

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From Florence County
Hon. William H. Seals, Jr., Circuit Court Judge
Appellate Case Tracking No. 2015-000235

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S.C. SUPREME COURT

THE STATE,

Petitioner,

v.

BRYANT CHRISTOPHER GURLEY,

Respondent.

Opinion No. 2017-UP-342 (S.C. Ct. App. filed August 9, 2017)

APPENDIX

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
General Sessions Court
William H. Seals, Jr., Circuit Court Judge

Case No. 2013-GS-21-01353
Appellate Case No. 2015-000235

The State,

Respondent,

v.

Bryant Christopher Gurley,

Appellant.

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WITNESSES

Jennifer Floyd Florence County Sheriff

DOCKET NO. 2013-GS-21-01353

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

OCTOBER TERM 2013

THE STATE

vs.

BRYANT CHRISTOPHER GURLEY

Catherine Anderson Wyse

ARREST WARRANT NUMBER

2013A2110200429

ACTION OF GRAND JURY

TRUE BILL

Indictment for

LEWD ACT ON A MINOR CHILD

Foreperson of Grand Jury

Date: 10/3/13

VERDICT

Foreperson of Petit Jury

Date:

FILED

2013 OCT -3 AM 11:11

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

INDICTMENT FOR
LEWD ACT ON A MINOR CHILD

At a Court of General Sessions, convened on OCTOBER 3, 2013 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- LEWD ACT ON A MINOR CHILD

That Bryant Christopher Gurley, being over fourteen years of age, did in Florence County during a time period from November 1, 2010 to November 1, 2011, 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 five, 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: touching the five year old minor child's vaginal area with his hand, in violation of Section 16-15-0140, 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

STATE OF SOUTH CAROLINA

COUNTY OF Florence
STATE VS.

Bryant Christopher Gurley

AKA:

Race: Black Sex: M Age: 20

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

in violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS(CSC ☐ § 17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.WITNESSETH
Catherine A. Wypse 738002
Wypse, Catherine Anderson SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections,☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 1052.00

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013-GS-21-01353

A/W#: 2013A2110200429

Date of Offense: 11/1/2010

S.C. Code § : 16-15-0140

CDR Code #: 2468

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel.§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2157

Sentence Date: 11/29/15

State of South Carolina	)	Court of General Sessions
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2013-GS-21-01353

State of South Carolina,	)	
	)	
Plaintiff,	)	

-vs-	)	Transcript of Record
	)	
	)	

	)	VOLUME 1 OF 2
	)	
	)	

Bryant Christopher Gurley,	)	
	)	
Defendant.	)	
	)	

January 26-29, 2015
Florence, South Carolina

B E F O R E:

The Honorable William Seals Jr., Judge; and a jury

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

Catherine Wyse, Esquire
Attorney for the Plaintiff

Marcus Woodson, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter

' RECEIVED APR 20 2015

1 And you've all sworn and told the judge you could be fair and
2 impartial, and we'd ask that you listen to the evidence and
3 give my client a fair day in trial. I thank you.

4 THE COURT: All right. Thank you. If you will, call
5 your first witness.

6 MS. WYSE: Thank you, Your Honor. Ms. Grainger from my
7 office is going to go get Ms. Richardson. The State would
8 call Teicher Richardson to the stand.

9 (Whereupon, there is a pause in the proceedings until the
10 witness enters the courtroom.)

11 THE CLERK: If you will, ma'am, come to the witness
12 stand. If you will, ma'am, place your left hand on the Bible
13 and raise your right hand. Do you swear to tell the truth,
14 the whole truth, and nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Please be seated and state your full name for
17 the record.

18 THE WITNESS: Teicher Daniels Richardson.

19 TEICHER RICHARDSON, being first duly
20 sworn, testifies as follows:

21 DIRECT EXAMINATION

22 BY MS. WYSE:

23 Q: Good afternoon, Ms. Richardson.

24 A: Good afternoon.

25 Q: Can you --

1 MS. WYSE: Can the members of the jury hear her? All
2 right.

3 Q: Ms. Richardson, will you please introduce yourself and
4 tell us who you are the mother of?

5 A: I am -- I'm Teicher Daniels Richardson. I'm the mother
6 of .

7 Q: All right. Ms. Richardson, if you wouldn't mind grabbing
8 that microphone and putting it in front of you, please. Just
9 -- just in case. Thank you. Ms. Richardson, I have a couple
10 of questions I need to ask you. You have some convictions on
11 our record; isn't that true?

12 A: Yes, I do.

13 Q: All right. In 1997, you have a breach of trust with
14 fraudulent intent; is that right?

15 A: I can't remember the dates. It's over 15 years ago, but
16 it's probably right.

17 Q: Okay. And another forgery conviction in 1998?

18 A: Mm-hmm.

19 Q: And a failure to return rented objects in 1997?

20 A: Yes.

21 Q: Okay. Another forgery in '98?

22 A: Yes.

23 Q: And I think another forgery in '98?

24 A: Yes.

25 Q: And a bank fraud charge from 1998?

1 A: Yes.

2 Q: And some fraudulent checks from 1998?

3 A: Yes.

4 Q: And another breach of trust with fraudulent intent from
5 2001?

6 A: Yes.

7 Q: All right. Thank you, Ms. Richardson. Will you please
8 tell us where you work now?

9 A: I'm the secretary at Jacob Plumbing Company.

10 Q: And what do you do there?

11 A: I set all the jobs and send all of the workers out to the
12 job sites. I handle all of the finances for the company, all
13 of the records for Mr. Jacob.

14 Q: All right. Now, let me ask you some questions. How many
15 children do you have?

16 A: Two.

17 Q: And who are they?

18 A: Samantha Catherine Toney and

19 Q: How old is Samantha?

20 A: She's 23.

21 Q: And how old is ?

22 A: She's ten.

23 Q: All right. Ms. Richardson, have you been married before?

24 A: Yes.

25 Q: And the marriage to father -- are you still

1 married to him?

