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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Marion County

Honorable William H. Seals, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

PRESTON MOZEAK,

APPELLANT

APPELLATE CASE NO 2015-002530

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT(S) ARE ON FILE WITH THIS COURT:

STATE’S EXHIBIT 1 (DVD OF “FORENSIC INTERVIEW”)

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF MARION	)	2015-GS-33-00115
	)	
	)	
	)	
State Of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Preston Mozeak	)	)
<u>DEFENDANT</u>	)	November 18-19, 2015
		Marion, South Carolina

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR., JUDGE.

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

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KESHIA REED
 Official Court Reporter

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1 (WHEREUPON, the remaining jury panel is
2 excused.)

3 THE COURT: Ms. Reed, I'm going to make you the
4 forelady for the jury. We're going to start back at two
5 this afternoon, but before I excuse you for lunch, I want
6 you to understand that you are not to talk to anybody
7 about this case. You're not to discuss the case even
8 among yourselves. Do not go home at lunch or at any point
9 in time during this whole process and research this case.
10 Do not get on the internet and Google anybody's name, put
11 it out of your mind. Do not discuss it, be back here at
12 two o'clock sharp. We will begin this afternoon. All
13 right. You are excused. Everybody else remain seated.

14 (WHEREUPON, the jury is excused for lunch.)

15 THE COURT: Anything we need to take up before
16 two o'clock?

17 MR. RICHARDSON: Your Honor, Mr. Brooker and I
18 discussed the video issue. I've read over The State vs.
19 Anderson case from August the pertinent part for the
20 video. And what we've agreed to do -- his concerns were a
21 little bit at the beginning where the forensic interviewer
22 discusses why the child is there with her. You know, this
23 is where we tell the truth. And at the very end where she
24 tells her that she did right thing by speaking up. We've
25 agreed to come up with the time period to begin the tape

1 and the time period to end the tape. And then if, Your
2 Honor, would just address the jury that, you know, they're
3 going to see a portion of video that has been agreed upon
4 by both parties as being the relevant portion with respect
5 to this case and I think we will be good to go.

6 THE COURT: Is that correct, Mr. Brooker?

7 MR. BROOKER: That is correct, Your Honor, as
8 long as there is no part that goes into the jury that's in
9 violation of instructions given by State vs. Anderson.

10 THE COURT: That sounds good.

11 MR. RICHARDSON: And just for purposes of the
12 record, keeping everything clean and still have the
13 forensic interviewer come at two o'clock to do the
14 pretrial hearing as laid out in Title 17 just to make sure
15 we properly authenticate the tape.

16 THE COURT: All right. Sounds good. I will see
17 you at two o'clock.

18 MR. RICHARDSON: Thank you.

19 (WHEREUPON, a lunch break was taken.)

20 (WHEREUPON, State's Exhibit No. 1 was marked for
21 identification only.)

22 THE COURT: State ready to go?

23 MR. RICHARDSON: Yes, sir, Judge, a couple
24 things. I placed on the bench there a copy of two cases.
25 One is State vs. Hail, that case basically stands for the

1 premise you'll see at the bottom of the first page
2 starting with the paragraph we find no abuse of
3 discretion.

4 THE COURT: Right.

5 MR. RICHARDSON: The issue in that case was
6 asking leading questions. The Solicitor asking leading
7 questions of the child victim in a similar case and the
8 Court basically ruled that that's okay. So I present that
9 just -- I know Thurmond will have to object at the
10 appropriate time and I just wanted you to have that heads
11 up. Also, you have in front of you State vs. Anderson,
12 which is a case from this past August, a Supreme Court
13 case from South Carolina deals with the exact issue for
14 this pretrial hearing and I point you to page 46.

15 THE COURT: All right.

16 MR. RICHARDSON: And it starts off with the
17 number four there and that large paragraph in the middle
18 basically gives a step-by-step procedure for what we're
19 about to do if it's necessary. And in speaking with --
20 oh, also after we conclude this portion of the trial, we
21 have the victim in the courtroom and Thurmond and I
22 discussed this. I think it'll be appropriate to do an
23 in-camera hearing place her up there just to have her
24 explain to you that she understands the difference between
25 a truth and a lie and that sort of thing, so everything's

1 clear with respect to that.

2 THE COURT: Okay.

3 MR. BROOKER: Your Honor, with respect to -- I
4 have the in-camera interview with respect to the minor
5 child and I think he's absolutely right on that. I think
6 the State vs. Anderson indicates I think there is a lot of
7 concern, you know, about anyone whether it be the forensic
8 interviewer, whether it be the other witness or anyone
9 suggesting to the juror or either somehow implying to the
10 jury that there is credibility to what the child may
11 testify to. And I think the only way to avoid that and I
12 think the case even suggests that those preliminary
13 questions with respect to whether or not she understands
14 the difference between a truth and a lie, I think has to
15 be done in-camera. And I think that that is certainly
16 satisfactory that any questions that was asked by the
17 forensic interviewer in preparing the videotape is that
18 the Court says that that sort of information about asking
19 the child whether or not she understands the difference
20 between a truth and a lie, that it is impermissible to
21 prevent that sort of testimony.

22 THE COURT: You not allowing that any way, are
23 you?

24 MR. RICHARDSON: Sir.

25 THE COURT: You're not allowing that anyway, are

1 you? You already redact?

2 THE COURT: Yes, sir.

3 MR. BROOKER: He's agreeing to that.

4 MR. RICHARDSON: On that note, we have agreed on
5 a time period for the videotape and we've gotten that
6 written down here, so we'll know when to start and when to
7 finish it. With respect to the pretrial hearing regarding
8 the statute of 17-23-175 and State vs. Anderson kind of
9 goes along with that. We spoken Mr. Brooker and I have.
10 He indicated he make a general objection just to the
11 statute and confrontation clause issue, of course, State
12 vs. Anderson resolves that, but I'm not sure yet if he
13 will make any objections with respect to the contents of
14 the tape itself. And if he stipulates to that, I don't
15 think we need to call a witness and go through all that.

16 THE COURT: You seen the tape, haven't you?

17 MR. BROOKER: Obviously, the tape, Your Honor,
18 is that obviously is that under 17-23-175 I think that
19 there is a list of factors that the Court has to consider
20 in determining whether or not the videotape is properly
21 admissible in evidence to the jury. And, of course, I did
22 talk with Mr. Mozeak in reference to whether or not he
23 stipulates to any of those factors. He advised me that he
24 does not want to give a stipulation to those factors and
25 would, you know, respectfully request the Court to go

1 through those factors and make a judicial determination as
2 to whether or not those factors are present and that the
3 videotape is properly admissible.

4 THE COURT: Let me take a second to read the
5 statute.

6 MR. BROOKER: Sure.

7 (WHEREUPON, a pause in the proceedings.)

8 THE COURT: So you go ahead and call her now and
9 go through those factors.

10 MR. RICHARDSON: Yes, sir, Your Honor, we can do
11 that. And I believe based on the way the statute reads
12 and based on the way Anderson reads, I don't think there's
13 any need for us to play the tape pretrial just have
14 questions answered about it.

15 THE COURT: Is that okay with you?

16 MR. BROOKER: It's good with me, Your Honor. I
17 don't know if I agree with that, but I'll leave that
18 determination up to the Court because I think underneath
19 subsection B I think it requires the Court to make
20 specific findings with respect to how the interview was
21 conducted and it says specifically whether the statements
22 were elicited by leading questions. And, of course, is
23 and that's a determination going to have to be made by
24 you. Obviously is that forensic interviewer can testify
25 that she did not ask a leading question but whether or not

1 the interview -- whether the statements represents a
2 detail accounting of the allege offenses with
3 statements has -- statement has internal, a coherence and
4 I think five -- I think those are probably the main three
5 of those factors -- main factors out of those -- a list of
6 factor that the Court may have to make a specific finding
7 in reference to.

8 THE COURT: Which three factors?

9 MR. BROOKER: I think is that whether or not the
10 statements were elicited from any leading questions.
11 Obviously, the forensic interviewer number two will
12 testify with respect to her training to conduct forensic
13 interviews and I don't think you need a tape for that,
14 whether the statement represents a detail accounting of
15 the allege allegations. And then, of course, is whether
16 or not the statement has internal coherence. And I think
17 those are the ones that the Court is going to have to
18 specifically make an independent finding based upon your
19 own perception as to whether or not those ---

20 THE COURT: I think to make those findings I
21 would have to see the tape as well.

22 MR. RICHARDSON: Yes, sir, I believe so too.
23 It's 28 minutes.

24 THE COURT: All right. Let's go. Let's tell
25 them it's going to be a short delay. We're working out

1 here and we'll be with them when we get ready.

2 (WHEREUPON, a pause in the proceedings.)

3 MR. RICHARDSON: We call Sally Williamson.

4 THE CLERK: Do you swear to tell the truth, the
5 whole truth, and nothing but the truth so help you God?

6 THE DEFENDANT: Yes, ma'am, I do.

7 WHEREUPON,

8 Sally Williamson,

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

10 DIRECT EXAMINATION IN-CAMERA

11 BY MR. RICHARDSON:

12 Q All right. Ms. Williamson, where do you work?

13 A I work for the Care House of the Pee Dee.

14 Q And what is that?

15 A The Care House is a children's advocacy center which
16 offers forensic interviewing, therapy and advocacy for
17 children and families involved in suspected cases of child
18 maltreatment?

19 Q What are your responsibilities there?

20 A My responsibilities are I am a forensic interviewer
21 at the Care House as well as a therapist.

22 Q What sort of educational background and training do
23 you have to conduct interviews with children?

24 A I have a master's degree in counseling, a bachelor's
25 degree in psychology, approximately 85 hours of training

1 in the area of forensic interviewing and I'm also a
2 licensed professional counselor in the State of South
3 Carolina.

4 Q About how many forensic interviews have you conducted
5 in your career?

6 A Approximately 1,800.

7 Q Okay. And how does a forensic interview differ from
8 a regular interview?

9 A A forensic interview is typically geared around
10 gathering information from children. It's an interview
11 which is conducted by trained professionals typically
12 those of whom hold a license, a licensed position. It is
13 an interview which follows certain guidelines including
14 neutral non-leading questions for the purpose of gathering
15 information about possible child maltreatment.

16 Q Sure. Did you conduct an interview with respect to
17 this case with Minor child ?

18 A Yes, I did.

19 Q And was that interview conducted for investigative
20 purposes regarding allegations of sexual abuse?

21 A Yes, it was.

22 Q When you conduct an interview there at the Care
23 House, what do you do in an effort to preserve that
24 interview?

25 A Do you mean when you say preserve do you mean to keep

1 an archive or a record?

2 Q Yes, ma'am.

3 A We make a recording of the interview itself as it's
4 occurring obviously on a closed-circuit television system.
5 And we also have a written report in regard to the
6 disclosure or non-disclosure made by the child.

7 Q So you have an audio-video recording ---

8 A Yes, we do.

9 Q --- for every interview you do?

10 A For every interview, yes.

11 Q You did one in this case?

12 A Yes, I did.

13 Q I want to show you what's been marked as State's
14 Exhibit 1 for identification at this time. Do you
15 recognize that?

16 A I do.

17 Q Have you reviewed the contents of it?

18 A I have.

19 Q And what is that?

20 A This is a recording of the forensic interview
21 conducted with minor child Minor child on 11-25-2014.

22 Q All right.

23 MR. RICHARDSON: Your Honor, if I can just have
24 this as an exhibit for this hearing only at this.

25 THE COURT: Any objection?

SALLY WILLIAMSON DIRECT EXAMINATION BY MR.
RICHARDSON

40

1 MR. BROOKER: No objection, Your Honor.

2 MR. RICHARDSON: Your Honor, I think now will
3 probably be as a good a time as any to go ahead and play
4 the tape.

5 THE COURT: All right.

6 MR. RICHARDSON: I may set this up and play it
7 in front of you. And I'll start it at the time we agreed
8 upon and that will save us sometime.

9 (WHEREUPON, DVD of forensic interview being
10 played for the Court.)

11 MR. RICHARDSON: Judge, we went a few seconds
12 past where we play it for the jury.

13 THE COURT: All right.

14 BY MR. RICHARDSON:

15 Q Ms. Williamson, was what we just saw there was that
16 part of the R-A-T-A-C or RATAAC procedure or the child
17 first protocol or what would you call that?

18 A I believe that would have been part of the child
19 first protocol after we made modifications and adjusted to
20 know longer use RATAAC exactly as it use to be.

21 Q Okay. And do you have Minor child date of birth on your
22 report or how old she was at the time this interview was
23 conducted?

24 A I had documented that she was seven years old at the
25 time of the interview.

1 Q Okay.

2 MR. RICHARDSON: Your Honor, I believe that's
3 all the questions I have for Ms. Williamson at this time.
4 She can answer any Mr. Brooker may have.

5 THE COURT: Mr. Brooker.

6 MR. BROOKER: Thank you, Your Honor, just very
7 briefly.

8 CROSS-EXAMINATION IN-CAMERA

9 BY MR. BROOKER:

10 Q Ms. Williamson, let me ask you this question, I think
11 you just said that -- let me ask you this, what interview
12 technique did you use to interview the child?

13 A I use the Child First South Carolina interviewing
14 technique.

15 Q Child First South Carolina Interviewing Technique. I
16 think you indicated that you use to use the previous
17 technique, but you all don't use that type any more?

18 A That's correct. There's been modifications and
19 there's constantly changes and modifications taking new
20 case law into consideration and modifying the interviewing
21 techniques used.

22 Q Okay. And the technique that you did use I think you
23 said -- could you tell me the name of that again?

24 A The former technique was called the RATAC, that's an
25 acronym for rapport, anatomy identification, touch

1 inquiry, abuse scenario, and closure.

2 Q Okay. And what did you use right now or what did you
3 use?

4 A The Child First South Carolina.

5 Q And explain to me what that is, could you at least
6 describe or explain how that technique works?

7 A It's very similar. However, rather than following a
8 structured process, instead it's very semi-structured.
9 And so basically that means depending on the child, their
10 developmental functioning, their cognitive abilities, we
11 may not go specifically through the same exact steps, but
12 basically we're still building rapport with the child,
13 explaining the rules of the room and the purpose of the
14 interview, helping them to feel comfortable. We may go
15 into anatomy identification or we may ask the child, an
16 older child for example, may be able to respond to why are
17 you here. And they may know why they are there and be
18 able to explain where as a younger child we may take a
19 different approach and go straight into anatomy
20 identification and asking about private parts. It's just
21 a little less structure than the RATAC protocol.

22 Q Okay. So gives you a little bit of flexibility in
23 deciding exactly how you going to proceed?

24 A Yes.

25 Q Based upon cognitive development I think you said of

1 the child?

2 A Those considerations, yes, and if they are aware of
3 why they might be there or if they -- sometimes children
4 will come in and immediately tell you why they are there
5 to talk to you. So obviously I would modify the approach
6 in that situation and go straight into asking them to
7 explain why they are there.

8 Q Okay. Let me ask you a few questions in reference to
9 at least some statements that the child made to you. And
10 I think during the forensic interview I think you
11 indicated at one point in time the child said to you, you
12 know, that -- and I think it was said on a number of
13 occasions that when the event -- alleged sexual event
14 would occur, I think the child would say or testify at
15 least in her statement is is that Preston or Mr. Mozeak,
16 her grandfather, would ask her to lay back. He would ask
17 her to unzip her pants. And then, of course, is that she
18 at some point in time and said that she fall asleep. Did
19 you ask her what did she mean when she said I would fall
20 asleep and I think also at one point in time she said you
21 know she said grandpa said wake up, but I was asleep. Did
22 you inquire about that and try to figure out exactly what
23 she was referencing or what she was trying to express when
24 she indicated that she fell asleep or when she indicated
25 at one point in time that grandpa said wake up, but she

1 was sleepy?

2 MR. RICHARDSON: Your Honor, if I might, these
3 questions may be more appropriate for cross-examination
4 during ---

5 MR. BROOKER: Well, let me tell you why they are
6 appropriate because underneath 23-17-175 subsection B, it
7 says that the Court has to make a determination as to
8 whether or not the statements -- whether or not the
9 child's statements were made in detail -- make a detail
10 statement and it specifically says that whether or not the
11 statements have internal coherence, which means that
12 whether or not the statements were making sense. And
13 there was a number of statements that she made in these --
14 a number of statements that was made by the child that at
15 least still have me baffled and I think that the Court
16 has to make a finding that there was an internal -- I
17 think the statute says has to make a finding there was a
18 internal coherence from the statements itself and that's
19 why I'm asking, so to give it more basis.

20 THE COURT: Go ahead.

21 BY MR. BROOKER:

22 Q Did you inquire or ever figure out exactly what she
23 meant, the child meant when the child says I would fall
24 asleep and then at one point in time she says grandpa said
25 wake up, but I was sleepy. Did you go into detail about

1 that to find out what that meant?

2 A I don't recall that I did upon reviewing the
3 interview a few minutes ago.

4 Q And, of course, is is that I think at another point
5 in time she said that that -- she said to you -- indulge
6 me for just a second that when she closed her eyes -- and
7 let me make sure I get this correctly, that when she
8 closed her eyes that her eyes take photographs or
9 pictures. Did you ever inquire to her -- it specifically
10 says that she told me that every time she blinks it takes
11 pictures of where she was. Did you try to discern exactly
12 what that meant or what she was trying to express?

13 A No, I didn't.

14 Q Okay. And the reason why I'm asking that is is that
15 all adults know that when our eyes blink that we don't
16 take photographs. And obviously is is that whether or not
17 she's trying to express something and obviously in a
18 unconventional way or even childlike way or whether or not
19 she was fantasizing about something?

20 A Well, I will say that in -- clarify that she doesn't
21 say that she's taking photographs with her eyes. She says
22 that she sees pictures of what occurred.

23 Q She says when it blinks it takes pictures?

24 A She doesn't say it takes photographs.

25 Q I know. She says it takes pictures. I think apples

1 or oranges. A picture is a photograph. I don't know, but
2 let's not get into it what's the difference between a
3 picture and a photograph. But you never inquired about
4 that trying to figure out exactly what she was trying to
5 communicate?

6 A No.

7 Q Also, there was also some point in time when you
8 asked her what age was she when these events happened.
9 What age was she -- and, of course, I'm specifically
10 looking at page seven of your report specifically the last
11 paragraph. And it says -- she said she was a different
12 age. I ask what age she said six, five, and four. I ask
13 if it happened when she was six, five and four or only
14 when she was seven. And then when you ask her did it
15 happen only when she was seven, then she changed her
16 response from when she had previously said six, five and
17 four and agreed with you that it was seven. Can you
18 explain why when you ask her an open-ended question what
19 were her ages when it happened and she says six, five and
20 four? And then when you said, well, you sure it happened
21 when you were six, five and four or only when you were
22 seven. And then, of course, when you ask her that way,
23 then, of course, she changes her response and agreed with
24 you that it was only seven. Do you have an explanation as
25 to why?

1 A My explanation is a poor question on my part. When I
2 asked it open ended, she gave several ages. When I ask in
3 an attempt to make it to filter out the information, I
4 should have said six, five, four, one of them, all of them
5 or none of them. Although, in an effort to not confuse
6 her instead I narrowed down to six, five and four or only
7 seven. So I think she interpreted it that she only had
8 the two choices either six, five, four or only seven. It
9 was a poor question on my part.

10 Q Okay. So based upon her response to that particular
11 question, is that you don't know whether or not her
12 response is accurate or whether or not she was simply, you
13 know, agreed with the options that you gave her?

14 A I'm not sure if she meant seven and some other ages
15 or only seven.

16 Q Okay. And I'm assuming is that that's one of the
17 reasons why interviewing kids is very difficult because
18 sometimes they can be impressionable when an adult ask
19 them questions or authority figure ask them questions and
20 sometime they tend to agree with the answer that's given
21 to them. Is that sometimes a problem with interviewing
22 young kids?

23 A I think it's certainly an issue and it may reflect
24 that particular poor question. However, I don't think
25 that overall the interview was impressionable in that

1 regard.

2 Q And just a couple more questions and then I will have
3 a seat. You conducted the forensic interview; is that
4 correct?

5 A Yes, sir.

6 Q Okay. And, of course, is I'm going to ask it how the
7 setup is with respect to the video camera. Is the video
8 camera set up in the room?

9 A Yes, sir, it is in the corner of the room.

10 Q Okay. And I know it's recording. Is the recording
11 device -- is it in the room or is in a different room?

12 A The recording device is in a different room.

13 Q Okay. And is there someone monitoring or handling
14 the recording device or does after the interview do you go
15 and shut the recording device off, do all that sort of
16 stuff?

17 A It varies. Sometimes there's an intern in the room
18 observing the interview and monitoring it. Sometimes not.
19 I turn it on and assure that it's recording when there is
20 no one to observe it. I turn it on and assure it's
21 recording and then come back and stop the recording once
22 it's complete.

23 Q Do you make notes that this particular case
24 indicating whether or not you were actually operating the
25 recording device or whether or not there was an intern or

1 someone was operating the recording device?

2 A Typically, we put if there's an individual observing
3 the interview as it takes place, but it's possible that an
4 intern comes in in the middle of the interview and I'm not
5 aware of it being in there prior.

6 Q Okay. Now, once the interview is over, who stops the
7 tape and gets the tape out and who does that?

8 A I do.

9 Q Okay. So in this particular situation, you stop the
10 tape after the interview and you took the tape out and
11 what did you do with the tape?

12 A We stop it and then it's actually on a hard drive and
13 then we make -- we burn a disk copy of that interview off
14 of the hard drive onto the disk.

15 Q Okay. And then what happens to it?

16 A Then it goes into the file and if law enforcement is
17 involved or if a copy of the disk is requested by the
18 Solicitor, then we go to that hard drive and make another
19 copy.

20 Q Do you put it in the file or do you make a hard copy
21 -- make the video copy of it?

22 A It varies -- I'm sorry.

23 Q I'm sorry. In this particular case, did you make the
24 copy of the video and handle the video after making a copy
25 on a disk from the hard drive?

1 A I honestly can't tell you. It depends on staff
2 availability. Sometimes it's me. Sometimes it's the
3 advocate or the in-take coordinator, but it's always Care
4 House staff.

5 Q Okay. So you don't know whether or not it's either
6 you or someone else. Okay. Do you know whether or not
7 you put it in the file?

8 A I likely put it in the file, yes.

9 Q Okay. Do you know whether or not you put it in the
10 file?

11 A I do not know that, no.

12 Q Once it goes in the file is this just a file room on
13 -- that everyone has access to or is this a secure room
14 that -- secure evidence room that's locked with only one
15 or two people having access to that room?

16 A When you say everyone having access, who for example
17 do you mean?

18 THE COURT: Is that relevant to 17-23-175 just
19 for that statute for what we're doing right now?

20 MR. BROOKER: Not necessarily, Your Honor, and I
21 possibly went into another issue with respect to chain of
22 custody. We'll have to deal with -- going to try and do
23 it while we had her on the stand, but if you want to take
24 that up later, I don't mind doing it later.

25 THE COURT: Let's just do that later that way we

1 can get the jury going a little bit.

2 MR. BROOKER: Sure.

3 THE COURT: I hate for them to think we're just
4 sitting out here drinking Kool-Aid and doing nothing.

5 MR. BROOKER: I understand that completely, Your
6 Honor. Well, the only thing I would suggest, Your Honor,
7 is is that with respect to the -- at whether or not the
8 tape is that admissible explain to you 17-23-175. I would
9 argue to the Court that it's not based upon a number of
10 reasons. I think one is that -- I think there has to be
11 at least -- I think what subsection B, you know, that
12 statute says is that there has to be at least some sort of
13 internal cohesion or coherence within the statement or
14 understanding within the statement. There's a number of
15 things that was said by the child that I think is not
16 coherent and understandable. And I think it calls into
17 question the entire statement specifically when she says
18 that when she closes her eyes and takes -- and she blinks
19 and takes a picture when she says, you know, that
20 something to the effect that she would fall asleep and
21 wake up in an interval during the allege sexual assault.

22 And these are confusing moments that are
23 tremendously important. And the reason why they are
24 important is is because we're dealing with a
25 seven-year-old child. And I think the South Carolina

1 Supreme Court and the judiciary recognizes that there are
2 different than your normal adult individual, that they are
3 susceptible to sometimes flowing between fact and fiction.
4 Sometimes flowing between reality and fantasy. They're
5 susceptible also to being influenced whether directly or
6 indirectly.

7 And as a result of that, I think that's why they
8 have this special procedure when it comes to kids, but in
9 this particular scenario is if she's actually drifting
10 back and forth between fantasy and fiction or reality,
11 then, of course, it not only calls into question just
12 those simple statements that she made, but it calls into
13 question the entire statement, you know, as to whether or
14 not this is actually, you know, a reliable factual
15 statement to whether or not there is some fantasy or
16 belief to being falling ---

17 THE COURT: I understand.

18 MR. BROOKER: --- and my only other objection,
19 Your Honor, make it very quickly just put it on the record
20 is I make a general objection with respect to the
21 admissibility of the statement based upon the
22 confrontation clause. And I know that in State vs.
23 Anderson that's been dealt with, but for a particular
24 reason, I think I feel compelled to put it on the record.
25 And that is is that because this is a statement that's

1 being made by the child in which the child was asked
2 questions might say is interviewed by the State and the
3 State was able to ask certain questions and solicit
4 certain information that the child produce. And, of
5 course, there was not a representative for the defendant
6 that was there to ask you know ---

7 THE COURT: I understand. You have the right to
8 cross-examine.

9 MR. BROOKER: Other than that, Your Honor, is is
10 that wait for your ruling.

11 THE COURT: It's my opinion that the questions
12 were not leading. They were open-ended questions. As far
13 as Ms. Williamson goes, she is very qualified, trained,
14 has a ton of experience. I think has a requisite training
15 to conduct this interview. As far as being detailed, I
16 think the statement is detailed enough. It may not be
17 perfect, but I don't know of any testimony or deposition
18 that is actually perfect in 110 percent detailed and I
19 think it's detailed enough. And it's coherent and it kind
20 of flows and makes sense when you take into account that
21 it's a seven-year-old child. It's an interview of a
22 seven-year-old child, that's pursuant to 17-23-175. I
23 find that it trust worthy enough to come in at trial.
24 Anything further?

25 MR. RICHARDSON: Not for the purposes of this

1 hearing, Judge. I think they may have taken Minor to the
2 restroom. What I anticipate doing after this is go ahead
3 and put her up for the qualification of her testimony but
4 hoping she'll be back in a second.

5 THE COURT: All right, sounds good.

6 You may step down.

7 (WHEREUPON, the witness leaves the witness
8 stand.)

9 THE COURT: David and Mr. Brooker, come forward.

10 (WHEREUPON, a bench conference was held in the
11 presence of the jury, but out of the hearing of the
12 jury.)

13 MR. RICHARDSON: Your Honor, we call Minor
14 child

15 THE CLERK: Place your left hand on the Bible
16 and raise your right hand please. Do you solemnly swear
17 or affirm to tell the truth, the whole truth, and nothing
18 but the truth so help you God? Say, yes, I do.

19 THE WITNESS: Yes, I do.

20 THE CLERK: Thank you.

21 WHEREUPON,

22 Minor child

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

24 DIRECT EXAMINATION IN-CAMERA

25

1 BY MR. RICHARDSON:

2 Q All right. Minor , how you doing?

3 A Good.

4 Q Remember we're going to keep our voices up, okay.

5 Minor how old are you now?

6 A Eight year old.

7 Q Eight years old. And what grade are you in?

8 A Third.

9 Q Okay. Where do you go to school?

10 A M.I.S.

11 Q Is that in Marion? Is that a yes?

12 A Yes.

13 Q Okay. What's your favor subject in school?

14 A Everything.

15 Q Everything. You like all your subjects?

16 A (Nod head).

17 Q Do you have rules in school about certain things

18 you're allowed to do and not allowed to do?

19 A Yes.

20 Q What's something you're not allowed to do in class?

21 A Don't bring food, don't disobey.

22 Q Okay. What happened to somebody who disobeys?

23 A They get sent to the office.

24 Q They get sent to the office?

25 A Yes.

1 Q Is that a good thing or a bad thing?

2 A Bad.

3 Q All right. Let me ask you, Minor, if I told you this
4 thing right here is red would I be telling you the truth
5 or lie?

