLED person that
19 testified, the person from SLED. Now, she got the
20 undergarments, she got the cup, she got different things
21 that she tested. And she found no semen. She found no
22 DNA.

23 Now, the prosecutor kind of minimized the
24 importance of these things, but they are important. They
25 can could not produce -- this agent that they had, the

1 nicely dressed lady who testified that all the little
2 things this State has got here, the rape kit, the
3 different things that they had in the boxes, the cup and
4 so forth, they have nothing to connect those to Mr. Desue,
5 nothing. And that's interesting because normally the
6 prosecutor would be using DNA to prove their case. They'd
7 be trumping with the DNA saying oh, yeah, here it is.
8 They wouldn't be minimizing it. Why? Because they don't
9 have it. So there's no DNA, no semen connected to him.

10 Well, let's talk about Dr. Crosswell, that's the
11 last one. Now, I told you that we're dealing with the
12 facts. We're not dealing with the emotional aspect, but
13 the facts. And you can dislike someone for the way they
14 look, the way they sit, but you have to look at what the
15 State has put forward. Because the doctor, the good
16 doctor, she couldn't say whether this was sexual abuse or
17 not. This nice little diagram here that they put
18 together, she could not say that it was sexual abuse.
19 Even under direct examination by the State, she could not
20 definitively say that.

21 Dr. Bailey was the same way, that's the doctor
22 we heard from yesterday. She couldn't tell what it was.
23 Dr. Bailey was the one that saw the girl first. She's the
24 one who said -- and this is what's interesting because we
25 had all this talk today from Dr. Crosswell of impaling and

1 sitting and so forth. What's interesting is when Dr.
2 Bailey saw the child on the 27th, she was happy, smiling,
3 playful. There was no indication that the child had any
4 problems walking. There was no bruising, no abrasions on
5 her legs, inner thighs, pubic area. The hymen was intact.
6 She didn't notice any bruising at all. This was a day or
7 two later.

8 They did make an issue about the underwear that
9 this little girl had that they sent down to SLED and so
10 forth. What's interesting is that not one of the persons
11 that testified could say what kind blood that was. Was it
12 from -- was it a passing, was it vaginal, they couldn't
13 say, they couldn't say where it came from. So you have
14 Dr. Bailey saying she can't say what it was. She could
15 say it was a notch. But no one had a history from this
16 child -- no one came in here saying you know, before the
17 24th, this child had no notches or abrasions, nothing like
18 that. So no one knows where that's from. No one knows
19 where the notch is from. No one knows about the
20 laceration. No one knows. Because they have on DNA, no
21 sperm, nothing. You can't link that to Mr. Desue. Not
22 one of these doctors can say it was sexual abuse. Not one
23 of them can say that.

24 And let's look -- you'll have an opportunity
25 when you go back in the jury room to listen and watch the

1 tape that the forensic interviewer did. You listen to it.
2 See what you think about it. See whether it was leading.
3 See whether the questions were leading. See how the child
4 may have been manipulated, how she was talking to her and
5 so forth. How the child got -- would a child act this
6 way? Because if you look at the child, she was a number
7 of things. She was very nonchalant about it, unemotional
8 about it. She acted like she was talking about somebody
9 else. She acted very much like she was rehearsed, like
10 someone had been telling her what to say. So listen to
11 the progression of the questions and how the questions
12 came out. If you'll listen to it, it sounds like she had
13 been prepped. She had been told what to say. And she
14 does have a motive. The prosecutor says no, there's no
15 motive involved. What motive was there? You're looking
16 at the motive right there.

17 MS. SEAY: Your Honor, I'm going to object.

18 MR. ROBINSON: I withdraw that, Your Honor.

19 THE COURT: All right, instruct the jury to
20 disregard it.

21 MR. ROBINSON: But she admitted to being
22 coached. And look at the allegation. She says that she
23 was sat on by Mr. Desue at five years old. Sat on by Mr.
24 Desue and he did all these bad things to her and so forth,
25 but if that were true, how come just a day or two later,

1 Dr. Bailey said she didn't see anything like that. Think
2 about how the story makes sense and how it doesn't make
3 sense.

4 The prosecutor in her statement says that
5 everything I'm talking about and everything I'm telling
6 you is pure speculation. I would argue very strongly what
7 she's talking about is pure speculation because there's
8 nothing. It's a could have, would have, should have and
9 that is not what this Court is about. Has the State
10 proven their case to you beyond a reasonable doubt? And I
11 would submit to you if you put emotions aside and use your
12 common sense that we talked about in the beginning, you
13 may not like this whole idea, this whole disgusting idea,
14 but the State has to prove to you beyond a reasonable
15 doubt that Keith Desue did this to his daughter. And they
16 can't do that. I would submit to you if you look at this
17 case, the verdict is one that speaks the truth, and that
18 is he is not guilty. Thank you.

19 JURY CHARGE

20 THE COURT: Okay. Now, I don't allow anyone in
21 or out of the courtroom during my charge so if anyone
22 needs to leave, now is the time to do it.

23 As you know, ladies and gentlemen, the Defendant
24 in this case is charged with criminal sexual conduct with
25 a minor in the first degree. This is a statutory offense.

1 And I tell you that some several years ago, our
2 legislature enacted a law which brought into one package
3 or under one umbrella, so to speak, all of our laws
4 dealing with sexual battery or with sexual assault. And
5 this is known as criminal sexual conduct. It's broken
6 down into first, second and third degree.

7 Ladies and gentlemen, I charge you that
8 generally sexual battery is accomplished in one of three
9 ways. Either with the use of force, which constitutes
10 criminal sexual conduct in the first degree or, secondly,
11 with the threat of the use of force, which would
12 constitute criminal sexual conduct in the second degree.
13 Or third, when the alleged victim is in some way
14 incapacitated, this would constitute criminal sexual
15 conduct in the third degree.

16 Now, with respect to the indictment in this
17 case, you are not concerned with whether or not force was
18 used, with whether or not there was any threat of the use
19 of force or that the alleged victim in the case was in
20 some fashion incapacitated. Section 16-3-655 of our code
21 of laws provides in part as follows: A person is guilty
22 of criminal sexual conduct with a minor in the first
23 degree if the actor engages in sexual battery with a
24 victim who is less than 11 years of age. Section 16-3-657
25 read, The testimony of the victim need not be corroborated

1 in prosecutions under this section.

2 Now, ladies and gentlemen, section 16-3-651
3 defines sexual battery as follows: Sexual battery means
4 sexual intercourse, cunnilingus, fellatio, anal
5 intercourse or any intrusion, however slight, of any part
6 of a person's body or any object into the genital or anal
7 openings of another person's body except when such
8 intrusion is accomplished for medically recognized
9 treatment for diagnostic purposes.

10 Ladies and gentlemen, I charge you that with
11 respect to the charge against the Defendant in this case,
12 that consent is not a defense to the commission of the
13 alleged crime. I charge you, ladies and gentlemen, that
14 this section that I read to you imposes strict liability
15 for its violation because neither consent, intent or
16 knowledge are made elements of the offense. Under the
17 statute, a person engages in the prohibited conduct with a
18 minor, whether or not the age of the person is known or
19 unknown.

20 As I told you earlier, ladies and gentlemen,
21 that sexual battery includes sexual intercourse, which
22 needs no definition by me to you. I do need to define for
23 you the words cunnilingus and fellatio. The term
24 cunnilingus, ladies and gentlemen, identifies a separate
25 and distinct act constituting sexual battery. It is

1 defined as oral stimulation of the vulva or clitoris of a
2 female with the tongue of the accused and is accomplished
3 by licking or kissing the vulva or clitoris. Penetration
4 or intrusion of the vagina is not necessary or required
5 for cunnilingus. With respect to the word fellatio, I
6 charge you that it means the completed act of fellatio,
7 that is there must be some degree of intrusion or
8 penetration of the victim's mouth by the Defendant's
9 penis, but any intrusion or penetration, however slight,
10 is all that is necessary and it is not necessary to prove
11 ejaculation or emission.