2 A: No. We're friends.

3 Q: All right. Now, when did you split?

4 A: I can't recall the -- I can't recall the exact dates.

5 Q: That's fine. Well, let me ask you this. Do you know Ms.
6 Denise Gurley?

7 A: Yes, I do.

8 Q: How do you know Ms. Denise Gurley?

9 A: We have been friends for over 30 years.

10 Q: For over how long?

11 A: Thirty years.

12 Q: All right. How -- and, like, 30 years ago did y'all
13 meet?

14 A: We met at -- at Olan Mills. She was the -- the secretary
15 and I worked in the back as the club planner --

16 Q: Okay.

17 A: -- for sending people out for pictures.

18 Q: All right. And so you say you've been friends for a long
19 time?

20 A: Yes.

21 Q: And since you know Ms. Denise Gurley, do you know Kenrick
22 Gurley?

23 A: Yes.

24 Q: How do you know him?

25 A: That's her husband.

TEICHER RICHARDSON - DIRECT BY MS. WYSE

- 1 Q: Okay. And did you go to their wedding?
- 2 A: No. I think I was -- I was locked up when -- when they
- 3 were married.
- 4 Q: Okay. Now, do you know their children?
- 5 A: Yes, I do.
- 6 Q: Well, let me -- let me back up. Who is Christopher -- or
- 7 Bryant's mother -- biological mother?
- 8 A: Hattie. I don't -- I can't recall the last name right
- 9 now.
- 10 Q: Okay. Now, Denise is his --
- 11 A: Stepmother.
- 12 Q: Okay. All right. Now, when you and your ex-husband
- 13 split, where did you go? Where did you go stay?
- 14 A: We went to stay with Denise and Kenrick Gurley, her
- 15 husband.
- 16 Q: And would you -- how would you classify your relationship
- 17 with the two of them at that time?
- 18 A: We were good friend. Best friends.
- 19 Q: All right. And were there any minor -- or were there any
- 20 children in the home?
- 21 A: Not besides .
- 22 Q: Okay. Did Samantha go stay as well?
- 23 A: Yes.
- 24 Q: All right. Now, do you remember approximately how long
- 25 you stayed with the Gurleys?

TEICHER RICHARDSON - DIRECT BY MS. WYSE

1 A: It was over a year.

2 Q: Okay. Do you remember the address where they -- where
3 you all lived?

4 A: Yes.

5 Q: Can you recite it?

6 A: .

7 Q: Okay. And is that in Florence?

8 A: Yes.

9 Q: Okay. Now, how do you know Mr. Gurley?

10 A: Which?

11 Q: Bryant. I'm sorry.

12 A: That's Ken's son from a previous marriage. Kenrick
13 Gurley Sr.'s son from a previous marriage.

14 Q: Okay. And while you were living at the Gurley's house,
15 did you see Bryant?

16 A: He would come and spend weekends.

17 Q: All right. So his father didn't have -- he just had
18 visitation rights?

19 A: Well, I guess they had an agreement. He -- he was able
20 to spend time with his dad whenever he could, whenever he
21 wanted.

22 Q: Okay. Now, how would you classify your relationship at
23 that time with Bryant?

24 A: It was -- it was fine.

25 Q: Did you ever help him do anything?

TEICHER RICHARDSON - DIRECT BY MS. WYSE

- 1 A: Yeah. He worked for me. I -- Hickory -- I managed a
2 Hickory Farms kiosk in the mall for over 14 years, and he --
3 like other young kids who I would try to give their first job,
4 he worked for me there.
- 5 Q: Do you remember what years he worked for you there?
- 6 A: I can remember 2011 and I can't remember the other years.
7 I think he did two years though for me there.
- 8 Q: Okay. And do you remember whether or not you were living
9 at that house when he was working for you?
- 10 A: Yes, we were.
- 11 Q: Okay. And did you ever help him with any of his school
12 work?
- 13 A: No. I didn't help him with no school work.
- 14 Q: Okay. All right. Now, did Mr. and Ms. Gurley have
15 another -- well, did Bryant have a brother?
- 16 A: Kenrick Gurley Jr.
- 17 Q: Okay. And did you -- did Kenrick Gurley Jr. live at that
18 house?
- 19 A: Yes.
- 20 Q: Okay. How old was he at the time?
- 21 A: I can't remember. I can't remember their ages right now.
22 It's so much. I can't remember. He was in his teens.
- 23 Q: Okay. And do you know where he was in high school?
- 24 A: West Florence.
- 25 Q: All right. And how was your relationship with Kenrick

TEICHER RICHARDSON - DIRECT BY MS. WYSE

1 Q: Okay. Now, Ms. Richardson, do you remember when you left
2 the Gurley residence?

3 A: Mm-hmm.

4 Q: When was that?

5 A: I don't remember the month and the exact time, but I
6 remember it was sometime in 2012.

7 Q: Okay. And where did you live after you left the
8 Gurley's?

9 A: I actually didn't have a place quite yet to stay in. I
10 tried to secure an apartment and it fell through. So we ended
11 up staying in a hotel, me and , for a few weeks.

12 Q: Okay. Now, certainly you know the reason why we're here
13 today?

14 A: Yes.

15 Q: And I would like to ask you when did your daughter tell
16 you about the reason we are here today?

17 A: I -- I can't remember the time frame because this has
18 really been an up -- whirlwind for me. I just remember one
19 morning I was getting her ready for school and she told me
20 that somebody had touched her inappropriately in that area,
21 and I asked her who was it and she told me it was Bryant --

22 Q: Okay.

23 A: -- that did that.

24 Q: All right. Now, when she -- where were you when you made
25 -- when she this discloser? Where were you living?

- 1 A: We were living in an apartment off of , and I
2 was getting her ready to go to school at Briggs Elementary.
- 3 Q: Okay. Now, she didn't call it her private area, did she?
4 What did she call it?
- 5 A: She called it powderpuff.
- 6 Q: Okay. All right. And that's the name that you had
7 taught her?
- 8 A: That I had taught her, mm-hmm.
- 9 Q: Okay. All right. Now, when told you this,
10 what was your reaction to it?
- 11 A: I was shocked. I was in disbelief. I asked her -- when
12 she said the name, I couldn't believe it. I asked her to tell
13 me again the name, and she said his name again and I don't
14 know what I thought. I got on the phone and I called Denise,
15 my best friend, and told her she needed to come and hear what
16 was telling me. And so that's -- that's what
17 happened.
- 18 Q: So did Denise come to the apartment?
- 19 A: Yes, she did.
- 20 Q: All right. And at that time, what happened?
- 21 A: I asked to tell Denise what she told me and
22 she told her, and she was just as shocked as I was. I think
23 we all cried. And I can't remember what the rest of my day
24 was like after that.
- 25 Q: All right. Did you call law enforcement?