6 A A lie.

7 Q Why is that?

8 A Because it's white.

9 Q Okay. What happens to people who tell lies?

10 A They get in trouble.

11 Q All right. So you understand it's important to tell
12 the truth; isn't it?

13 A (Nod head).

14 MR. RICHARDSON: Your Honor, I believe that's
15 all the questions I have for her.

16 THE COURT: Mr. Brooker, anything you want to
17 ask her?

18 MR. BROOKER: I want to ask her one question
19 based upon case law.

20 CROSS-EXAMINATION IN-CAMERA

21 BY MR. BROOKER:

22 Q You know difference between right and wrong?

23 A Can you say that again please?

24 Q Yes, ma'am. You know the difference between right
25 and wrong?

1 A (Nod head).

2 Q Tell me what's the difference between right and wrong
3 in your own words?

4 A You doing something right like you doing something
5 good that you know you suppose to do. And wrong is like
6 when you not suppose to do it, it's like really bad to do.

7 Q Yes, ma'am. And just one more question and I'm going
8 to sit down. I know you were asked the difference between
9 a truth and a lie. Can you tell me or articulate what the
10 truth is?

11 A The truth is something good that you need really to
12 tell to people that they really need to know.

13 Q Okay. What's your definition of something bad?

14 A Something bad like when you really don't want to tell
15 anybody about keep it. You just want to keep it to
16 yourself.

17 Q Okay. And definition of a lie?

18 A You're like acting out the word while you're actually
19 telling a lie, when you're actually telling a lie.

20 MR. BROOKER: Okay. No further questions, Your
21 Honor.

22 THE COURT: I find her competent to testify,
23 very articulate.

24 MR. RICHARDSON: Very good.

25 THE COURT: She may step down.

1 MR. RICHARDSON: Minor , you can go on sit back
2 down.

3 (WHEREUPON, the witness leaves the witness
4 stand.)

5 THE COURT: We ready? Let's go ahead and bring
6 out the jury.

7 (WHEREUPON, the jury came into open court.)

8 THE COURT: All right. I apologize for the
9 delay, but we had to take up some matters outside of your
10 presence so that we could get the ball rolling and keep it
11 rolling smoothly and uninterrupted throughout the rest of
12 the trial.

13 All right, Ms. Clerk, if you will swear the
14 jury.

15 (WHEREUPON, the jury was sworn.)

16 THE COURT: Okay. All right. Members of the
17 jury, before we begin the trial, I want to go over some
18 preliminary instructions with you just to give you a
19 little bit of working knowledge that you can use
20 throughout this process. First thing I want to tell you
21 is that the State of South Carolina has the burden of
22 proof in this trial. They have to prove the defendant
23 guilty beyond a reasonable doubt.

24 Now, you may ask, well, what is your role,
25 Judge, and what is our role as jurors, how do they differ.

1 In that regard, you are the judge of the facts, that means
2 that you determine what the facts of this case are not me,
3 not my clerk, nobody in the audience, just you all. You
4 ask yourselves, well, how do we determine what the facts
5 of this case are. It's very simple. You look at the
6 evidence. Evidence is made up of the witnesses that come
7 over here. They take this witness stand. They're sworn
8 in and they testify. It's also made up of any exhibits
9 admitted into the record as evidence, that could be
10 pictures, drawings, posters, reports what have you, that
11 is the evidence. That is where you determine what the
12 facts of this case are.

13 Now, I am the judge of the law. It is my job to
14 give these parties a fair trial and it is my job to
15 instruct you on the law applicable to this case in great
16 detail at the very end. I want you to understand that if
17 you have any problems with my instruction of the law, you
18 have to abandon those problems or those preconceptions and
19 you have to accept the law as I give it to you. Then when
20 I tell you to begin your deliberations you'll take the
21 facts as you find them. You'll take the law as I give it
22 to you. You'll put the two together and make a decision
23 therefrom.

24 Furthermore, I want you to understand that if we
25 take a break at any point in time in this trial or if we

1 go home this evening and have to come back tomorrow,
2 tonight or any break, I do not want you to discuss this
3 case at all. I will tell you specifically at the very end
4 when you can begin your deliberations and when you can
5 start talking about the case. The reason I tell you that
6 is because it's not appropriate to start too early. You
7 need to hear from everybody. You need to hear from the
8 State, if the defense wants to put up evidence. You need
9 to hear from them as well. Then you need to hear the law
10 from me. You need to hear everything before you begin
11 your deliberations. So if we take a break and you go home
12 and anybody ask you about the trial, tell them you can't
13 talk about it. When you go back there in the jury room,
14 talk about sports, talk about the weather, politics or
15 whatever you want to talk about, but do not talk about
16 this case until I tell you to. All right. At any point
17 in time if you need a break or if you need something, if
18 you'll just kind of get my attention, I'll try to take a
19 break and make sure that you're taken care of, okay.
20 Right now I want you to sit back. I want you to relax.

21 And I recognize the State.

22 MR. HOLT: Thank you, very much. Judge, may it
23 please the Court.

24 THE COURT: Sure.

25 MR. HOLT: Mr. Brooker. Ladies and gentlemen,

1 the last place, the last place you want to be is having to
2 talk for a long time in front of people who have just
3 spent about an hour and a half in a small room. So what I
4 did when you were back there, we were taking care of other
5 things, I cut it down a little bit. But there's some very
6 important things that I'm going to need to talk to you all
7 about that we can't cut out. And throughout the time that
8 I'm talking, I want you to consider two very important
9 things. I want you to consider family and I want you to
10 consider betrayal. The facts in this case are going to be
11 fairly straightforward.

12 This man right here Preston Mozeak did sometime
13 August of last year to November of last year commit two
14 crimes criminal sexual conduct with a minor first degree
15 and criminal sexual conduct with a minor third degree.
16 And he committed those crimes against a young lady right
17 here on the first row.

18 Now, first degree is for what he did to her
19 body. Third degree is for what he forced her to do to
20 his. You'll hear a lot of that kind of stuff. You're
21 going to hear a lot about a lot of things. You're going
22 to get a two-fold education this week or these next two or
23 three days.

24 The first is going to be in the facts in this
25 family, in the people that make up this family and in the

1 circumstances that bring you here. And the second is
2 going to be on the law and our judicial system and how it
3 plays out. He's going to be the judge of the law. He's
4 got his education. He's got his law school. He's got his
5 years as a lawyer. He's going to be in charge of the law,
6 but the facts are going to be your domain. You will be
7 the judge of the facts. And what you're going to bring to
8 the table is all the collective years that you have been
9 in the community. All the collective knowledge that you
10 have stored up. And you're going to combine this with the
11 12 of you all that are left to make this decision, you
12 going to combine this in what I call your collective
13 common sense.

14 He will lead us down a just path, but you will
15 bring us home with a verdict. Mr. Richardson he'll be in
16 charge of this case. I'm simply helping him. The two of
17 us will be in charge of providing you the facts. It's not
18 going to be very complicated.

19 Now, when we talk about the facts -- this is one
20 of the parts where I cut stuff out skip ahead.. You
21 talking about the facts of the case. I want you to think
22 or try and explain some things to somebody who you maybe
23 never saw before. You want to tell them about a nice day.
24 You want to tell them about a pretty blue sky, that
25 person's never had their sight. And when they walk away

1 from your conversation, they're going to be more confused
2 then when you got there. They're going to want to know
3 about color, about what you consider the sky. Words
4 without facts don't help anybody. But when you explain
5 the context to these people, to anybody, then they can
6 walk away more assure of what happened. And the context
7 of this case will be very simple and it'll be two things.
8 And you'll hear me repeat them again and again and again
9 be betrayal and it'll be family.

10 Now, I don't know how they do things on the west
11 coast or how they do things in the inner city big enough
12 for a subway system, but here in Marion County close --
13 very close to where I'm from family is a big thing.
14 Family is something more than a parent and a child.
15 Something more than a mother and a father and maybe one or
16 two or kids. Family means more.

17 Now, in the 1980's at 2:57 when the final bell
18 rang at Hanna Pamplico elementary school when I got out of
19 school, I did not go home with my mother and my father. I
20 collected my brother. I collected my sister and went to
21 Nanna's house. And when you were there, a couple of
22 things happened. You got your homework done. You got
23 ready for school the next day and at six o'clock
24 granddaddy got home. You got to go to a bunch of other
25 stuff in the community. Life expanded.

1 You learned how to crank a lawnmower. You
2 learned how to maybe do your home work that Nanna couldn't
3 help you with. Mom and daddy got home sometime later on
4 in the night. You were a group, you were a big family.

5 Their family, the family in the case here, the
6 Mozeaks, was a lot like mine. It's very similar, a lot of
7 the same things that I have noticed. It wasn't just a
8 mother and a father. It was a mother, a father, a child,
9 a younger brother and the grandparents. And the
10 grandparents took an equal amount of time in raising the
11 children as the parents did. When mom and dad would have
12 been in class, when mom and dad would have been at school,
13 they thought the children were safe because the children
14 were where, the children were with their grandparents.
15 Mom and dad didn't worry about it. Mom and daddy were
16 able to provide and they were able to better themselves
17 because everybody worked together as a group until
18 November of last year.

19 November of last year, Mrs. Latasha Mozeak
20 becomes upset. She hears her daughter in the bathroom
21 talking to herself about some special things that happened
22 between just granddaddy and her. Mrs. Mozeak, of course,
23 had been to pick her daughter up and she had seen Minor
24 following Preston. She had seen Minor real close with
25 Preston. She had never worried about it. She never

1 worried about it because they were family and she didn't
2 felt she needed to be concerned.

3 When she heard her daughter talking in the
4 bathroom, she became concerned. She speaks to her. She
5 wants to know what she's talking about. She wants to know
6 what the special time is. She speaks to her momma. They
7 speak to the police, speak to the Care center. They
8 collect evidence and the facts shake out a little bit like
9 this. Sometime in between August and November Preston
10 would take the then seven-year-old second grade Minor and
11 lay her down on the bed and he would do some things that
12 he told her she shouldn't talk about. He would rub her
13 body. And then he would show her how he liked to be
14 touched and you're going to hear all of this from the
15 stand. And throughout the entire time, I'm going to need
16 you all to remain focus, to use your critical thinking.
17 How do I go about during my normal day looking for the
18 truth and how do I go about during my normal day looking
19 for a lie.

20 Ladies and gentlemen, hold these things in your
21 head and I'm going to sit down now. I had a much longer
22 one, but I want everybody to remember just how important
23 this case is both to the State and to the defense. This
24 is third grade Minor day in court. Please pay careful
25 attention to everything that happens the next two days.

1 THE COURT: All right. Thank you.

2 The defense is recognized.

3 MR. BROOKER: Thank you, Your Honor. Good
4 afternoon. You remember me my name is Thurmond Brooker
5 and I represent Preston Mozeak. He is seated right next
6 to me. And as the Solicitor says or just explain to you,
7 Preston Mozeak been accused of criminal sexual conduct
8 first degree one count and criminal sexual conduct third
9 degree one count.

10 Now, a lot times in trials one of the things
11 that attorneys try to do is try to give the jury a
12 summation or a succinct kind of summation in reference to
13 what a case is about, you know, a capture. And I think
14 the evidence in this case or the lack of evidence in this
15 case I think once you heard it is going to show that this
16 case is about a young child. And, of course, you'll make
17 your own decisions in reference to her level of
18 competency, with her level of reality versus fiction. But
19 this is a case about a young child who made some extremely
20 serious allegations against her grandfather. And the
21 second part of that is it's about law enforcement -- and
22 to say it kindly incomplete investigation of the
23 allegations that were made and that's putting it kindly,
24 but you'll have to accept my word for it. You'll hear the
25 evidence that comes from this stand.

1 Now, let's get to some extremely important
2 principles of law. Principles that you as a jury is going
3 to have to adhere to if you expect to, if you expect to
4 honor your duty in seeking justice. And these principles
5 of laws are kind of the foundations of justice.

6 Now, one of the things I'm going to tell you on
7 that you should always remember to keep in the back of
8 your minds as you listen to us attorneys and that is is
9 that as I talk -- sit here or stand here and talk with
10 you, you know, as the Solicitors stands here and talk with
11 you, you have to understand what our role is. We are not
12 witnesses. We are not witnesses in connection with this
13 case. Nothing that we say or do is to be construed as
14 evidence. I am not a fact witness. The prosecutors are
15 not a fact witness. So keep in context that everything
16 that we say to you is not evidence.

17 Our job as attorneys we are facilitators. We're
18 apart of this for a lack of a better term production. And
19 the purpose of all of this is, the purpose of attorneys is
20 is to take the facts and the evidence or lack thereof and
21 to present it to you in an orderly fashion, in a way in
22 which hopefully you can absorb it. And at the end of the
23 case make an intelligent decision with respect to guilt or
24 not guilt. So don't get confused by my opening remarks
25 and don't get confused by the opening remarks of the

1 assistant solicitor. So far you have heard not a lick of
2 evidence. You haven't heard one iota of evidence in
3 connection with this case. Keep that in mind, don't be
4 confused or fooled by lawyers. We are facilitators. And
5 hopefully if we do a good job, then you'll be able to go
6 back in the jury room at the conclusion of this case and
7 make an informed and intelligent decision.

8 Now, the next important principle of our
9 judicial system, which is the foundation of justice is is
10 that you probably all heard of this term and this is an
11 extremely important term. You know, it's not some sort of
12 theoretical idea. It's a living breathing, doctrine and
13 it is the foundation of our criminal justice system. It's
14 the foundation of justice itself and that is as Preston
15 Mozeak sits here in this chair and has been accused of
16 these horrific crimes, you must perceive him as being
17 innocent. He is innocent. That is a right that's given
18 to us by the constitution of this country that each and
19 every one of us are innocent. And sometimes I'll tell the
20 jury you can think of it as having a robe or cloak of
21 innocence. And we have that robe and cloak of innocence
22 from the day in which we born until the day in which we
23 die man, woman and child.

24 Now, in order for that cloak of innocence to be
25 removed, the State has to strip it from his body. In

1 order to find him guilty of any crime, it is the
2 responsibility of the State to rip it from his body and
3 expose him and as guilty. Expose him as the guilty
4 perpetrator. Now, you probably asking yourself, well, how
5 do they do that, how do they strip this robe of innocence
6 that we all carry. It's not easy. They have to do it by
7 proof beyond a reasonable doubt. They have to prove to
8 you beyond a reasonable doubt that every single element of
9 the crime in which they are alleging, that he's guilty of
10 it not by a preponderance of the evidence of what you
11 would see in a civil case, not by I think he's guilty, not
12 by maybe he's guilty. It has to be proof beyond a
13 reasonable doubt. It is the most heaviest burden that we
14 have in the judicial system and right fully so because
15 we're dealing with extremely important rights. It
16 protects us from the tyranny and the abuse and sometimes
17 the incompetency of a government. It is here to protect
18 us. So you have to if you are performing your job as a
19 jury, you have to make them perform their duty. You have
20 to prove this crime by proof beyond a reasonable doubt.

21 Mr. Preston as he sits there he doesn't have to
22 prove anything to you. He doesn't have to present any
23 witnesses. He doesn't have to take the stand. He doesn't
24 have to do anything. No man is required to prove his
25 innocence. When I use the word man, I am referring to all

1 citizens regardless of gender. No person is required to
2 prove their innocence. It is purely the burden of the
3 State. It's solely theirs and it's your obligation to
4 make sure that they carry it.

5 Now, let's talk a little bit about the facts of
6 this case and I am not going to go into great detail.
7 Like I said, what I say is not evidence. You will hear
8 the evidence from this stand. If it doesn't come from
9 this stand, it is not evidence. But basically what
10 occurred in this case is is that Preston Mozeak and his
11 wife are the grandparents of Minor . Like the
12 assistant solicitor says and like any grandparents,
13 sometimes what people often do is is that they may have
14 her for the afternoon or may have her for a day or may
15 have her for a weekend. They would have their grandkids.
16 And they would care for her just like any other
17 grandparent. But in November of 2014 Minor said or made
18 an allegation that her grandfather had sexually assaulted
19 her on numerous occasions. And her grandfather has
20 vigorously and strongly denied that he's ever done
21 anything. You are going to hear that from the stand. You
22 are going to hear two competing stories. He did these
23 things to me. I didn't do these things to her.

24 And what the assistant solicitor says about
25 using common sense and what the solicitor said about this

1 case being about family, this case is not about family.
2 No criminal case is about family. Criminal cases are
3 about evidence. They are about proof. That's what
4 criminal cases are about.

5 So what happens when you have a situation when
6 you have two people telling who are telling two different
7 stories. What's the tie breaker, how do we figure out,
8 you know, what actually occurred and what didn't actually
9 occur. Well, that's the important of investigations,
10 that's the purpose of investigations is to try to discern
11 fact from fiction, to try to discern what happened and
12 what didn't happen. Now, I wish I could tell you that
13 you're going to hear a wealth of testimony and a wealth of
14 evidence in reference to the extensive and thorough
15 investigation that occurred in connection with this case
16 and that it will provide you with all the information that
17 you need to make an informed decision. But as you sit
18 here today, I tell you that you won't hear that because
19 the investigation in connection to this case was lawfully
20 lacking, that the evidence or should I say lack of
21 evidence that will come from this stand I think will
22 demonstrate to you that the State, the State did not carry
23 its responsibility, it's burden. They did not thoroughly
24 investigate this case.

25 What I think at the conclusion of this case

1 after you hear the evidence, I think what the State is
2 asking you to do is just to sit back and to make a guess.
3 For you to listen to the competing allegations and gamble
4 and gamble with respect to what's right and what's wrong.
5 And you'll have to gamble because the investigation was
6 not proper. And as a result of that, everyone has been
7 done a disservice. That the allege victim, and notice I
8 use the words allege victim, has been a disservice. That
9 Mr. Mozeak, Preston Mozeak has been done a disservice.
10 And I think the system of justice has been done miss
11 justice.

12 We have to demand more. We have to demand more.
13 I think more is required in order to reach the conclusion
14 that beyond a reasonable doubt that someone is guilty,
15 specifically Preston Mozeak in this particular situation
16 is guilty of such a serious crime. Thank you very much.

17 THE COURT: Call your first witness.

18 MR. RICHARDSON: Thank you, Your Honor. We call
19 Minor child . Your Honor, I believe she's under oath.

20 THE COURT: She is.

21 WHEREUPON,

22 Minor ,

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

24 DIRECT EXAMINATION

25

1 BY MR. RICHARDSON:

2 Q All right. Minor , could you tell us your whole name?

3 A Minor child

4 Q Okay. And how old are you now, Minor ?

5 A Eight.

6 Q Eight year olds. What grade are you in in school?

7 A Third.

8 Q Third grade. And did you just start third grade a
9 few months ago? Is that a yes?

10 A Yes.

11 Q Okay. And so what grade were you in last year?

12 A Second.

13 Q All right. And where are you in school?

14 A I'm at M.I.S.

15 Q M.I.S. Is that in Marion? Is that a yes?

16 A Yes.

17 Q Okay. Tell me who lives with you in your house?

18 A My mom, my dad and my brother.

19 Q All right. What's your mom's name?

20 A Tasha.

21 Q All right. Tasha Mozeak. And what's your dad name?

22 A Tony.

23 Q Tony Mozeak. Is that a yes? Can you give me a
24 verbal?

25 A Yes.

- 1 Q Okay. Remember keep our voice up all right.
- 2 A Okay.
- 3 Q And you said you had a brother M.M. . . How old is
- 4 M.M. ?
- 5 A Six.
- 6 Q He's six. So last year around this time would he
- 7 have been five?
- 8 A Yes, sir.
- 9 Q All right. And do you all live here in Marion?
- 10 A Yes, sir.
- 11 Q Who are your grandparents, Minor
- 12 A Grandma and grandpa.
- 13 Q I need you to speak up loudly for me, okay.
- 14 A Grandma and grandpa.
- 15 Q Grandma and grandpa. Do you know their real names?
- 16 A Preston and Lillie.
- 17 Q Preston and Lillie. Okay. Do they live in Marion
- 18 too?
- 19 A Yes, sir.
- 20 Q Okay.
- 21 A Just a few blocks away from our house.
- 22 Q Just a few block away from your house?
- 23 A Yes, sir.
- 24 Q All right. Minor , do you remember last year sometime
- 25 talking to Ms. Sally from the Care House. Is that a yes?

1 A Yes.

2 Q All right. And did you go over with her some
3 drawings about different parts of the body?

4 A Yes, sir.

5 Q Okay. And did she -- were you able to look at, you
6 know, a girl's body part, boy's body parts and that kind
7 of stuff?

8 A Yes, sir.

9 Q Okay. And when you went over those things, were you
10 asked questions like who gives you hugs, do you remember
11 that?

12 A No, sir.

13 Q Who gives you hugs?

14 A My mom and my dad.

15 Q All right. Does your little brother ever try to hug
16 you?

17 A Yes, sir.

18 Q Do you like for him to try to hug you?

19 A Yes, sir.

20 Q You do. All right. Mom and dad ever try to tickle
21 you to make you laugh?

22 A My mom does.

23 Q She does. Okay. Are there parts of your body that
24 it's not okay for people to touch?

25 A Yes, sir.

- 1 Q Can you tell us what those are?
- 2 A Boobs, your bottom and your private.
- 3 Q Okay. Can you speak up some for me a little bit,
- 4 Minor I know it's tough, but we need to be able to hear
- 5 your voice, okay?
- 6 A Okay.
- 7 Q So I'll ask you again, can you tell us what parts of
- 8 your body is not okay for people to touch?
- 9 A Boobs, bottom and private part.
- 10 Q Okay. And when you say private part, what do you
- 11 mean by that? What do you call it?
- 12 A The pee hole.
- 13 Q Say that a little louder for me?
- 14 A The pee hole.
- 15 Q Pee hole. Okay. Minor, has anybody ever touched
- 16 your pee hole?
- 17 A Yes, sir.
- 18 Q Who is that?
- 19 A My grandpa.
- 20 Q What's his name?
- 21 A Preston.
- 22 Q What grade were you in when he touched your pee hole?
- 23 A Second.
- 24 Q You said last year you were in the second grade.
- 25 Could you tell us when you would get out of school when

1 second grade started where would you go when you get out
2 of school?

3 A Go to my grandma's house.

4 Q To your grandma's house?

5 A Yes, sir.

6 Q And was that Grandma Lillie? Is that a yes?

7 A Yes.

8 Q Okay. And what would you do when you left school
9 like how would you get to grandma's house?

10 A On a bus.

11 Q You take the school bus?

12 A Yes, sir.

13 Q And where would it drop you off?

14 A At my grandma's house right in front of her yard.

15 Q Right in front of her yard. So did you do this every
16 day after school?

17 A Every day.

18 Q All right. Were your mom and dad out working?

19 A Yes, sir.

20 Q Okay. When you would get dropped off at your
21 grandparent's house, what would you all do, you know,
22 typical afternoon, would you all just stay home every day
23 or would you go places?

24 A We go places.

25 Q Okay. What are some of the places you would go?

- 1 A The park.
- 2 Q The park around here somewhere?
- 3 A Yes, sir.
- 4 Q It in Marion?
- 5 A Yes, sir.
- 6 Q Okay.
- 7 A Two parks.
- 8 Q Two parks?
- 9 A Two parks.
- 10 Q Both of those around here?
- 11 A Yes, sir.
- 12 Q And who would take you to those parks?
- 13 A Grandpa.
- 14 Q And would M.M. be with you most of the time?
- 15 A Yes, sir.
- 16 Q All right. And how would grandpa take you to these
- 17 parks would it be in a car, would you all walk or how
- 18 would you get there?
- 19 A Sometimes by walking or by car.
- 20 Q So you all would go in the car?
- 21 A Yes, sir.
- 22 Q When you would go in the car, would grandpa be
- 23 driving the car?
- 24 A Yes, sir.
- 25 Q And where would you be sitting?

- 1 A Right beside him.
- 2 Q So you be in the front seat?
- 3 A Yes, sir.
- 4 Q And where would M.M. sit?
- 5 A Backseat.
- 6 Q Okay. And what kind of car was it? It all kinds of
- 7 different things trucks, cars, SUV. You remember what
- 8 kind of car it was?
- 9 A Yes, sir.
- 10 Q What was it?
- 11 A It was like a red car.
- 12 Q A red car?
- 13 A Yes, sir.
- 14 Q Okay. When grandpa would take you to the park or
- 15 wherever was grandma ever there, with you?
- 16 A No, sir.
- 17 Q Okay. And some days would you be at home -- would
- 18 you stay at your grandparent's house in the afternoon to
- 19 not go places?
- 20 A You can say something like that.
- 21 Q Okay. Would grandma usually be home in the
- 22 afternoons?
- 23 A Yes, sir.
- 24 Q All right. I believe you mentioned that grandpa
- 25 touched your pee hole you were in the second grade; is

1 that right?

2 A Yes, sir.

3 Q Can you tell us about a time when he did that?

4 A We always do it when we're heading to the park.

5 Q Ask you to speak up for me, okay.

6 A We always do it when we're heading to the park.

7 Q So you go to the park?

8 A We go to the park. One time we did it in Wal-Mart
9 and one time we did it at Food Lion.

10 Q Okay. When you say it, you did it at all these
11 places? What do you mean exactly that you did?

12 A I mean he touch my pee hole there.

13 Q Could you describe what would he do before he touched
14 your pee hole? You were wearing clothes I guess, right?
15 Is that a yes?

16 A Yes, sir.

17 Q Okay. So how would he touch your pee hole if you had
18 clothes on?

19 A He tells me to unzip my pants.

20 Q And was this when you were in the seat of the car?

21 A Yes, sir.

22 Q Now, M.M. was he in the backseat?

23 A He was in the backseat, so he couldn't see. He was
24 trying to keep himself occupied.

25 Q You said he couldn't see.

1 A He couldn't see.

2 Q So when your grandpa would ask you to unzip your
3 pants, what would you do?

4 A Do it.

5 Q Okay. And then what would he do?

6 A He get his finger and he does it.

7 Q Okay. Speak up little a bit for me will you repeat
8 that?

9 A He gets his finger and he does it.

10 Q What exactly would he do with his finger, I mean,
11 would he reach over to you or tell us how it would happen?

12 A He reach over to me because he got his other hand
13 driving the car. He reach over to me and gets his finger
14 and he digs.

15 Q He dig is that what you said? Is that a yes?

16 A Yes.

17 Q And when he would dig, Minor would he touch you was
18 it on the outside of your pee hole or on the inside?

19 A Inside.

20 Q Do you remember if it was just one finger that he
21 would use or two or do you remember at all?

22 A One finger.

23 Q Which finger could you hold it up?

24 A (Witness shows finger).

25 Q So his pointed finger?

1 A Uh-huh.

2 Q When he would do that to you, Minor what did it feel
3 like?

4 A Really good.

5 Q Could you say that a little bit louder for us?

6 A Really good.

7 Q Would he say anything to you while this was
8 happening?

9 A Well, he tell me to get the handle of the car and lay
10 back.

11 Q Talking about he say lay it back, you talking about
12 the car seat?

13 A Yes, sir.

14 Q Okay. Would he ask you to do that every time or just
15 sometimes?

16 A Sometimes.

17 Q You repeat that little louder for me please. Did you
18 say every time or sometimes.

19 A Sometimes. I will remember that he ready for it.

20 Q What you mean that's how he's ready for it? Can you
21 explain that to me?

22 MR. BROOKER: I'm sorry I didn't hear it.

23 BY MR. RICHARDSON:

24 Q You said something about him being ready for you or
25 for it. Could you explain what you mean by that?

1 A I mean when we are in the car and I'm in the front
2 seat, I know he's going be doing it because we always do
3 it.

4 Q So would he start off by asking you to put your seat
5 back?

6 A I started off with that and then I unzip my pants and
7 he does it.

8 THE COURT: Do you mind speaking up just a
9 little bit louder, so we can all hear?

10 BY MR. RICHARDSON:

11 Q Okay. Now, Minor you mentioned that when he would
12 do this, that it felt good. Would it last a long time or
13 just a short time?

14 A It would last a long time for going to the park,
15 Wal-Mart or Food Lion.

16 Q When would it last a short time?

17 A At the park. The park's not far because there's a
18 park on this side and there's like a park on that side.
19 We usually go to the park on this side, so it's really
20 short.

21 Q You mean how long it takes to get to the park?

22 A Uh-huh.

23 Q What I meant was when he was touching you on your pee
24 hole or in your pee hole, would he do that for a long time
25 in the car or would it just be a short time?

1 A It would be a short time if we're going to the park,
2 but it will be a long time if we're going to a store.

3 Q Okay. What would M.M. be doing in the backseat
4 while Preston or grandpa was doing this?

5 A Trying to keep himself occupied.

6 Q Do you know if he had any idea what was going on?

7 MR. BROOKER: Objection to basically hearsay and
8 also as to speculation.

9 MR. RICHARDSON: Yes, sir.

10 BY MR. RICHARDSON:

11 Q Well, what would grandpa say to you in the car while
12 he was touching your pee hole?

13 A The way I remember it he usually don't say anything.
14 He just looks up the road and just -- he looks at the
15 road, he drives and he does it.