12 Now, ladies and gentlemen, as jurors in this
13 case, you have a function or a responsibility that is
14 entirely separate and distinct from my function in the
15 case as the trial judge. The constitution of our state
16 does not allow me to charge you on the facts of this case
17 or to discuss the facts with you or in any way or manner
18 let you know what my personal feelings, if any, are about
19 this case. And that's because you and you alone are the
20 judges of the facts. Therefore, if during the course of
21 this trial or during the course of my charge, you have a
22 feeling or you have been left with the impression that I
23 have a personal feeling about this case, one way or
24 another, then you disregard that feeling or that
25 impression.

1 Now, it's your duty and your duty alone to weigh
2 the testimony and evidence in this case and to pass upon
3 the credibility or the believability of the witnesses you
4 heard testify. You have the right to believe all that a
5 witness told you or you can disbelieve all that a witness
6 told you. You can believe a part of what a witness told
7 you and disbelieve a part of what a witness told you. You
8 can believe one witness as against several or you can
9 believe several against one. You also have the right to
10 take into consideration any bias or prejudice or interest
11 you feel a witness in the case might have.

12 I'm the judge of the law in this case and I'm
13 required to charge the law that applies to the facts.
14 It's not a question of what you feel the law might be or
15 what it should be. It is not necessarily what the lawyers
16 may have told you it is because under your oath, you are
17 required to take the law as I give it to you, apply that
18 law to the facts as you determine those facts to be and to
19 write your verdict accordingly. It's also my duty to see
20 that this trial is conducted according to the rules of the
21 court and the rules of evidence applicable to the
22 admissibility of testimony and the evidence as I
23 understand those rules to be. Therefore, you are not to
24 consider in any way or manner testimony that was ruled out
25 by me as being not admissible or to consider arguments of

1 counsel that I have instructed you to regard.

2 Now, in this case as in all criminal cases, this
3 Defendant comes into this courtroom presumed to be
4 innocent. And this presumption continues and carries
5 through the entire trial until and unless it is removed by
6 evidence that satisfies you of his guilt beyond a
7 reasonable doubt. The burden is on the State in this case
8 to prove this Defendant guilty and to prove each and every
9 element of the offense for which he is charged beyond a
10 reasonable doubt.

11 Now, some of you may have in the past served as
12 jurors on civil cases. And if so, you were most likely
13 told that it was only necessary to prove that a fact was
14 more likely true than not true. But in criminal cases,
15 the State's proof must be more powerful. As I've told
16 you, it must be beyond a reasonable doubt. Now, proof
17 beyond a reasonable doubt is proof that leaves you firmly
18 convinced of this Defendant's guilt. There are very few
19 things in this world that we know with absolute certainty
20 and in criminal cases, our law does not require proof that
21 overcomes every possible doubt. If based on your
22 consideration of the evidence in this case, you are firmly
23 convinced that this Defendant is guilty, then you must
24 find him guilty. If on the other hand, you find that
25 there's a real possibility that he is not guilty, then you

1 must give him the benefit of that doubt and find him not
2 guilty.

3 As I told you earlier, ladies and gentlemen,
4 this Defendant has absolutely no burden. He does not have
5 to take the stand and testify. And as I've told you, you
6 cannot hold that against him in any way. You cannot even
7 discuss it in the jury room.

8 Now, under the oath you took in this case, you
9 swore to try the case based only and solely on the
10 testimony and evidence presented in this case. I tell you
11 that it is your duty to lay aside all outside opinions,
12 bias, prejudice or sympathy you may have in reaching your
13 verdict. The word verdict, ladies and gentlemen, is taken
14 from the Latin word veredicto that means to speak the
15 truth. You have no friends to reward in this case or
16 enemies to punishment. I charge you to abide by your oath
17 and return a verdict that speaks the truth.

18 Now, you'll have in the jury room with you the
19 indictment. This indictment does not constitute evidence,
20 it simply sets forth the allegation by the State. This
21 indictment is the legal document that brings this case
22 into this courtroom and presents it to you for your
23 determination. There are one of two verdicts in this
24 case, guilty or not guilty. And whatever your verdict is,
25 it must be unanimous. That is all 12 of you must agree.

1 Madam Foreman, whatever the unanimous verdict of
2 the jury is, guilty or not guilty, you'll find a place on
3 the back where it says verdict. Please write out verdict
4 and then sign your name on the line where it says
5 foreperson of the petit jury.

6 Now, at this time, I'm required to go over my
7 charge with the lawyers. I need you to go back into your
8 jury room, but do not begin deliberations until I send
9 word in for you to do so. Thank you.

10 (WHEREUPON, the jury left the courtroom at
11 approximately 1:37 p.m.)

12 THE COURT: Anything further from the State?

13 MS. SEAY: No, sir.

14 THE COURT: From the Defense?

15 MR. ROBINSON: No, Your Honor.

16 THE COURT: Okay. All right. You got all the
17 exhibits together?

18 Bring my two alternates out to me. Tell them to
19 begin deliberate.

20 (WHEREUPON, the jury began deliberating at 1:39
21 p.m.)

22 THE COURT: Okay. Ladies, since our 12 jurors
23 have made it through this case, this will conclude your
24 service on this case. I need you back in the morning at
25 9 o'clock and we'll start some other cases. So you're

1 free to go until then, so be back at 9 o'clock in the
2 morning. Thank you.

3 (WHEREUPON, court was in recess awaiting a
4 verdict.)

5 THE COURT: All right. Ladies and gentlemen, I
6 understand we have a verdict. Of course, we don't know
7 what that verdict is, but I need everyone in the courtroom
8 to understand that regardless of the verdict that I will
9 not permit or condone any displays of emotion, no outburst
10 of any kind, no crying, laughing or anything of that
11 nature. And should there be any, that would constitute
12 contempt of court and I will punish accordingly.

13 Now, does anyone not understand what I just
14 said?

15 All right, bring the jury.

16 (WHEREUPON, the jury entered the courtroom at
17 approximately 2:20 p.m.)

18 THE COURT: Madam Forelady, if you've reached
19 your verdict, would you hand it to the bailiff, please,
20 ma'am.

21 All right, would you please publish the verdict.

22 VERDICT

23 THE CLERK: Your Honor, this is case number
24 2009-GS-23-4190, the State vs. Keith Antreus Desue,
25 indictment for criminal sexual conduct with a minor first

1 degree, the verdict is guilty. Signed the foreperson,
2 Dana Cockman.

3 If this is your verdict, please raise your right
4 hand.

5 (WHEREUPON, all members of the jury panel raised
6 their right hand.)

7 THE COURT: Anything further from the jury,
8 counsel?

9 MS. SEAY: No, sir.

10 MR. ROBINSON: No, sir.

11 THE COURT: Thank you, ladies and gentlemen, for
12 your service on this case. You have the rest of today
13 off, of course, but we need you back in the morning,
14 unfortunately. So I'll ask that you report to the jury
15 assembly room at 9 o'clock in the morning. 9 o'clock in
16 the morning. Thank you so much. You're free to go.

17 (WHEREUPON, the jury left the courtroom and
18 excused at approximately 2:22 p.m.)

19 THE COURT: Any motions?

20 MR. ROBINSON: None, Your Honor.

21 THE COURT: Anything else from the State?

22 MS. SEAY: Nothing further from the State.

23 THE COURT: Come around, please.

24 Mr. Robinson, you need to sign that.

25 MR. ROBINSON: Yes, sir.

1 THE COURT: Not your client.

2 MR. ROBINSON: Yes, sir.

3 THE COURT: No, he doesn't need to sign it, jury
4 trial.

5 MR. ROBINSON: Thank you, Your Honor.

6 THE COURT: All right. Now, sir, you exercised
7 your constitutional right not to testify during your
8 trial, but you have a perfect right now to address the
9 Court concerning the sentence that I will impose. Is
10 there anything you'd like to say now before I sentence
11 you?