- 1 A: No. First of all, I talked to someone at a -- at a
2 children's center and they advised me what I needed to do, and
3 then I called law enforcement.
- 4 Q: All right. And so do you remember if an officer came to
5 the residence or where did you meet the officer?
- 6 A: One came to me at the residence.
- 7 Q: All right. And did you file -- or did he file a report?
- 8 A: Yes, he did.
- 9 Q: All right. Now, you said that you spoke to somebody at
10 another place and, without telling me what they said to you,
11 will you tell me what you did?
- 12 A: I went in after talking to the lady over the phone. It
13 was at a place on Irby Street.
- 14 Q: That's okay. You don't have to remember that.
- 15 A: Okay.
- 16 Q: Just -- just tell me what you did.
- 17 A: She advised me that I needed to --
- 18 Q: Don't --
- 19 MR. WOODSON: Objection.
- 20 Q: Don't tell me what she --
- 21 A: Okay.
- 22 Q: I'm sorry.
- 23 THE COURT: You're correct.
- 24 Q: Don't tell me what she said.
- 25 A: Okay.

1 Q: When you say her husband, who do you mean?

2 A: Kenrick Gurley Sr.

3 Q: Okay.

4 A: And it turned out when I got to Columbia it wasn't all of
5 the numbers. It was four of the numbers. So they gave me a
6 check for \$1,200.

7 Q: That's disappointing.

8 A: Yes.

9 Q: And what happened as a result of you only getting a
10 \$1,200 check?

11 A: All of those cars had to be turned back in.

12 Q: All right. Now, where did you -- you said that you --
13 you got a car for your -- for your daughter and a car for Mr.
14 Gurley. Where did you get those cars?

15 A: Mike Reichenbach Ford.

16 Q: Okay. Now, back when disclosed some things to
17 you, did she tell you where and kind of when these incidents
18 occurred?

19 A: She couldn't -- she told me about the incidents and she
20 told me where they happened. As far as exactly telling me it
21 happened this day, she didn't tell me that.

22 Q: All right. Now, can you describe where these incidents
23 took place?

24 MR. WOODSON: Your Honor, I object on the grounds of
25 hearsay. At this point, the child hasn't testified and she's

1 -- she's going to testify now to what I guess she was told.

2 THE COURT: Overruled. Where and when is the exception
3 to the hearsay rule in cases like this.

4 MS. WYSE: Thank you, Judge.

5 THE COURT: All right.

6 BY MS. WYSE:

7 Q: Please proceed and tell us where these incidents
8 occurred.

9 A: She told me one incident where she was left out in the
10 living room with Bryant while me and Denise and Ken were in
11 the bedroom closed up with Kenrick Garvey Jr. I guess we were
12 all trying to get on him for some things that he hadn't been
13 doing right and we were all in there in a discussion with him
14 and she was left out in the living room with Bryant by
15 herself.

16 Q: Okay.

17 A: She told me of another incident where I had taken Bryant
18 with me to my mother's house in Lake City and she rode in the
19 back seat of the car and when we got ready to leave, she
20 didn't want to get back in the back seat of the car. And I
21 was trying to explain to her she was only -- she was too young
22 to ride in the front seat because of the air bag; so she had
23 to ride in the back seat. And she started crying and she
24 kicked the car door, and I made her against her will get in
25 the back seat with him anyway.

1 Then she told me the time that we were getting ready for
2 church and he was already dressed for church and he came out
3 of the room that he was in dressed. I had already dressed
4 her. She was sitting in her little dress on the bed. I
5 stepped in the kitchen for Kenrick Sr. to arch my eyebrows and
6 while -- while I was getting my eyebrows arched, Bryant went
7 in the room to her again.

8 MR. WOODSON: Objection, Your Honor. Hearsay.

9 THE COURT: I didn't hear what she said.

10 MS. WYSE: She said that the daughter --

11 THE COURT: Come on up.

12 (Whereupon, a bench conference is held in the presence of
13 the jury but out of the hearing of the jury as follows.)

14 THE COURT: So I understand, what's your ground?

15 MR. WOODSON: This is going way beyond time and place.
16 She's saying what the girl said and he went in the room and
17 what he did.

18 THE COURT: What was your question just now?

19 MS. WYSE: I just asked her to tell me where the
20 incidents occurred, and she said that the daughter was in the
21 bedroom and she had gotten her dressed for church and she was
22 wearing her dress. And then she was with Denise and with Mr.
23 -- Mr. Gurley, the father, and he was arching her eyebrows.
24 That's what she said.

25 MR. WOODSON: But -- well -- and then she went beyond

TEICHER RICHARDSON - DIRECT BY MS. WYSE

1 that and she said that he went into the bedroom with the girl.
2 That's not in any of the reports, but --
3 THE COURT: I think that's her testimony. You can cross
4 her.
5 MR. WOODSON: But -- well -- and that's -- I mean she's
6 testifying what the girl told her. Unless she -- unless she's
7 going to say she saw him go in the bedroom.
8 MS. WYSE: Yes, she did. That's exactly what she said.
9 THE COURT: She's testifying as to what she saw?
10 MR. WOODSON: She's not testified to this before.
11 MS. WYSE: Yeah.
12 MR. WOODSON: She's not said that before.
13 THE COURT: If she's not, you can object. If she's doing
14 that, it's fine.
15 MS. WYSE: Okay.
16 THE COURT: All right.
17 (Whereupon, the bench conference ends and the proceedings
18 continue as follows.)
19 BY MS. WYSE:
20 Q: Those were where told you these incidents
21 occurred?
22 A: Yes.
23 Q: And those are things that you saw yourself?
24 A: As she explained them to me, I could see in my --
25 remember back in my mind the exact everything she was

1 explaining to me. I just never pinpointed to what she was
2 trying to explain to me happened.

3 Q: Now, around the time that she told you about these
4 incidents, what was behavior like?

5 A: She was wetting the bed. She was -- she was not -- she
6 was not focusing in school. She was -- she was having a hard
7 time. Her grades were -- were not where they -- the teacher
8 had told me she didn't understand what was going on with
9 , but Jacquelynn was having some issues in class.

10 Q: All right. And was she sleeping alone?

11 A: She was sleeping with me.

12 Q: All right. Now, was anybody else in the
13 apartment with you?

14 A: No.

15 Q: Where was Samantha at this time?

16 A: She was off at college.

17 Q: Where was --

18 A: College of Charleston.

19 Q: Okay. All right. Now, Ms. Richardson, do you have
20 anything against the Gurleys?

21 A: No. The Gurleys to me are good people. I have nothing
22 against them at all.

23 Q: In fact, they helped you out; right?

24 A: Yes.

25 Q: All right. Did you pay them rent while you were there?

1 never said to her. She never -- I never once said to her
2 anyone threatened me.

3 Q: Okay. So you just took these over voluntarily? You
4 never said any of that?

5 A: She asked were we having conversations and I said yes,
6 and she asked for the messages from my phone to see what the
7 conversations were.