16 Q Okay. Speak up a little bit louder for me, okay.

17 A Okay.

18 Q Now, you're talking about stuff that happened in the
19 car. Was there ever a time in the car where he would have
20 you touch his private part?

21 A Yes, sir.

22 Q Can you tell me about that one?

23 A Well, I thought he was only going to be doing mine,
24 but one day he unzip his pants and he told me to do the
25 same thing he did to him -- that I did to him.

1 Q All right. Could you speak up for me a little bit
2 having a hard time hearing you? So you said one day in
3 the car you thought that he was just going to do the same
4 thing he always did?

5 A Yes, sir.

6 Q But he did something different?

7 A Yes, sir.

8 Q And could you say kind of loudly what it is that he
9 did that time?

10 A I thought he was going to be doing the same way that
11 he did to me, but it was going to be different because he
12 zipped his pants -- he unzipped his pants and he told me
13 to lean on to him and do the same thing he did to me.

14 Q So he asked you to do the same thing to him that he
15 would usually do to you?

16 A Yes, sir.

17 Q Did he show you what to do or tell you what to do?

18 A Well, the way I looked at it the only thing I needed
19 to touch was the middle part.

20 Q So could you show us kind of with your hand what you
21 did?

22 A (Witness demonstrating).

23 Q Okay. Did he say anything? Let me clarify. When
24 you were doing that to him, did he say anything to you?

25 A No, sir.

1 Q What did it feel like?

2 A Well, I didn't know what it felt like to him, so I'm
3 thinking it felt good the same way that he did to me.

4 Q I mean what did it feel like in your hand. Do you
5 remember?

6 A Well, a little soft and a little squishy.

7 Q Okay. Did anything ever happen to you in grandma and
8 grandpa's house?

9 A Yes, sir.

10 Q Where in their house?

11 A In the living room.

12 Q Where would you be sitting when that would happen?

13 A Sometimes in this chair and sometimes in that chair.

14 Q So it could happen in two different chairs?

15 A (Nod head).

16 Q How would you all be sitting down? Would you be next
17 to him or how would it work?

18 A Next to him.

19 Q Okay. And where would grandma be when this would
20 happen?

21 A Kitchen.

22 Q I'm sorry what did you say?

23 A Kitchen.

24 Q In the kitchen?

25 A Yes, sir.

1 Q Did she ever come in and catch grandpa doing this to
2 you?

3 A No, sir.

4 Q And in the living room in the house what would he do
5 to you?

6 A He does same thing that he does in the car.

7 Q Which one? You talked about two different things in
8 the car. And what would he do in the living room?

9 A I usually sit beside him. I sit in his lap. And
10 then when I'm on off his lap, he tells me -- I unzip my
11 pants and he done the same thing that he does in the car.

12 Q So in the house he would unzip your pants?

13 A No, sir, I unzip my own.

14 Q Speak up for me now.

15 A No, sir, I unzip my own.

16 Q So you would unzip your own pants. He wouldn't do it
17 for you?

18 A No, sir, he wouldn't do it for me.

19 Q Okay. At any time in the living room, did he ever
20 have you touch his pee hole again or was that just in the
21 car?

22 A Just in the car.

23 Q You mentioned that one of the times it happen in the
24 car you all were at the Food Loin or going to the Food
25 Lion. Was that a Food Lion here in Marion?

1 A Yes, sir.

2 Q Okay. Did Preston ever tell you anything about what
3 he was doing to you or ask you not to tell anybody?

4 A He asked me not to tell anybody.

5 Q Can you remember what he said?

6 A He said if you tell anybody I will go to jail. And I
7 did not want that to happen.

8 Q But did you eventually tell your mom?

9 A Yes, sir.

10 Q Okay.

11 A Actually, I told my friends and then I told my cousin
12 and then I told my mom.

13 Q Okay. When you were in the living room at your
14 grandparent's house and Preston would touch your pee hole,
15 I know you said you would unzip your own pants, but in the
16 living room, did he touch you on the outside of your pee
17 hole or on the inside?

18 A Inside.

19 Q Okay. Hang on one second for me, Minor. Minor, did
20 all this happen while you were just in the second grade?

21 A Yes, sir.

22 MR. RICHARDSON: All right. I thank you very
23 much and please answer any questions that he may have for
24 you, okay.

25 CROSS-EXAMINATION

1 BY MR. BROOKER:

2 Q How you doing, Minor

3 A Good.

4 Q All right. My name is Thurmond Brooker. And I'm
5 going to be asking you a few questions okay. Is that all
6 right?

7 A Okay.

8 Q Now, if at any time if I ask you a question and you
9 don't understand my questions, you just let me know and
10 I'll try to ask it again in a way in which you understand,
11 okay?

12 A Okay.

13 Q All right. Now, how old are you?

14 A Eight.

15 Q Eight years old. Okay. And I think you testified
16 that Preston and Lillie are your grandparents?

17 A Yes, sir, they are.

18 Q Okay. And I think you also testified to the fact
19 that you have a younger brother name Mike?

20 A Yes, sir.

21 Q Okay. And Mike's younger than you; is that correct?

22 A Sir.

23 Q Mike's younger than you?

24 A Yes, sir.

25 Q Okay. He's your little brother?

1 A Yes, sir.

2 Q Now, I want to ask you some questions in reference to
3 some of the questions that you just answered, okay. Now,
4 if I ask you question and like I said is if you need to
5 stop, just let me know and I'll stop and give you a break
6 all right?

7 A Okay.

8 Q You just have to let me know.

9 A (Nod head).

10 Q All right. Now, first of all, let me ask you did you
11 prepare for your testimony today?

12 A Yes, sir.

13 Q How did you prepare for your testimony today?

14 A With my mom every time when she comes from work we
15 practice.

16 Q Okay. You practice your testimony?

17 A (Shook head).

18 Q Okay. How long do you practice your testimony?

19 A Like until it's my bedtime.

20 Q All right. How long is that?

21 A Some minutes because I go to bed at eight o'clock.
22 It be a little later than that.

23 Q Okay. Is that an hour or two hours? How long do you
24 think it is? I know that you said when you get home from
25 work until you go to bed, just roughly how long that is do

1 you think?

2 A Like two hours or three.

3 Q Two hours or three. And how long have you been
4 practicing your testimony?

5 A Until like it's my bedtime or like I want to be
6 finish with my testimony.

7 Q Okay. And when I said how long have you been doing
8 it and I'm sorry I didn't ask the right question. If you
9 been ---

10 A How long I been preparing?

11 Q Well, have you been practicing for -- when I say how
12 long, I'm talking about the length of time has it been
13 weeks or months this is ---

14 A Some days 'til today.

15 Q I'm sorry.

16 A Some days 'till today.

17 Q Some day 'till day. Do you remember when you first
18 started practicing?

19 A (Nod head).

20 Q More than a week?

21 A You can say that. Me and my mom we been ready
22 Wednesday, so we kept practicing.

23 Q You kept practicing. Okay. All right. And what
24 parts of your testimony did you practice?

25 A Like when someone going to ask me about what

1 happened, where was it, how did it happen and something
2 like that.

3 Q Okay. So you all practice you know what you would
4 say?

5 A (Nod head).

6 Q Okay. Did you practice hard to try to remember
7 everything?

8 A Yes, sir.

9 MR. BROOKER: Your Honor, could we possibly have
10 a moment maybe outside the presence of the jury?

11 THE COURT: Members of the jury, if you would
12 step into the jury for a few minutes. Do not discuss the
13 case.

14 (WHEREUPON, the jury retire to the jury room.)

15 THE COURT: All right. Any time you ready?

16 MR. BROOKER: Thank you, Your Honor. The reason
17 why I ask that we have this moment outside the presence of
18 the jury because I think what the young lady just
19 testified to, at least in my opinion, it may disqualify
20 her to testify as a witness. And the reason why I think
21 it may disqualify her is is that based upon, you know,
22 obviously the rules of evidence that talks about the
23 competency of a witness to testify. And, of course, it's
24 not simply Rule 601 to testify with respect to that, but
25 there's case law that also supports it. And, of course,

1 Rule 601(B) says a person is disqualified if the Court
2 determines that the proposed witness is incapable of
3 expressing him or herself concerning the matters as to
4 being understood by the judge and jury either directly or
5 through interpretation by one who can understand him or
6 the proposed witnesses incapable of understanding the
7 duties of a witness to tell the truth, that is general, I
8 guess, disqualification factors.

9 But in addition to that, the rules of evidence
10 also basically says is is that a witness must testify with
11 respect to personal knowledge. And I think in the case
12 of -- indulge me for just a second until I pull up the
13 case, Your Honor. This is the case of The South Carolina
14 Department Social Services vs. John Doe. And this is a
15 1987 case and I think the citation is 355 SEC 543 among
16 other cases. I think the Court said in that particular
17 case -- you can indulge me for just a second. It says a
18 child's competent to testify depends on a showing of
19 dissatisfaction by the trial judge that the child was
20 substantial, rational in responses to the questions asked
21 sufficiently aware to tell the truth and probability of
22 punishment if the child is mature enough to understand the
23 questions and narrowed the answers to perceive facts
24 accurately through the median senses to recall them
25 correctly to a true version of facts perceived to narrow

1 the difference between right and wrong, good and bad, to
2 understand it is right to tell the truth and the right or
3 good to tell the truth, wrong to tell bad, but the
4 specific things that we're referring to is is that when
5 the Court talks about to perceive facts accurately through
6 the median of the senses to recall them correctly and to
7 relate a true version of the facts perceived. They're
8 talking about the child or any witness has to be
9 testifying based upon their own perceptions have to be
10 testified based upon their own knowledge, has to be
11 testifying based upon their own memory, has to be
12 testifying based upon, you know, their own interpretation
13 of events.

14 THE COURT: I think she did.

15 MR. BROOKER: But when you have a child that
16 testifies, you know, that -- and, of course, it's a little
17 vague how long, but she says that she would testify, you
18 know, for long periods of time. And, of course, she said
19 from when she gets home until she goes to bed for hours a
20 night and that she be drilled with respect to what to
21 testify to, what to say about the abuse, when it happened,
22 what occurred, et cetera et cetera.

23 Then, of course, is is that child is no longer
24 testifying based upon their own perceptions as the law
25 testifying based upon own memories, that child has been

1 drilled to an extent that that child is almost verbatimly
2 repeating what has been fed to them. And at that
3 particular period of time, it becomes almost impossible to
4 now make a distinction between what she's testifying to
5 based upon her own perceptions, based upon her own
6 knowledge, based upon her own memory or what she's
7 testifying to based upon what was told to her or what was
8 coached to her, witnessed cannot be coached to testify. I
9 mean it is absolute plain and clear. And from what she
10 has testified to, I think this is probably one of the most
11 egregious cases which I ever had where witnesses testify
12 that they would drill and coach so thoroughly.

13 THE COURT: Any reply to that?

14 MR. RICHARDSON: Yes, sir. She didn't testify
15 she was told what to say just that they practiced and we
16 have to keep in context that she's a little kid who's
17 never been probably in a courtroom before much less
18 testified in one. And I can understand a parent's concern
19 of wanting her to be comfortable through the process, but
20 she never said that she was told what to say and that's
21 the important distinction. And we also have the tape that
22 can be compared to her testimony here and it all will come
23 down to her credibility.

24 THE COURT: I agree. I think considering her
25 age, the sensitive of the testimony that she has to give

1 in court, the seriousness of court, the importance of
2 court. The fact that it involves a family member. The
3 idea that a parent will practice a little bit with their
4 child I think is appropriate, most lawyers practice with
5 their witnesses anyway. I'm going to overrule it. I
6 think she's very capable of telling the truth. I think
7 she is telling the truth. That's for the jury to decide,
8 that's for your cross-examination. You may cross-examine
9 her in that regard.

10 MR. BROOKER: It is, Your Honor, sure.

11 THE COURT: Bring out the jury.

12 (WHEREUPON, the jury came into open court.)

13 BY MR. BROOKER:

14 Q You okay, Minor

15 A Yes, sir.

16 Q Okay. You ready to start back?

17 A Yes, sir.

18 Q Okay. Now, I'm going to start back where we left
19 off. I think you testified where we left off is is that
20 you had prepared after work or after school for your
21 testimony here today?

22 A (Nod head).

23 Q Okay. What did you all talk about during your
24 preparation sessions?

25 A We talked about what I was going to say like what we

1 thought they was going to say.

2 Q Okay. You okay?

3 A Yes, sir.

4 Q Did you testify about what you were going to say?

5 A Yes, sir, my mom she was the one acting like who was
6 going to ask me the questions and I was the one who was
7 going to answer them.

8 Q Let's move on from that okay?

9 A Okay.

10 Q Ask you a few more questions okay?

11 A Okay.

12 Q Now, you testified when you were asked questions by
13 the gentleman before when you were asked questions by
14 Mr. Richardson that your grandfather -- that you would a
15 lot of times the bus would take you to your grandfather
16 and grandmother's house?

17 A Yes, sir.

18 Q Okay. And that you would spend the afternoon there,
19 you know, to your parents got off from work?

20 A Yes, sir.

21 Q Okay. And would also drop you and your brother off;
22 is that right?

23 A Yes, sir.

24 Q And I think you testified to the fact that your
25 grandfather at times what you described as touch you in

1 your pee pee hole; is that correct?

2 A Yes, sir.

3 Q Okay. And I think you testified or told

4 Mr. Richardson that it would occur, you know, when you go
5 to the park or when you go to the store or when you go to
6 Food Lion; is that correct?

7 A Yes, sir.

8 Q All right. And you correct me if I'm wrong, my
9 understanding of what you testified to when you were asked
10 questions by Mr. Richardson was that your father -- your
11 grandfather would be sitting in the front seat and that
12 you'll be sitting in the passenger seat?

13 A Yes, sir.

14 Q And he would ask you to unzip your pants?

15 A Yes, sir.

16 Q What type pants would you have on?

17 A Khaki's.

18 Q Khaki's. Okay. And he would ask you to unzip your
19 pants?

20 A Yes, sir.

21 Q Then, of course, is that I think you said he would
22 ask you to lean back?

23 A Yes, sir.

24 Q You talking about lean back you let the seat back?

25 A Yes, sir.

1 Q Do you know how to let the seat back in the car?

2 A Yes, sir.

3 Q Okay. And then I think your testimony was he would
4 then touch you in your pee pee hole?

5 A Yes, sir.

6 Q Okay. All right. And you testified that he did it
7 with this finger?

8 A Yes, sir.

9 Q What Mr. Richardson referred to as the pointed
10 finger. Now, about how many times did that happen?

11 A I can't count them all, but it was like more than --
12 it was like more than one.

13 Q Was it more than five?

14 A More than five.

15 Q More than ten?

16 A More than ten.

17 Q More than 20?

18 A I say like 20.

19 Q Like 20. Okay. Now, you said that when you unzip
20 your pants and like I said if there's any time you need to
21 stop just let me know, okay?

22 A Okay.

23 Q You said when he told you to unzip your pants that he
24 would take his finger and touch you in what's referred to
25 as his pointed finger and touch you in your pee pee hole?

1 A Yes, sir.

2 Q Would he do that with his right hand or his left hand
3 do you know? So he would do that with his right hand?

4 A Right hand.

5 Q Okay. I'm I getting it correct? I think you hold up
6 your right hand; is that right? Is that your right hand
7 that you held up?

8 A Yes, sir.

9 Q So he would do that with his right hand?

10 A (Nod head).

11 Q And would he do this while you were driving?

12 A Yes, sir.

13 Q Okay. Now, do you remember talking -- and I think
14 Mr. Richardson I think referenced you're talking to
15 Ms. Williams. Do you remember telling Ms. Williams that
16 you would fall asleep, that when he put his finger in your
17 pee pee hole you would fall asleep?

18 A I don't remember saying that.

19 Q Okay. Do you know what that means or what you meant?

20 A What I meant by falling asleep I meant really felt
21 good and so like when he did, I really fell asleep?

22 Q You fell asleep actually fell asleep?

23 A Yes, sir.

24 Q Okay. All right. And do you remember also telling
25 Ms. Williams that when you went to Food Lion that he did

1 this insert his finger in your pee pee hole while you all
2 were going to Food Lion and I think coming back to Food
3 Lion?

4 A No, sir, but I'm thinking that I told another
5 psychologist that.

6 Q Okay. So let me ask you your memory. So when he did
7 this, how long would he do it? So when you say he would
8 go into the grocery store, would he do it going to the
9 grocery store?

10 A It would be like some quiet time and he wakes me up
11 when we're at our stop.

12 Q Okay. And you literally will be asleep?

13 A I was literally sleep.

14 Q Okay. And so when you get to Food Lion and he wakes
15 you up, what happens then does he go in the store and then

16 ---

17 A We go in the store and get our stuff and come back.

18 Q Okay. Get your stuff and come back?

19 A Yes, sir.

20 Q And does he do it on the way back too?

21 A Yes, sir.

22 Q Okay. Now, you also said something interesting to
23 Ms. Williamson I want to ask you about that I didn't
24 understand. You told her that every time you blink your
25 eyes it take pictures?

1 A Yes, sir.

2 Q Tell me what you mean by that?

3 A It's like whenever I blink and I remember like when I
4 was eight, seven, five or four I remember what happened.

5 Q Okay. So when you blink your eyes, you would take
6 pictures you talking about -- I want to make sure I
7 understand you're talking memories?

8 A Yes, sir.

9 Q So that's what it means by blinking your eyes?

10 A Yes, sir.

11 Q Now, you also said -- I think you testified here
12 today that it only occurred when you were seven when you
13 were asked by Mr. Richardson. Did you ever remember
14 telling Ms. Williamson when she ask you when it happened,
15 do you remember telling her that six, five and four years
16 of age?

17 A No, sir.

18 Q I'm sorry I couldn't hear you?

19 A No, sir.

20 Q Okay. Now, my understanding and you correct me if
21 I'm wrong, when you talk with Ms. Williamson, you told Ms.
22 Williamson that your brother was always there with you ---

23 A Yes, sir.

24 Q --- when this would happen I think in the car?

25 A In the car.

1 Q And when you go to the park or when you go to ---

2 A While I'm in the house, yes, sir.

3 Q Okay, going to the store. And then also told the
4 time when it happened in the house and you said that your
5 brother was there watching TV in the living room. How
6 many times do you think this happened in the house?

7 A Like ten.

8 Q Like ten times in the house?

9 A Yes, sir.

10 Q And how many times you think it happened in the car?

11 A Twenty.

12 Q Twenty times in the car?

13 A Yes, sir.

14 Q And ---

15 A Since, we always go to the park, so think it's like
16 20.

17 Q Okay. Now, so ten times in the house and you think
18 20 times in the car. Now, you also were asked the
19 question in reference to, you know, touching your
20 grandfather. And I think Mr. Richardson ask you did you
21 ever touch your grandfather's pee pee hole and I think you
22 said ---

23 A Yes, I did.

24 Q How many times do you think you touched your
25 grandfather's pee pee hole?

1 A Five.

2 Q Five times. Okay. And I don't want to confuse you
3 now, but we just need to get the facts. Do you remember
4 telling Mr. Richardson that every time he touched your pee
5 pee hole you touched his?

6 A No, sir, I don't remember that.

7 Q Okay. And you may not, but I want to understand from
8 your recollection and not from anybody else's. So you're
9 saying roughly around five times that you touched his pee
10 pee hole?

11 A Yes, sir.

12 Q And could you tell me where those five times took
13 place?

14 A One time we was like -- it was me and grandpa we was
15 like going down a dirt road. We was headed for the real
16 road ---

17 Q I'm sorry you heading for where?

18 A We was heading for a real road until like grandpa he
19 unzipped his pants and I was doing the same thing that he
20 does to me. And he was driving the car and I asked him if
21 I could drive too. And we did and I want to drive a long
22 time. I only drove for a short time. And then when we
23 was on the real road, I did the same thing we did on the
24 dirt road.

25 Q Okay. And did you tell this time about the dirt road

1 and the real road to Ms. Williamson when you talk with
2 her?

3 A No, sir.

4 Q Okay. Didn't tell her about the dirt road and the
5 real road when you talk to her?

6 A (No response).

7 Q Now, like I said I'm almost finish. I know you're
8 tired, so I'm going to finish up with you real soon, okay?

9 A Okay.

10 Q Just a few more questions. I know you also said --
11 well, let me ask you this, the times you touch Preston's
12 pee pee hole, your grandfather's pee pee hole he be
13 driving?

14 A He be driving.

15 Q Okay.

16 A He have two of his hands on the wheel and he be
17 driving and I have my seat belt on. And I just reach over
18 him and do what he does to me.

19 Q Okay. And that's the question I'm asking is I think
20 you almost predicted my question and answer is is that so
21 you're saying he keeps his hands on the wheels and you
22 reached over and you unzip his pants and touch his pee pee
23 hole?

24 A Yes, sir.

25 Q Okay. How would that happen he would generally ask

1 you to do that or how would it happen?

2 A Well, whenever we're in the car, I know when
3 something's going to happen like he's going to touch mine
4 or I'm going to touch his.

5 Q Okay.

6 A Even though I did not know that was a bad thing.

7 Q Okay. Now, you said that you -- don't tell me what
8 anybody said okay, you know, that's what's called hearsay.
9 So it's not permissible, but I just wanted to make sure I
10 understand. You can answer me with a yes or no. You said
11 that you told some friends at school?

12 A Yes, sir.

13 Q Okay. And who were the friends you told at school?

14 A Hillary, Hallie, and Johnna, and Arial and Pagan --
15 Payton.

16 Q Let me make sure that I get everybody down. You said
17 Hillary?

18 A Hillary, Hallie.

19 Q Holly.

20 A Hallie.

21 Q Hallie. How she spell it H-A ---

22 A H-A-L-L-I-E.

23 Q Hallie. And who else?

24 A Johnna.

25 Q Okay. Who else?

1 A Arial.

2 Q Now, you might have to spell that for me? Do you
3 know how?

4 A I don't.

5 Q I'm going to try my best. Arial and who else?

6 A Payton.

7 Q Payton?

8 A Yes, sir.

9 Q And did you tell anybody else at school? Did you
10 mention to anybody else or that's it?

11 A That is it.

12 Q Now, you also mentioned that you told your cousins
13 and you also told your sisters?

14 A Yes, sir.

15 Q Who are they? Can you give me their names?

16 A Nevah.

17 Q Nevah. Can you spell that?

18 A N-E-V-A-H.

19 Q H?

20 A H.

21 Q Nevah. Okay. And who else? I think you said your
22 three sisters or cousins?

23 A Joycelin.

24 Q Joycelin. And who else do you remember?

25 A Kristen.

1 Q Can you spell Kristen?

2 A K ---

3 Q It's all right if you can't spell it just joking with
4 you. Now, almost finish and I'm going to let you out of
5 that seat, okay. You doing okay?

6 A Yes, sir.

7 Q All right. Give me just a second. Now, I'm going to
8 ask you about something. Do you remember telling Ms.
9 Williamson about a time when your mother was on the way to
10 pick you up?

11 A I do not remember telling her that.

12 Q Okay. Let me finish it, okay, and then if you don't
13 remember it just say I don't remember it, okay?

14 A Okay.

15 Q Do you remember telling Ms. Williamson about a time
16 when your mother was on the way to pick you up and that
17 you crawled underneath your grandfather? At some point in
18 time your mother told you and it doesn't make it clear
19 when not to crawl underneath your grandfather. Do you
20 remember telling Ms. Williamson that?

21 A No, sir.

22 Q Okay. Do you have any independent recollection of
23 your mother ever telling you not to crawl under --
24 objection I'm going to withdraw that because that's
25 hearsay. I'm not going to ask you a hearsay question. Do

1 you have any recollection of ever crawling under him while
2 y'all were in the living room?

3 A Yes, sir.

4 Q Okay. You do have a recollection of crawling under
5 him in the living room?

6 A Yes, sir.

7 Q Okay. Could you tell me about that in your own
8 words?

9 A Well, when we do it, I usually don't do it until this
10 came up.

11 Q I'm sorry until what come up?

12 A Him dig into my private part.

13 Q Okay. To him dig into your private parts?

14 A Yes, sir.

15 Q And I'm going to ask you this almost done this
16 question. When you say he dig into your private parts ---

17 A Did I mean by that?

18 Q Ma'am?

19 A What do I mean by that?

20 Q Yeah, only if you can express yourself, only if you
21 can express yourself. Can tell me what you're talking
22 about?

23 A I'm talking about -- I forgot what you was about to
24 ask me to explain.

25 Q Okay. It's all right. Well, let me just you this

1 question. When he used his finger and I know you said he
2 put his finger in your pee pee hole, did he put his finger
3 all way in your pee pee hole?

4 A You can say something like that.

5 Q Okay. Does he use his whole finger?

6 A His whole finger.

7 Q Okay.

8 A Like this.

9 MR. BROOKER: All right. If you can indulge me
10 for just a second, Your Honor, let me make sure I don't
11 have any further questions.

12 (WHEREUPON, a pause in the proceedings.)

13 MR. BROOKER: I don't have any further
14 questions, Your Honor, but one of the things that I do
15 want to mention is is that we want to reserve the right to
16 recall her after we play the videotape and I think that
17 issue was addressed in I think State vs. Anderson. So I
18 just want to express that we reserve the right to do that
19 because that videotape has not been entered into evidence
20 and there might be question as to why after we play the
21 videotape.

22 THE COURT: Do you want to go ahead and ask them
23 now make sure you cover them?

24 MR. BROOKER: Well, that's what I don't know. I
25 can't remember everything verbatim what's on the video

1 tape, that's why I want to at least reserve that.

2 THE COURT: That will be fine.

3 Redirect?

4 MR. RICHARDSON: No, Your Honor.

5 THE COURT: You may step down. You can go back
6 with your parents.

7 (WHEREUPON, the witness leaves the witness
8 stand.)

9 THE COURT: You want to call your next witness.

10 MR. RICHARDSON: We approach one second?

11 THE COURT: Yes.

12 (WHEREUPON, a bench conference was held in the
13 presence of the jury, but out of the hearing of the
14 jury.)

15 MR. HOLT: The State would call Sergeant Daniel
16 Ray, Judge.

17 THE CLERK: Do you solemnly swear or affirm to
18 tell the truth, the whole truth, and nothing but the truth
19 so help you God?

20 THE WITNESS: I do.

21 THE CLERK: Have a seat in the witness chair.

22 WHEREUPON,

23 Daniel Ray,

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

25 DIRECT EXAMINATION

1 BY MR. HOLT:

2 Q Could you give me your whole name for the jury
3 please?

4 A Daniel Derrick Ray.

5 Q And where are you currently employed?

6 A Marion County police department.

7 Q And in November of last year where were you employed?

8 A Marion police department.

9 Q What position did you hold at that time?

10 A I'm a sergeant.

11 Q And can you tell the jury who might not be familiar
12 with law enforcement what the duties of sergeant are or
13 what are your particular duties will be?

14 A I'm a supervisor of a three-man shift.

15 Q Okay. And what does that entail?

16 A I got two guys up under me. If they need something,
17 I am the go-to guy while we're working.

18 Q And how long does a shift last?

19 A Twelve hours.

20 Q In November of last year, did you have occasion to
21 meet Mrs. Latasha Mozeak?

22 A I did.

23 Q Okay. And what did she do when you met her?

24 A She came to me at the police department want to file
25 a report on abuse.

1 Q And did you help her?

2 A I did.

3 Q And how did you help her?

4 A I did a report for her while she was talking.

5 Q Okay. And what were some of the things she was
6 reporting?

7 MR. BROOKER: That's inappropriate ---

8 THE COURT: Sustained.

9 BY MR. HOLT:

10 Q What I mean -- let me rephrase that completely
11 different to get out what I want to get. After you took
12 the report, how did you process it?

13 A I went to my captain.

14 Q Okay. And did you make an arrest at that time?

15 A No, sir.

16 Q All right. And after you processed your report, was
17 there anything else you did?

18 A No, sir.

19 Q Okay. And do you remember what day this was?

20 A This was November the 21st.

21 Q And did she come meet you there?

22 A At the police department.

23 Q And did she have her daughter with her?

24 A I don't recall.

25 MR. HOLT: Hold on just a second, Sergeant Ray.

1 (WHEREUPON, a pause in the proceedings.)