12 MR. DESUE: Yes, sir.

13 THE COURT: All right, sir.

14 MR. DESUE: This is a crime that I did not
15 commit. If there's anything I can do to prove that I did
16 not commit this crime, I'm willing to do it. I mean --

17 THE COURT: Well, this jury unanimously found
18 that you did commit it, sir. And it was overwhelming
19 evidence in the case to show that. You have, of course, a
20 right to appeal to the Supreme Court if that's what you
21 want to do.

22 MR. DESUE: Yes, sir.

23 THE COURT: But beyond that, just.

24 MR. DESUE: Your Honor, thank you for handling
25 this case.

1 MR. ROBINSON: Your Honor, we'd ask for the
2 minimum sentence. He has no record to speak of as far as
3 violence or anything of that nature. I believe he has a
4 credit card fraud or something of that nature a while ago.
5 I don't know when that was. There was another charge from
6 2003, I think, but nothing of this kind of nature before.

7 THE COURT: Anything from the State?

8 MS. SEAY: No, sir, Your Honor. The penalty is
9 25 years to life on this offense.

10 THE COURT: Anything else?

11 MR. DESUE: I just ask that you give me the
12 least that you can give me, please.

13 SENTENCING

14 THE COURT: All right. The sentence of the
15 Court is that you be committed to the Department of
16 Corrections for a period of 25 years.

17 MS. SEAY: Thank you, Your Honor.

18 MR. ROBINSON: Thank you, Judge.

19 MR. ROBINSON: May we approach, Your Honor?

20 THE COURT: Sure.

21 (WHEREUPON, the proceedings were concluded.)
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, PENNY M. JOHNSON, Professional Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 9-10th day of January, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

~~MOOREHEAD~~ DECEMBER, 200

PENNY M. JOHNSON, Court Reporter

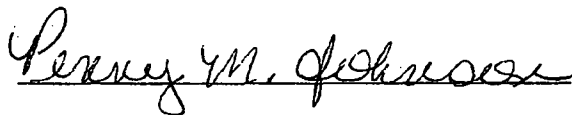
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I do further certify that I am neither of kin, counsel nor interest to any party hereto.

JUNE 5, 2012



PENNY M. JOHNSON, Court Reporter



Division of Appellate Defense
 1330 Lady Street, Suite 401
 Columbia, South Carolina 29201-3332
 Post Office Box 11589
 Columbia, South Carolina 29211-1589
 Telephone: (803) 734-1330
 Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
 Wanda H. Carter, Deputy Chief Appellate Defender

November 4, 2013

RECEIVED

NOV 04 2013

The Honorable Jenny Abbott Kitchings
 S.C. Court of Appeals
 PO Box 11629
 Columbia, SC 29211

SC Court of Appeals

Re: State of South Carolina v. Keith Desue
 Appellate Case No. 2012-207288

Dear Ms. Kitchings:

The brief of appellant and designation of matter in the above case are due to be served and filed on November 11, 2013. However, as evidenced by the enclosed affidavit, Mr. Desue has elected to drop his appeal. I have discussed the consequences of dropping the appeal with Mr. Desue both verbally and in writing. Because Mr. Desue's decision to drop his direct appeal is knowing, intelligent, and voluntary after thoroughly discussing the advantages and disadvantages of pursuing a direct appeal, I respectfully request that the Court issue an order dismissing Mr. Desue's appeal.

By copy of this letter, I am informing Salley W. Elliott of the Office of the Attorney General of Mr. Desue's decision.

Thank you for your time and assistance in this matter.

Sincerely,

Benjamin J. Tripp
 Appellate Defender

BJT/pcm

Enclosure

cc: Salley W. Elliott, Esquire
 Keith Desue

RECEIVED

NOV -4

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

IN THE SOUTH CAROLINA COURT OF APPEALS
 APPELLATE CASE NO. 2012-207088

THE STATE,)
)
 Respondent,)
)
 v.)
)
 KEITH DESUE)
)
 Appellant.)
)
 _____)

AFFIDAVIT

PERSONALLY appeared before me, Keith Desue, who being duly sworn, deposes and says:

1. I am the appellant in the above captioned case.
2. I understand that I am entitled to an appeal of my conviction, and that, because I am indigent, I am entitled to the assistance of an attorney from the South Carolina Office of Appellate Defense. I have been informed that if I drop my direct appeal that I forever waive those issues that could be raised.
3. In light of the risks which have been explained to me, it is my desire that the South Carolina Office of Appellate Defense drop the appeal formerly filed on my behalf.
4. I have made this decision on my own, with a full understanding of all the possible consequences of this action.
5. I do not wish to appeal.

SWORN TO before me this 29
 day of October, 2013.

Keith Desue
 Keith Desue
Keith Desue

Franklin (L.S.)
 Notary Public for South Carolina
 My Commission Expires: 12-16-2019

RECEIVED

NOV -4 2013

CLERK OF COURT

The South Carolina Court of Appeals

The State, Respondent,

v.

Keith Desue, Appellant.

Appellate Case No. 2012-207288

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NOV 12 2013

ATTORNEY GENERAL'S
OFFICE

The Honorable C. Victor Pyle, Jr.
Greenville County
Trial Court Case No. 2009GS2304190

ORDER

It appears that Keith Desue, with full understanding of all possible consequences of this action and with agreement of counsel, wishes to withdraw and dismiss this matter. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina
cc:
Salley W. Elliott
Benjamin John Tripp
Keith Desue

FILED
11/11/13



RECEIVED

NOV 27 2013

close

ATTORNEY GENERALS

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 26, 2013

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: The State v. Keith Desue
Lower Court Case No. 2009GS2304190
Appellate Case No. 2012-207288

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Keith Desue, 349222
Salley W. Elliott, Esquire
Benjamin John Tripp, Esquire

FORM 5

STATE OF SOUTH CAROLINA)

County of GREENVILLE)Keith DESUE # 349222)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2014-CP-23-

002

APPLICATION FOR

POST-CONVICTION RELIEF

2014 JAN 16 PM 9 24

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMERINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention: McCormick Correctional Inst.
386 Redemption Way McCormick S.C. 29899
2. Name and location of Court which imposed sentence GREENVILLE County
GENERAL SESSIONS, Greenville, South Carolina
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2009-GS-234190 CSL First Degree
(b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) JANUARY 10, 2012 25 years
- (b) ~~25 years violent~~
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. if you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Nov 26, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistance of trial counsel
- (b) prosecution misconduct
- (c) Newly discovered evidence
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failure to object, Failure to investigate
- (b) Failure to disclose exculpatory evidence
- (c) New testimony corroborating claim of innocence
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Direct appeal
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. S.C. Court of Appeals, Columbia S.C.
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Dismissed
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. Nov 26, 2013
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

this PCR - NO

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Scott Robinson - 101 Lavinia Avenue
Greenville S.C. 29601 - Trial Attorney

ii. _____

iii. Benjamin Tripp - SCCID, Columbia S.C.

(b) the proceedings at which each such attorney represented you:

i. Trial and sentencing - Scott Robinson

ii. _____

iii. Appeal - Benjamin Tripp

19. State clearly the relief you seek in filing this application:

VACATION of conviction and sentence

~~REVER~~ ALTERNATIVE, REVERSE and remand for new trial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Keith Deane, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Keith Deane

SWORN to and subscribed before me this 03
day of January, 2014.

J. Frank (L.S.)
Notary Public

My Commission Expires: 12-16-2015

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Keith DESUE, SCD # 349222, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Keith Desue

Applicant

SWORN or affirmed to and subscribed before me this

03 day of January, 2014.

J. Franklin
Notary Public

My Commission Expires: 12/16/2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2014-CP-23-0257
COUNTY OF GREENVILLE	)	
	)	
Keith Antravus Desue,	)	
S.C.D.C. No. 349222,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed January 16, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the December 2010 term of General Sessions for first-degree criminal sexual conduct with a minor (2009-GS-23-4190). Scott D. Robinson, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On January 10, 2012, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to twenty-five years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. On November 7, 2013, the Court of Appeals issued an order dismissing the appeal based upon the Applicant's request. The Remittitur was sent on November 26, 2013.