8 Q: Okay. Well, I guess my question is prior to you giving
9 the messages, you didn't couch them as "I'm afraid" or things
10 of that nature, did you?

11 A: No.

12 Q: Okay. All right. So your mother lives in Lake City;
13 correct?

14 A: Yes.

15 Q: All right. And your testimony is that at some point when
16 you got to the house in Lake City that you actually all got
17 out of the car and went into her -- into your mom's house?

18 A: Yes, we did.

19 Q: Okay. Including Bryant?

20 A: Including Bryant.

21 Q: Okay. All right. And typically did Bryant sit in the
22 front of the vehicle or did he sit in the back of the vehicle?

23 A: It was -- we didn't typically go a lot of places
24 together. So he was in the back seat of the vehicle on this
25 occasion when we went to my mom's house.

1 Q: And your daughter -- your testimony is your older
2 daughter was in the front seat?

3 A: Samantha was in the front seat and was in the
4 back seat.

5 Q: Okay. And was there a point where you left them in the
6 car where you weren't in the car and went in the house or is
7 it your testimony that all of you went in the house?

8 A: All of us got out of the -- out of the car.

9 Q: I'm sorry?

10 A: All of us got out and went in the house.

11 Q: And was this during the day or was it at night?

12 A: I can't remember the time of day. It was -- we all went
13 in the house. I can't -- I can't pinpoint the day -- time
14 frame of the day, whether it was early in the morning. I
15 can't pinpoint it.

16 Q: Well, I guess my question is was the sun up or was it
17 down?

18 A: The sun was -- it was in the afternoon.

19 Q: Okay. So broad daylight?

20 A: It was late afternoon.

21 Q: But the sun was up?

22 A: Yeah.

23 Q: All right. And surely if you had seen something
24 inappropriate, you would have done something at that point;
25 correct?

1 THE WITNESS: I do.

2 THE CLERK: Please be seated and state your full name for
3 the record.

4 THE WITNESS: Lillie Catherine Daniels.

5 LILLIE DANIELS, being first duly sworn,
6 testifies as follows:

7 DIRECT EXAMINATION

8 BY MS. WYSE:

9 Q: Good afternoon, Ms. Daniels. How are you doing?

10 A: I'm fine.

11 Q: Good. And will you please tell us how you are related to
12 Ms. Richardson?

13 A: I am Ms. Richardson's mother.

14 Q: All right. And that makes you grandmother?

15 A: Grandmother.

16 Q: All right. I want to ask you about a specific event that
17 occurred when Ms. Richardson and both her daughters and Mr.
18 Gurley visited you in Lake City.

19 A: Yes.

20 Q: Do you remember that event?

21 A: Yes.

22 Q: All right. Can you tell this Court about that visit?

23 A: Okay. They came down and we had a wonderful time. We
24 were inside the house for a little while. Then came the time
25 for them to leave. That was when everybody was getting ready

1 to get in the car and refused. She did not want to
2 get in the back seat.

3 Q: How did she act?

4 A: She got upset. She started crying, and I didn't know why
5 she was crying or what was going on, but we couldn't get
6 nothing else out of it. So her mother had the oldest daughter
7 in the front seat with her. So what they did -- they just
8 left like that, you know, with her seated.

9 Q: Do you remember who was seated where in the car?

10 A: Teicher was driving. Samantha was on the opposite side
11 in the front. was in the back seat with Bryant.

12 Q: All right. And do you know how long they stayed at your
13 house?

14 A: They stayed a little over an hour or so.

15 Q: Okay. Now, where do you live?

16 A: Lake City.

17 Q: Okay. And so they visited you in Lake City?

18 A: Yes.

19 Q: All right. And was that a common occurrence?

20 A: Yes.

21 Q: Did -- did Bryant go to Lake City often?

22 A: Yes. He's been to my house several times. Matter of
23 fact, he calls me Grandma.

24 Q: Okay. So you had a good relationship with Bryant?

25 A: Yes.

- 1 Q: All right. And do you remember about when this happened?
- 2 A: All I know is Samantha was in college and she was home
- 3 from a visit from college and they came down to see me.
- 4 Q: Do you remember about what time of day it was?
- 5 A: It was light when they came.
- 6 Q: It was light when they came over?
- 7 A: Yes.
- 8 Q: All right.
- 9 MS. WYSE: I beg the Court's indulgence for just one
- 10 minute.
- 11 THE COURT: Mm-hmm.
- 12 MS. WYSE: I don't have any further questions. Please
- 13 answer any Mr. Woodson has to ask you.
- 14 THE COURT: All right. Mr. Woodson?
- 15 CROSS-EXAMINATION
- 16 BY MR. WOODSON:
- 17 Q: Hi, Ms. Daniels.
- 18 A: Hello.
- 19 Q: I'm looking through my paperwork that I got prior to
- 20 trial and I don't see your name. Have you talked to law
- 21 enforcement prior to today?
- 22 A: I spoke with the solicitor before today.
- 23 Q: Okay. Has any investigator come to your house? Have you
- 24 gone up to the Sheriff's Department and talked to anybody
- 25 prior?

1 A: No, sir.

2 Q: Has anybody asked you to write a statement prior to
3 today?

4 A: No.

5 Q: Okay. So when was the first time you spoke to the
6 solicitor about what you're telling the jury about today?

7 A: I guess when she was told that I was the witness, and
8 that was -- well, before the week -- last week out.

9 Q: So last week you came forward with this testimony that
10 she -- your granddaughter was crying before she got in the
11 car?

12 A: Yes.

13 Q: Okay. And you understand that this allegation dates back
14 to 2010-2011; correct?

15 A: Yes.

16 Q: And when she came forward in 2013, you were made aware of
17 that?

18 A: Oh, yes. I was made aware of what was supposed to have
19 taken place.

20 Q: Okay. Then two weeks ago you said you had something that
21 you could tell the jury I guess?

22 A: No, sir. I told my daughter what I witnessed before
23 that, and then that's when the solicitor, you know, asked me
24 to come forward.

25 Q: Okay. Two weeks ago? Okay.

SAMANTHA TONEY - DIRECT BY MS. WYSE

1 SAMANTHA TONEY, being first duly sworn,
2 testifies as follows:

3 DIRECT EXAMINATION

4 BY MS. WYSE:

5 Q: Good afternoon, Ms. Toney. Would you please tell us how
6 you are related to Ms. Richardson?

7 A: That's my mother.

8 Q: Okay. And do you have a sister?

9 A: Yes.

10 Q: And what is her name?

11 A:

12 Q: And do you -- do you recognize the gentleman over here?

13 A: Yes.

14 Q: And who is he?

15 A: That is my -- my god-brother.

16 Q: Bryant Gurley?

17 A: Bryant Gurley.

18 Q: Okay. Ms. Toney, today I want to specifically ask you
19 about a trip that you took with your mother to Lake City. Can
20 you please describe to us that trip?