2 MR. HOLT: Please answer any questions Mr.
3 Brooker might have.

4 CROSS-EXAMINATION

5 BY MR. BROOKER:

6 Q Just very briefly, you said Sergeant Gray?

7 A Ray R-A-Y.

8 Q Okay. I just wanted to make sure. I think you said
9 that you took a report from Mrs. Mozeak; is that correct?

10 A That's correct.

11 Q And I think you indicated that your position is
12 sergeant?

13 A Yes, sir.

14 Q Okay. Just for the purposes of this case is it that
15 are the duties of a sergeant is that in anyway encompass
16 investigating a CSC cases ---

17 A No, sir.

18 Q --- involving minors?

19 A No, sir.

20 Q Do you have any training investigating CSC involving
21 minors?

22 A No, sir.

23 Q Okay. Other than taking the report and I think you
24 said you pass it on to your ---

25 A Captain.

1 Q --- to your captain. Is that all that you did in
2 connection with the case?

3 A That's it.

4 Q Okay. All right. And almost finish is is that I
5 just wanted to make sure is that the captain you passed
6 this onto which captain is that?

7 A Barr.

8 Q Captain Barr. Okay. And do you know whether or not
9 the investigator was assigned to this allegation once the
10 allegation was made, the report was made do you know
11 whether or not an investigator was assigned?

12 A No, sir.

13 Q Okay. But that's all you did nothing else?

14 A Nothing else.

15 Q Okay.

16 MR. BROOKER: If you indulge me for just a
17 second, Your Honor. I don't think I have any further
18 questions.

19 (WHEREUPON, a pause in the proceedings.)

20 MR. BROOKER: No further questions, Your Honor.

21 THE COURT: Redirect?

22 MR. HOLT: No further questions, Your Honor.

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

24 (WHEREUPON, the witness leaves the witness
25 stand.)

1 THE COURT: All right. Ladies and gentlemen of
2 the jury, we're going to break for the day. I need you
3 back at 9:30 in the morning and we will start again. As I
4 told you earlier, when you leave the courtroom, do not
5 discuss the case among yourselves or with anybody else.
6 When the case is over, you can talk anyway you feel like
7 it, but right now do not discuss the case.

8 Everybody else remain seated as the jury is
9 excused.

10 (WHEREUPON, the jury is excused for the day.)

11 THE COURT: All right. We'll resume at 9:30 in
12 the morning.

13 MR. RICHARDSON: Yes, sir, Judge.

14 (WHEREUPON, the proceedings were concluded for
15 the day to be reconvened on November 19, 2015.)

16 THE COURT: Okay. Go ahead and bring the jury
17 out.

18 (WHEREUPON, the jury came into open court.)

19 THE COURT: Go ahead and call your next witness.

20 MR. HOLT: Thank you very much, Judge. At this
21 time the State would like to call Mrs. Latasha Mozeak to
22 the stand.

23 THE CLERK: Put your left hand on the Bible and
24 raise your right hand. Do you solemnly swear or affirm to
25 tell the truth, the whole truth, and nothing but the truth

1 so help you God?

2 THE WITNESS: I do.

3 THE CLERK: State your name and spell your last
4 name for the court reporter please.

5 THE WITNESS: Latasha Mozeak M-O-Z-E-A-K.

6 WHEREUPON,

7 Latasha Mozeak,

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

9 DIRECT EXAMINATION

10 BY MR. HOLT:

11 Q Do you go by Latasha or you go by Tasha?

12 A Either one.

13 Q And where do you live?

14 A I live in Marion Smith Street.

15 Q Okay. And where are you from?

16 A I'm from Gresham.

17 Q Where do most of your relatives live?

18 A Most live the Friendship Tabernacle Gresham area.

19 Q Okay. And are you married?

20 A I am.

21 Q Who you married to?

22 A Antonia Mozeak.

23 Q Would you point him out to the jury?

24 A He's right there.

25 Q Okay. When did you meet Tony?

- 1 A I met him in '99.
- 2 Q Were you living here then?
- 3 A I wasn't living in Marion. I was in Marion County.
- 4 Q When did you all get married?
- 5 A When?
- 6 Q Yes, ma'am.
- 7 A We got married 2001.
- 8 Q 2001. And where is Tony from?
- 9 A Tony's from Marion.
- 10 Q And where does most of his family live?
- 11 A In Marion.
- 12 Q All right. When did you have your first child?
- 13 A We had our first child in 2007.
- 14 Q And how old is she?
- 15 A She's eight.
- 16 Q And what is her name?
- 17 A Her name is Minor child.
- 18 Q And what grade is she in this year?
- 19 A She's in third grade.
- 20 Q And last year?
- 21 A She was in second grade.
- 22 Q Okay. And how long before your second child?
- 23 A Two years.
- 24 Q Okay. What's your second child's name?
- 25 A M.M.

1 Q How old is M.M. ?

2 A M.M. is six.

3 Q Where do you work? You work outside the home?

4 A Where do I work now?

5 Q Yes, ma'am.

6 A I work at the beach. I work in Myrtle Beach at Star
7 Tech.

8 Q And before that where were you working?

9 A Before that I worked with my dad and I worked at Blue
10 Cross Blue Shield.

11 Q Are either one of those are they in Marion?

12 A No.

13 Q And when you're away from home, how would your
14 children -- did they go to school in Marion?

15 A My children go to school in Marion.

16 Q And how were they cared for when you were outside of
17 Marion working?

18 A After school, they would be dropped off at my
19 in-laws.

20 Q And how about Tony does he work outside the home?

21 A Well, at the time he was in school.

22 Q You say at the time what do you mean by that?

23 A At the time of the incident occurred, he was in
24 school, but as far as like right now, he's in between
25 jobs. He's not working right now.

1 Q Okay. Specifically in November of last year, who was
2 helping you with the children from August to November of
3 last year?

4 A My in-laws.

5 Q Okay. And what are their name?

6 A Preston and Lillie Mozeak.

7 Q All right. And just for the record, do they live in
8 Marion County?

9 A They do.

10 Q And about how far away from you do they live?

11 A They live a half of a minute. I mean, they don't
12 live that far from us at all.

13 Q And that's in Marion County as well?

14 A It is.

15 Q And the time were you close to Preston and Lillie?

16 A Yes.

17 Q Before the incident occurred, did you feel like you
18 could talk to them?

19 A Yes, I mean, yes.

20 Q Who do you feel like you were closer to?

21 A I felt like I was closer to Mr. Preston. He and I
22 had we would, you know, chat. You know, I'll come and
23 I'll talk to him. We sit on the porch and we talk. I
24 mean I talk to my mother-in-law, but I talk to him.

25 Q All right. At any time were you ever worried about

1 their safety?

2 A No, no, I felt they were in a safe place.

3 Q Okay. Now, do you know how old Mr. Preston is?

4 A I think he is 62 or 63.

5 Q All right. And from how Preston and your daughter
6 interacted, did you ever notice anything strange?

7 A At first I did not, but then it got to a point to
8 where I will begin seeing, you know, it seems like she was
9 spending more time with him. I mean, she was like -- one
10 time I came in from work and she was sitting on his lap.
11 I mean, we had keys to the house.

12 Q And whose house is this so the jury is aware?

13 A We had keys to my in-laws' house. And so, I mean,
14 whenever we would get off work, I got off work I open the
15 door and she was sitting in his lap. And I'm like -- I
16 told her I said Minor you don't sit in his lap. You know,
17 and I mean they were moving so quickly. You know, it's
18 like he had hands, you know, kind of like this, but she
19 moved so quickly and I scolded her. I told her I said you
20 don't sit in his lap. You know, and I try to make her
21 understand, you know. He's a man. You're a little girl.
22 You don't sit in any man's lap. I mean, I don't care if
23 it is your grandfather, you know. And so I had been
24 seeing that she's been kind of like sitting under him, you
25 know, really next to him, that's what I had noticed.

1 Q But at that time did you think anything was going on?

2 A I didn't think anything. I don't think anything. I

3 mean, that was her granddad, but I mean at the same time

4 the fact of the matter is she's a child and he's a man.

5 Q When did you discover that anything was going on?

6 A When she told me.

7 Q All right. And about datewise when do you think that
8 was?

9 A When she told me?

10 Q Yes, ma'am.

11 A She told me November of last year, which would have
12 been November 21st.

13 Q And did she come right out and tell you?

14 A Well, she did. She did. She did. It was one
15 morning before school she came out and she told me when I
16 was ironing the children's clothes getting ready for
17 school she came out and she told me.

18 Q And then after you had this information, of course,
19 you can't tell the jury what anybody told you that be
20 hearsay, but once you had this information, what did you
21 do after that?

22 A When she told me, I took her to the doctor. I took
23 her to her pediatrician because I wanted him to check her,
24 you know.

25 Q Is that where you went first?

1 A Yes.

2 Q Okay. Can you tell us in between her telling you and
3 the doctors, did you talk to Tony about it like what
4 happened?

5 A Yes. Okay, she came and told me what happened. And,
6 you know, I stayed calm, of course, you know, because I
7 wanted her to be able to know that she could confide in
8 me. She could tell me whatever she wants to tell me. So
9 she told me and I let her know I was like, okay, she said
10 but don't tell dad, okay.

11 MR. BROOKER: Just objection to the hearsay.

12 THE COURT: Sustained.

13 BY MR. HOLT:

14 Q Just don't say anything about specifically what she
15 told you?

16 A She told me. I let her know that we had to tell her
17 father. We walked in the office where he was and let him
18 know what happened.

19 Q And then what steps did you all take?

20 A I took her to the doctor. After we left the doctor,
21 I filed a police report.

22 Q And did you -- where did you file the police report?

23 A In Marion.

24 Q Okay. Specifically what building, did you go
25 somewhere?

1 A I went to the police department.

2 Q Okay. And then after that -- and you can't get into
3 what the police told you either, but then after that what
4 steps did you take?

5 A After that, we went to the Care House and I mean the
6 experience was very traumatic for her.

7 MR. BROOKER: Objection, Your Honor.

8 THE COURT: Sustained.

9 BY MR. HOLT:

10 Q Could you tell any visible differences in the child
11 after the Care House?

12 A After the Care House, yes, yes, whereas Minor is very
13 talkative. I mean, she is more reserved. There was even
14 a time when, you know, bedtime, okay. So I always go say
15 and good night, you know, I love you and everything like
16 that. This particular time I went in the room and she was
17 playing with herself. She had her finger down there and I
18 said, Minor, what are you doing. And she said ---

19 MR. BROOKER: Objection to the hearsay.

20 THE COURT: Sustained.

21 A Okay. Well, I apologize, but -- she had her finger
22 down there.

23 Q All right. When you noticed that, did you have a
24 conversation with her?

25 A I did. I had a conversation with her because I

1 wanted to know why she was doing that. I mean, you know,
2 don't, yes. I had a conversation with her. Yes, we
3 talked about that.

4 Q And previous to these allegations, did you ever
5 notice anything like that?

6 A No, I did not. No, I did not notice that previous to
7 these allegations I did not.

8 Q Okay. And after the Care House was there any other
9 specific steps you took?

10 A No, besides she had therapy. She had therapy.

11 Q Did the Care House recommend that you see somebody
12 about any physical ---

13 MR. BROOKER: Objection, Your Honor, in
14 reference to speaking about references or recommendations
15 of the Care House made.

16 THE COURT: What is the question again?

17 MR. HOLT: She testified about going to a doctor
18 earlier and I want to know if the Care House sent her
19 there.

20 MR. BROOKER: She can't testify to any
21 references with respect to what the Care House may have
22 referenced.

23 MR. HOLT: I can completely rephrase it.

24 BY MR. HOLT:

25 Q Besides the doctor that you talked about taking her

1 to see, did you take her to see another medical doctor?

2 A I did not. I did not. When I took her to her
3 pediatrician, I asked him to check her. He let me know
4 that ---

5 MR. BROOKER: Objection, Your Honor.

6 THE COURT: Sustained. Sustained.

7 A Well, I did not.

8 Q Can you tell the jury why you did not?

9 A I did not take her some place else. Well, I know
10 what I want to say, I just don't want it to be like
11 hearsay, you know, him having -- her physician what was
12 stated to me, but I did not. I mean, I was told that the
13 ---

14 MR. BROOKER: Objection that will be hearsay.

15 THE COURT: Sustained. Sustained.

16 A Specialist are in Charleston. And I did not -- I had
17 checked her -- I looked, you know, myself to see if I saw,
18 you know, anything -- not that I knew what I was looking
19 for, but I did not because of that.

20 Q Okay, switch topics. Prior to all this coming to
21 light, were there any problems between you and Lillie and
22 Preston?

23 A No, we didn't have any problems.

24 Q Is there any litigation?

25 A I'm sorry.

1 Q Any litigation in court over anything?

2 A Quarrel?

3 Q Quarrel or court anything like that?

4 A No, we didn't quarrel over anything if that's what
5 you're asking, no.

6 Q Where is your youngest son right now?

7 A Right now he's in school.

8 Q And after he get outs school today, who's going to
9 care for him?

10 A One of my friends.

11 Q Okay. And you said his name is M.M. ?

12 A His name is M.M. .

13 Q Is there any specific -- does M.M. have any
14 specific medical issues?

15 MR. BROOKER: Again, Your Honor, I'm going to
16 object if he's going to make reference to, I guess,
17 medical records that ---

18 THE COURT: He just asked if he had any medical
19 issues.

20 BY MR. RICHARDSON:

21 Q Is there anything that makes M.M. special to you?

22 A Well, I mean, he's my only boy, but I mean as far as
23 M.M. is special in his own way. He's ADHD and, you
24 know, he has Asperger's.

25 Q Okay. Yesterday, talked a lot on cross-examination,

1 that you and your daughter practiced. Were you here when
2 they talked about that?

3 A Yes.

4 Q And can you explain to us how that came about and
5 what you all talked about specifically when you practicing
6 with her?

7 A Yes. I was asked -- I knew, you know, that this was
8 coming up and everything. And, of course, the child knew.
9 And with them not have ever experience it, I want to know,
10 okay, so what could possibly, you know, anybody ask me.
11 So what I did I asked questions like, you know, any person
12 would ask. So I thought -- I never experienced this
13 either.

14 Q Did you ever tell Minor what to say?

15 A I did not.

16 Q Did you ever plant anything in her head?

17 A I did not.

18 Q Did you tell her how she should react in anyway?

19 A I did not.

20 MR. HOLT: Beg the Court's indulgence two
21 seconds.

22 (WHEREUPON, a pause in the proceedings.)

23 MR. HOLT: No further questions, Your Honor.

24 THE COURT: All right, Mr. Brooker.

25 CROSS-EXAMINATION

1 BY MR. BROOKER:

2 Q Just going to ask you a few questions, Mrs. Mozeak.
3 And I'm not going to try to trick you or anything like
4 that. So if I ask you a question and you don't understand
5 my question, just let me know I'll be more than happy to
6 repeat it, okay. I think you testified to the fact and
7 you correct me if I'm wrong, that you had a fairly good
8 relationship with your in-laws?

9 A Yes.

10 Q That's Preston and his wife, Lillie, is that correct?
11 And I think you said that they cared for your kids a lot
12 of times after school because at that particular period of
13 time you were working and I think you testified that Tony,
14 your husband, was in school?

15 A Right.

16 Q Okay. And how long had they been caring for your
17 kids while you were working and while you were in school,
18 how long had that sort of arrangement been going on?

19 A It's been going on pretty much since they been in
20 school. I mean, outside from child care, you know,
21 because they were in daycare if you looking at that. So I
22 mean as far as them being in school, yes, daycare for them
23 after school since they been to school.

24 Q Okay. And then, of course, at the time in which
25 these allegations were made she was seven at that time?

1 A She was seven.

2 Q Okay. And I don't want to kind of show my age, but
3 how long would she have been in school at that time. I
4 think she was in second?

5 A She was in second grade at the time.

6 Q Roughly two years. You tell me because I don't want
7 to testify for you?

8 A Correct. She started school at five. She was in
9 5-K.

10 Q So roughly two years?

11 A Uh-huh.

12 Q Okay. And then, of course, I think you testified to
13 the fact that you didn't have any suspicion of anything
14 that was going on and I think you said that one day you
15 came home -- you came to their house and that you saw
16 Preston. You saw your daughter sitting in Preston's lap?

17 A Yes.

18 Q And then, of course, she kind of hurried off of his
19 lap when you come in the door?

20 A Uh-huh.

21 Q Is that correct?

22 A Yes.

23 Q Now, you testified when your daughter told you this
24 story that you went and told -- that after you all had
25 talked, after she made these allegations to you, you went

1 and you all talked to your husband and you told your
2 husband about it. Then, of course, you took her to your
3 family doctor; is that correct?

4 A To her pediatrician.

5 Q To her pediatrician. Now, and I want to make this
6 clear to you. I don't want you to say anything that your
7 pediatrician said, but I'm going to ask you whether or not
8 you witness him do anything, okay. So you can answer yes
9 or no?

10 A Okay.

11 Q But I don't want to know what your pediatrician said,
12 but you can testify to what you visually saw, okay. Did
13 the pediatrician at that time did you see whether or not
14 the pediatrician performed any sort of forensic
15 examination like a rape kit or that sort of thing?

16 A Right, he did not.

17 Q Okay. So and I think you testified that the next
18 thing that you did was is that you -- that you all
19 reported it to law enforcement?

20 A Correct.

21 Q Okay. And like I said you tell me based upon your
22 knowledge when you reported it to law enforcement, did you
23 take Minor with you?

24 A I did not.

25 Q Okay. All right. At any point in time and you tell

1 me whether or not you know or not, at any point in time
2 did law enforcement pick Minor up and transfer Minor to
3 some sort of medical facility to have a forensic
4 examination or either a rape kit test performed?

5 A They did not.

6 Q And I'm going to ask you this and I don't want you to
7 tell me anything because -- I'm going to ask you this
8 because when you testified with Mr. Holt he's asking you
9 questions, you raise an issue in reference to the medical
10 University of South Carolina or am I correct MUSC or
11 something like that? You said something about MUSC, but
12 you started to?

13 A What I said was Charleston.

14 Q Charleston. Okay. Was it your intention to take her
15 to Charleston to have a forensic examination or either a
16 rape kit test before?

17 A No.

18 Q Okay. So she never went to Charleston I think you
19 testified to?

20 A She did not.

21 Q And I think you testified to the fact that instead of
22 taking her to Charleston you just simply looked at her
23 yourself?

24 A I mean, yeah, I looked at her.

25 Q I understand. You looked at physically from the

1 outside; is that correct? You examined her body
2 physically from the outside?

3 A I mean, yes, because I usually check her after she
4 washed up make sure she washed up good, so, yeah, I
5 looked, yes, I looked for myself.

6 Q Okay. And that's something that what you saying is
7 that you usually would do is that you would look at her I
8 think you said when you washed her just a minute ago you
9 looked at her from the outside to make sure she had no
10 external injuries to her body or damage to her body?

11 A Yeah.

12 Q Okay. Now, and you tell me yes or no because I don't
13 know what you know. Do you know what the purpose of --
14 and you may not. Do you know what the purpose of a
15 forensic examination or either a rape kit test examination
16 is for?

17 A What it's for?

18 Q Yes.

19 A I mean to detect if something has happened in that
20 manner.

21 Q Okay. It's a medical examination; is that correct?

22 A You ask if I knew what it was for.

23 Q Yes, ma'am. And I'm asking you is it a medical
24 examination?

25 A I'm not sure.

1 Q Okay. Did -- with your physical examination, were
2 you able to do a forensic vaginal examination?

3 A Of course not, I wouldn't dare try to stick my finger
4 in my child or anything like that, no, sir.

5 Q And I'm not talking about that. I'm just asking were
6 you able to -- and the answer is yes or no. Were you able
7 to perform a forensic vaginal examination?

8 A I was not.

9 Q Are you medically qualified and trained to perform a
10 forensic medical examination?

11 A I am not.

12 Q Okay. And I think -- and I want to make sure that I
13 get this correctly. At some point in time you said you
14 took her to another doctor. Is that the doctor you
15 referring to in Charleston?

16 A I took her to one doctor her pediatrician.

17 Q Okay. I want to get that straight. I don't want to
18 get anything wrong. One doctor which was her
19 pediatrician. And then no medical doctor thereafter?

20 A Correct.

21 Q Okay. Now, prior to her telling you this -- the
22 allegation that she did last year, I think you testified
23 that you had never suspected there was anything that was
24 going wrong?

25 A I had never suspected anything that was going wrong.

1 What do you mean going wrong with her?

2 Q Yeah, that what she alleged that you had never
3 suspected that that sort of stuff was going on?

4 A Right.

5 Q Okay. And that's what I'm talking about. Okay. And
6 I'm assuming the reason why you never expected that
7 something like that was going on is I'm assuming was her
8 attitude was the same?

9 A Was her attitude the same?

10 Q Yeah, I'm trying to figure why didn't you suspect
11 anything. There was no change in her behavior?

12 A You talking about I never expected anything prior to
13 or after?

14 Q Prior to. I'm talking about before not after. I
15 know you've explained after. You alleged the incident
16 after. I'm talking about before?

17 A Before this happened?

18 Q Yeah, you testified that before Minor made these
19 allegations to you that you had never suspected that
20 anything was going on?

21 A Right, I did not. I didn't suspect that anything was
22 going on. I mean, because, you know, she was, I mean,
23 happy-go-lucky. I mean everything was good, you know,
24 still Minor I mean, it was only after that I could, you
25 know, looking back can kind of see how her, you know,

1 mannerisms and things have changed, but before, no, I
2 would not have.

3 Q Okay. So during the alleged conduct you didn't
4 notice any -- during the alleged conduct, I'm not talking
5 about afterwards. I'm talking about before. During the
6 alleged conduct, you didn't notice any change in her
7 behavior?

8 A You said during?

9 Q Yes, during. I'm not talking about afterwards, I'm
10 not talking about afterwards. I'm talking about before
11 ---

12 A While it was going on?

13 Q Yeah, and what I'll do is to try to make this easier,
14 I'm probably going to separate this by, you know, before
15 the allegation and after the allegation. Right now I'm
16 talking the period of time before the allegation. Did you
17 notice any difference -- I think you testified to the fact
18 that you never suspected, so before she made the
19 allegations to you, did you notice any difference?

20 A Okay, well, yes, yes, yes, I mean as I stated seeing
21 her sitting under him. And what I mean by sitting under
22 him, I mean, you know, right next to almost on up on him.
23 Yes, I did see that. I did saw that. As I stated, you
24 know, when I came in that day and I saw her sitting in his
25 lap, that right there -- that was just a bit much because

1 I mean this is my child who is seven and this is her
2 grandfather, yes, at the time he's in his 60's. And so in
3 my mind whether it's grandpa or not, he's a man. You're
4 a child. You're a girl. No, so, yes, I did see changes
5 like that.

6 Q Okay. And I just want to make sure I understand.
7 I'm talking about the behavior changes in her. Was there
8 any changes in her eating habits, were there any changes
9 in her sleeping habits, was she doing bad in school, was
10 she acting out? What were the behavioral changes?

11 A With that, Minor she was beginning to get a little
12 bit more reserved. Minor is a talker. I mean, she'll
13 talk, but I mean she was becoming a little bit more
14 reserved. And so, you know, I just kind of figure okay,
15 well, she's just growing up a little bit, but then, you
16 know, well, I have, yeah, I notice change like that.

17 Q When you talk to law enforcement, did you express to
18 them that there was behavioral changes in her prior to the
19 incident that -- and let me ask specifically, what were
20 the behavioral habit change? I know you said that she was
21 a little bit more reserved. I think you gave a general
22 answer -- kind of a general answer, but that was the
23 behavioral change is that she was a little bit more
24 reserved as oppose to she being more outgoing normal?

25 A Yes, that. And like Minor her being like I said a

1 girl, it was -- she was seeming to me a little bit more
2 brazen. Like if she's sitting on the couch, she would sit
3 with her legs open or one leg like straight and other one
4 like she got it propped up like almost like on the arm of
5 the chair and whatnot 'no, no, no. So not in seeing and
6 knowing how my child is but as far as behavioral too, yes.

7 Q And the reason why I'm asking that question is is
8 that I'm confused at least by your testimony when you said
9 you had no idea you testified before that she seem to be
10 fine, but now all of sudden you're saying that, you know,
11 when I'm asking you that you're saying you notice sudden,
12 you know, I guess intangible behavioral changes. Did you
13 express that to anybody?

14 A Okay. Well, if you saying before, maybe I didn't
15 understand the question that was answered before.

16 Q I'll shift to after, but I'm talking about before
17 right now?

18 A Well, yes, when I answer that question and see you
19 asked a question also if I had told the police about
20 behavioral or anything, no, I did not. I just told him
21 the allegation.

22 Q The allegations?

23 A Right.

24 Q All right. Now, so one more question in reference to
25 this I hope at least before and that was is you said that

1 one day you came to your in-laws house and you saw Minor
2 sitting in her grandfather's lap and you said that you got
3 real upset about that?

4 A I did.

5 Q Did that create some concern that something was going
6 on at that time?

7 A At that time, I mean, I kind of I'm like, you know,
8 like I was -- it came cross my mind that I'm like, okay,
9 but no that's her granddad, that's her granddad.

10 Q Did you have any concern at all at that time when you
11 came and you said you saw Minor sitting there?

12 A Yes, I had concern because I wanted to know why she
13 was sitting in his lap, that's why I scolded her.

14 Q What were your concerns? What were your concerns?

15 A My concern was that I didn't want her sitting in his
16 lap because that could cause other stuff, you know. And
17 so I understood, I guess, I was -- I guess I understand
18 how things can go on. I mean with -- I understand how --
19 I'm trying with her being a child, him being a man and you
20 know the fact that the situation, you know, I guess the
21 house or home situation with him but just different. And
22 so her being a little girl and child I didn't want that to
23 cause anything else.

24 Q Now, my next question would be is is that if you had
25 those -- if you had, you know, just even an inclining of a

1 concern, did you go to Preston and say, hey, Preston, now
2 I'm kind of feeling a little bit uncomfortable. I got a
3 little concern either to go to Mrs. Mozeak, your
4 mother-in-law, and says I'm feeling a little about icky
5 (sic) about what happened. We need to talk about that.
6 Did you go to them and have that conversation with them?
7 A He was there when I was having the conversation with
8 Minor I had the conversation with her and looked at him
9 and let her know you don't do that. And I don't care who
10 you are grandpa or not, he was sitting right there in the
11 chair so, yes.
12 Q Okay. Okay. And I got you and I understand exactly
13 what you're saying. Did you have a specific conversation
14 with him adult to adult saying that listen here these
15 types of things makes me little bit eerie she's a child.
16 You're an adult. I want to have this conversation with
17 you. So you didn't have that sort of conversation?
18 A I did not.
19 Q Did you have that conversation with Mrs. Mozeak
20 Minor grandmother?
21 A I did not.
22 Q Okay. All right. Now, I'm going to ask you a few
23 questions now about afterwards. And I think you were
24 sitting in the courtroom when Minor testified, were you
25 not? You were sitting in the courtroom when Minor

1 testified; is that correct?

2 A Yes.

3 Q Did you tell me who Cloe is?

4 A Cloe?

5 Q Uh-huh.

6 A It's one of her previous classmate of hers.

7 Q Okay. And what about I think Paris?

8 A Previous classmate of hers.

9 Q And I'm pretty sure you could tell me the name of --

10 can identify -- indulge me for just a second I want to

11 make sure I get their names right. I think it's Kristen?

12 A Her cousin.

13 Q Okay. Is she a cousin on your side of the family?

14 A Yes.

15 Q Okay. What about I think it's Nevah?

16 A Nevah.

17 Q Who's Nevah?

18 A Cousin.

19 Q Okay. Again on your side of the family?

20 A Yes.

21 Q Okay. And Joycelin?

22 A Cousin.

23 Q Okay. And again cousins on your side of the family?

24 A Yes.

25 Q Okay.

1 MR. BROOKER: If you can indulge me for just a
2 second, Your Honor.

3 THE COURT: Okay.

4 (WHEREUPON, a pause in the proceedings.)

5 BY MR. BROOKER:

6 Q Okay. Now, let me ask you about a couple more names
7 see if you can tell me who they are if I can get to my
8 right notes. Who is Hillary?

9 A Previous classmate of hers.

10 Q Okay. And Hollie or Hallie?

11 A A previous classmate of hers.

12 Q And I think it was Johnna?

13 A A previous classmate of hers.

14 Q And I hope I'm not getting this wrong is it Alora?

15 A You said Alora. I think she might have said Arial.

16 Q Arial?

17 A Something like that. A previous classmate of hers.

18 Q And then Payton?

19 A A previous classmate of hers.

20 Q Do you know these classmates?

21 A I do not. Besides I mean I've seen Paris.

22 Q Okay. Have you ever met the classmates?

23 A I met Paris.

24 Q Okay. What about Cloe?

25 A I've not.

1 Q Have you ever met the other ones Hallie? Hillary?

2 A Hillary I have not.

3 Q What about Hollie or Hallie?

4 A I have seen her when I went to the school.

5 Q Johnna?

6 A I've seen her when I went to the school.

7 Q Arial?

8 A No, I've not met her.

9 Q What about Payton?

10 A No, I've not met her.

11 Q Okay. Do you know what any of their last names are?

12 You know what Hillary's last name is?

13 A I don't know any of their last names.

14 Q Any whatsoever?

15 A No.

16 Q Okay. Now, I'm almost finish with you. I promise I
17 just want to make sure I cover all this. I think these
18 allegations were made in November of 2014; is that
19 correct?