Attached herewith and incorporated herein by reference are the records of the Greenville

County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the appellate records. The trial transcript will be forwarded upon receipt.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Failure to object.
 - b. Failure to investigate.
2. "Prosecution misconduct."
 - a. "Failure to disclose exculpatory evidence."
3. "Newly discovered evidence."
 - a. "New testimony corroborating claim of innocence."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent submits the allegation of prosecutorial misconduct must be dismissed. To establish vindictive prosecution a defendant must prove “that (1) the prosecutor acted with genuine animus toward the defendant and (2) the defendant would not have been prosecuted but

for that animus.” United States v. Wilson, 262 F.3d 305, 314 (4th Cir. 2001). To establish genuine animus, the defendant may prove actual vindictiveness through direct evidence or raise a presumption of vindictiveness when the prosecutor’s actions “pose a realistic likelihood of ‘vindictiveness.’” Blackledge v. Perry, 417 U.S. 21, 27, 94 S. Ct. 2098 (1974). The Applicant has failed to meet his burden of proof regarding this issue.

Further, “[a] Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment.” Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999) (emphasis added). The Applicant has alleged that exculpatory evidence was not disclosed but has failed to either articulate this alleged evidence or meet his burden of proof regarding this issue.

V.

The South Carolina Supreme Court has held that, for an applicant to be granted post-conviction relief based on after-discovered evidence, he must show the alleged evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and, (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983) (citation omitted) (emphasis added). This Court notes the Applicant has failed to articulate the exact nature of the “new evidence” and has not attached any documentation of such to the PCR application. The Applicant has not shown that the alleged evidence meets any of the requirements for after-discovered evidence. Most importantly, the “new evidence” offered by the Applicant is not

material to the issue of guilt or innocence, and probably would not change the result if a new trial was had. See id. The Respondent submits the Court should summarily dismiss this allegation.

VI.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VII.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

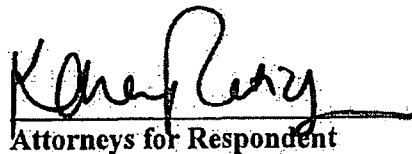
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P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

May 14, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2014-CP-23-0257
	)	
KEITH ANTRAVUS DESUE, 349222	)	
	)	
Applicant,	)	
	)	
vs.	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Keith Antravus Desue, 349222
 McCormick Correctional Institution
 386 Redemption Way
 McCormick SC 29899

DATED this 14th day of May, 2014.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS

2014-CP-23-00257

KEITH ANTRAVUS DESUE,
APPLICANT,

vs.

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,
RESPONDENT.

ORIGINAL

December 16, 2014
Greenville, South Carolina

B E F O R E:

THE HONORABLE EUGENE C. GRIFFITH, JR., JUDGE.

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

BRIAN P. JOHNSON, ESQ.
Attorney for the Applicant

KAREN C. RATIGAN, ESQ.
Attorney for the Respondent

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

Page No.

(AW) KEITH ANTRAVUS DESUE:

Direct Examination by Mr. Johnson.....5
Cross-Examination by Ms. Ratigan.....13

(RW) SCOTT DAVID ROBINSON:

Direct Examination by Ms. Ratigan.....17
Cross-Examination by Mr. Johnson.....21

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

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THE COURT: Are we ready?

MS. RATIGAN: Yes, Your Honor.

May it please the Court.

This is the case of Keith DeSue v. The State of South Carolina. The docket number is 2014-CP-23-0257.

Mr. DeSue was indicted for first degree criminal sexual conduct with a minor. He was represented by Mr. Robinson.

The case was brought to trial in January of 2012 before Judge Pyle. He received a 25-year sentence.

Mr. DeSue did file a notice of appeal. However, upon his request, that appeal was withdrawn in November of 2013.

His application was timely filed. The State is ready to proceed.

I would note just for the record and for Your Honor's information, the victim's adoptive parents are here today behind me. They're here to observe the Court proceedings.

THE COURT: Okay. Very well.

All right. Mr. Johnson.

MR. JOHNSON: Thank you, Your Honor.

May it please the Court.

THE COURT: Yes, sir.

MR. JOHNSON: At this time, I think it might be helpful if I just briefly summarize what our position is.

1 THE COURT: Okay.

2 MR. JOHNSON: We're, basically, alleging ineffective
3 assistance of counsel. In the transcript, it appears that
4 counsel opened the door for the witnesses testimony, who
5 was a child, to be bolstered by other people who she told
6 the same story to. So, basically, the State was allowed
7 to provide consistent statements with what she was
8 testifying to at trial that would not ordinarily be
9 permissible.

10 Judge, they cited a case -- it was an Appeals Court
11 case of the State v. Jeffcoat in the transcript, Judge.
12 And that's what allowed them to be able to provide that
13 evidence entered in.

14 I'm going to be calling my client to testify as to
15 the specifics of our case, Judge.

16 THE COURT: Okay.

17 MR. JOHNSON: I'm going to call Keith DeSue to the
18 stand.

19 THE CLERK: Mr. DeSue, please, place your left hand
20 on the Bible and raise your right hand.

21 I'll let you place your stuff down.

22 WHEREUPON,

23 KEITH ANTRAVUS DESUE,
24 after first having been duly sworn, testified as follows:

25 THE CLERK: Please state your full name.

1 THE WITNESS: Keith Antravus DeSue.

2 THE CLERK: Thank you.

3 You may be seated.

4 DIRECT EXAMINATION

5 BY MR. JOHNSON:

6 Q Mr. DeSue, how old are you?

7 A 32 years old.

8 Q Where are you currently living?

9 A Right now, I'm at McCormick Correctional Institution.

10 Q Why are you at McCormick Correctional Institution?

11 A Because I was convicted to 25 years.

12 Q Can you speak -- can you just speak up or come closer
13 to microphone?

14 A Because I was convicted to 25 years.

15 Q All right. Thank you.

16 On what charge were you convicted of?

17 A Criminal sexual conduct first degree with a minor.

18 Q Okay. Who represented you during that charge?

19 A Mr. Robinson.

20 Q And was he appointed or retained?

21 A He was retained.

22 Q Okay. So you, actually, paid him to represent you?

23 A Yes, sir.

24 Q Do you recall when you went to trial?

25 A Yes, sir.

1 Q When?

2 A In -- January the 9th 2012, the 9th and 10th.

3 Q Can you portray to the Court very briefly the
4 allegations that were made against you?

5 A Well, they was trying to -- they alleged that I
6 sexually assaulted my daughter.

7 Q Okay. And you were convicted of that after a trial?

8 A Yes, sir.

9 Q Now, with regards to the trial itself, I believe that
10 you have seen the -- you're in possession of a transcript;
11 correct?

12 A Yes, sir.

13 Q Okay. Now, during the course of that trial, do you
14 recall the victim testifying?

15 A Yes, sir.

16 Q And do you recall whether or not your attorney
17 questioned the victim?

18 A Yes, sir.

19 Q Now, do you recall whether or not the State was
20 allowed to bolster or, otherwise, support the victim's
21 testimony?

22 A Yes, sir.

23 Q Okay. Can you recall the situation that led to that?

24 A Yes, sir.

25 Q Can you, please, portray that to the Court very

1 briefly as to your understanding of it?

2 A My understanding is the Solicitor, she brought forth
3 a case -- a Jeffcoat case saying that if Mr. Robinson and
4 I say that she is -- that she had been coached that they
5 can bring in people saying that she told them the same
6 thing. That's my understanding of it --

7 Q Do you recall -- excuse me. Do you recall whether or
8 not Mr. Robinson questioned whether she was coached?

9 A Yes.

10 MR. JOHNSON: Your Honor, just in reference to this
11 transcript, that was on Page 57 of the transcript, Judge.

12 BY MR. JOHNSON:

13 Q Now, on Page 57, I'm going to recall and ask you if
14 this is your recollection. It's, obviously, a transcript.
15 I'll just read it into the record.