21 A: Well, I can't remember what the trip was for, but I do
22 remember that the four of us were together. It was me, my
23 mother, , and Bryant. And we rode to Lake City in
24 an SUV that was for me, and we went there to visit my
25 grandmother. And when we arrived, we all went in and spent a

1 little bit of time with her, and when we left to come back to
2 Florence, my sister wasn't ready to -- to leave and she -- she
3 was told she had to get in the back seat of the car because
4 she's too young to ride in the front obviously, and she wasn't
5 very happy about that.

6 Q: How did she act?

7 A: She started to sob and get very upset and ask questions
8 of why, you know, she had to ride in the back and really
9 begged to not ride in the back seat.

10 Q: All right. Now, did you -- you said you were in the --
11 the front passenger seat?

12 A: Yes.

13 Q: Did you see anything happen in the back seat?

14 A: No.

15 Q: Did you hear anything happen in the back seat?

16 A: No. I had -- I could have had headphones in. I didn't
17 hear anything.

18 Q: All right. Now, you said that the SUV was for you. Will
19 you please explain to the jury why you said that?

20 A: The car was purchased -- well, it was intended as a gift
21 for me for going off to college. At the time, I didn't have
22 my own car and I was doing well in high school and my mother
23 really wanted to reward me for that. So I had picked out a
24 car that I really liked that I thought would be good for me
25 for college, which was an SUV, a blue Ford Escape, and we had

1 the car for a little bit of time, which was the car that we
2 took to Lake City that day.

3 Q: Okay. Now, did you live with your mother and your sister
4 at the Gurley's house?

5 A: Yes.

6 Q: How long do you think you lived there?

7 A: I would estimate maybe three or four years off and on.

8 Q: So while you were in college?

9 A: Yes. When I came home for vacation, summer vacation or
10 Christmas vacation, I was there.

11 Q: All right. And what was your relationship with the
12 Gurleys?

13 A: They were my godparents.

14 Q: Did you love them?

15 A: Yes.

16 Q: And you said that Bryant is your god-brother?

17 A: Yes. Was.

18 Q: Did you have a good relationship with him?

19 A: Yes, I did.

20 Q: And how -- how would you -- how would you categorize your
21 mother's relationship with the Gurleys?

22 A: Very strong. From my understanding, my mother knew Ms.
23 Denise Gurley before I was born, and they were very close
24 friends for a very long time.

25 Q: And do you know if -- after your mother left the

SAMANTHA TONEY - DIRECT BY MS. WYSE

1 Gurley's, do you know if she continued a relationship with
2 Denise?

3 A: I'm not sure of that.

4 Q: Okay.

5 A: Because I was away at college.

6 Q: All right.

7 MS. WYSE: I have no further questions. Please answer
8 any Mr. Woodson has.

9 THE COURT: All right. Mr. Woodson?

10 CROSS-EXAMINATION

11 BY MR. WOODSON:

12 Q: Hi, Ms. Toney. My name is Marcus Woodson and I have a
13 couple of questions for you. First of all, let's start off I
14 guess like I asked your grandmother a while ago. I don't see
15 your name in any of these police reports. Did you talk to any
16 police officer right after this allegation came out?

17 A: No.

18 Q: Okay. Did you give any written statement?

19 A: No.

20 Q: When is the first time you came forward to tell what
21 you're telling today?

22 A: Today.

23 Q: Today? Okay. All right. Now, you were driving this
24 SUV. Is this the same SUV that your mom said you wrecked?

25 A: No.

1 Q: Do you recall the incident where your mom accused you of
2 driving a vehicle and wrecking it?

3 A: No.

4 Q: All right. As far as you can recall, that didn't happen?

5 A: No.

6 Q: Okay. All right. You said in response to the
7 solicitor's questions that you're not sure what happened
8 because you could have had on headphones. I mean that's
9 speculation. Did you have on headphones that particular day
10 or not?

11 A: I don't remember.

12 Q: Okay. Isn't it true that you went to college in 2010?

13 A: Yes.

14 Q: All right. And you are aware that allegations in this
15 case are from November 1st, 2010, to November 1st, 2011;
16 correct?

17 A: If that's what's on the paper. I don't know the exact
18 dates.

19 Q: Okay. You haven't talked with your sister about this at
20 all to see what dates she says it happened?

21 A: No. I wouldn't talk to her about this to make her upset.

22 Q: Okay. So the allegations -- how did you come to find out
23 what the allegations were?

24 A: I was told the day that my mother -- the day that my
25 sister told my mother what had happened to her. I had gotten

1 the news from my mother that day.

2 Q: Okay. So you got it through your mom and not directly
3 from your sister; correct?

4 A: My sister had come forth about what happened to her when
5 I attended her therapy sessions with her. So I had heard my
6 sister tell things that had happened to her directly from
7 herself in her therapy sessions that I was in.

8 Q: Okay. You -- and let me back up. If you were in college
9 and you went to college since 2010, then -- and your testimony
10 was that your mother got you a car because of your grades; is
11 that correct?

12 A: Yes.

13 Q: So it couldn't have been between August and December
14 because you wouldn't have gotten your first set of grades
15 until December; correct?

16 A: High school grades.

17 Q: High school grades?

18 A: Yes. I was an honor student. I graduated high school
19 early.

20 Q: Okay. So your mom was going to get you an SUV for your
21 grades in high school?

22 A: Yes.

23 Q: This was your senior year?

24 A: Yes.

25 Q: Okay. And this was around the time that she said she won

1 the lottery; is that correct?

2 A: Yes.

3 Q: Okay. And is this a vehicle -- is this one of the
4 vehicles she supposedly was going to get as a result of her
5 lottery earnings?

6 A: Yes, I suppose so.

7 Q: Okay. Let's back up to the day at your grandmother's
8 house in Lake City because I don't have anything where you've
9 said anything prior to today. What -- what is your
10 allegation? That you were sitting in the front; correct?

11 A: Yes.

12 Q: Okay. What is the structure -- because SUVs are pretty
13 big. What is the structure? Is it -- I mean was there a
14 divider between the seats? Were they separate seats or was it
15 one long seat?