20 A That is correct.

21 Q That's when you said that she made these allegations
22 to you. And I know that some of those names that I gave
23 to you I think I gave you at least seven classmate names.
24 Some of them you said that you seen and some of them you
25 said that you didn't. Do you know whether or not they

1 were her classmates at that particular period of time in
2 the seventh grade -- I mean, excuse me in the second
3 grade?

4 A They were her classmates.

5 Q Okay. Just question and I'll sit down have -- and
6 you tell me if you have or have not. Have you spoken to
7 any of these classmates in reference to her -- in
8 reference to Minor allegations?

9 A I have not.

10 MR. BROOKER: Okay. You can indulge me for just
11 a second make sure I don't have any further questions for
12 you.

13 (WHEREUPON, a pause in the proceedings.)

14 MR. BROOKER: I have no further questions, Your
15 Honor.

16 THE COURT: Redirect?

17 MR. HOLT: Thank you very much, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. HOLT:

20 Q When Mr. Brooker asked you have you spoken to any
21 second graders about these allegations, have you spoken to
22 a lot of people about these allegations?

23 A I have not.

24 Q Did you speak to any other children about these
25 allegations?

1 A I have not.

2 Q Is it your practice to take up important matters with
3 children routinely?

4 A It is not.

5 Q Okay. This sounds like an obvious question. Second
6 grade talking about the time line Mr. Brooker has do you
7 remember what month second grade started?

8 A In August.

9 Q Since August of last year is childcare easier or
10 harder on your family?

11 A It's a little bit harder.

12 MR. HOLT: Thank you very much.

13 MR. BROOKER: I have one follow-up question.

14 RECROSS-EXAMINATION

15 BY MR. BROOKER:

16 Q I think you were asked by the assistant solicitor
17 whether or not you in the business of asking children, you
18 know, talking with children about the allegations of your
19 daughter. But isn't it true that these were not just any
20 children, these were the children in which she alleged
21 that she talk with about these allegations, so they're
22 not just any kids. They're not like any other kids; is
23 that correct?

24 A I mean, they're kids.

25 Q Yeah, I know, but they're not just any kids. They're

1 different from the normal kids. These are kids in which
2 she said that she had talk with about these allegations
3 even before you; is that correct? /

4 A Yes, she did state that, but they're still kids.

5 MR. BROOKER: No further questions.

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

7 (WHEREUPON, the witness leaves the witness
8 stand.)

9 THE COURT: Call your next witness.

10 MR. RICHARDSON: Your Honor, our next witness
11 got delayed at work this morning. She's driving here
12 right now, but she'll be here within the next 20 or so
13 minutes if we could take a brief recess.

14 THE COURT: You got anybody you want to call in
15 between?

16 MR. RICHARDSON: No, sir, not at this time.

17 THE COURT: All right. Members of the jury, if
18 you would step into the jury room. Do not discuss the
19 case.

20 (WHEREUPON, the jury retire to the jury room.) \

21 (WHEREUPON, a break was taken.)

22 THE COURT: Bring the jury in.

23 (WHEREUPON, the jury came into open court.)

24 THE COURT: Call your next witness.

25 MR. RICHARDSON: Thank you, Your Honor. We call

1 Sally Williamson.

2 THE CLERK: If you will place your left hand on
3 the Bible and raise your right hand. Do you solemnly
4 swear or affirm to tell the truth, the whole truth, and
5 nothing but the truth so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Please be seated and state your name
8 and spell your last name for the record?

9 THE WITNESS: My name is Sally Williamson
10 W-I-L-L-I-A-M-S-O-N.

11 WHEREUPON,

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

14 DIRECT EXAMINATION

15 BY MR. RICHARDSON:

16 Q Ms. Williamson, where do you work?

17 A I work for the Care House of the Pee Dee in Florence.

18 Q And what is the Care House?

19 A The Care House is a children's advocacy center which
20 offers therapy, advocacy and forensic interviewing to
21 children and families in cases of suspected child
22 maltreatment.

23 Q And do you typically -- well, what do you do there?

24 A I am a forensic interviewer and a therapist as well.

25 Q Okay. And do you all get case referrals from law

1 enforcement agencies?

2 A We do from law enforcement and department of social
3 services as well.

4 Q Okay. And did you get a referral in this particular
5 case with Minor child ?

6 A Yes, we did.

7 Q Okay. Did Minor come in and meet with you?

8 A Yes, she did.

9 Q And do you have a date where she came in?

10 A She came in for a forensic interview on November 25th
11 of 2014.

12 Q Okay. And when you do a forensic interview how do
13 you memorialize or keep track of the interviews you've
14 done?

15 A As the interview is taking place, we have a closed
16 circuit television system which records the entire
17 interview from start to finish, saves it on a hard drive
18 and we make disk copies of the interview as well as
19 produce a typewritten report.

20 Q Okay. So all your interviews are audio-video
21 recorded?

22 A Yes, they are.

23 Q And you can put those on a disk and give them to
24 whoever necessary parties are?

25 A Yes, we can.

1 Q Did you make a recording in this case?

2 A Yes, I did.

3 Q All right. I want to show you what's marked for
4 State's 1 for ID only at this time can you take a look at
5 that and do you recognize that?

6 A I do.

7 Q And what is it?

8 A This is the disk copy of Minor forensic
9 interview conducted on 11-25-14.

10 Q And you've reviewed the contents of that?

11 A I have, yes.

12 Q Is that a true and accurate representation of your
13 interview with her that day?

14 A Yes, it is.

15 MR. RICHARDSON: Your Honor, if I could please
16 move State's 1 into evidence.

17 THE COURT: Any objections other than what
18 you've stated earlier?

19 MR. BROOKER: Nothing other than the ones stated
20 earlier, Your Honor.

21 THE COURT: Overruled. It's into evidence.

22 (WHEREUPON, State's Exhibit No. 1 was admitted
23 into evidence.)

24 MR. RICHARDSON: Thank you, Your Honor. At
25 this, Your Honor, may we publish the agreed upon portions

1 that the parties have agreed upon?

2 THE COURT: You may.

3 MR. BROOKER: Well, I will object to publishing
4 it right now until proper foundation has been made.

5 THE COURT: It's into evidence and you can
6 publish it.

7 MR. RICHARDSON: Yes, thank you.

8 MR. BROOKER: Thank you, Your Honor.

9 (WHEREUPON, video of forensic interview being
10 played for the jury.)

11 BY MR. RICHARDSON:

12 Q Okay. Ms. Williamson, were you and Minor the only
13 two people present in that room when the interview took
14 place?

15 A Yes, we were.

16 MR. RICHARDSON: Thank you, ma'am. Please
17 answer any questions Mr. Brooker may have.

18 THE COURT: Mr. Brooker.

19 MR. BROOKER: May we approach just a second,
20 Your Honor?

21 THE COURT: Sure.

22 (WHEREUPON, a bench conference was held in the
23 presence of the jury, but out of the hearing of the
24 jury.)

25 MR. BROOKER: I don't have any questions, Your

1 Honor.

2 THE COURT: All right. You may step down.

3 Thank you.

4 (WHEREUPON, the witness leaves the witness
5 stand.)

6 THE COURT: Call your next witness.

7 MR. RICHARDSON: State rest, Judge.

8 THE COURT: Members of the jury, if you would
9 step into to the jury room. We have to take up some
10 motions right now. We'll be right back with you.

11 (WHEREUPON, the jury retire to the jury room.)

12 THE COURT: Any motions at this time?

13 MR. BROOKER: Thank you, Your Honor. Your
14 Honor, at this particular period of time, I guess the
15 only motion that we could make at this particular period
16 of time obviously would be a motion for a directed verdict
17 based upon the grounds that there's insufficient evidence
18 in which the jury could reach a verdict of guilt beyond a
19 reasonable doubt. All the evidence that has been
20 presented to the jury at this particular period of time
21 has been evidence which would require the jury to go back
22 and speculate in reference to whether or not these events
23 occurred.

24 Now, I am familiar with the law. I know that
25 the -- that the statutory law basically says is is that

1 jurors can reach a conclusion of guilt based solely upon
2 testimony of the child or testimony of a victim. So it
3 does not have to be corroborated, but the only thing that
4 I would argue with respect to that is is that I think when
5 the legislature was contemplating when drafting that
6 statute, what they were contemplating is is a situation
7 where there was extremely clear evidence. Then, of
8 course, if the evidence is clear, it's profound. Then
9 simply the allegations itself will be sufficient.

10 In this particular situation, we have something
11 completely different. There are tremendous amounts of I
12 think inconsistencies in the testimony that was made.
13 And, of course, we'll point them out later. I want go
14 through a great detail, but at some point in time she
15 testified in the forensic interview that she told two of
16 her classmates, that she told Miss Cloe, Miss Paris. And
17 then, of course, when she testified on the stand, she
18 testified that she told five classmates and the five
19 classmates that she told none of them was Cloe or Paris.
20 They were five completely different individuals.

21 The second justification with respect to why I
22 think that there should be a directed verdict is is that
23 -- and, of course, is that I'll be very brief on this
24 because you've already I think ruled on this and that is
25 that I think on that testimony should be disqualified or

1 should have been disqualified based upon the fact that she
2 was not a competent witness to testify. When she
3 testified on the stand that her mother had coached her
4 every day after school and that she would be coached from
5 the time in which she got home until the time in which she
6 went to bed. I think she said she got home at around
7 something like five something and she went to bed
8 something like 8:30 and that she would be constantly
9 coached consistently on her testimony and they would go
10 over and over and over and over again, which would
11 demonstrate is is that -- and the problem with that is it
12 was already I think a sensitivity with respect to children
13 testifying in the first place. You know, obviously is is
14 that the testimony of a witness from a child or child
15 witness is completely different from that of an adult.
16 You know, children sometimes can distinguish between what
17 people tell them. You know, and, of course, is is that
18 what's based upon their own recollection.

19 In a situation where she's saying she's been
20 coached, you know, for hours every afternoon, you know,
21 for as long as she can remember about her testimony, then,
22 of course, is that that raises a serious concern as to
23 whether or not the testimony that she gave in the
24 courtroom was that of her testimony or was it that of her
25 mother's and that's the danger. And, of course, obviously

1 her mother get up and says, well, no, you know, I just
2 talked with her about her testimony a little bit. But she
3 indicated she was coached and that she was coached for
4 long periods of time or an extended period of time for
5 hours at a time every day after she got off from work --
6 after she got out of school.

7 I think to allow the jury to go back with that
8 evidence would simply say to the jury to go back, you
9 know, and take an educated guess with respect to whether
10 or not these events occurred, whether or not they didn't
11 occur and I think our system of justice doesn't permit
12 that. Unless, there is clear evidence in which a jury can
13 reach a conclusion of proof beyond a reasonable doubt,
14 then, of course, is is I think the jurisprudence says it's
15 within a judge's prerogative or right to grant our motion.
16 And I think that's exactly what we have here the jury
17 simply going back and speculate with respect to whether or
18 not these events took place or not. Thank you, Your
19 Honor.

20 THE COURT: I think there's sufficient evidence
21 to send it to a jury and I'm going to respectfully deny
22 your motions. All right. Do you want to go over his
23 Fifth Amendment rights at this time or you want me to go
24 over it with him? You want to talk to him?

25 MR. BROOKER: Yes, Your Honor, can I take about

1 a couple minutes with him and his wife?

2 THE COURT: Sure, go ahead take as long as you
3 need.

4 (WHEREUPON, a break was taken.)

5 MR. BROOKER: Thank you, Your Honor. I've
6 talked with him, Your Honor, and, of course, he's express
7 to me that he wishes to testify. And, of course, is that
8 he understands that that decision is completely and solely
9 his and it's not my decision. I can't tell him what to
10 do. I'm just his attorney. He has to make that decision
11 for himself. He advises me that he wishes to testify.

12 THE COURT: All right, that will be fine. Come
13 on up and let me swear him in and go over his rights as
14 well.

15 Swear him in, Mrs. Clerk if you would.

16 THE CLERK: Place your left hand on the Bible
17 and raise your right hand. Do you solemnly swear or
18 affirm to tell the truth, the whole truth and nothing but
19 the truth so help you God?

20 THE DEFENDANT: I do.

21 THE COURT: All right. Mr. Mozeak, I want you
22 to understand that this is your trial and you have the
23 right to come over here and be sworn in and testify if you
24 would like. However, I want you to understand that if you
25 testify you may be cross-examined on any and all relative

1 issues in connection with your trial. Furthermore, if you
2 have a criminal record that involves crimes of dishonesty
3 or false statements or a criminal record that has crimes
4 and if it carries a punishment of more than one year and
5 the Court determines that the probative value of admitting
6 saying outweighs its prejudicial effect, then your
7 criminal record will be introduced to attack your
8 credibility. Do you understand that?

9 THE DEFENDANT: I understand.

10 THE COURT: Furthermore, I want you to
11 understand that you do have the right to remain silent.
12 You do not have to testify and nobody can make you
13 testify. In fact, if you choose to exercise that right,
14 I want you to understand that I'll tell the jury they
15 cannot use that against you in any way. I would tell the
16 jury the fact that you did not testify is to have
17 absolutely no prejudice against you. I would even go so
18 far as to tell that jury they can't even talk about that
19 fact in the jury room. You understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you have any questions for me
22 about your Constitutional Right to remain silent?

23 THE DEFENDANT: Only one thing just discuss with
24 my attorney and I'll come right back to answer.

25 THE COURT: All right. You make sure you get

1 everything answered.

2 (WHEREUPON, a pause in the proceedings.)

3 THE DEFENDANT: I think we have a green light,
4 sir.

5 THE COURT: All right. Do you want to testify?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: All right. Do you have any
8 questions for me about your right to remain silent?

9 THE DEFENDANT: None at all.

10 THE COURT: Any questions for your lawyer?

11 THE DEFENDANT: None.

12 THE COURT: Have you had enough time with your
13 lawyer?

14 THE DEFENDANT: Yes, I have.

15 THE COURT: All right. Have you understood
16 everything I have said?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Thank you very much.
19 I'll find that you made that decision intelligently,
20 freely and with advice of competent counsel.

21 THE DEFENDANT: Okay, sir. Can I be seated?

22 THE COURT: You can go ahead have a seat.
23 Go ahead and bring out the jury.

24 (WHEREUPON, the jury came into open court.)

25 THE COURT: If you'll call your first witness.

1 MR. BROOKER: Thank you, Your Honor. We call
2 Preston Mozeak.

3 THE CLERK: Place your left hand on the Bible
4 and raise your right hand. Do you solemnly swear or
5 affirm to tell the truth, the whole truth, and nothing but
6 the truth so help you God?

7 THE WITNESS: I do.

8 THE CLERK: Please be seated and state your full
9 name and spell your last name.

10 THE DEFENDANT: My name is Preston Mozeak
11 M-O-Z-E-A-K.

12 WHEREUPON,

13 Preston Mozeak,
14 after first having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. BROOKER:

17 Q Mr. Mozeak, how old are you?

18 A I'm 63.

19 Q You 63 years of age?

20 A Right.

21 Q And where do you reside at?

22 A West Liberty Street Marion.

23 Q Okay. Now, are you originally from Marion, South
24 Carolina?

25 A Yes, born and reared.

1 Q Born in Marion, South Carolina?

2 A Yes.

3 Q Have you lived here your entire life?

4 A No, I have not.

5 Q Did you graduate from high school here?

6 A I did Johnacan (sic) high school.

7 Q And you said you haven't lived here after high
8 school. Where did you go after high school?

9 A After high school, I went to reside with my brother,
10 my half brother in Philadelphia. And from there, I spent
11 20 years in the military. And from there I came back to
12 Marion and attended Florence Darlington Tech. And then a
13 job at Pan American Electric. And from there I left Pan
14 American Electric and joined a company in Virginia, stayed
15 up and there came back to South Carolina and I worked here
16 for a few years. Now, I'm retired.

17 Q Okay. I want to ask you a couple questions in
18 reference to your military experience. You say you're 63
19 years old. What year did you enter the military what
20 branch did you go into?

21 A I entered the military in '71, 1971 and got out in
22 '91. And I was in the Air Force for 20 years.

23 Q Okay. And what was your rank at the time that you
24 retired?

25 A I retired a tech sergeant E-6 in the United States

1 Air Force.

2 Q Okay. Now, was your discharge was it voluntarily --
3 was it voluntary discharge or let me ask that another way
4 is is that was it an honorable or dishonorably discharge?

5 A I was honorably discharged from the United States Air
6 force. I did 20 years and some months.

7 Q Okay. And I know that you kind of flew through your
8 employment history and I didn't get everything. Where did
9 you go to immediately after you left the military? Where
10 did you work first at?

11 A I first started working after the military
12 immediately I was going to Florence Darlington Tech and
13 working in Florence as a security officer along with going
14 to school. And the reason I got out of that is because my
15 kids got ill and I started actually having to bring in
16 more money to help take care of that deficit. I join Pan
17 American Electric where they sent me all over from Florida
18 to actually Kentucky, Virginia and several other states.

19 Q And what did you do for them?

20 A I started off electrician to help them and became a
21 supervisor for them.

22 Q Okay. And how long did you stay with them?

23 A About nine years, ten years.

24 Q All right. And I think you said you eventually left
25 them. Did you have another employer after you left?

1 A Yes, I did a couple other ones. I left Pan American
2 and went to work for the union, that's Hillbern Electrical
3 company. And from there, there was economic shortage in
4 where they started going out of business and I went from
5 them to tech service. And then I started working with a
6 company Cell Grove. Cell Grove I worked as a maintenance
7 person there. And when they changed over were bought out
8 through a merger with Cornan (sic), I came back down here
9 to South Carolina to seek employment here work with
10 Sopakco over in Bennettsville, South Carolina. And then I
11 worked with another place in Clio where they work with
12 wood products. It's called Pacific MDF.

13 Q Okay. And then you retired sometime thereafter?

14 A I did. Due to layoffs and my age it was kind of
15 difficult going out finding, you know, suitable
16 employment.

17 Q Okay. Now, are you married?

18 A Yes, I am.

19 Q Who you married to?

20 A Lilliann Mozeak.

21 Q Is that Mrs. Mozeak -- your wife sitting in the back
22 of the courtroom?

23 A Correct on the immediately left.

24 Q Okay. And what year did you all get married?

25 A Excuse me.

- 1 Q Do you remember what year you got married?
- 2 A Quite sometime. I would venture to say we got
- 3 married in the early 1975 and should be 39 years my math
- 4 is correct.
- 5 Q Now, any children?
- 6 A Yes, two. Tony and Preston, Jr..
- 7 Q I'm sorry?
- 8 A Tony and Preston, Jr.
- 9 Q Okay. Tony and Preston, Jr.?
- 10 A Correct.
- 11 Q And Tony is in the courtroom; is that correct?
- 12 A That's correct.
- 13 Q Okay. And what about Preston, Jr.?
- 14 A I think he's currently at the home residence.
- 15 Q Okay. Now, and you got grandchildren?
- 16 A Yes.
- 17 Q How many grandchildren do you have?
- 18 A Minor and M.M.
- 19 Q Okay. And are -- those are the children of Tony?
- 20 A Correct.
- 21 Q Okay. All right. Now, let me ask you at least some
- 22 questions in reference to your two grandkids. I think you
- 23 said you have two grandkids that's M.M. and Minor
- 24 Those are Tony's kids, right?
- 25 A Correct.

1 Q Now, at some point in time did you and your wife
2 babysitted Tony and Minor

3 A Yes, we did.

4 Q And why were you all babysitting Tony and Minor , what
5 circumstance did you all baby sit?

6 A They were previously employed and my wife was always
7 at home. She's not employed at this point in time. So
8 there was a built-in babysitter for them, which we had no
9 problem with that.

10 Q Okay. And how long had you all been babysitting
11 before Minor made the allegations in reference to you?

12 A That will be kind of difficult because it was years
13 prior to, you know, I would guess maybe about three or
14 four years.

15 Q Okay.

16 A Off and on, you know, not a study type thing even
17 further back than that.

18 Q Okay, off and on. And, of course, tell me how --
19 and I want to kind of just get an idea or want the jury to
20 kind of get an idea of exactly, you know, the
21 circumstances did you all babysit. Would this be after
22 school or during the school week or on weekend, what were
23 the arrangements for babysitting if they were?

24 A After school initially or sometimes like child care
25 centers only go to a certain time frame and then they

1 start charging extra. We would pick them up then until
2 like either Tony or Tasha came home and babysit that way,
3 but normally as of late, it's been every five days from
4 school until someone came by -- their parents came by to
5 pick them up.

6 Q Okay. And about what time did they get to y'all
7 house after school when you babysitting after school?

8 A Around six in the afternoon about that time.

9 Q Around six in the afternoon?

10 A Correct.

11 Q Okay. And why would they getting there at six in the
12 afternoon, did they go some place else before they go to
13 your house. I might be mistaken, but I thought school got
14 out a little bit earlier than that, you know, around I
15 don't know three or four. Were they coming straight from
16 school to y'all's house?

17 A Oh, I thought you said the parents. No, the kids
18 came straight from the bus to the home front.

19 Q Yeah, I'm asking about the kids not the parents. I'm
20 going to ask about the parents later on. What time did
21 the kids get to your house?

22 A I guess around 2:30, 2:15 somewhere around that time
23 frame.

24 Q Okay. And when they -- and at the time in which
25 these allegations occurred in 2004 (sic) when you were

1 babysitting were both you and your wife, were y'all home
2 or was she working outside the home or how is that?

3 A She always was home. I would probably be the person
4 out either seeking employment or I would be at the house
5 thereto, but she would always be at the house.

6 Q Okay. All right. And I think you answered this
7 question and I'm going to ask again is is that they got by
8 2:30 or three. What time would the parents come and pick
9 them up?

10 A Around six that night.

11 Q Around six?

12 A Right.

13 Q So y'all would keep them between two and three until
14 around six when they come and pick them up?

15 A Correct.

16 Q And what do you do with small kids between 2:30 and
17 six I like to know?

18 A Several things. Well, one keep them out the streets
19 very much, kind of hard to do sometimes because they are
20 active kids. They're busy I call them. I've always
21 taught my kids let kids be kids, you know, let them enjoy
22 themselves and play. And we go to the park. We would
23 walk sometimes. We would ride the car or we play games
24 at the house. And as long as they were active or they
25 would watch their cartoons. Sometimes they would have a

1 video they would watch or actually turn a cartoon station
2 on TV and watch that.

3 Q Okay. Now, I'm going to get into some specifics and
4 obviously is is that when did you first learn -- and like
5 I said don't tell me what anybody else said because it be
6 hearsay, but just tell me when did you first learn that
7 Minor had allege that you had been sexually assaulting
8 her?

9 A I was apprehended on the 26th, so I would say 23rd of
10 November be that Monday.

11 Q Okay. And no conversations, but you can identify a
12 person, but did you learn through a person?

13 A I did.

14 Q Okay. All right. Now, I'm asking about your own
15 thoughts is what did you think when you first heard that
16 Minor had alleged that you'd been sexually assaulting her?

17 A My first thoughts were not only amazed but trying to
18 figure out what happened, what's going on. I mean, this
19 is someone that I cared for my grandkids. My only two
20 grandkids. I was -- unbelievable.

21 Q Did you have a good relationship with her prior to
22 that time?

23 A Yes, I did.

24 Q What about with M.M. 1 your other grand how did you
25 get along with him?

1 A Mike was born on my birthday. We have the same
2 birthday. I apologize, but, you know, how you want to do
3 what's right even though you have your kids, you do the
4 best you can with your grandkids. You have them as
5 template of what you going to go back and do better than
6 you did initially. So that's the only way I can say it.
7 How do I feel about them, I love them to death.

8 Q Was your relationship good with M.M. ?

9 A Yes.

10 Q Okay. Now, you were in the courtroom I think when
11 Minor testified and you also heard a videotape. And I
12 think Minor says that you had been sexually assaulting her
13 on a number of occasions and specifically in the
14 videotape. And then I think she also testified to this on
15 the stand about an incident where you're taking her and
16 her brother to Food Lion and that you sexually assaulted
17 her going to Food Lion and on the way back from Food Lion.
18 First of all, have you ever drove them to the grocery
19 store?

20 A Yes, I have.

21 Q Okay. Have you ever drove them to Food Lion?

22 A Yes, I have.

23 Q Okay. And like I said may be difficult for you to
24 remember, but can you tell me how many times you driven
25 her and Minor and M.M. , how many times they rode with

1 you to the grocery store over the years that you babysit
2 them -- you and your wife babysit them?

3 A No less then may be four times a week minimum during
4 that time frame.

5 Q For years?

6 A Correct.

7 Q Okay. So no less than four times would be for years
8 you take them out and go to the grocery store and that
9 sort of thing?

10 A That sort of thing, correct.

11 Q During any of those times, have you ever asked her to
12 recline her seat and to unbuckle her pants?

13 A Never.

14 Q Have you ever took your finger and I think she
15 testified to that it was -- your -- I believe your right
16 what was referred to earlier as a pointing finger. Have
17 you ever took your right hand with your right finger and
18 insert your right finger into her vaginal area?

19 A No, never.

20 Q Are you absolutely certain about that?

21 A I am.

22 Q Now, let me try and find a good way to ask this
23 question because I don't want you to speculate. I know
24 that you testified earlier that your relationship with
25 Minor and with M.M. was a very good relationship, that

1 you all got along fine?

2 A Yes, that's correct.

3 Q When -- let me ask you this question, let me move and
4 ask you this question and get specifically into the facts.
5 She also indicated that you would take her to the park her
6 and her brother; is that true?

7 A Yes, it is.

8 Q Okay. And did you frequently take them to the park
9 during the years that you were babysitting?

10 A Yes, we did go to the park several times per week.

11 Q And that's the next question I was going to ask you
12 is is that like I said who's counting, but you have any
13 idea if some estimate, over the course of all these years
14 that you and your wife would babysit. Roughly how many
15 times have you taken Minor and M.M. to the park?

16 A Well, weather permitted, you know, good days or it's
17 not raining or it's good weather I say per week we average
18 sometime at least three sometimes five times a week, so it
19 like varies. If they had more they really want to see
20 they might not think about. Majority of the time they
21 want to go to the park and then come back and watch the
22 movie, so I know a minimum of at least three times a week
23 with good weather.

24 Q Okay. And on any of those trips, have you ever asked
25 her to lay her seat back and to zip down her pants or I

1 think she said zip down her pants and you inserted your
2 finger into her vaginal area?

3 A Never.

4 Q Have you ever touched Minor sexually on any part of
5 her body, you know, regardless of whether or not it's the
6 vaginal region have you ever touched her sexually on any
7 part of her body?

8 A Never. No, I have not.

9 Q Have you ever took her to Wal-Mart -- her and her
10 brother to Wal-Mart?

11 A Yes, we have several times.

12 Q Okay. Have you ever on any trips to Wal-Mart while
13 driving, you know, sexually assaulted her with your
14 finger?

15 A No, I have not never.

16 Q Have you ever taken her any place whether it be
17 Wal-Mart, the park or either any place even some place
18 that was not even mentioned? Have you ever taken her to
19 any place and perform, you know, sex acts on her, you
20 know, the acts that she described here or any other sex
21 act?

22 A Never.

23 Q Now, she also said -- and I'll get into this a little
24 bit later on. She also said that she would that you told
25 her -- and we'll get into the specifics later, but that

1 you told her to, I guess, massage or handle your penis?

2 A No.

3 Q Have you ever had her to massage or even handle your
4 penis?

5 A No, never.

6 Q Now, she told about an incident that happened at the
7 house. I think she said that you and her and M.M. was
8 in the living room and I think she said that that you had
9 sexually assaulted her with your finger at that time. Did
10 you ever assault -- sexually assaulted her with your
11 finger or either in any other fashion at your house?

12 A No never.

13 Q Now, she indicated and I'm going to measure it just
14 for the jury, so the jury will know it's going to become
15 relevant later on. I think she indicated when she
16 testified that it was your right finger and it was your
17 right hand with your -- what's referred to as your
18 pointing finger. Can see your right hand and pointing
19 finger and what I'm going to do is is that I got a tape
20 measure here and I'm going to measure the length of it and
21 ---

22 MR. RICHARDSON: I object to any -- I mean, I
23 don't mind him asking objective questions, but I don't
24 know what he's getting at as far as -- this isn't a
25 question.