16 You talked to Rena several times before you came in
17 here today as well, didn't you?

18 The answer was: No, sir.

19 It says, So you didn't meet here with them?

20 She said, No, sir.

21 It says, That was you in the conference room down
22 there.

23 The answer was: In the conference room I didn't talk
24 to them.

25 He says, I'm sorry.

1 The answer was, I didn't talk to them.

2 Okay. And there's a redaction.

3 Who told you what to say -- who told you to say what
4 you testified today about this? Did someone tell you to
5 say something today about this?

6 The answer was, No, sir.

7 And is that your recollection of --

8 A Yes, sir.

9 Q Okay. And it's your understanding that that opened
10 the door for the State to be able to bolster her
11 testimony?

12 A Yes, sir.

13 Q And the State referenced the Jeffcoat case; correct?

14 A Yes, sir.

15 Q Do you recall whether or not that Mr. Robinson was
16 aware of the Jeffcoat case?

17 A I don't think he was aware of the Jeffcoat case.

18 Q So, in other words, he didn't know that what he was
19 doing could potentially open the door and hurt your case?

20 A I'm not sure if he knew. I don't think he knew that
21 it would hurt my case. I don't think he researched the
22 case.

23 MR. JOHNSON: Now, again, Your Honor, I'm referencing
24 Page 60 of the transcript. And I'll just read it aloud
25 for Mr. DeSue. It's lines 10 through 14. It's in

1 reference to the Jeffcoat case.

2 BY MR. JOHNSON:

3 Q It says -- Mr. Robinson states, I have not read this
4 case, Your Honor. I think what's good for the goose is
5 good for the gander. We have people that will say the
6 exact same thing, that she had inconsistent statements
7 prior to this time.

8 Is that consistent with your recollection of it?

9 A Yes, sir.

10 Q Okay. And, based upon that statement, was he aware
11 of the Jeffcoat case?

12 A No, sir.

13 Q Do you think if he were aware of the Jeffcoat case
14 that he would have entered that line of questioning?

15 A I think that if he was aware of the Jeffcoat case
16 that he probably would have never allowed -- agreed with
17 the Solicitor to bring it in.

18 Q Now, did the State, actually, utilize the permission
19 to move forward with bolstering the witnesses testimony?

20 A Yes, sir.

21 Q Now, was -- one of the witnesses that was allowed to
22 bolster the testimony, was her name Elizabeth Rena Bright?

23 A Yes, sir.

24 Q And she gave a -- she, actually, gave testimony that
25 the witness had given her consistent testimony with what

1 she had testified to in court on the day of trial; is that
2 correct?

3 A Correct.

4 MR. JOHNSON: And, Your Honor, I'm referencing the
5 direct testimony of Rena Bright. It starts on Page 61 of
6 the transcript.

7 BY MR. JOHNSON:

8 Q Now, was there someone who testified in your case
9 named Carmen Dorendorf Johnson?

10 A Yes, sir.

11 Q Okay. And was that person -- that person was an ER
12 nurse; correct?

13 A Correct.

14 Q And she was allowed to, also, give testimony that the
15 victim testified consistent with the way she testified at
16 trial; correct?

17 A Correct.

18 Q Someone named Jonathan Taylor, also, testified?

19 A Yes, sir.

20 Q Do you remember who Jonathan Taylor was?

21 A I believe he was an officer on call.

22 Q Okay. And this person was, also, allowed to testify
23 consistent with what the victim had testified to in court;
24 is that correct?

25 A Correct.

1 Q Was there someone named James Austin that, also, was
2 able to testify?

3 A Yes, sir.

4 Q Do you remember who that person was?

5 A I think he was the acting investigator on the case.

6 Q Okay. And was he, also, allowed to testify
7 consistent with what the victim testified to in court?

8 A Yes, sir.

9 Q And that was on --

10 MR. JOHNSON: Judge, I'm referencing Page 101 of the
11 transcript.

12 And, Judge, to go back briefly, Jonathan Taylor is on
13 Page 95 and 96. I don't think I said anything about that.

14 BY MR. JOHNSON:

15 Q Now, Mr. DeSue, I think I've recounted four different
16 people, including law enforcement personnel and ER
17 personnel, in reference to supporting the victim's
18 statements; is that correct?

19 A Correct.

20 Q Do you think that these people being allowed to
21 support the victim's testimony helped the State's case?

22 A I know it did.

23 Q Do you think it hurt you and prejudiced you?

24 A Yes, sir.

25 Q Do you think there was a chance that the jury may not

1 have believed her story if they weren't allowed to support
2 her story?

3 A Yes, sir.

4 Q Now --

5 MR. JOHNSON: One second, please, Your Honor.

6 (Pause.)

7 BY MR. JOHNSON:

8 Q Now, after the testimony had taken place, is it
9 true -- or do you recall whether or not Mr. Robinson tried
10 to then come back and argue State v. Jeffcoat after
11 becoming familiar with the case?

12 A I'm not sure he tried to argue it.

13 Q All right. If you don't remember...

14 Other than the statements given, to your
15 recollection, was there any other evidence found
16 consistent with the allegations in this case?

17 A None.

18 Q Okay. Now, was there a sexual assault or genital
19 exam performed?

20 A There was a sexual assault performed.

21 Q Was there --

22 A I mean, it was a sexual assault kit performed.

23 Q Okay. Was there any findings of semen or otherwise
24 in there?

25 A No, there wasn't.

1 Q Now, do you recall whether or not there was evidence
2 of fecal matter?

3 A Fecal matter. What --

4 Q Fecal matter in the child's underwear. Was there any
5 fecal matter found?

6 A No.

7 Q Was there any other -- any substance found in the
8 child's underwear?

9 A It was just blood found in the child's underwear.

10 Q And no one, specifically, stated that it came as a
11 result of anything you had done; correct?

12 A Excuse me?

13 Q Did anyone say that it came as a direct result of
14 something you had done?

15 A No.

16 Q Okay. So the statements of -- the statement of the
17 victim was the primary tool that the State used in order
18 to pursue your conviction?

19 A Right.

20 MR. JOHNSON: Your Honor, nothing further.

21 Please answer any questions Ms. Ratigan has.

22 CROSS-EXAMINATION

23 BY MS. RATIGAN:

24 Q Mr. DeSue, the victim in this case was your daughter;
25 is that correct?

1 A Correct.

2 Q And she had come to stay with you for a couple of
3 days?

4 A Just for one night.

5 Q Okay. And she was five years old at the time?

6 A Correct.

7 Q And eight at trial; is that correct?

8 A Correct.

9 Q Okay. And the charges -- basically, the case started
10 rolling when blood was found in her underwear after she
11 came to visit you; is that correct?

12 A Correct.

13 Q Okay. And Mr. Robinson tried to argue at trial that
14 the blood had to do with the fact that she had some bowel
15 issues; is that correct?

16 A Correct.

17 Q And would it be fair to say that Mr. Robinson -- one
18 of the things he was going to argue at trial was the
19 victim, your daughter, had given some conflicting stories?

20 A Correct.

21 Q Okay. And did Mr. Robinson bring that out at trial,
22 that she had told some kind of different stories to
23 different people?

24 A I don't think he --

25 Q Maybe he didn't bring it out as much as you would've

1 liked?

2 A Yeah. I don't think he just brought it out like
3 that.

4 Q Well, one of the stories that the victim stated was
5 that you had threatened her with a knife; is that correct?
6 Do you recall that?

7 A No. She didn't say that to the investigator.

8 Q Okay. But Mr. Robinson brought out that there was no
9 knife found in your home; is that correct?

10 A Correct.

11 Q So he was able to bring out some inconsistencies?

12 A Correct.

13 Q And you stated there was no evidence in this case,
14 but there was blood in the five-year-old child's
15 underwear; correct?