16 A: In the back?

17 Q: Yes.

18 A: It's not a separator. It's one -- one long seat.

19 Q: Okay. And do you recall how everybody was seated in the
20 vehicle that particular day?

21 A: I don't remember who was sitting behind me, but I do know
22 that Bryant and my sister were in the back seat.

23 Q: But you don't remember who -- who was sitting where?

24 A: Yes.

25 Q: All right. Do you remember if there was space in-between

SAMANTHA TONEY - CROSS BY MR. WOODSON

- 1 them?
- 2 A: No.
- 3 Q: You don't remember?
- 4 A: I would assume not. I mean it's --
- 5 Q: No. Let's not assume. I mean it's a trial. It's very
- 6 important. Do you remember or don't you?
- 7 A: No.
- 8 Q: Okay. Your sister and yourself were around Bryant after
- 9 the incident; is that correct?
- 10 A: I'm sorry. Repeat that?
- 11 Q: Okay. After this alleged incident in Lake City, you were
- 12 around Bryant. You saw him after that; is that correct?
- 13 A: I don't remember.
- 14 Q: You don't remember if you ever saw Bryant after this
- 15 incident?
- 16 A: I mean I've seen him other times after. I don't remember
- 17 if it was that night -- whether we were together that night.
- 18 Q: I'm not talking about that. I'm talking about subsequent
- 19 --
- 20 A: Yes.
- 21 Q: -- days, weeks. You saw him?
- 22 A: Mm-hmm.
- 23 Q: And you saw him around your sister; is that correct?
- 24 A: Yes.
- 25 Q: Is it your testimony that every time she saw Bryant she

SAMANTHA TONEY - CROSS BY MR. WOODSON

1 cried?

2 A: No.

3 Q: So your testimony is that that particular day she just
4 didn't want to get in the back seat and she was crying; is
5 that correct?

6 A: Yes.

7 Q: Okay. After that, do you recall any incident where she
8 was crying around Bryant?

9 A: I don't recall.

10 Q: Okay. Tell me about the -- are you aware -- let me ask
11 it this way. When you went to college, was your mom still
12 living with the Gurleys?

13 A: Yes.

14 Q: Okay. Do you know anything about the circumstances as to
15 why she moved out from the Gurleys?

16 A: No.

17 Q: Do you know anything about an incident where there was a
18 ring that went missing and there was some allegations back and
19 forth or anything like that? A high school -- Bryant's high
20 school ring?

21 A: The only thing I know is that --

22 MS. WYSE: Objection, Your Honor. If she wasn't there,
23 then it would be hearsay as to how she found out about it.

24 MR. WOODSON: Oh, did she say she wasn't there?

25 THE COURT: She hasn't testified yet.

1 testifies as follows:

2 DIRECT EXAMINATION

3 BY MS. WYSE:

4 Q: Good afternoon, Deputy. Will you please tell us where
5 you work?

6 A: Florence County Sheriff's Office.

7 Q: And how long have you worked for the Florence County
8 Sheriff's Office?

9 A: Five years.

10 Q: All right. And how are you employed with the Sheriff's
11 Office?

12 A: I'm a deputy on patrol.

13 Q: Okay. Have you -- do you have any prior law enforcement
14 experience?

15 A: Just here.

16 Q: Okay. Will you please tell us about a call that you
17 responded to on March 7th, 2013?

18 A: On March 7th, 2013, I responded to
19 in reference to a report that there was a sexual assault.

20 Q: And who did you meet with that day?

21 A: Ms. Teicher Robinson -- Richardson.

22 Q: Okay. And did you speak with anybody else?

23 A: No, ma'am.

24 Q: Okay. Now, did she tell you who the victim was?

25 A: Yes, ma'am.

JOHN AUSTIN MEGGS - DIRECT BY MS. WYSE

- 1 Q: And did she identify that person?
- 2 A: Her daughter.
- 3 Q: And what was her name?
- 4 A:
- 5 Q: Okay. Now, did she tell you -- and when I say she, I
- 6 mean Mrs. Richardson. Did she tell you what she had done
- 7 prior to your arrival?
- 8 A: She advised me what happened on the incident date and
- 9 that it was two years ago and she had already taken
- 10 to the hospital in reference to the allegations made.
- 11 Q: All right. Now, what did you do? What was your role in
- 12 this?
- 13 A: When I got there, I took her statement, her side, and
- 14 contacted Investigator Floyd or Lee.
- 15 Q: All right. And is Investigator Floyd here?
- 16 A: Yes, ma'am.
- 17 Q: All right. Well, yes, investigator. She was
- 18 Investigator Lee at the time. She's Investigator Floyd now?
- 19 A: Well, she's Investigator Lee now.
- 20 Q: Oh, sorry. So she was Investigator -- well, she's
- 21 actually still the same person?
- 22 A: Right.
- 23 Q: Okay. And to your knowledge, what does she do?
- 24 A: She handles all the criminal sexual conducts through the
- 25 Sheriff's Office. She's an investigator.

1 Q: Okay.

2 A: I think it was all verbal.

3 Q: Okay. And do you recall being told about an -- about the
4 child crying and having to be put in the car in Lake City
5 forcibly? Do you recall anything like that?

6 A: That wasn't -- nothing of that was in my report.

7 Q: Okay. All right.

8 MR. WOODSON: I don't have any other questions, Your
9 Honor.

10 THE COURT: All right. Any redirect?

11 MS. WYSE: No, Your Honor.

12 THE COURT: All right. You may step down. Thank you.

13 THE WITNESS: Thank you, sir.

14 THE COURT: Call your next witness.

15 MS. WYSE: Your Honor, at this time, the State would call
16 Investigator Floyd. Oh, Judge, I'm sorry. One more
17 housekeeping matter. Can we please excuse Deputy Meggs from
18 his subpoena?

19 THE COURT: Any objections?

20 MR. WOODSON: No objection.

21 THE COURT: All right. Yes.

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

24 THE WITNESS: I do.

25 THE CLERK: Please be seated and state your full name for

JENNIFER FLOYD.- DIRECT BY MS. WYSE

1 and was promoted to a school resource officer, and worked a
2 year in the school and was promoted to investigations.

3 Q: All right. Thank you. Now, do you have any kind of a
4 specialized training to go along with what you do now?

5 A: Yes. We go through a lot of specialized classes, and
6 PDAHEC puts on classes, as well as SLED, PDAHEC here in
7 Florence.

8 Q: What is that?

9 A: They provide educational training for nurses, for
10 teachers, any mandated reporters, anything dealing with sexual
11 abuse, elderly abuse, CDV. It's all held at McLeod usually.

12 Q: Okay.

13 A: But I've gone through the -- all the training at the ARC
14 as far as forensic interview, investigator, just multiple
15 trainings we attend throughout the year.