1 MR. BROOKER: This is a question. I'm going to
2 ask him to identify, you know, the specifically -- the
3 length of his finger.

4 THE COURT: I'll overrule it. Go ahead.

5 BY MR. BROOKER:

6 Q I have a I guess a standard Stanley 12 inch or 12
7 foot scale or measuring stick in my hand and I want to
8 measure the finger that we're talking about. From at
9 least what we're measuring and I want you to look at it
10 and tell me what's measure the length of that finger?

11 A About three and a half.

12 Q Okay. About three and half inch?

13 A Right.

14 Q Okay. This might sound like a silly question, but
15 it's not. I'm going to ask you questions in reference to
16 your fingernails. Do you normally keep fingernails or
17 what's the normal length of your fingernails?

18 A I normally keep then much longer than this. I just
19 cut them off recently, maybe a quarter inch.

20 Q Quarter of an inch fingernails?

21 A Correct.

22 Q Okay. Now, have -- I don't want you to tell me what
23 anyone said, but I'm going to ask this question. Have you
24 produced or have you had any fingernail scrapings and this
25 is the time in which I think you said you were arrested

1 back in -- this was November of 2006?

2 A November ---

3 Q 2014 I apologize. November 26, 2014 -- I believe the
4 25th?

5 A Twenty-six.

6 Q Twenty-six of 2014. At any point in time did anyone
7 from law enforcement perform a fingernail scraping
8 underneath either one or either or any of your
9 fingernails?

10 A No, they did not.

11 Q Okay. Now, when -- let me take you back to the
12 incident that was alleged or take you back to your wife.
13 I know that you said that your wife was home?

14 A Yes.

15 Q At all times?

16 A Yes.

17 Q Okay. And I think she also testified you correct me
18 if I'm wrong that whenever -- when you took the -- Minor
19 to the park did you ever go to the park with her alone?

20 A No, sir, we would either walk or we would drive. It
21 was always M.M.

22 Q Okay. So you'll always be at least M.M. ?

23 A Yes.

24 Q So you never took her alone?

25 A No.

1 Q Did you ever take her to the park or to Food Lion, to
2 any of the places in which she mentioned? Did you ever
3 take her to any of those places just herself?

4 A Only once and that's when I went to Wal-Mart.

5 Q Okay. You took her once to Wal-Mart?

6 A Correct.

7 Q At the house when you normally babysit her at the
8 house, did you ever babysit her alone just her?

9 A No, the wife was always there.

10 Q I'm sorry.

11 A My wife was always at home.

12 Q Was M.M. always there?

13 A I think one time M.M. had some kind of meeting he
14 went to, but that was maybe one, maybe two days out of
15 all this time.

16 Q Okay. Now, you also heard I think Mrs. Mozeak
17 testify with respect this and I wanted to ask you about
18 that. I think you were in the courtroom when I think she
19 testified to -- I think you said something to the effect
20 of one day that she came to your house and that she saw
21 Minor sitting in your lap and that she admonished or
22 either scold verbally admonish Minor about sitting in your
23 lap. Do you remember that incident?

24 A Yes, I do.

25 Q Okay. Tell me at least from your recollection of

1 what happened in that incident?

2 A Well, I'm always busy playing with the kids. We
3 wrestle, we tussle or I put them in what I call a lock up.
4 And I did this with my kids and I do it with my grandkids.

5 Q And let me just stop you, explain to me what's a lock
6 up because I don't understand what that is either?

7 A Okay. What I do is I physically have them in my lap
8 and I hold their hands together and their legs together
9 and I say now get out. They would struggle to get out and
10 we would have fun play like that, that's what I call you
11 getting in lock up. They seem to enjoy it, so I've done
12 it for years, you know. I didn't have a problem with
13 this, but as I got older and they got stronger, I kind of
14 slowed down.

15 Q Now, the game that you just played, the lock-up game,
16 where you hold their hands and hold their feet while they
17 struggle to try to get out of lock up. Did you play that
18 game with M.M. ?

19 A Yes, with both my sons and my grandkids.

20 Q Okay. So that's a game that you played with your
21 kids when they were kids?

22 A Yes.

23 Q Have you ever had any sort of contact or any sort of
24 communication or either played any special game with Minor
25 that you did not play with M.M. ?

1 A No, the only thing, I mean, she got -- well, they
2 both got so heavy that I'm use to wearing my work boots.
3 And now when they jump on my feet to walk with me, they do
4 like the little duck walk, it hurts for me to walk with
5 them like that. So we don't do that any more. It's
6 things like that, you know.

7 Q Okay. Now, I know I got you off point when I ask you
8 to explain that game. I want to redirect you were
9 explaining at least your recollection of what happened. I
10 think you said when Mrs. Mozeak said that one day when she
11 came to the house and she open the door and she saw Minor
12 in your lap explain your recollection of that event?

13 A Well, when she came in like she said she has a key to
14 come into the house. When she came in, I don't know if we
15 were playing lock up that particular day or she was just
16 sitting beside me, but Minor got up and she said mommy,
17 mommy and whatever. Her mother scolded her like she said
18 about being up under her grandpa don't do that. You're a
19 little baby and, you know, she scolded her, that's what I
20 perceived out of it and I just told Minor you can't play
21 like that no more. You cannot sit like this.

22 Q Now, have -- and I don't want you to tell me what
23 anyone else says, but although she testified you were in
24 the courtroom when Mrs. Mozeak, Minor mother, testified
25 that she never had an incident, an independent

1 conversation with you. Is your recollection have you ever
2 had an independent conversation with Minor mother in
3 reference to your handling or your playing with the kids?

4 A Not of that nature. We had conversations, but it was
5 on different other topics.

6 Q Now, don't tell me what anyone else says, but like
7 what topic?

8 A What topic?

9 Q Yeah.

10 A Well, one that cross my mind is about my grandson and
11 her son that was mostly, you know, at one point in time
12 but never about Minor

13 Q It was about M.M.

14 A Correct.

15 Q Okay. And what was the issue or the problem with
16 M.M. ?

17 A Him staying on task for his lesson, trying to get in
18 line with schooling and stuff.

19 Q Okay. All right. Now, I'm not going to have you on
20 the stand for long, but I know -- do you have -- ask this
21 question directly to you. I'm not asking you to
22 contemplate what's in Minor mind, but is there anything
23 in your mind that you can think of that you may have done,
24 anything, you know, to cause her to say these things about
25 you?

1 MR. RICHARDSON: I object to speculation.

2 THE COURT: Sustained. Rephrase it.

3 BY MR. BROOKER:

4 Q I'm asking you about your mind not Minor mind, your
5 mind, your thoughts, your recollection, not about someone
6 else's. Is there anything in your mind -- have you
7 thought about this or thought about that anything that you
8 could have done that you thought, have you thought about
9 that question?

10 A Yes, I have. I have no earthly idea what or how this
11 came about.

12 MR. BROOKER: If you can indulge me for a
13 second, Your Honor, just one last question, one last
14 question.

15 BY MR. BROOKER:

16 Q I know I asked you whether or not you ever touched
17 her sexually in anyway or had any sort of sexual contact
18 with her, but I want to cover all the gammot never did you
19 ever have any sexual conversation with her not just
20 contact but any sexual conversation with her with Minor

21 A No, I have not.

22 Q And are you absolutely certain about that?

23 A I'm positive.

24 MR. BROOKER: If you can indulge me for just a
25 second, Your Honor, let me check and make sure I don't

1 have any...

2 (WHEREUPON, a pause in the proceedings.)

3 MR. BROOKER: Just a couple.

4 BY MR. BROOKER:

5 Q Now, when Minor was testifying and also in person and
6 also when she gave a statement in the video and you may or
7 may not tell me whether or not you know or not. She
8 mentioned in the video she alleges that when you touched
9 her -- that when you ask her to unzip her pants and that
10 when you then touched her in her vaginal area that she
11 would fall to sleep. And I asked her when she was on the
12 stand what she meant and she said she didn't know. Is
13 there anything game or anything like that that you know of
14 that could explain that? And I'm talking about your
15 personal knowledge not talking about somebody else. Was
16 there any game that she played in the house or anything
17 that you observed about falling asleep?

18 A No, sir.

19 Q Did you all ever play in the house blinking the eyes
20 or anything like that?

21 A No, never.

22 Q Now, and you may not know, but I'm going to ask you
23 before I sit down. She mentioned a number of children.
24 I'm going to ask you the same question that I asked
25 Minor mother. Do you know I think it's Kristen?

1 A No, I do not.

2 Q Okay. What about Joycelin?

3 A No, I do not.

4 Q Do you know I think it's pronounced wrong it's Nevah?

5 A No, sir.

6 Q Okay. Do you know a Cloe?

7 A No, sir.

8 Q Okay. Paris?

9 A No, sir.

10 Q Hillary?

11 A No, sir.

12 Q Do you know a Hallie?

13 A No, sir.

14 Q Johnna?

15 A No, sir.

16 Q Arial?

17 A No, sir.

18 Q What about Payton?

19 A No, sir.

20 MR. BROOKER: That's all the questions I have,

21 Your Honor?

22 THE COURT: All right. Thank you.

23 Any cross?

24 MR. RICHARDSON: Yes, sir, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. RICHARDSON:

2 Q Mr. Mozeak, you mentioned a bunch of places that you
3 worked in the past, what's your current source of income?

4 A My current source?

5 Q Yes, sir.

6 A Social security and military retirement.

7 Q Okay. Do you own any like huge tracks of land or
8 have any trust funds or anything or any, you know, massive
9 amounts of money out there somewhere?

10 A No, sir.

11 Q Your wife you mentioned she does not work outside the
12 home?

13 A She does not.

14 Q And has not for quite awhile?

15 A Correct.

16 Q Okay. Does she have any independent source of income
17 other than ---

18 A She is on disability.

19 Q Does she have any huge amount of money sitting around
20 somewhere?

21 A No, sir.

22 Q Okay. Now, you mentioned when the kids would come to
23 your house in the afternoons that you would take them
24 places, right?

25 A Correct.

- 1 Q Grocery store, park, Wal-Mart every now and then?
- 2 A Correct.
- 3 Q Now, it would be typically you and Minor and M.M.
- 4 A Correct.
- 5 Q So Mrs. Lillie she stay -- she be at the house?
- 6 A Correct.
- 7 Q That was over, you know, a couple year period you
- 8 said you would do this?
- 9 A Correct.
- 10 Q Okay. All right. And Ms. Lillie Mozeak she would
- 11 remain home and you all would go out and have activities
- 12 at the park or wherever?
- 13 A Correct.
- 14 Q Okay. Now, you mentioned sometimes you guys would
- 15 walk other times you drive places?
- 16 A That's correct.
- 17 Q All right. Now, the time this was going on Minor
- 18 was seven years old. M.M. was five; is that right?
- 19 A That's correct.
- 20 Q Okay. About how tall do you remember M.M. being
- 21 five years old do you know?
- 22 A I would have to guess. It's been a minute. I would
- 23 guess ---
- 24 Q Would you say he's kind of a little fellow for five
- 25 years old?

1 A Yeah.

2 Q All right. And when you would drive him places would
3 he be buckled in?

4 A Yes, very much so.

5 Q Okay. So you wouldn't let him get out of the
6 seatbelt wander around the car anything like that while
7 you were driving?

8 A No, I mean it's a battle, but I did that.

9 Q Right. Okay. Did he have to sit in one of those
10 booster seat things?

11 A Initially, he had a booster seat or seat in a child
12 carrying seat. And as he moved along, he had the booster,
13 but we would be without them for a minute or two and we
14 would take the seats out and then he would sit in it
15 without the booster seat.

16 Q All right. So sometimes you would take the booster
17 seat out and just let him sit on the flat car seat buckled
18 in?

19 A Correct.

20 Q Okay. Now, you mentioned you had them at the house
21 fair amount of the time and your wife was usually always
22 there?

23 A Correct.

24 Q All right. Was there ever a time the time you would
25 keep them, you know, you have them in the living room and

1 your wife might be in the kitchen or bathroom or bedroom
2 something like that?

3 A Yes.

4 Q Would that happen somewhat regularly?

5 A That was regular. She would sometime come in and
6 watch TV or whatever, but she mostly in the kitchen.

7 Q All right. So most time she be, you know, preparing
8 a meal or doing whatever she was doing somewhere else?

9 A Correct.

10 Q And you be the one kind of watching the kids?

11 A Yes.

12 Q Okay. You and your son and daughter-in-law have any
13 huge blow up or family fight or some huge problem leading
14 up to this?

15 A Never.

16 Q Okay. Now, when you mention been married quite
17 awhile closing in on 40 years, was there a time when Minor
18 was very little like newborn that you lived somewhere else
19 away from the family?

20 A That's correct.

21 Q Where were you living then?

22 A I was in northern Virginia.

23 Q All right. About how long were you away from the
24 family?

25 A I would say roughly around five or six years.

1 Q Okay. And during that time your wife was still here
2 in Marion?

3 A Correct.

4 Q So when you came back both children were born; is
5 that right?

6 A That's correct.

7 Q Did you have a cell phone?

8 A I did, yes.

9 Q You mentioned on direct examination that you and
10 Minor never had any sort of sexual discussion or any
11 interaction of a sexual nature; is that right?

12 A That's correct.

13 Q Do you recall a time where you showed her a
14 photograph on a cell phone of a naked man?

15 A I did not.

16 Q Have you ever had any interaction with the children
17 since November of last year?

18 A No, I have not.

19 Q Have had any interaction with your son or his wife
20 since you been arrested?

21 A No, I have not.

22 MR. RICHARDSON: Thank you, Your Honor, that's
23 all I got.

24 THE COURT: Redirect?

25 MR. BROOKER: No redirect, Your Honor.

1 THE COURT: All right. You may step down.

2 (WHEREUPON, the witness leaves the witness
3 stand.)

4 THE COURT: Call your next witness.

5 MR. BROOKER: We don't intend to call any other
6 witnesses, Your Honor.

7 THE COURT: All right. Defense rest?

8 MR. RICHARDSON: Yes, sir.

9 THE COURT: Members of the jury, let's take a
10 lunch break. I need you back at 2:30 this afternoon and
11 we'll conclude this trial. Do not discuss the case over
12 lunch and I look forward to seeing you this afternoon.
13 Everybody else remain seated. The jury is excused.

14 (WHEREUPON, the jury is excused for a lunch
15 break.)

16 THE COURT: Any motions from the defense?

17 MR. BROOKER: Nothing, Your Honor, except, you
18 know, we just simply -- the objection we made for directed
19 verdict that's it. No additional arguments other than the
20 ones we made at that time.

21 THE COURT: All right. I deny those motions. I
22 have the charge and verdict form if you want to look at it
23 real quick.

24 MR. RICHARDSON: Sure.

25 (WHEREUPON, a pause in the proceedings.)

1 THE COURT: Everything good from the State?

2 MR. RICHARDSON: Yes, sir.

3 THE COURT: From the defense?

4 MR. BROOKER: Yes, sir.

5 THE COURT: I'll see you all back at 2:30.

6 (WHEREUPON, a lunch break is taken.)

7 THE COURT: Go ahead and bring out the jury.

8 (WHEREUPON, the jury came into open court.)

9 THE COURT: All right. The defense is recognize
10 for your closing statement.

11 MR. BROOKER: You all could remember at the
12 start of this case I said something to you and if you
13 could remember I said something to the effect that if you
14 could kind of summarize or -- this case I think this case
15 would appropriately be summarized as young girl who made
16 some extremely serious allegations about her grandfather
17 and the State's incompetent investigation of those
18 allegations and I would slightly change that now. This is
19 still a case in reference to now that we've heard the
20 evidence and we've heard the State's case, this is still a
21 case of reference to a young girl who made some extremely
22 serious allegations about her grandfather. But this is no
23 longer a case about or at least it could no longer be said
24 that the State's case was incompetent or incomplete.

25 I think the best description was is that the

1 State's case, law enforcement's investigation was
2 nonexistent. There was none. So now that we're at the
3 conclusion of this case, your decisions are going to be
4 based upon solely the allegations that was made by the
5 young girl Minor nothing else. And we're going to get
6 into that a little bit further no forensic evidence. No
7 one took her to the emergency room to have a rape kit test
8 done or any sort of forensic or either vaginal
9 examination, that she allege vaginal penetration.

10 No one took her to have a psychological
11 examination or either take her to see a child abuse
12 assessment expert to assist in determining whether or not
13 the allegations that were made that -- well, actually
14 determine whether or not there was, you know, I guess,
15 indicators of sexual abuse psychological indicators or
16 behavior indicators of sexual abuse. No one followed, you
17 know, South Carolina's, you know, sexual assault protocol
18 in which South Carolina does have. I think the SLED South
19 Carolina Law Enforcement division, you know, has a ---

20 MR. RICHARDSON: Your Honor, I just make a quick
21 objection he about to testify about something.

22 THE COURT: Sustained.

23 MR. BROOKER: Your Honor ---

24 THE COURT: Come on up.
25

1 (WHEREUPON, a bench conference was held in the
2 presence of the jury, but out of the hearing of the
3 jury.)

4 MR. BROOKER: I'm sorry. Like I said, there are
5 protocols for this whether it be SLED's protocol, whether
6 be attorney general, South Carolina Attorney General or
7 federal protocol, but there are protocols on how to handle
8 sex abuse cases and specifically how to handle sex abuse
9 allegations by children because they are uniquely
10 different from that of adults. None of this was followed.
11 Absolutely none. If you can remember is that one officer
12 got up and that was Sergeant Ray. And, of course, is I
13 think probably Sergeant Ray was on the stand for on direct
14 examination for about a minute and on cross-examination
15 for about 30 seconds. And if you can remember is is I
16 asked him on cross-examination, well, what did you do.
17 And he says that Mrs. Mozeak, Minor mother, came by the
18 police station, he took her report. And I said, well, are
19 you an investigator. And he said, no, sir. And I said
20 are you trained to investigate, you know, sexual assault
21 cases and he said no. He said the only thing that I did
22 was take her report and that was it. And there was no
23 other evidence from any other law enforcement agency --
24 law enforcement officer from the State, but I'm going to
25 get into that in a minute.

1 Let's start off with at least what we do have
2 what was presented because like I said this entire case is
3 going to be based upon the statement of this young child,
4 that's it. And it's going to be based upon whether or not
5 that one statement satisfied proof beyond a reasonable
6 doubt that Preston Mozeak is guilty of these offenses.
7 That statement alone is what you're going to have to try
8 to determine does it satisfy the highest burden in any
9 judicial system. The highest burden in any judicial
10 system within the State of South Carolina, within this
11 country and that's the criminal burden of proof beyond a
12 reasonable doubt is it satisfied by simply the statements.

13 Now, the judge is going to instruct you is is
14 that there are times when a statement, a statement alone
15 in sexual assault cases can be strong enough and
16 sufficient evidence to satisfy that burden, that's what
17 our general assembly says. But I'll tell you this that if
18 anyone is ever to be convicted just on a statement alone,
19 that statement better be strong and that statement better
20 be completely void of imperfections. That statement
21 better be incapable of impeachment. If you're going to
22 deprive someone of their rights on statement alone, it
23 better be the strongest one, the most consistent one. It
24 better be a statement that is above impeachment. It
25 better be a statement that cannot be criticized. All the

1 pieces of the puzzle have to fit together. All the dots
2 have to be connected. All the T's have to be crossed and
3 all the I's have to be dotted. Otherwise, you're making a
4 statement based upon emotion and that's the biggest fear
5 in a case like this. It's the biggest fear when you have
6 a child alleging a crime is emotion.

7 You were selected as a jury for a reason. You
8 were selected specifically because it was believed that
9 you would perform this job professionally. That you would
10 set aside emotion even though you have the most sympathetic
11 accuser. Kids bear a special place in all of our hearts.
12 I imagine if I ask this entire courtroom if I ask
13 everybody in this courtroom whether or not they have a
14 special place in their heart for kids, whether or not they
15 want to protect them, whether or not they love them.
16 Everybody would throw their hands up, that is natural.
17 But if you're going to perform your duty as a juror, if
18 you going to uphold the principles of the constitution and
19 the principles of the judicial system -- the justice
20 system based, you know, that basically our entire country
21 is based on you got to set that aside.

22 If you can remember at the beginning of this
23 case when Assistance Solicitor Holt says this case is
24 about family and I told you no it's not. This is a
25 criminal tribunal. This is a place where people's rights

1 and freedoms are being taken away. This is not about
2 family. This is about proof and proof beyond a reasonable
3 doubt. This is about evidence, the existence of it or the
4 nonexistence of it. It's not about emotion. And you
5 can't have that when you step back in the jury room. If
6 you do, you have already failed as a juror. You can't
7 have it. But I know I am asking you to do something
8 extremely difficult. I am the defense attorney for
9 Mr. Mozeak and I sympathize for her. I find her cute and
10 adorable. I wish she grow up and have a wonderful life,
11 but I don't have the luxury of emotion because of my
12 position and neither do you.

13 Now, let's talk about the statement because
14 that's what this entire case is base off. Let's talk
15 about this case statement and let's see whether or not
16 it's beyond reproach, whether or not it's beyond
17 impeachment, whether or not it is one of those statements
18 in which all the dots are connected. All the T's are
19 crossed. All the I's are dotted. All of the pieces of
20 the puzzle are assembled. There is no reasonable
21 questions to be asked. Let's see whether or not it's that
22 type of statement because that's all you have, ladies and
23 gentlemen, and it's not your fault.

24 It's because of some incredible failures that
25 occurred in connection with this case. Failures in

1 investigation and those failures let everybody down. I
2 think I told you that during the opening remarks, those
3 failures let down the alleged victim. They let down
4 Mr. Mozeak as a defendant. They let down our judicial
5 system because now the government is saying here is this
6 crappy case. You go back and figure it out even though we
7 have not given you everything that you need to do it. And
8 they're going to rely on you to be emotional because
9 without emotion they don't have a case.

10 Now, let's talk about why this case is not above
11 impeachment. She is a sweet child, but I cannot have
12 emotion. I have to be a professional just like you do.
13 She testified as you can remember and, of course, you
14 heard two statements that was given by her. One was video
15 recorded and that was from the forensic interview. She
16 did a forensic interview. And basically what a forensic
17 interview is is that it's someone who just takes the
18 statements of the allegation. Brings the child in and
19 they take the child's statement what she is alleging and
20 records it on videotape as it was here. And then, of
21 course, if you can remember on that videotape is that she
22 testified to some things that one logically don't fit.
23 And then also two some things that was inconsistent to
24 what she testified on the stand. And I didn't push her I
25 was as genital with her as possible because she is a

1 child.

2 Now, one of the things that she testified to is
3 obviously is is that I think she testified to the fact
4 that her father heard her grandfather was molesting her,
5 that he was digitally penetrating her. And, of course,
6 she testified on the videotape that she says that her
7 first recollection at least on the videotape was one time
8 when they went to Food Lion and she said that she was in
9 the vehicle. Her grandfather was driving. She was in the
10 front passenger seat and her brother was in the backseat.
11 And she said that they were driving to Food Lion and she
12 said that he would ask her to lay back to recline her seat
13 back. And I ask her that on the stand too and she said
14 she would lay her seat back. He would tell her to unzip
15 her pants and then, of course, he would take with his
16 right hand and which was referred to earlier as his
17 pointing finger. And she used the word he would dig into
18 her vaginal area. He would vaginally penetrate her. And
19 she said that this would go on when they were riding to
20 the store and that it would also when they rode to Food
21 Lion and that it also went on when they were coming back.
22 Okay.

23 And then, of course, is is that she testified
24 also that when he would digitally penetrate her, she said
25 something about which I don't understand and I ask her

1 this when she was on the stand. She said that when he
2 would zip her pants -- when he would tell her to unzip her
3 pants and then, of course, is is that he would then start,
4 you know, digitally penetrating her that she would fall
5 asleep. I never understand what that mean. And I ask her
6 when she was on the stand what did you meant when you said
7 I would fall asleep. If you could remember, she said I
8 was literally asleep. That she was literally asleep while
9 the digital penetration was occurring. That's one of the
10 things that puzzles me, that's one reason why we needed a
11 thorough investigation. What does that mean she fell
12 asleep and that she was actually asleep while she was
13 being digitally penetrated going to Food Lion and coming
14 back. Is that a metaphor for something or she actually
15 asleep or if she was actually asleep, then how could she
16 be able to recount the events during the assault, that's
17 why she should have been submitted for a psychological
18 forensic examination, but that wasn't done. That wasn't
19 done whatsoever. So you're left to figure out was she
20 actually asleep, was this a metaphor, was she playing
21 fantasy or playing some sort of game, what is it. I don't
22 know. They don't know. They tell you to go back and
23 guess at it. They tell you to go back and just guess.

24 She also said that it happened when they would
25 go to the park and she specifically said in the video when

1 she was asked, she mentioned the park and she mentioned
2 Food Lion and she mentioned it happening at the home.
3 When she testified on the stand, she testified to it
4 happening at Wal-Mart and she also testified to something
5 about railroad tracks or train tracks that was something
6 new if you can remember. Something that she had never
7 testified before or said before. Well, what is that
8 inconsistency, was her memory better in 2014 or was her
9 memory worse a year ago and it's better today.

10 Now, we all know that that's not how memory
11 works. Our memory usually get worse over time or could it
12 have been that she was coached and she testified to that.
13 She testified to the fact that her mother for long periods
14 of time that after she got home from school that they
15 would study and that they would prepare and that they
16 would rehearse this until she went to bed and that would
17 be hours every night. That would be hours every night.

18 Well, whose testimony are you getting. Are you
19 getting her testimony or the recollection of what she or
20 her recollection or are you get someone else's testimony
21 and getting the testimony of the mother or what someone
22 else told her to say or what she was rehearsed to say.
23 That's the danger when you're dealing with child accusers,
24 that's why they have to be submitted for a psychological
25 forensic examination, so we can all have this. So we

1 don't have to speculate about it.

2 Now, she was also asked during the video well
3 how many times it happened and I think she testified on
4 the video that happen ten times or more and that's a
5 total. She said ten times or more or something like that.
6 She seemed to be confused about it. And, of course, ten
7 times total. I think the examiner asked her that and when
8 I asked her on the stand, well, how many times did it
9 happen and she gave me a total number of 30 if you can
10 remember because I wrote it down. And I think, well, how
11 many times did it happen at the house and how many times
12 did it happen on the road in the car because she said
13 every time it happen in the road, it happen while driving.
14 Not that they stopped some place he did this. It happened
15 while driving. So all of the sexual assault happened
16 while he was driving the vehicle. And I said how many
17 times in the car and how many times in the house. And I
18 hope I don't get them mixed up, but she said one was 20
19 and the other one was ten. And I think she said and the
20 car was 20 and at the house ten and every time her brother
21 was with her. He was there. Whether it happened ten
22 times, whether it happened 20 times or 30 times he was
23 there. He was a essential witness. He was in a position
24 to either corroborate or not corroborate any of what she
25 says. Where was that witness? Where was that

1 corroborating witness? He wasn't on the stand. Do we
2 know why? Maybe he would corroborate everything that she
3 says or maybe he would not corroborate any of it.

4 Now, they might say, well, I can't say this.
5 Well, you do it. It's not our job. The judge is going
6 tell you that. He doesn't have to prove his innocence.
7 They have to prove his guilt beyond a reasonable doubt.
8 He didn't have to take the stand if he didn't want to. He
9 could stop there and say absolutely nothing and do
10 absolutely nothing. It is the job of the government when
11 they're seeking to take a citizen's rights to do a good
12 job, to do a proper investigation, not says -- well, we
13 just throw it to them and let them figure it out. But
14 that potential witness wasn't here. Nobody heard from
15 them and you can't speculate with respect to what you
16 would have said. You can't speculate about it. Every
17 time whether it happened ten, 20 or 30 times and she
18 testify to the fact when it happened in the car and I
19 think she said one time she didn't lean back and that was
20 at the park because she didn't want him to see. But she
21 testified on other times that he would ask her to lean the
22 seat back unzip her pants and he would digitally penetrate
23 her while the brother was in the backseat. What did he
24 see. Is it reasonable to believe ten, 15, 20 times this
25 happened and he was there that he would not have seen

1 anything during the entire time when it was happening
2 right there next to him and how big is a car. It's not
3 like it's another room. They're in front of him and he's
4 sitting in the car seat. And if she leans her seat back
5 and he is driving and he is reaching over and he's
6 digitally penetrating her why the boy is sitting right
7 there, how in the world can he not see it. It's not
8 logical.