16 A Correct.

17 Q Okay. And the medical doctor testified there was a
18 transection of the hymen; is that correct? Do you
19 remember?

20 A She testified to it.

21 Q And did he, also, not testify that there was an
22 external laceration in the victim's genital area like an
23 external cut?

24 A (There was no response.)

25 Q If you don't recall, you can say you don't --

1 A Yes.

2 Q So there was some other evidence, other than the
3 victim's statement; is that correct?

4 A Not of a sexual assault.

5 Q Okay.

6 A She stated that that was the -- that was what she was
7 told, so that's what she was going by. She said it could
8 have come from riding a bike, or falling on a bike, or
9 anything. But she was told a sexual assault, so that's
10 what she said.

11 Q So she found this physical evidence. But your
12 testimony is that that physical evidence doesn't mean it
13 was a sexual assault?

14 A She didn't find any physical evidence of a sexual
15 assault.

16 MS. RATIGAN: Okay. That's all I have, Your Honor.

17 THE COURT: Anything else?

18 MR. JOHNSON: No redirect, Judge.

19 THE COURT: You may step down.

20 MR. JOHNSON: Your Honor, that's the Applicant's
21 case.

22 THE COURT: Okay. Ms. Ratigan.

23 MS. RATIGAN: Your Honor, the State would call
24 Mr. Robinson.

25 THE CLERK: Place your left hand on the Bible and

1 raise your right hand, Mr. Robinson.

2 WHEREUPON,

3 SCOTT DAVID ROBINSON,

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

5 THE CLERK: Thank you.

6 Please state your full name for the record.

7 THE WITNESS: Scott David Robinson.

8 THE CLERK: Thank you.

9 Have a seat.

10 DIRECT EXAMINATION

11 BY MS. RATIGAN:

12 Q Mr. Robinson, do you recall representing Mr. DeSue on
13 this charge?

14 A I do.

15 Q And were you, in fact, retained?

16 A I was.

17 Q Did you file the usual Brady and Rule 5 discovery
18 motions?

19 A Yes.

20 Q To the best of your knowledge, did you receive full
21 discovery from the State?

22 A Yes.

23 Q Were you able to review those materials with
24 Mr. DeSue?

25 A Yes.

1 Q Included in these materials, was there a video-taped
2 forensic interview?

3 A Yes. It was, actually, on a VHS tape.

4 Q Were you able to show that interview to Mr. DeSue?

5 A Yes.

6 Q And did the discovery include the medical reports of
7 the sexual assault exam?

8 A Yeah. We had a bunch of stuff. I mean, a bunch
9 of -- they had taken -- they had gone to the residence and
10 tried to tie Mr. DeSue through clothing and bed covering,
11 but nothing came of that.

12 Q And did Mr. DeSue tell you kind of his version of
13 events?

14 A Yes.

15 Q After listening to Mr. DeSue's version of what
16 happened with his daughter and looking at the discovery,
17 what did you determine your defense strategy was going to
18 be?

19 A He needed to go to trial. He didn't -- he could
20 not -- he did not want to plead guilty to something --
21 because he said he didn't do it. And I agreed with him.
22 So we prepared for trial.

23 The strategy was really -- I mean, they didn't really
24 have any physical evidence, other than some -- they had
25 some blood. They had some little notches, or whatever it

1 is near the vagina, things of that nature with the little
2 girl.

3 Q So there was no evidence of a sexual assault -- no
4 conclusive evidence of a sexual assault?

5 A There was no conclusive because the -- if you -- with
6 the medical reports, the hymen was intact. She was,
7 basically, happy when she went in, I guess, to this one
8 place that she went to. She had -- I think she had had
9 some diarrhea at some point. But that's what it was.

10 Q Would it be fair to say that one of the -- one of
11 your plans of attack at trial was to point out
12 inconsistencies in her statements?

13 A Yes. And the fact that there was very little
14 physical evidence in this case against Mr. DeSue.

15 Q Were you, in fact, aware of the Jeffcoat case prior
16 to the Solicitor having argued it at the trial?

17 A Here is what my recollection of that is. I read the
18 advance sheets. I read things like that. But this was
19 Judge Pyle, I believe, that was the trial judge.

20 As far as, specifically, reading the case, that I
21 don't -- I can't go back that far and tell you that. But
22 I advised the Court that I wanted to look at a copy of the
23 case overnight before they got into that.

24 And I did argue -- I didn't think the Judge -- I
25 disagreed with the Court in allowing that bolstering

1 testimony to come in. Because I believe under Jeffcoat --
2 after I read Jeffcoat, you've got to show that the -- as
3 far as -- you've got to have the statement, the pressure
4 and coaching has got to occur before the statement is
5 made, not afterwards. And I think that that would not --
6 was not applicable in this case. That was my
7 recollection.

8 Q Okay. So when the Solicitor argued Jeffcoat, she
9 hadn't given you a copy to --

10 A She hadn't, yeah.

11 Q Okay. So once you had a chance to review Jeffcoat,
12 your testimony is that's when you --

13 A I didn't think -- I did not think it was applicable
14 in this case.

15 Q Okay. But you did argue that to the Judge later?

16 A I thought I -- I think I argued that on Page 116.
17 That was the morning after that day.

18 MS. RATIGAN: I beg the Court's indulgence.

19 (Pause.)

20 MS. RATIGAN: That's all I have, Your Honor.

21 THE COURT: All right. Anything else?

22 MR. JOHNSON: Permission to cross-examine, Judge, at
23 this time.

24 THE COURT: Yes.

25 MR. JOHNSON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q Mr. Robinson, you've had an opportunity to review the transcript in this case; is that correct?

A I have.

Q Okay. Now, do you agree that questioning the victim in this instance with regards to whether -- essentially, whether she had been coached was a mistake in hindsight?

A I don't know that that was a mistake exactly. Because I think that getting out the fact that she had been -- was talking to the Prosecutor and different people, I think that was important. I think it was worth -- I think it was important.

Q Now, when you weigh that with the State's ability to then bolster her testimony with what I referred to with Mr. DeSue's direct -- on Mr. DeSue's direct, there was four different witnesses, some being law enforcement --

A Right.

Q -- others being, basically, medical personnel -- when you weigh that against that, do you think that that risk outweighed -- that the rewards outweighed the risk with them being able to bolster her testimony?

A Well, hindsight is always 20/20 in every single case. I disagreed with the Judge's ruling. Because I don't think that Jeffcoat was applicable. I don't think they

1 should have been allowed to do that.

2 But, as far as a mistake, I think, at the time, I
3 thought it was the best. I thought the risk outweighed
4 the benefits of it.

5 Q Now, would you agree that -- at the time you asked
6 the victim the questions with regards to whether or not
7 she had been coached, essentially, do you agree that you
8 weren't aware of that rule?

9 A Do you mean the Jeffcoat case?

10 Q Correct.

11 A Now, this is going back to whenever this was, 2009, I
12 believe, or something like that. I normally read
13 everything up to date. If I didn't know about it at that
14 time, then I didn't know about it. That's what I may have
15 advised the Court.

16 And the Court gave me an opportunity to read it
17 overnight. And that's when I made the legal arguments
18 regarding inapplicability at that time.

19 Q Okay. So just to get clarity on the question I
20 asked, would you agree that at the time you asked the
21 question, you weren't aware of Jeffcoat?

22 A I think I may have answered that on direct
23 examination. I don't know if I was aware of it
24 specifically, correct.

25 Q So you don't recall whether you were aware of it?

1 A I really don't. I don't. I -- it was a long time
2 ago.

3 Q Do you think that the -- obviously, would you agree
4 that the transcript as it recalls the testimony and the --
5 what you said and what Ms. Seay said, et cetera, would you
6 agree that that's an accurate recollection of the
7 events -- or an accurate recitation of the events during
8 trial?

9 A It was 2009. You have to go by the transcript in
10 this case.

11 Q Okay.

12 A And you can see my argument that I made, and what I
13 advised. And those are what I made back then five years
14 ago.