16 Q: Okay. Did you become involved in a case where the
17 suspect was Bryant Gurley?

18 A: I did. I was contacted by Deputy Meggs.

19 Q: Okay. Now, how do you generally get a case?

20 A: Either the deputy contacts us directly or the incident is
21 filed and once it goes through AEGIS and hits our office, then
22 one of our supervisors will assign us a case.

23 Q: Can you tell us what AEGIS is?

24 A: It's a computer-based system. When a deputy comes out
25 and takes a report, it's not handwritten. It actually is

1 Q: Okay. All right. Thank you for clearing that up. Now,
2 did you speak with Ms. Richardson?

3 A: I did. I contacted her by telephone.

4 Q: Okay. And did you talk to ?

5 A: I did not.

6 Q: Okay. Do you know whether or not had a
7 forensic interview?

8 A: Yes. I called the Care House and got an appointment.
9 That's normally what we do is we schedule for the Care House.
10 I let Ms. Richardson know what time and date that appointment
11 was for the Care House, as well as for the medical exam.

12 Q: Okay. Now, I think you told us a little while earlier
13 that you actually had training in forensic interviewing; is
14 that correct?

15 A: That's correct.

16 Q: But you didn't do a forensic interview?

17 A: No. Normally, we have so many cases we don't have time
18 to do our own forensic interviews.

19 Q: Okay. All right. Now, based upon your investigation and
20 upon your experience, what happens when a child is interviewed
21 at the Care House?

22 A: It's a child-friendly setting so they don't feel
23 intimidated. It would be one-on-one with the interviewer and
24 the child in a room, and it's open-ended questions, not where
25 -- they're not -- they're not led to say something. You let

1 THE COURT: She just asked did you become aware of and
2 that's not --

3 MR. WOODSON: Okay.

4 THE COURT: She's the investigating officer. I'm going
5 to overrule it. Go ahead.

6 MS. WYSE: Thank you.

7 BY MS. WYSE:

8 Q: And were you -- how many incidents were you made aware
9 of?

10 A: I was made aware of four incidents.

11 Q: Okay.

12 MR. WOODSON: Objection.

13 THE COURT: Overruled.

14 MR. WOODSON: Same basis.

15 BY MS. WYSE:

16 Q: And based upon the information that you got for those and
17 your investigation, what did you decide to do?

18 A: After receiving all of the information, we went ahead
19 with a warrant for his arrest. Mr. Gurley was contacted. His
20 family was contacted to give him the opportunity to come in to
21 speak with me about these incidents, but they refused to do
22 that at the time.

23 Q: Okay. What warrant did you get? What was the charge on
24 the warrant?

25 A: It was lewd act on a minor and the warrant number would

JENNIFER FLOYD - DIRECT BY MS. WYSE

1 be 2013A2110200429.

2 Q: Okay. Now, why did you get a warrant for lewd act on a
3 minor?

4 A: You want me to --

5 Q: Tell you what you -- tell me what you learned during your
6 investigation and why you got that charge.

7 A: Okay. I can read off the warrant that I obtained.

8 Q: Don't -- don't --

9 A: No?

10 Q: -- read off the warrant.

11 A: Okay.

12 Q: Just tell us in your own words what your investigation
13 led you to do.

14 A: Based on the information that was -- that the child
15 disclosed, it fell under the statute for lewd act on a minor.

16 Q: Okay. And what were the dates that you primarily focused
17 on in your investigation?

18 A: Because of the child's age and the delayed disclosure, it
19 was very hard with the dates. We had to -- I had to meet with
20 Ms. Richardson and talk with her about certain incidents and
21 what she remembered happened at that time. Again, the child
22 was five to six years old. They only remember certain things
23 at that age and most of the time it's who and what, not
24 necessarily where and all that kind of stuff, but --

25 MR. WOODSON: Your Honor, I'm going to object to that.

1 was 17.

2 Q: Did you -- how did you make a determination whether or
3 not to pursue Mr. Gurley as an adult?

4 A: At the last incident, him being 17 plus 16 based on the
5 crime, he would have been moved up to adult. I contacted the
6 Solicitor's Office and talked to Mr. Hill at the time, who
7 advised to go ahead and charge him as an adult.

8 Q: What does Mr. Hill do?

9 A: He does all the juvenile crime.

10 Q: Okay. All right. Now, Investigator, thank you. Thank
11 you for going through that with us. Did you talk to Mr.
12 Bryant's mom?

13 A: I did. I made contact with her.

14 Q: And did you -- did you -- were you able to ask her any
15 questions?

16 A: I made contact with her asking about having him come in
17 to speak with us, and at that time she advised that they were
18 going to be getting an attorney. I asked her to have her
19 attorney make contact with me and after a couple days I have
20 not -- I had not heard from her attorney and made contact with
21 another family member.

22 Q: All right. Another part of your investigation is, you
23 know, when -- when you do this kind of thing, you have to
24 decide where -- what county it took place in; right?

25 A: That's correct. Jurisdiction.

JENNIFER FLOYD - DIRECT BY MS. WYSE

1 Q: Sorry.

2 A: That's all right.

3 MS. WYSE: I would beg the Court's indulgence for just
4 one minute, please.

5 THE COURT: Mm-hmm.

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

8 THE COURT: All right. Cross?

9 MR. WOODSON: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. WOODSON:

12 Q: Investigator Floyd, the last question she asked you was
13 about who you talked to. The only person you talked to was
14 Ms. Richardson?

15 A: As far as anybody listed in this case?

16 Q: Yes. As far as your investigation, did you talk to
17 anybody else other than Ms. Richardson?

18 A: Well, I spoke to the deputy. I spoke to Ms. Richardson.
19 I called the Care House. I called Dr. Saunders. I called Ms.
20 Hattie. I spoke to Mr. Gurley's father. I spoke to you.
21 That would be about it.

22 Q: So did you speak to Ms. Richardson's mother?

23 A: No, I did not.

24 Q: Did you speak to Ms. Richardson's older daughter?

25 A: No, I did not.

1 Q: Okay. You were aware though that the older daughter was
2 supposedly in the car when the incident happened over in Lake
3 City; correct?

4 A: I was aware, yes.

5 Q: Okay. And you didn't think it would be important to talk
6 to the older daughter?

7 A: Well, at that time, they did not see anything that
8 occurred.

9 Q: Okay. At that time, they didn't see anything?

10 A: They did not disclose that they saw anything happen in
11 the car.

12 Q: Okay. And Ms. Samantha Toney testified that her first
13 time coming forward was today; is that true as far as you
14 know?

15 A: I can't answer that question. I'm not sure.

16 Q: Okay. All right. So the -- the span of your
17 investigation was from the time you got the information until
18 the time that the warrant was issued; is that correct?