9 It's not reasonable, but, hey, just forget logic
10 and reason. She said it happened, it happened. We don't
11 need to do to no stinking investigation. Why? Because
12 the child is always right, is that what they're thinking,
13 is that what they want you to believe. A child can't be
14 wrong. A child can't say or do things that are not true
15 for whatever the reasons and whether or not they're
16 psychological reasons, whether or not emotional behavioral
17 reasons, that's the whole purpose of having a
18 psychological forensic interview because you need to know
19 these things when you're just simply dealing with
20 allegations and specifically when you dealing with a minor
21 child who have complex and developing minds and we all
22 know that. We all know that.

23 I have a minor relative of mine who has an
24 imaginary friend and that friend is real to her, is real
25 to her. Children have interesting and developing minds

1 and I'm not an expert on that and they're not experts on
2 that. And Lord knows I don't think there's anybody in
3 here is an expert. You're not an expert on that, but they
4 going to tell you go back and figure it out. We didn't do
5 that, just go back and guess at it.

6 Now, she also indicated that he -- when he
7 digitally penetrated her and to use her word that he would
8 I think at one point in time he said he would dig in her
9 vaginal area. And I ask her on direct examination would
10 he insert his whole finger into her. Now, you probably
11 thought it was silly for me to bring out a tape recorder
12 to try to measure his finger, but I was doing that for a
13 reason. And his finger measured -- and he's kind of a
14 tall guy, who's got relatively large hands, and his finger
15 she says and I asked her on direct examination when I
16 questioned her is is that, well, which hand was it and
17 also, you know, I think she was asked by Mr. Richardson on
18 direct examination which finger and she said, well, it was
19 this finger. And if you can remember Mr. Richardson says,
20 oh, you talking about the pointing finger and that he
21 digitally penetrated with that. And his finger measured,
22 you know, roughly three and a half inches, almost four
23 inches.

24 This is a seven-year-old child. And if you
25 imagine if he's digging, using her language, if he's

1 digging in her vagina with a three and a half inch digit
2 with a nail on the end of it, is it possible that she
3 suffered internal trauma. Internal trauma that would help
4 us figure out whether or not this happened or not, is it
5 possible that he bruised her on the inside or that he
6 ruptured her hyman. It is very possible, that's why we
7 have forensic examinations. That's why we have them,
8 ladies and gentlemen, is so we can try to help determine,
9 you know, whether or not there's corroborating evidence
10 and we have it for the benefit of the jury. Was that done
11 in this case. Absolutely not. I don't even know whether
12 or not an investigator was ever assigned because none ever
13 got on the stand.

14 The State didn't put up any investigator to say
15 I did this, I did that or either why I didn't do it if it
16 wasn't done. It would have evidentiary value and we
17 wouldn't have to guess about this. I asked her mother,
18 you know, well, she went to the doctor. And she said,
19 well, I took her to the doctor to her pediatrician, but he
20 did not do, you know, a rape kit test a forensic
21 medical -- a medical forensic examination, you know, on
22 her genitals. And then, of course, is that she mentioned
23 something about a doctor in Charleston that she was going
24 to take her to but that she didn't. She changed her mind
25 and says I'm not going to take her to Charleston to have a

1 forensic examination but why in the heck would you not do
2 that. If you think that this man assaulted your child
3 like that, if it was my child, I would gather every piece
4 of evidence that I can collect to make sure I can prove
5 that he did this, but, no, didn't do it. And I don't
6 blame the mother that's not her job, that's law
7 enforcement's job. They're the ones who are suppose to
8 collect the evidence and prepare this case for trial. I
9 don't blame the mother. This is not her profession.
10 She's not an investigator. She didn't do it, but you
11 can't blame her but so much. It's not her job. She's not
12 a professional law enforcement officer. She hasn't been
13 trained to do rape investigations involving minors. I
14 think she said that she looked at her on the outside, that
15 she look at her herself, just look at her body and see
16 whether or not she had any external injuries in her
17 vaginal area. She said she didn't see any. Well, it's
18 not going to help in a case in which the child says that
19 she been digitally penetrated by someone who has, you
20 know, in a roughly three and a half almost four inch
21 finger with nail on the end of it in the genital areas of
22 an underdeveloped seven-year-old child.

23 Now, she also testified that when it happened
24 that when he digitally penetrated her in the vehicle, that
25 they would always be driving and this is something else

1 that I didn't know whether or not you picked up, but I
2 did. But she testified and I think it was on the forensic
3 interview when she was asked I think at one point in time
4 the forensic interviewer asked her, well, did he ever
5 influence you to touch his and she said yes. And she said
6 he would made her hold his penis and, of course, massage
7 his penis up and down. And when I asked her when she was
8 on the stand how many times did that happen, she said
9 about five times. And then she testified with the
10 forensic interviewer that every time he would digitally
11 penetrate her, she would be made to massage or stroke what
12 she referred to as his pee pee hole. So every time he
13 digitally penetrated her, she end up massaging his
14 genitalia.

15 For one thing, it's different when she testified
16 on the stand that it happened five times. I think she
17 testified a total of 30 times of these incidents. Five
18 times that she was assaulted in the car. And then, of
19 course, ten times that she was assaulted at home and then
20 20 times in the car. And I asked her, well, how many
21 times did have you to do her -- do him. She said that was
22 a total of five times, but in her forensic interview, she
23 said that every time, every time that he digitally
24 penetrated her, she massaged him.

25 Now, besides the inconsistencies between five

1 and ten, but let's assume that it did happen every time.
2 Let's assume what she said on the forensic interview was
3 correct that every time and she said this never happened
4 when they stopped. She said he was always driving. He
5 would always be driving.

6 Well, logistically can you imagine that he
7 driving the car, he is digitally penetrating her while
8 she's laying back and then either at the same time or
9 either sometime after he digitally penetrates her, she
10 then massages his genitalia or stokes his genitalia. And
11 the boy in the back never sees or knows anything about it
12 M.M. . And then think about logistically, you know, how
13 that would happen. And I think she testified that when I
14 ask her, well, how long did it take, how long will that
15 last and she said usually it would last longer when they
16 go to the store. She said it would last a long time when
17 they went to the store when they went to Wal-Mart, when
18 they went to the park. And then she says, well, in the
19 park it would all be based upon which park they went to
20 because there was a park that they had was close. And if
21 they went to that park, it wouldn't be long the digital
22 penetration, but when they drove to the store and to
23 Wal-Mart or wherever then it would be a long time. It
24 makes no sense. Is there an explanation for what she's
25 saying. Is there a psychological or emotional explanation

1 what for she's saying. Wow, if only we had that forensic
2 interview, a psychological forensic interview. Wow, if
3 only we had that child abuse assessment expert. Wow.

4 Now, she also testified that it happened at the
5 house and then the same thing again. You would have to
6 imagine if this happened ten times in the house as what
7 she told me on the stand. Then she said something
8 different in the forensic interview happened a total of
9 about ten times or more she says. She couldn't remember
10 happen so much and that the grandmother didn't know. And
11 if you believe the statement where she says, well, okay
12 well I think when she gave an initial distribution of it
13 and you remember the videotape when she gave an initial
14 description of what happened, she never mentioned in her
15 description of her grandfather digitally penetrating her.
16 She never mentioned that she was reciprocated at the same
17 time. So every time she would say when we went to Food
18 Lion he digitally penetrated me. I laid back unbuckled.
19 He digitally penetrated me. I went to sleep. When we
20 were at the house and we watching TV and my brother was
21 there in the living room watching TV and grand mom was in
22 kitchen, I unzip my pants and laid back and he digitally
23 me. And each one of the descriptions of those she never
24 described reciprocating to him. And then later on in the
25 interview when it says, well, okay, well, you know, when

1 he digitally penetrated you and you said that you would
2 also reciprocate or stroke him. Well, did it happen at
3 the same time and she said, yes, every time she would
4 digitally penetrate him, that she would reciprocate on
5 him. But she didn't describe that when she initially told
6 the story. But why wasn't the reciprocation part of her
7 original story when the interviewer asked her tell me
8 everything that happen. But she said the reciprocation,
9 oh, yeah, after the fact. I don't understand a child's
10 mind. I'm not a child psychologist. Wow, wouldn't it
11 have been great if we had had a forensic psychological
12 examination in child abuse assessment expert.

13 Now, she also said something about and I think
14 she kind of explained this a little bit about I think
15 every time she blinks it takes a picture. And then, of
16 course, when I ask her about this then she says, well,
17 what she means is is that she remembers things. And I
18 wrote down she said I things remembers from six, seven or
19 eight. And I didn't say anything even though that when
20 this happened she was at seven, so she certainly would not
21 have had that memory when she flicks her eyes at the age
22 of eight at that time.

23 And, of course, at the time in which it happened
24 in the house she said -- she said in the forensic
25 interview which she alleged it happened in the living room

1 with her brother watching TV and her grandmother. And she
2 said that he dug her out the same way he did in the car
3 and that I fell asleep. And then when dad told me to wake
4 up and I was sleepy. I don't understand all of this and I
5 don't understand the psychology of a child's mind. And I
6 shouldn't have to understand the experts for that and
7 neither should you because we are not experts.

8 And she also said just for one other thing and a
9 minor inconsistency, but it does have some note is is that
10 when she was asked in the videotape in reference to
11 whether or not when she would allegedly perform, I guess,
12 when she would allegedly handle, you know, his genitals.
13 She said that I think that he would take out his genitals
14 while they were driving and she would handle it. And he
15 would have fondle his genitals. He would take them out
16 while they were driving and have them fondled. And, of
17 course, she testified on the stand that she would take out
18 his genitals and fondle him, that he didn't actually
19 perform that but she did. It is an inconsistency, but
20 it's a slight one in comparison. And I know that you all
21 have to rely on your memory, but for the attorneys, we
22 have copy of the forensic interview tape and we can look
23 at it as many times as we want and write down notes from
24 it meticulously to see what's in them and that's what I've
25 done. We have access to that long before you all get

1 here.

2 And just one more thing that I think that bears
3 the importance in reference to the inconsistency and this
4 is probably one of the biggest ones is that when the
5 examiner -- the interviewer ask her, well, did you tell
6 anyone before you told your mom. And she identified she
7 said I told two classmates. She said she told her
8 classmates Cloe and Paris. Cloe and Paris was the two
9 classmates that she told. And when she was on the stand,
10 I ask her the same question is is that who did she tell
11 and she said that she told her classmates. But this time
12 she gave the name of five classmates and none of five that
13 she gave this time included Cloe and Paris. She gave five
14 different names from the two that she gave the forensic
15 interviewer a year ago, a year ago.

16 This time she says on the stand that she told
17 Hillary. She told Hallie. And I hope I don't mess up the
18 name I think it was Johnna or Jona, Arial and she told
19 Payton. Her classmates. Can anybody explain that to me.
20 Can anybody explain why a year ago she said that she told
21 Cloe and Paris. And then today she didn't tell Cloe and
22 Paris. She told Hillary, Hollie, Arial, I think Johnna
23 and Payton. Can you explain that to me. Why such a big
24 inconsistency.

25 Now, I don't blame the child. I don't know

1 what's going on with her. I don't whether or not there is
2 a psychological issue with her, that would explain all of
3 this. I blame law enforcement. I blame the State. It's
4 their job. What should they have done. We all know it.
5 You don't have to go on to detective school to know you
6 just go and talk to these young people. You said okay.
7 She said she told Cloe and she told Paris. We find out
8 who Cloe and Paris is and you go to Cloe and Paris. You
9 take them into the interview room have them interviewed to
10 try to verify what you're getting. And maybe if they had
11 done that, who knows maybe we never been here today.
12 Maybe, Cloe and Paris says she never told me that. Oh, we
13 play the game of secrets. I don't know. I'm guessing.
14 And they're telling you to go back in there and do the
15 same thing, guess. Look into eyes of this sweet child and
16 lose reason and logic and say I done it that child said
17 this happened, it must have happened and all these
18 inconsistency. All of these fills, all of these gaps, all
19 of these in all these imperfections in the story. I'm
20 just going to ignore that and it happened and that's it.
21 That might happen in the Middle East, but it don't happen
22 here.

23 We got better judicial system than that. We got
24 a better judicial system than that and that judicial
25 system is going to be tested today because this is a hard

1 case. Like I said, it never gets any harder when you have
2 cute kids sitting on the stand. It never gets any harder
3 because it's difficult to separate your emotions from
4 logic and reason. It'll be much easier if it was an adult
5 sitting on the stand and you don't have those same types
6 of fears. And you can simply say, okay, inconsistency
7 here, inconsistency there, lack of logic here something's
8 wrong here, okay. I'm not going to give this person a
9 pass. I'm not going to give this 27 year old a pass or
10 this 30 year old, this 40 year old a pass. But a child
11 you say, wow, she's a child. So what do I do with a
12 child. Do I just allow my emotions to take over and
13 ignore all of these problems. He can't. Although, you
14 want to you can't. And you can't because you aren't a
15 professional juror.

16 You represent our judicial system. And if we
17 don't have a function-working judicial system, then we're
18 in chaos. It has to be that way. And it's nobody's
19 fault. It's not my fault. It's not the child mother's
20 fault. It's the State's fault. They really dropped the
21 ball on this one. They send us in here and ask us to
22 guess because I don't know.

23 She also identified two other, three other
24 people that she says that she told cousins if you can
25 remember. She said she also told her cousins Kristen.

1 I'm not guessing her name. I think it was Kristen, Nevah.
2 I always have trouble with it and she also told Jocelyn.
3 If you can remember, I asked her mother when her mother
4 was on the stand how old is Jocelyn, how old is Nia, and
5 how old is Kristen. She said 11, six, six. I asked her
6 what relationship and she said they're cousins on my side
7 of the family. Did you talk with them. No. Did law
8 enforcement go and talk with them. No. Well, why? I'm
9 not going to talk to no kid about this sort of stuff.

10 This is a criminal investigation involving someone's life.

11 This case is not about family or not about
12 emotion. It's about existence or nonexistence of
13 evidence. It's about proof. We got to do our jobs here.
14 We can't change the rules simple because we're dealing
15 with a child. We got to always follow the law and we got
16 to always follow protocol. We got to do a proper
17 investigation.

18 You can't accept a statement as being true about
19 verifying it especially when there's so many opportunities
20 to verify. She identified so many people. She identified
21 other children. Maybe, this is a game. It's not a funny
22 one or maybe it is the truth, I don't know. Heck, do we
23 know. That's the whole purpose of doing all this stuff.
24 It is the whole purpose of doing all of this stuff, so we
25 don't have to sit here and guess. We don't have to guess

1 about somebody's life.

2 I imagine Mr. Mozeak if I can probably express
3 it in an awfully way is probably shaking in his boots and
4 peeing in his britches because his entire life is on the
5 line and this is what it is. I wish we had more. I wish
6 it was a better investigation. I wish everything was
7 clean, but it's not but just wasn't done correctly.

8 Now, the mother testified on the stand too I
9 think she was a witness who testified and, obviously, I've
10 already talked a little bit about some of the things that
11 the mother said, that when law enforcement didn't take the
12 child for medical forensic examination. I talked with you
13 about the fact that I asked her when she took her to a
14 family doctor whether or not her family doctor performed
15 one or pediatrician and she said no. She was suppose to
16 take the child to Charleston to have one done. She said
17 no. She just did an examination of herself the outer area
18 of the body.

19 I also asked her some questions, you know, about
20 what the child's behavior was. And, of course, if you
21 remember, we had this kind of, I guess, we had a lack of
22 meeting of the minds for a second there when we were
23 talking about, you know, pre-allegations and
24 post-allegations and what her behavior or demeanor was
25 pre-allegation versus post-allegation. And she said that,

1 well, pre-allegation, you know, she was a pretty good
2 child. You know, she never noticed anything, no change in
3 her behavior.

4 Another reason for a medical -- for a forensic
5 psychological examination is because, you know, are there
6 psychological indicators. A lot of times you hear about
7 physical indicators of assault. Internal damage in the
8 vaginal region. You know, bruising of the internal
9 vaginal walls or scratches in a case of a young child or
10 damaging -- a virgin, you know, a rupture hyman and hear
11 all these medical terms that they look at to try and see
12 whether or not, you know, the vaginal region is no longer
13 pristine and it's been disturbed. And you hear a lot
14 about, you know, medical evaluation. There's also a
15 psychological evaluation too. There's psychological ---

16 MR. RICHARDSON: Your Honor, I object again.

17 THE COURT: Sustained. Sustained.

18 MR. BROOKER: Okay, I want get into that. I'm
19 not going to try to explain to you about psychological
20 examinations. And I understand what I'm saying I haven't
21 got to that point yet, but I guess what he's saying is
22 that I shouldn't be trying to explain to you what
23 psychological examinations are and what happened during
24 them because I am not a psychiatrist, but he's right I'm
25 not qualified to do it. But it's common knowledge that if

1 we have psychiatrist, you know, that's common knowledge.
2 And it's common knowledge what they do. It's common
3 knowledge. None of it happened to her.

4 Now, when I sit down, I'm about to sit down very
5 soon. I'm not going to get a chance to get back up. In
6 these cases, the prosecutor gets a chance to close. And
7 when he gets up here, I imagine the prosecutor's going to
8 say, well, she told this story and how could a child
9 really know about all of this sort of sexual stuff. How
10 could a seven year old child know penis and a vagina. I
11 think seven year old kids do know about penis and vagina
12 and the difference between the male and female anatomy in
13 a rudimentary way, but how does she know about all of this
14 stuff, how does she know about the digital penetration and
15 that the vagina is for something other than just, you
16 know, urinating. That's why we have psychological
17 forensic examiners, that's why we have child abuse
18 assessment experts. But they going to say, well, we want
19 you to draw a conclusion without having this information.

20 There could be no other explanation and there
21 could be thousands of other reasonable explanations,
22 thousands of psychological explanations. That's why they
23 are there, that's why we have existed. And I think they
24 also -- I think there was some testimony I think when Mr.
25 Mozeak was on the stand that Mr. Mozeak was asked by

1 Assistant Solicitor Richardson didn't you show her a naked
2 man on your phone and Mr. Preston Mozeak said no. And
3 then, of course, the first thing that hit my mind when he
4 said that is, well, if you want to prove that, you know,
5 why didn't law enforcement confiscate his phone. Why did
6 law enforcement confiscate his phone and why didn't they
7 then do, you know, a forensic search of the phone.

8 You all will probably hear a lot about cell
9 phones in light of all this stuff that's going on, you
10 know, the terrorist attach and stuff and the sophisticated
11 ways in which they use cell phones and the media and that
12 sort of stuff. The age in which in which there's debate
13 about data on the internet and accessing people's cellular
14 records. You know, Hillary Clinton's server where servers
15 never really -- when you delete something, it really never
16 goes away. There's a digital imprint. Why didn't they
17 confiscate the phone to verify any of this, but now
18 they're asking you to guess about it.

19 Ladies and gentlemen, it has -- I wish I could
20 say it's been a pleasure meeting you under these
21 circumstances, but it has not been. It's not been a
22 pleasure for anybody in this courtroom because it is a
23 serious case. But before I sit down, I will say to you is
24 that -- and you've probably heard this before and it's
25 true, you know, that next to actual military service that

1 serving on a jury is probably the second most patriotic
2 thing that you can do. And the reason why is is that all
3 though the military, the soldiers they protect our country
4 from the outside. They make sure -- try to make sure the
5 bad people don't come in and harm us.

6 Jurors protected from the inside. Jurors make
7 sure that the government live up to it's responsibility.
8 Jurors make sure that the government follows the
9 constitution. Jurors make sure that government doesn't
10 rain tyranny on its citizen, that it exercises due
11 process. That before government deprives anyone of life,
12 liberty and the pursuit of happiness, that they're going
13 to go through this exercise. They're going to take it
14 seriously and they're going to do everything that is
15 reasonable to ensure what they're doing is accurate before
16 they deprive us of these things. And jurors the
17 gatekeepers. You're the judges. You're the ones who make
18 sure that the government does its job.

19 Now, when you walk back in that room and if you
20 can say to me the government did its job, due process
21 occurred. They properly investigated this case. That
22 there is no reasonable doubt here, then you convict him.
23 Then you convict him. It will be your duty to do that,
24 but equally if you back in that room and says there is
25 reasonable doubt here. There are unanswered questions,

1 this puzzle is not complete. There are holes. And the
2 government has done absolutely nothing to help you fill
3 those out and answer them.

4 If you go back and there and say I got questions
5 that haven't been answered in this case, don't guess about
6 those questions that's just -- that's just justice telling
7 you that the government didn't do its job because you
8 shouldn't have any. They should have provided you with
9 the answers. And I implore you to please take this
10 serious. And I have no doubt that you will because this
11 is for all of us. And what I mean by that is is that you
12 might have heard this says that injustice done to one
13 person threatens injustice to all of us. And that what
14 that means is is that if the justice system fails one
15 person, then it could potentially fail us all because one
16 day we may be judge by it.

17 Tell them to go back and do their job right.
18 Tell them that you're not responsible for guessing at
19 things. They haven't as sad as that sounds they have not.
20 And as so much as I know you want to find him guilty
21 because you have so much sympathy for this young girl.
22 They have failed woefully. Thank you very much.

23 MR. RICHARDSON: Your Honor, might I inquire if
24 jury may need a little break.

25 THE COURT: You need a break before we proceed

1 forward anybody? Let's take a 15 minute break and we'll
2 come back and resume. Do not discuss the case.

3 (WHEREUPON, the jury retire to the jury room.)

4 (WHEREUPON, a break was taken.)

5 THE COURT: Go ahead and bring out the jury.

6 (WHEREUPON, the jury came into open court.)

7 THE COURT: All right. You recognized.

8 MR. RICHARDSON: Thank you, Your Honor. Folks,
9 I know it's been a long week, been a tough couple of days,
10 but getting down to it here. I know you all rested and
11 ready to go here at the tail end of it. The way I figure
12 it at this point in the trial you all are following in of
13 about three camps potentially. One, you believe what
14 Minor says happen to her and that's good, that's
15 where I want you to be. Two, you believe what Preston
16 Mozeak said and that basically Minor is making this up
17 either lying or concocted this up somehow some way.
18 You're in that camp probably not a lot I can do to help
19 you at this point. Third camp, you may be on the fence.
20 You know, you heard a lot about what the police didn't do,
21 what they should have done and that kind of stuff. And
22 that thought might be rolling around in your hand head is
23 that stuff fatal to a conviction in this case.

24 Let's talk about the third camp for a minute.
25 This particular kind of case when we deal with allegations

1 of a sexual nature, these aren't your typical cases where
2 law enforcement are directly involved building on the
3 ground kind of thing like for drug stings what have you
4 where police are really in the middle of it, okay. All of
5 this stuff we're here talking about happened to Minor in
6 her grandparent's house and in a car.

7 Nobody from Marion PD is sitting at the
8 grandpa's house sitting in the car. These kind of cases
9 largely depend and sometimes completely depend upon the
10 witness credibility. All right. I've said this previous
11 cases. I'll say it again our case is sitting right there
12 playing that little Game Boy thing. She is the State's
13 case because she was there. She endured it. She's the
14 only one who can tell you what happened to her, what
15 happened inside of her. So I ask you not to overlook the
16 fact that we must determine the witnesses' credibility in
17 this case.

18 Let's first talk about some folks who we didn't
19 hear from. M.M. he was suppose to be in the car
20 when some of this stuff happened. Why didn't we hear from
21 him, why him a five-year-old boy with Asperger syndrome.

22 Lillie Mozeak never in the car conveniently,
23 always in the kitchen or somewhere else not in a position.
24 See child molesters don't make a habit of having a whole
25 bunch other people around who can spill the beans on them

1 when they're perpetrating on their victims. His problem
2 in this case is his obedient little granddaughter, who
3 says bless you to court personnel when they sneeze,
4 spilled the beans on him. It took her a while, but she
5 finally did it and we'll get more to her in a second.

6 Latasha Mozeak what a nightmare this must be for
7 her. She got up here and told you a little bit about the
8 family history, how long she's been around who everybody
9 is that sort of thing. And I don't know if you could tell
10 when she was testifying about the incident where she came
11 in the door and saw her daughter sitting on his lap. And
12 she kind of, you know, stuttered around a little bit about
13 it why that bothered her. Maybe, you all heard of the
14 term mother's intuition. She didn't know at that point
15 what was happening, but you could tell when she walked in
16 and saw her that momma's intuition kicked in.

17 Then Minor tells her and image the horror of
18 hearing that from your seven-year-old baby, goes to the
19 pediatrician, goes to the police. She took steps. And
20 then has to make the gruesome discovery of walking in
21 catching her seven-year-old daughter masturbating in her
22 bed. Maybe, her imaginary friend taught her how to do it.
23 So Latasha did what she did. She went to police. She
24 went to the doctor. You know, Mr. Brooker's right she's
25 not some professional. She did what she thought to do in

1 the moment. But apparently, nobody in this room is
2 qualified to interpret what a seven-year-old means when
3 she said her grandfather stuck his finger in her pee hole.
4 We need an expert to determine that.

5 So let's talk about Preston a minute. Preston
6 got up here and denied everything image that. I don't
7 know that it would be something we can all expect for him
8 to come up here and be like, okay, you got me, got to get
9 this all off my chest. He's not going to do that. He's
10 only the one in this courtroom with a motive. He's the
11 only one with something to lose, think about it. He
12 testified, he's not rich. His wife's not rich, got no
13 family troubles. Grand children love them. They love the
14 grandparent no problems with the kids. What's the motive
15 of Minor child . What's the motive of her parents.
16 Latasha testified since this has happened things hadn't
17 gotten easier, things are hard. They got no babysitters.
18 They're struggling. The family is broken. What did they
19 get from it. But what else is he going to say deny, deny,
20 deny is all he can do and just hope and just hope that one
21 of you buys it.

22 So then we have Minor . Minor obviously critical
23 to this case. She told her mom what took place. She's
24 eventually sent to the Care House of the Pee Dee for a
25 forensic interview investigative interview and you saw

1 that video. And Mr. Brooker is a prophet because I am
2 going to talk about why a seven year old would know how to
3 do this. Maybe, her imaginary friend taught her that too,
4 you know. Not. But one thing adds up, you know, she gave
5 specific details about instances in her grandfather's
6 vehicle where her grandma never was and five-year-old
7 Asperger syndrome M.M. was snugly, belted in his seat.
8 I think we went to Food Lion. We went to the park. We
9 went Wal-Mart. I think one time even Preston admitted he
10 was alone with her. All these places specific locations
11 specific, specific, specific. Remember, I said it. You
12 got to look at the credibility of the witnesses.

13 Preston has every motive to lie. Minor has no
14 motive at all. So we then must look at her details.
15 Cases like this are won and lost on details when you have
16 children who testify, okay. Minor gave remarkable detail
17 stuff that no kid should know because it's freaking
18 horrifying. Minor sits back. Minor lay back and unzip
19 her pants and would dig. And we heard about, you know,
20 how long Preston Mozeak is as if to imply that the entire
21 digit was used, but remember Minor was sitting right here
22 talking to him on cross-examination. She did something
23 like this. Details. You didn't hear nothing about that
24 in the last hour and a half whatever it was. So we have
25 this digging going on. Penetration of her vagina what she

1 knows as her pee hole childhood innocence, childhood
2 innocence. How did it feel Minor Felt good. Childhood
3 innocence. She doesn't even know that that's not
4 something somebody would say when responding to that
5 question. She gave a completely honest answer. How did
6 that feel. It felt good. I fall asleep.

7 Then we have the reciprocation. Before I get to
8 that, one thing I left out. You remember when we ask her
9 what hand did he use. Seven year olds don't drive cars.
10 They sit in cars, right. She said she's sitting in the
11 passenger seat, think about she's sitting in the car.
12 Preston driving the car. Minor is next to him and what
13 hand does he use. What hand she said details. She could
14 have screw that up. Apparently, it happened enough where
15 she remembered it immediately.

16 All right. Reciprocation him putting his
17 fingers in her vagina wasn't enough. He needed to get his
18 jollies or more of them. She testified that he would
19 unzip his pants, display his penis. She was ask what it
20 look like on the video. She pointed the male anatomical
21 drawing of a penis, but she added a little something. It
22 was kind of big too. Details. And then just probably
23 most mind boggling thing she did in the video and here.
24 Of course, on the video she did it with one hand because
25 she was drawing on the board when she did it and had two

1 hands free when she did it but come on come on. A seven
2 year old not going to know what that is and how to do that
3 unless the imaginary friend showed her. She was asked
4 questions about how many times this happened and, you
5 know, and the context of a kid's mind ten times, 20 times
6 all we got to show is once and she talked plenty enough
7 about that. She didn't charge it was 20 times.