15 Q Now, during Mr. DeSue's direct testimony, I recited
16 what you said in reference to, I have not read this case,
17 Your Honor.

18 A Okay. That's what I -- if that's what I said back in
19 2000 [sic], then that's correct.

20 Q Okay. So you would agree that that seems to indicate
21 that you weren't aware of the case?

22 A Right. Back in 2000 [sic], that's what I said.

23 Q Okay. Now, I believe you, also, stated that you then
24 came back a day later and argued Jeffcoat; is that
25 correct?

1 A I think we did. That was on Page 116.

2 Q 116?

3 A I believe so.

4 Q Okay. And the witnesses that I recited, are you
5 aware that those witnesses were introduced into evidence
6 on the first day of trial, on the same day, or before you
7 made your arguments? Were you aware of that?

8 A I'd have to -- you have to look at the transcript. I
9 have to go by the transcript in this matter. If that's
10 what it says, that's what it says.

11 Q Okay. Now, just for the record, and I'm going to ask
12 you a question after I say this. Ms. Bright's --
13 Ms. Elizabeth Rena Bright's testimony was on Page 61. And,
14 obviously, that's before Page 116 on the second day.

15 A Okay.

16 Q And Carmen Dorendorf Johnson was on Page 66. And
17 that would have been before the second day of trial. And
18 then Brianne [phonetic] Bailey was on Page 82 -- or
19 roughly her testimony is contained on Page 82. And that's
20 before the second day of trial. Jonathan Taylor, it looks
21 like his testimony regarding the subject matter was on
22 Page 95 and 96. And James Austin, it looks like his
23 page -- his testimony concerning the matter -- concerning
24 the subject matter is on Page 101 and 102.

25 And your testimony -- or your rebuttal with regards

1 to State v. Jeffcoat was on Page 116?

2 A I believe that's correct.

3 Q So, based upon that and based upon your argument
4 being made so late, the jury was, obviously, present when
5 those others testified; is that correct?

6 A I believe, basically, the transcript.

7 Q Okay. And, therefore, that -- the damage -- or the
8 damage had been done, essentially, before you made your
9 argument or rebuttal to Jeffcoat?

10 A Well, I'm going to -- I'm going to just -- I'm going
11 to disagree with one thing with you. First of all, you're
12 assuming that that's the only reason why Mr. DeSue was
13 convicted. You're assuming that because these persons
14 came and testified regarding this, that that's what
15 happened.

16 It was -- there was other physical evidence that
17 Ms. Ratigan recited regarding different little things.
18 Basically, the fact that there was blood, the fact that
19 there was a little notch or something in the vagina.
20 Different things. It wasn't just their testimony that did
21 it. There was more to it than that.

22 Q Let me ask you a question. In your recollection of
23 the case and your refreshing of the case --

24 A Okay.

25 Q -- with regards to the laceration, are there physical

1 evidence that you just referred to that that Ms. Ratigan
2 questioned you about?

3 A Right.

4 Q What tied Keith DeSue to those particular potential
5 injuries?

6 A There -- my belief is this. I believe that Mr. DeSue
7 is innocent. I've always believed that.

8 All right. But the question is, what other evidence
9 was there besides this testimony? And there was little
10 things like blood, the notches, different little things
11 that the jury could look to besides the testimony of these
12 people. It wasn't just -- that's not the only thing the
13 jury hung their hat on, I don't think.

14 Q Let me rephrase my question. Are the injuries alone
15 evidence of a sexual assault?

16 A I don't believe so. I don't believe so. But they
17 brought this case. They had doctors, nurses, and so
18 forth. They had a forensic interview. But most -- they
19 have doctors, nurses that all say that these -- little
20 issues that you have. But I don't know -- I don't think
21 they could tie anything to Keith DeSue. I don't think so.

22 Q Not without the statement of the victim?

23 A I think the statement of the victim was extremely
24 important. That's -- I think that was the case.

25 Q So is it your understanding that if the victim did

1 not testify that they would have been able to support a
2 conviction?

3 A Now, I don't know that. I don't know that. Based on
4 the testimony of other persons, maybe. I don't know. I
5 have no -- that is a hypothetical question. And, at the
6 time, the child did testify.

7 Q But you agree that if there were injuries, somebody
8 has to tie Mr. DeSue to the injuries; correct?

9 A I don't think they could tie the injuries to Keith
10 DeSue.

11 Q Okay. So you agree with that?

12 A I've said that, correct.

13 Q Okay. Now, with regards to how -- you know, whether
14 the jury believed it or not. I guess they believed it.
15 With regards to how they tied it to him, it was based upon
16 the testimony of the victim; correct?

17 A I think that was the big thing, correct.

18 Q And they thought that her testimony was credible?

19 A Well, I have no idea about that. They could have
20 weighed -- the jury could have weighed a bunch of
21 different things. They could have weighed a bunch of
22 different things. They could have weighed the little
23 notches. They -- I don't know. I don't know what the
24 jury was thinking. I have no idea what the -- the reason
25 why they came back to what they were talking about. And

1 that's one of the reasons why I've always believed and
2 still believe Mr. DeSue is innocent of these charges.

3 Q Okay. Now, you reference the Jeffcoat case. I think
4 we have established that you weren't aware of it at the
5 time that you started answering the questions. However,
6 are you familiar with the South Carolina Rules of
7 Evidence?

8 A Yes, I am.

9 Q All right. Are you aware of Rule 801(D) (1) (B)?

10 Now, I don't expect you to know it offhand. But are
11 you aware of --

12 A Why don't you tell me what it is if you're going to
13 ask me a question about it?

14 Q Okay. Sure. Reciting the rule, it says, This rule
15 renders [phonetic] a hearsay statement potentially
16 admissible if it is consistent with the declarant's trial
17 testimony and is offered to rebut an express or implied
18 charge against the declarant of recent fabrication, or
19 improper influence, or motive.

20 A Okay.

21 Q Okay. Would you agree that that's, essentially,
22 consistent with what Jeffcoat says?

23 A Jeffcoat adds a little bit more to it.

24 Q Of course, it does --

25 A But there's a little bit more to it that you're kind

1 of leaving out there with the rule. Jeffcoat has a --
2 there's certain parts of it. It's not just a one
3 statement kind of thing. It adds different things. And
4 the Judge in this matter permitted that to go forward.

5 Q Well, with regard to the rule of evidence that I just
6 read, essentially -- would you agree that it, essentially,
7 says if you offer that the -- if you offer any evidence or
8 any questioning with regards to that it might have been
9 recently fabricated that they then may be allowed to
10 support that testimony?

11 A If that's what the rule -- if that's what the rule
12 says, that's what the rule says. I can't comment. If
13 that's what the rule says, that's what I have to go by.

14 Q Now, were you familiar with that rule when --

15 A Yes.

16 Q You were --

17 A Yes.

18 Q Okay. Was that something that you weighed before you
19 began to question the victim --

20 A Back in 2009, I don't recall exactly what I was
21 weighing at that time. I really don't. I have always
22 believed that the evidence did not support a conviction of
23 Mr. DeSue. I did not.

24 Q Okay. Now, would you agree that four different
25 people being allowed to present consistent testimony is

1 potentially harmful to Mr. DeSue's case?

2 A I think it's potentially harmful. But is it
3 determinative of what the jury was thinking? No, it's
4 not.

5 Q Okay. But you agree that -- you believe that
6 Mr. Jeffcoat -- Mr. DeSue is innocent?

7 A I always have, yes.

8 Q And you believe that the physical evidence didn't
9 necessarily connect Mr. DeSue; correct?

10 A I agree. I agree.

11 Q And, therefore, the primary piece of evidence that
12 you thought was most influential was the story?

13 A I think her story is very -- as far as -- yes, I do.

14 Q And you agree that her story was allowed to be
15 supported?

16 A I agree that the statement came in because she was
17 allowed to testify. We tried to keep her statement out,
18 based on competency. As far as -- I think -- I don't know
19 what the effect of the -- of these guys testifying was
20 with the jury. The jury could either believe them or not
21 believe them.