8 On the video one of the things that I think most
9 was the most powerful was when she misunderstood Sally
10 Williamson's question at one point when we were talking
11 about the manipulation of Preston's penis. Sally
12 Williamson asked her how did it feel. It's obvious from
13 hearing the question that what Sally meant was how did it
14 feel to you Minor She misunderstood the question and
15 answer it with said it felt good. She messed up the
16 answer, but she gave a much more powerful response from it
17 by making a mistake answering the question. So then Sally
18 ask her, you know, more directly, well, how did it feel to
19 you squashy, details. That's interesting word for a seven
20 year old to use who's got no experience with the male
21 anatomy. So take that for what it is. But I tell you
22 what let's talk about motives more.

23 If Minor is making this thing up and the family
24 is setting Preston up, they could have done a better job.
25 One they could have accused him of doing it to M.M.

1 too. They could have come up with something. But the
2 thing I think about the motive. If a child is making this
3 up, think about what the child has to go through this
4 whole process. Grandpa's in trouble. She said in the
5 video he told me if anybody ever found out he go to jail.
6 I don't want him to go to jail. She loves him. She at
7 the time didn't understand that what was happening was
8 wrong. The childlike innocence. She told her mom which
9 is the right thing to do. Then her mom went the next step
10 and got law enforcement. She ends up at the Care House.

11 MR. BROOKER: I'm just going -- I hate -- always
12 hate to interrupt anybody when they're doing closing
13 arguments is is that make one objection and that is is
14 that and I know it's closing arguments. And I know
15 sometimes you have some latitude, but as far as
16 interpretation with respect to what she meant and what she
17 didn't meant, I think it's inappropriate. And I also
18 think that when he made a comment in reference to her
19 knowledge of prior sexual history none of that testimony
20 was made into evidence. We can't bring it in because
21 there's a rape shield law. I don't think he should be
22 allowed to comment with respect to what that prior history
23 was if it's prohibited from us from discussing underneath
24 the rape shield law.

25 THE COURT: I think he's just simply arguing the

1 facts as he sees them. It's just a seven-year-old child.

2 MR. BROOKER: I know not any evidence he's
3 arguing that there's a history not in evidence. Thank
4 you, Your Honor.

5 THE COURT: I'm going to overrule it.

6 MR. RICHARDSON: So Minor has go to the Care
7 House has to talk to a complete stranger in a room with a
8 parent and tell this complete stranger everything that
9 happened to her and she did. She didn't back down.

10 Then the biggest step is she got to come in here
11 in a gigantic room. How many people you think are sitting
12 in this room. I don't know I didn't count them. There's
13 a bunch of them. And she had to plop her little body in
14 that chair with her little thing of sand in front of the
15 perpetrator. She did it. She's a hero. And he's a child
16 molester.

17 Thurmond Brooker is right he is sitting there
18 shaking in his freaking boots, peeing in his pants because
19 his day is coming. It's time for that imaginary friend to
20 learn a real lesson. I'm asking you to go back there and
21 give it to him. Minor child done all she can do. Her
22 parents have done what they can do for her, but they got
23 her here. She stood up here. She stood up to him. She
24 told you all what happened.

25 Her grandfather was in a position to protect

1 her, not only did he fail that miserably, he destroyed the
2 family. Now, the only people who can protect her in this
3 moment is the 12 of you.

4 I think about her in this stage of her life no
5 way she really gets the magnitude of this because she will
6 get older. She will get more life experience. She will
7 remember this day.

8 I want to go over a little bit about these two
9 charges. Criminal sexual conduct with a minor in the
10 first degree, criminal sexual conduct with a minor in the
11 third degree. First degree straightforward. The
12 defendant engages in a sexual battery with the victim who
13 is earlier or younger than 11 years old at the time.
14 She's seven and we're covered.

15 Sexual battery what does that mean. In the
16 context of this case, vaginal penetration no matter how
17 slight. He doesn't have to have the whole finger in
18 there. He doesn't have to have it up to the knuckle. The
19 slightest bit of intrusion, slightest tip of his finger
20 nail is enough for a sexual battery.

21 Third degree, the defendant has to be over 14
22 years of age. He's in his 60's. We got him. The victim
23 has to under 16. We got him.

24 A lewd and lascivious act, the defendant
25 willfully and lewdly commits or attempts to commit a lewd

1 or lascivious act upon or with the body or its parts of
2 the victim. The defendant's intent was to arouse, appeal
3 to or gratify the lust, passion or sexual desire of
4 himself or the child. Well, he had her stroke his penis.
5 He was committing a lewd or lascivious act with her body
6 specifically her hands. We got it.

7 Intent, well, that's a no brainier. Why else do
8 you do that to arouse, appeal to or gratify the lust
9 passion or sexual desires of himself or the child. And
10 it's probably safe to say that it was for himself. Those
11 are the two crimes. I'm asking you to find him guilty of
12 both of them not because of your emotions because of the
13 details because of the lack of motive of the victim. The
14 details of the victim, the credibility of the victim,
15 think about that context of a seven-year-old mind. I said
16 this before I'll say it again, the judge is about to give
17 you the law. When he does, he's going to talk about
18 reasonable doubt, that's the threshold, that's the
19 standard, that's make our system work. In order to
20 convict someone, you got to be convinced that person did
21 it beyond a reasonable doubt. That does not mean beyond
22 any doubt, that just means that you're firmly convinced
23 based on what you've heard that he did it. Some of you
24 may be there right now, I hope you are. If you are and
25 you go back there in that room, I know it's getting late

1 in the day. I know you might be tired, it's getting late
2 in the week. If you believe this guy did it, I want you
3 to fight for her. All right. Thank you.

4 THE COURT: Members of the jury, it is now my
5 duty to instruct you on the law applicable to this case.
6 In that regard, it is your duty as jurors to accept and
7 apply the law as I now state it to you. Furthermore, it
8 is your exclusive duty to decide all the issues of fact in
9 this case and to determine the effect, the value, weight
10 and truth of the evidence presented. Both the State and
11 the defendant have the right to expect that you will
12 carefully consider and evaluate the evidence and apply the
13 law of this case to it so that in the end both the State
14 of South Carolina and this defendant will have received a
15 fair and impartial trial.

16 I want you to understand that when I use the
17 word defendant I refer to Preston Mozeak. In this case,
18 the State of South Carolina charges the defendant with the
19 offenses known as criminal sexual conduct with a minor
20 first degree and criminal sexual conduct with a minor
21 third degree. To these charges, the defendant has entered
22 a plea of not guilty. These pleas of not guilty places
23 the burden of proof on the State to prove the guilt of the
24 defendant to you beyond a reasonable doubt on each charge.
25 It is vital to understand that the defendant is presumed

1 under the law to be innocent of the charges. It is a
2 fundamental rule of our law that a defendant regardless of
3 the seriousness of the charges against him is always
4 presumed innocent of the crimes for which he is charged,
5 unless and until his guilt has been proved by evidence
6 that satisfies you beyond a reasonable doubt. The
7 presumption of innocence is not a mere legal theory or
8 legal phrase. The presumption of innocence is very
9 important. And you need to understand that this
10 presumption accompanies the defendant from the time of his
11 arrest and appearance in this court and continues with the
12 defendant even after you retire to the jury room to
13 deliberate.

14 In other words, the defendant receives the
15 benefit of the presumption of innocence until the very end
16 of this trial. When you, the jury, would deliberate upon
17 the evidence and decide whether the State has proved his
18 guilt on each and every charge beyond a reasonable doubt.

19 During this trial, you and I have separate
20 duties to perform. As trial judge, it is my
21 responsibility to preside over this trial. Therefore, I
22 have the duty to rule upon the admissibility of the
23 evidence offered during the trial. In that regard, you
24 are to consider only the evidence before you. Thus, you
25 are to consider only the testimony which has been

1 presented from this witness stand together with any
2 exhibits admitted into the record as evidence.

3 Furthermore, I have the additional duty to
4 charge you on the law applicable to this case and in that
5 regard it is your duty to accept and apply the law as I
6 now state it to you. If you have any preconceived ideas
7 as to what the law is or what the law ought to be and it
8 does not agree with what I tell you the law is, then you
9 are obligated under your oath to abandon these
10 preconceptions and accept the law as I now state it to
11 you.

12 In this trial, you are the sole and exclusive
13 judge of the facts and I am the judge of the law. Do not
14 infer that I have any opinion about the facts in this case
15 from anything I have said or done during the course of
16 this trial. In this regard, the law simply does not
17 permit me to have an opinion about the facts. As jurors,
18 it is your duty alone to determine the effect, value,
19 weight and truth of the evidence presented.

20 Furthermore, it is your job as jurors to
21 determine the credibility and believability of witnesses
22 who have testified in this case. You must evaluate the
23 evidence and determine which evidence convinces you of its
24 truth. In determining the believability of witnesses who
25 have testified in this trial, you may believe one witness

1 over many or many over one. You may believe apart of the
2 testimony of a witness and reject the remaining part. You
3 may believe the testimony of a witness in its entirety or
4 reject it in full. You may consider whether the witness
5 has an interest in the result of the trial, whether the
6 witness is prejudice toward either party. The opportunity
7 for the witness to have seen the matters and things about
8 which the witness may testify and the way the witness acts
9 on the witness stand.

10 Proof beyond a reasonable doubt is proof that
11 leaves you firmly convinced of the defendant's guilt.
12 There are few things in this world that we know with
13 absolute certainty, so even in criminal cases the law does
14 not require proof that overcomes every possible doubt.
15 However, if based on your consideration of the evidence,
16 you are firmly convinced that the defendant is guilty of
17 the crimes charged, you must find him guilty. If on the
18 other hand you think there's a real possibility that he is
19 not guilty, you must give him the benefit of the doubt and
20 find him not guilty. Please understand that reasonable
21 doubt may arise from evidence which has been presented in
22 the case or from the lack of evidence in the case. It is
23 your responsibility to determine whether or not reasonable
24 doubt exist as to the guilt of this defendant on each and
25 every charge. I charge you that the defendant is entitled

1 to every reasonable doubt arising in the whole case. If
2 upon any issues of fact essential to conviction in a
3 verdict of guilty, you have a reasonable doubt as to how
4 that issue should be resolved. It would be your duty to
5 resolve that reasonable doubt in favor of the defendant.
6 Thus, in summary it is important to understand that a
7 defendant is not required prove his innocence. Instead,
8 the State is required by law to prove every essential
9 element of the charges against the defendant by evidence
10 which satisfies you of his guilt beyond a reasonable doubt
11 only then can you convict the defendant and find him
12 guilty.

13 Evidence may be direct or circumstantial.
14 Direct evidence is testimony by a witness about what the
15 witness personally saw or heard or did. Circumstantial
16 evidence is indirect evidence. That is it is proof of one
17 or more facts from which one can find another fact. You
18 are to consider both direct and circumstantial evidence.
19 The law permits you to give equal weight to both, but it
20 is for you to decide how much weight to give to any
21 evidence.

22 The defendant is charged with one count of first
23 degree criminal sexual conduct with a minor. The State
24 must prove beyond a reasonable doubt that the defendant
25 engaged in a sexual battery with the victim. A sexual

1 battery is sexual intercourse, cunnilingus, fellatio,
2 annal intercourse or any intrusion however slight of any
3 part of a person's body or of any object into the genital
4 or annal openings of another person's body, except when
5 such intrusion is accomplished from medically recognized
6 treatment or diagnostic purposes. The State must prove
7 beyond a reasonable doubt that the victim was less than 11
8 years old at the time of the sexual battery. The consent,
9 willingness, indifference or ignorance on the part of the
10 minor, if any, as to what was taking place does not in any
11 way effect the charge of criminal sexual conduct with a
12 minor because an unmarried woman under the age of 14
13 cannot legally consent sexual intercourse.

14 The defendant is also charged with one count of
15 third degree criminal sexual conduct with a minor. The
16 State must prove beyond a reasonable doubt that the
17 defendant willfully and lewdly committed or attempted to
18 commit a lewd or lascivious act upon the body of the
19 victim. This involves acts which are usually classified
20 as fondling. No attempt at actual sexual intercourse
21 needs to be proved. The State must also prove beyond a
22 reasonable doubt that the act was committed with the
23 intent of arousing, appealing to or gratifying a lust,
24 passions or sexual desires of the defendant or the victim.
25 The State must then prove beyond a reasonable doubt that

1 the victim was less 16 years old at the time the act was
2 committed. The State must also prove the defendant is
3 over 14 years old at the time the act was committed.

4 Ladies and gentlemen, I'm now drawing near the
5 end of my charge and I want you to clearly understand that
6 you are not partisans or advocates for the State or the
7 defendant. You do not serve as jurors to reward your
8 friends or punish your enemies. In this regard, you have
9 been selected by both the State and this defendant to be
10 fair and impartial jurors. It is your duty by your joint
11 deliberations to determine the truth in this case giving
12 to this defendant the benefit of every reasonable doubt on
13 each and every issue. Then to the facts which you
14 determine to be true, you should take and apply the law
15 which has been given to you by this court and thus arrive
16 at a verdict which speaks the truth. In fact, the word
17 verdict which has a Latin derivative means a true saying.
18 Thus, when you have accomplished these responsibilities,
19 you will have satisfied your oath as jurors and you will
20 have discharged your duty to this court.

21 Now, Mr. Bailiff, if you would hand the forelady
22 the verdict form. Now, Ms. Forelady, I have handed you
23 the verdict form. When you arrive at a verdict in this
24 case, you will write your verdict on the form. For
25 charges, if the State has failed to prove the guilt of

1 this defendant beyond a reasonable doubt, your verdict, of
2 course, will be two words not guilty. However, should the
3 State have proved their case against the defendant beyond
4 a reasonable doubt, then your verdict will be one word
5 guilty.

6 Ms. Forelady, once a decision has been reached,
7 just check which ever choice is your verdict on each
8 count. Also, please understand that the verdict that you
9 render in this case must be the verdict of each and every
10 juror. It must be your unanimous verdict. All 12 jurors
11 must agree on the verdict, which you authorized the
12 foreperson to write for the jury. Ms. Forelady and
13 members of the jury, I want you to further understand that
14 the order which the choices of verdict appear on the
15 verdict form are not suggestive of any verdict on the part
16 of this court. The verdict in this case is to be
17 determined by you and not the Court. Furthermore, ladies
18 and gentlemen, please understand that even though I have
19 given the verdict form to the forelady, it is not her
20 verdict alone. It is the verdict of all 12 of you. And I
21 have to emphasize again it must be unanimous.

22 Now, you will retire to the jury room. However,
23 I would ask that you do not begin your deliberations until
24 you are told to do so. The law requires that I now
25 consult with the attorneys first about this charge. After

1 I have done so, the bailiff will bring in the items of
2 evidence and instruct you to begin your deliberations at
3 that time. Also should you have any questions during your
4 deliberations, you must put them in writing and send them
5 to me by way of the bailiff. The court bailiff will be
6 placed immediately outside of the jury room door to
7 provide security and assistance for you during your
8 deliberations. Once you have reached your verdict, please
9 knock on the jury room door and ask the bailiff to advise
10 the Court that you have reached a verdict and will return
11 you to the courtroom as promptly possible thereafter.
12 Thank you. And you may retire to the jury room, but do
13 not begin your deliberations until told to do so.

14 (WHEREUPON, the jury retire to the jury room.)

15 THE COURT: Okay. Any objections to the charge
16 as given from the State?

17 MR. RICHARDSON: No, sir.

18 THE COURT: From the defense?

19 MR. BROOKER: I don't think, Your Honor, is --
20 the only concern that I have with it is the part that says
21 basically is the jury is to seek a verdict that seeks the
22 truth. And if I'm not -- and like I said, I don't have
23 any case law, but from my memory is that I remember
24 probably about year ago reading some law in reference to
25 that in which there was a lot of cases in which the

1 superior courts had admonished as to whether or not that
2 sort of language is appropriate specifically is is that
3 when it comes to asking the jury whether or not they're
4 seeking the truth. I think it -- and I think it goes as
5 to whether or not that's somehow shift or change the
6 burden and that they're supposed to be looking for and
7 that is is that whether or not the State has satisfied,
8 you know, the burden of proof beyond a reasonable doubt.
9 So their job is not to seek the proof but determine
10 whether or not that burden has been satisfied. So like I
11 said, I can't quote any law. It struck my mind when that
12 part was read and so I'll leave it to Your Honor's
13 discretion with respect to what he has.

14 THE COURT: You want to reply to that?

15 MR. RICHARDSON: No, sir.

16 THE COURT: All right. I'm going to leave it
17 like it is. You all want to take a look at the evidence
18 and see if it's in order and we'll send it on back.

19 MR. BROOKER: Thank you.

20 THE COURT: Send it on back and bring out the
21 two alternates and tell them to begin.

22 (WHEREUPON, the jury began deliberations at
23 4:52 p.m.)

24 THE COURT: All right. I want to let you know
25 that you have fulfilled your duties to this court. You

1 were our second string and our backup. Somebody got hurt
2 or somebody's family member got sick or somebody fell out,
3 we got to have 12. So you were there to back us up should
4 we need you. So you complete your duties and you are free
5 to go for the week. You've earned a three-year exemption.
6 You will be paid. It won't be much. If you not happy
7 with it, you complain to him right there in that green
8 jacket. You have a good day.

9 (WHEREUPON, the alternate jurors were excused.)

10 THE COURT: Okay. For the record, we have our
11 first set of questions. The first one is something to
12 play DVD. And I written on the note. Yes, we will play.
13 And what is Asperger's is number two and number three did
14 mom and dad have access to DVD. I responded this is not
15 in evidence and not to be considered. Any objections to
16 that from the State?

17 MR. HOLT: None from the State, Your Honor.

18 THE COURT: From the defense?

19 MR. BROOKER: None from the defense, Your Honor.

20 THE COURT: All right. You go ahead and give
21 them that and tell them we're setting up. Are you ready
22 with the DVD.

23 MR. GODBOLT: Not quite.

24 THE COURT: All right. Tell them we're getting
25 the DVD set up to play it for them in just a minute.

1 (WHEREUPON, court at ease.)

2 THE COURT: Go ahead and bring them out.

3 (WHEREUPON, the jury came into open court at
4 5:44 p.m.)

5 THE COURT: Okay. Go ahead and play the DVD.

6 (WHEREUPON, DVD is played for the jury.)

7 THE COURT: You may return to the jury room to
8 begin your deliberations.

9 (WHEREUPON, the jury retire to the jury room at
10 5:59 p.m. to continue deliberations.)

11 THE COURT: You let me know.

12 (WHEREUPON, court at ease.)

13 THE COURT: You go ahead and bring out the jury.

14 (WHEREUPON, the jury returned to the courtroom
15 with a verdict at 6:09 p.m.)

16 (WHEREUPON, Court's Exhibit No. 1 was admitted
17 into evidence.)

18 THE COURT: All right. Ms. Forelady, has the
19 jury reached a verdict?

20 FOREPERSON: Yes, sir.

21 THE COURT: Would you be so kind as to hand it
22 to the bailiff and let him hand it to me. Thank you. All
23 right. The verdict form is in order if you would publish
24 the verdict.

25 THE CLERK: State of South Carolina County of

1 Marion in the Court of General Sessions for the Twelfth
2 Judicial Circuit, the State of South Carolina vs. Preston
3 Mozeak: As to the charge of criminal sexual conduct with
4 a minor first degree, we, the jury, unanimously find the
5 defendant guilty.

6 As to the charge of criminal sexual conduct with
7 a minor third degree, we, the jury, unanimously find the
8 defendant guilty. Signed by Myleka Reed November 19th
9 2015, Marion, South Carolina. Is this your verdict say
10 you one say you all?

11 (WHEREUPON, all jurors' agreed by saying yes it
12 is.)

13 THE COURT: Need for further polling?

14 MR. BROOKER: Indulge me a second, Your Honor.

15 THE COURT: Sure.

16 (WHEREUPON, a pause in the proceedings.)

17 MR. BROOKER: We'll waive it, Your Honor.

18 THE COURT: Thank you very much. Members of the
19 jury, I appreciate you being here this week. I appreciate
20 you serving this week. You have done your job and you
21 have done your job well. You are dismissed for the week.
22 You will earn a three-year exemption by being here. And
23 you will receive a small check, which by no means will
24 compensate you for the work you have gone through. You
25 have a good evening. Everybody else remain seated while

1 the jury is excused.

2 (WHEREUPON, the jury is dismissed.)

3 THE COURT: All right. Any motions from the
4 defense?

5 MR. BROOKER: Probably the only motion we'll
6 have, Your Honor, is is that a lot of times I hate to do
7 it after -- immediately after a verdict specifically after
8 a long day. The only motion we'll do is a motion to ask
9 the Court to set aside the verdict based upon the Court's
10 authority as to 13th juror and order a new trial.
11 Generally, in these particular situations is is that if
12 there's any suggestive -- is any evidence of suggestive
13 juries decision was guided by passion or any of the
14 similar, you know, inappropriate influences that, of
15 course, is is that the judge has it within his authority
16 to set aside a verdict in order that the trial be had
17 anew.

18 I think in this particular situation where I
19 think obviously the evidence was I think tremendously
20 lacking, you know, consider the fact that you have so many
21 inconsistencies and action with the testimony that was
22 given at the forensic interview versus the testimony that
23 was testified on the stand by the young girl. In closing
24 arguments, there was a lot of discussion in reference to
25 her being a sweet little girl when she got up there in

1 this big courtroom with her little hands and testified.
2 You know, I think soliciting the passions of the jurors to
3 make a decision based upon passion. I think that the jury
4 follow the law, had the jury follow the evidence and not
5 had been influenced by passion. I believe they would have
6 reached a different result considering the fact that there
7 was absolutely, you know, no investigation that was done
8 to corroborate a situation where there was so much
9 inconsistency. So based upon that, we ask the Court
10 consider setting aside the verdict and order a new trial.

11 THE COURT: Thank you. I'm going to deny the
12 posttrial motions. Be glad to hear from the solicitor.

13 MR. HOLT: Judge, I just want to remind the
14 Court I think you talked about this briefly before trial
15 started. The defendant does have a previous record. It
16 was 1996, it was too old for us to bring out. But it's an
17 ABHAN, Judge, looks like he got five years suspended on
18 five years probation. I believe it was pled down. Judge,
19 I spoke to the family. They informed me they didn't want
20 to speak. I would like to offer it to them again to let
21 any of them know if there's anything they want to say
22 especially maybe Mr. Mozeak if anything they wanted to
23 say.

24 TONY MOZEAK: I'm good.

25 THE COURT: Nothing further. I'll be glad to

1 hear from you, Mr. Brooker.

2 MR. BROOKER: Sure, thank you, Your Honor. Your
3 Honor, obviously is is that I've talked with Mr. Mozeak
4 prior to the start of this trial. And, obviously, he
5 understand the penalties in which first degree CSC carries
6 along with a third degree CSC and a very serious penalty.
7 And I think during the trial I think you heard a lot about
8 who Mr. Mozeak is in his life history. He's 63 years of
9 age. I think he said he went in the military I think at
10 the age of -- 1971 after high school, served in the
11 military for 20 years. After he got out of the military,
12 retired from the military with honorable discharge, that
13 he had served in I think various capacities, various jobs
14 with various different companies, always been gainfully
15 employed, always provided for his family.

16 He married I think his wife I think in 1974 --
17 '74, '75. I think sometime after he advised me that when
18 he -- and this didn't come out during the trial is is that
19 when he married his wife, obviously, is think everybody at
20 least all the attorneys and everybody else knew that
21 Antony was not his biological son, is that his wife was
22 pregnant with him at the time in which he gotten married.
23 He raised him as his son, who's taken his last name. He
24 has those grandkids. And up until this particular point
25 in time, you know, I think he has lived a relatively, you

1 know, a fine decent life. He has been an exemplary
2 citizen. He serve this country well. He was honorably
3 discharged. Obviously is is that with the allegations in
4 which jury the has found him guilty. And sometimes at
5 least during sentencing proceedings, Your Honor, I think
6 sometimes that is probably the hardest thing to talk about
7 when you before a sentencing judge. Your Honor, because
8 judges look at it kind of differently is that some judges,
9 well, if he doesn't get up and now admit that he's guilty
10 of the offense, and, of course, have shown a lack of
11 remorse. And, of course, has shown a lack of remorse.
12 And then, of course, here part it shows a lack of remorse.
13 And then, of course, is is that some judges sometimes
14 might hit them a lit bit harder, you know, because of the
15 judicial process, you know, that he went through.

16 We would ask the Court at the age of 65 I think
17 the maximum -- minimum sentence that can be given for the
18 first degree CSC I think is 25 years. We would ask the
19 Court to serious considering at least giving him the
20 minimum. I think at 63 years old with a 25 year sentence,
21 I think roughly he would be.

22 THE COURT: Eighty-eight.

23 MR. BROOKER: Yeah, he be 88 close to 90 years
24 old if he is released, assuming he'd have to serve every
25 day of that. And, of course, it is a violent offense and

1 probably will for the chances that he even survives that
2 that is going to be slim to none. It's going to be very
3 slim. And if he does survive that, he'll be roughly
4 almost 90 years old. I think the remainder of life that
5 he might have after a period of time if he survives that
6 long won't be much at all. Thank you, Your Honor.

7 THE COURT: Thank you. Sentence of the Court in
8 reference to the criminal sexual conduct first will be
9 that the defendant is committed to the state department of
10 corrections for a term of 25 years. In reference to the
11 CSC third, sentence of the Court is 15 years. I'll run
12 both of the concurrent.

13 MR. BROOKER: Thank you, Your Honor.

14 MR. HOLT: Thank you very much, Judge.

15 THE COURT: This concludes it.

16 END OF REQUESTED TRANSCRIPT

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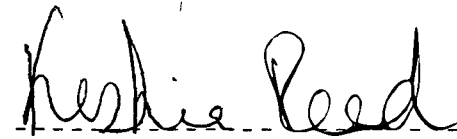
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter and Notary Public
in and for the State of South Carolina At Large, do hereby
certify that the above-entitled cause was heard as
hereinafter set out; that I was authorized to and did
transcribe the said proceedings; and that the foregoing
and annexed paged, numbered 1 through 247, inclusive,
constitute a true and accurate transcription of my
stenographic report of the said cause taken during the
said hearing. In the Court of General Sessions for Marion
County, South Carolina, on the 18th and 19th days of
November, 2015.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto. In witness
whereof, I have hereunto affixed my signature this 17th
day of June 2016.


Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF MARION)

CRIMINAL SEXUAL CONDUCT WITH A MINOR,
 FIRST DEGREE &
 CRIMINAL SEXUAL CONDUCT WITH A MINOR,
 THIRD DEGREE

At a Court of General Sessions, convened on MAY 7, 2015 the Grand Jurors of MARION County present upon their oath:

COUNT ONE- CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

CDR: 0385 16-03-0655(A)(1)

That Preston Mozeak did in Marion County, State of South Carolina, between the dates of August 1, 2014 and November 21, 2014, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the First Degree by engaging in sexual battery with a minor who is less than eleven (11) years of age, to wit: seven years of age, by penetrating her vagina with his fingers, in violation of Section 16-3-655(A)(1), S. C. Code of Laws, 1976, as amended.

COUNT TWO- CRIMINAL SEXUAL CONDUCT WITH A MINOR, THIRD DEGREE

CDR: 3661 16-03-0655(C)

That Preston Mozeak, being over fourteen years of age, did in Marion County between the dates of August 1, 2014, and November 21, 2014, willfully and lewdly commit a lewd or lascivious act upon or with the body of a child, less than sixteen (16) years of age, to wit: age seven years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of said defendant or of the victim, including but not limited to: having the child stroke his penis with her hand, in violation of Section 16-03-0655(C), S. C. 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.



E.L. Clements, III
 TWELFTH CIRCUIT SOLICITOR

WITNESSES

Robert C Smith Marion Police Department

David A Richardson

ARREST WARRANT NUMBER

2014A3320100327

2014A3320100328

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

DOCKET NO. 2015-GS-33-00115

The State of South Carolina

County of

MARION

COURT OF GENERAL SESSIONS

MAY TERM 2015

THE STATE

vs.

PRESTON MOZEAK

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR, FIRST DEGREE &
CRIMINAL SEXUAL CONDUCT WITH A
MINOR, THIRD DEGREE

FILED
2015 MAY -7 PM 4:56
MARION COUNTY
SOUTH CAROLINA

Oral Webster 5-7-15
Foreperson of Petit Jury Date:

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

A handwritten signature in cursive script, reading "Laura R. Baer", written over a horizontal line.

Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 19th day of May, 2017.