22 Q Well, I'm only asking a specific question. The
23 victim testified. And was the victim's testimony allowed
24 to be supported with prior consistent statements? Yes or
25 no?

1 A I think it was.

2 Q You think it was?

3 A Uh-huh.

4 MR. JOHNSON: Your Honor, I have no further
5 questions.

6 THE COURT: All right.

7 MS. RATIGAN: I have nothing further for
8 Mr. Robinson, Your Honor.

9 And the State would rest at this time.

10 THE COURT: You may step down.

11 THE WITNESS: Thank you, Judge.

12 THE COURT: Anything else, Mr. Johnson?

13 MR. JOHNSON: No, sir, Your Honor, just very brief
14 argument.

15 It appears that -- well, my client argues ineffective
16 assistance of counsel. The argument is that Mr. Robinson
17 should have been familiar with the recent case law, or the
18 case law regarding sexual assault, and especially witness
19 statements. I mean, this is a case from 2002. And it's a
20 relatively old case.

21 Furthermore, there is, also, the rules of evidence
22 that cover the way someone's testimony may be supported.
23 And 801(D)(1)(B), we, also, argue that he should have been
24 familiar with that. So even if he wasn't familiar with
25 Jeffcoat, he should have been familiar with the rules of

1 evidence.

2 And because of his failure to be knowledgeable about
3 these things, the victim's testimony was allowed to be
4 bolstered by four different people, including law
5 enforcement personnel, and hospital personnel, people who
6 a jury and who I, personally, would revere and respect.
7 And they were allowed to support that statement.

8 And I believe that the testimony indicates that the
9 primary evidence in this situation considering there was
10 no direct evidence of an assault tied to Mr. DeSue was the
11 credibility of the victim. I think that was tantamount as
12 it is in most of these cases. And they believed her.

13 And I believe that the fact that the State was able
14 to bolster her testimony with four other people with
15 consistent statements allowed them to -- allowed them to
16 believe her even more so. And, therefore, that's the
17 prejudice to my client. He was convicted. And that's our
18 case for ineffective assistance of counsel, Judge.

19 THE COURT: All right. I want to read the record in
20 this case and make a decision after considering y'all's
21 argument and the testimony.

22 *****END OF TRANSCRIPT OF RECORD*****
23
24
25

CERTIFICATE OF REPORTER

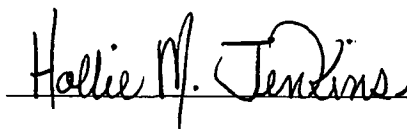
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 16th day of December, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 11, 2015



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2014-CP-23-0257
COUNTY OF GREENVILLE	)	
	)	
Keith Antravus Desue,	)	
S.C.D.C. No. 349222,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 FEB 11 PM 4 27

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 16, 2014. The Respondent made its return on May 14, 2014. An evidentiary hearing into the matter was held on December 16, 2014 at the Greenville County Courthouse. The Applicant was present and represented by Brian P. Johnson, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Scott D. Robinson, Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the December 2010 term of the Greenville County Grand Jury for first-degree criminal sexual conduct with a minor (2009-GS-23-4190). He was represented by Scott D. Robinson, Esquire.

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After the State brought the case to trial, the Applicant was found guilty. On January 10, 2012, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to twenty-five years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. On November 7, 2013, the Court of Appeals issued an order dismissing the appeal based upon the Applicant's request. The Remittitur was sent on November 26, 2013.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Failure to object.
 - b. Failure to investigate.
2. "Prosecution misconduct."
 - a. "Failure to disclose exculpatory evidence."
3. "Newly discovered evidence."
 - a. "New testimony corroborating claim of innocence."

At the PCR hearing, the Applicant proceeded upon an allegation of ineffective assistance of trial counsel and abandoned all other issues.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

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Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant confirmed the victim in his case was his daughter (who was five years old at the time of the incident). The Applicant stated trial counsel allowed the State to bolster the victim. The Applicant stated trial counsel asked the victim whether she had been coached and the State then argued the Jeffcoat¹ case against him. The Applicant stated trial counsel's argument was that the blood in the victim's underwear resulted from her bowel issues. The Applicant also admitted trial counsel brought up the victim's inconsistent statements and that, while the victim mentioned a knife, no knife was ever found. The Applicant stated there was no evidence against him except for the victim's testimony.

¹ State v. Jeffcoat, 350 S.C. 392, 565 S.E.2d 321 (Cl. App. 2002).

Trial counsel testified he filed discovery motions, received those materials, and reviewed them with the Applicant (which included the victim's medical reports and videotaped interview). Trial counsel testified the Applicant also explained his version of events. Trial counsel testified the Applicant did not want to plead guilty because he proclaimed his innocence. Trial counsel testified his trial strategy involved arguing: the victim had been inconsistent, there was no physical evidence, there was no conclusive evidence of a sexual assault, that the victim was happy before the examination, and that the blood in the victim's underwear was the result of some bowel issues. Trial counsel testified he brought up the idea that the victim had been coached in order to show the victim had spoken with the assistant solicitor about the case. Trial counsel testified he did not believe Jeffcoat was applicable in this case and believed the risk was worth it.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly cross-examine the victim. Trial counsel testified he believed asking the victim about potential coaching was worth the risk.² Trial counsel testified part of his trial strategy was to point out inconsistencies in aspects of the victim's testimony. This Court finds trial counsel articulated a valid reason that he asked the victim about whether she had spoken to several people about the case and what she should testify about. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel). This Court notes trial counsel testified he did not agree with the trial judge's application of Jeffcoat and argued as such once he had time to thoroughly review the opinion. (Trial transcript, pp.116-17). If the Applicant wished to challenge the application of Jeffcoat in

² This was during trial counsel's cross-examination of the victim. (Trial transcript, pp.56-58).

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this case, he should have done so on appeal. See Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (finding a post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal).

Regardless, Petitioner failed to meet his burden of proving he suffered any prejudice resulting from the application of Jeffcoat in this case because the State presented such strong evidence of his guilt. The victim, of course, testified about the sexual abuse by the Applicant. The victim had blood in the crotch of her underwear. (Trial transcript pp.63-64). A medical examination noted a laceration on the victim's labia and redness at her vaginal opening. (Trial transcript, pp.82-83). The victim also had a transection of the hymen on the same side of her body as the laceration. (Trial transcript, pp.140-41; pp.145-48). The victim's videotaped forensic interview was published to the jury. (Trial transcript, p.137). As the State presented abundant evidence that the Applicant sexually assaulted the victim, the Applicant cannot demonstrate he was prejudiced by any alleged error made by trial counsel. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he

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was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

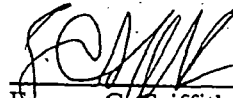
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

Handwritten signature

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 4th day of February, 2015.



Eugene C. Griffith, Jr.
Presiding Judge
Thirteenth Judicial Circuit

Waukena, South Carolina.



WITNESSES

James Austin *AB*

Greenville County Sheriffs Office

3/23/2009

DOCKET NO. 2009-GS-23-
BSD

000199

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December TERM 2009/0

THE STATE

vs.

ARREST WARRANT NUMBER

1477667

KEITH ANTRAVUS DESUE

ACTION OF GRAND JURY

TRUE BILL

Ann Shoverette

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty
James Cockman

Foreperson of Petit Jury

Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

1-10-2012

Date:

VIOLATION § 16-3-655(A)(1)[formerly 16-3-655(1)]

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on DEC 14 2010

the Grand Jurors of Greenville

County present upon their oath:

That KEITH ANTRAVUS DESUE did in Greenville County, between the 24th day of December, 2008, and the 25th day of December, 2008, commit a sexual battery on T.M.D., who was less than eleven years of age. This is in violation of §16-3-655(A)(1)[formerly 16-3-655(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.

Supna S. Pray
SOLICITOR