19 A: That's correct.

20 Q: All right. And after the warrant was issued, was there
21 any subsequent investigation after that?

22 A: Not in this case.

23 Q: Okay. When was your first time hearing about the
24 incident in Lake City where there was supposedly trouble
25 getting the child in the car? When was your first time

1 hearing that?

2 A: I don't remember. I'm sorry.

3 Q: Okay. You testified that typically the hospitals in
4 Florence County don't deal with children. Is that what I
5 heard you say?

6 A: In sexual abuse cases, that's correct.

7 Q: Are you aware that went to Carolinas Hospital
8 on March 3rd of 2013?

9 A: I'm aware that she went.

10 Q: Okay.

11 A: I'm not sure if she was seen or not.

12 Q: Okay. You're not sure?

13 A: No.

14 Q: Okay. So if I told you that there were medical records
15 related to her visit, would you be able to admit or deny that?

16 A: I have not seen medical records.

17 Q: Okay.

18 A: To my knowledge.

19 Q: Okay. And you also testified that you never talked to
20 . Is that standard policy for the Sheriff's Office
21 not to talk to children?

22 A: Well, it just depends on the case. A lot of times in
23 delayed disclosure, we don't. We just go ahead and refer them
24 out. If it's immediate disclosure, a lot of times I go out on
25 the scene to get what information I need to get to know if I

1 need to send them immediately to a medical provider or not.

2 So it all depends on the case.

3 Q: Okay. If had gone to the hospital and saw
4 somebody, would it be typical for them to call you at that
5 point?

6 A: The hospital?

7 Q: Yes.

8 A: It would be typical for them to notify 9-1-1.

9 Q: Okay. In this case though, you -- it did not occur that
10 way?

11 A: Not to my knowledge.

12 Q: Okay. All right. And so between 2013 and today, you
13 never did talk to ; is that correct?

14 A: That's correct.

15 Q: All right. Now, you had said something else during
16 direct that two of the incidents happened on the same date.
17 What two incidents are you talking about happened on the same
18 day?

19 A: Based on the forensic interview, the victim disclosed --

20 Q: Well, of your own knowledge, do you know what two
21 incidents happened on the same day?

22 A: My knowledge comes from the forensic interview.

23 Q: Okay. Then I'll strike that question. But your
24 understanding is in the forensic interview the testimony was
25 that two -- two incidents happened on one day?

1 A: That's correct.

2 Q: Okay. And were they two incidents at the house or was it
3 a car and a house incident?

4 A: I would have to review my notes.

5 Q: Okay.

6 A: Would you like me to do that?

7 Q: Please.

8 A: Okay.

9 (Whereupon, there is a pause in the proceedings, after
10 which the proceedings continue as follows.)

11 A: I can tell you about the four incidents. At this moment,
12 I can't tell you how I came up with two happened on the same
13 day, but I can tell you about all four incidents.

14 Q: Okay. Let me ask you a question. You said you were
15 referring to your notes. Are you actually referring to the
16 forensic interview report?

17 A: I was referring to my investigative narrative and to the
18 forensic interview report.

19 Q: Okay. And I have a copy of your investigative narrative.
20 Is it two pages?

21 A: That's correct.

22 Q: Okay. And in those two pages -- really one-and-three-
23 quarter pages -- it doesn't say that two incidents happened on
24 the same day, does it?

25 A: I can read it to you.

1 Q: I don't need you to read it. You can -- you can read
2 that sentence. Do you see that sentence where it says two
3 happened on the same day?

4 A: Well, there's many sentences. If you give me a minute, I
5 can read the report in its entirety.

6 Q: I'm not asking you to. My question is does your report
7 state that two incidents happened on the same day and, if it
8 does, I want you to read that sentence to the jury.

9 A: Okay. Can you allow me to read my report in its
10 entirety?

11 Q: Sure.

12 A: Okay.

13 Q: I thought that's what you were doing. Go ahead.

14 (Whereupon, there is a pause in the proceedings, after
15 which the proceedings continue as follows.)

16 A: No. My report does not say that.

17 Q: Okay. That's just something that you just said, but it's
18 not in there -- in the documentation?

19 A: It's not in this report.

20 Q: Is there another report that I don't have?

21 A: I -- I don't know if I had it in my notes or not, but to
22 my understanding I believed that there was two incidents in
23 one day.

24 Q: Okay. You have notes? You have handwritten notes?

25 A: I have notes.

1 Q: Okay. Where are your notes?

2 A: They're located at the office.

3 Q: And did you turn those over to the Solicitor's Office?

4 Because you're testifying to something that is not in your
5 report and you're saying there's other documentation that you
6 have?

7 A: I believed -- I believed that there was two incidents in
8 one day.

9 MR. WOODSON: Your Honor, I need to be heard off the
10 record -- I mean on the record outside the presence of the
11 jury.

12 THE COURT: All right. Members of the jury, if you
13 would, step into the jury room for just a moment.

14 (Whereupon, the jury exits the courtroom at 4:03 p.m.)

15 THE COURT: All right. Yes, sir?

16 MR. WOODSON: Your Honor, at this time, I would move for
17 a mistrial. This officer -- this investigator is testifying
18 that she has evidence that has not been turned over, and we're
19 in the trial of this very serious case. She's saying she has
20 notes -- handwritten notes that would be different from the
21 documentation that I've already received. That's very
22 important. And if there is documentation that she has that
23 contradicts what is -- all this with the two reports that I
24 have, then I think that's very important and I think that that
25 violates my client's constitutional rights if they have

1 little different. The issue was that they refused to give a
2 limiting instruction to the jury.

3 THE COURT: All right. It still seems to me everything
4 is working in your favor clearly, and she's still on the stand
5 to be cross-examined in that regard. I've looked at Rule 5
6 and I've read all the notes and I looked at some case law last
7 night and this morning in that regard.

8 And at this time, based on everything I've heard, I'm
9 going to deny your motion, but she's still on the stand and
10 you now have the notes and you can do your job, which I'm sure
11 you will. All right.

12 Now, we have another issue and that's about an expert of
13 some sort; is that correct?

14 MS. WYSE: I think that -- I think he also made an
15 objection to my opening statement. I don't know how he wants
16 to handle that.

17 THE COURT: Are we talking about --

18 MR. WOODSON: Your Honor, my object -- I didn't -- I
19 didn't object during the statement; so that wasn't preserved,
20 of course. But what I -- what my argument is is during her
21 opening statement she said that she's going to elicit
22 testimony about post-traumatic stress syndrome.

23 The only thing I've gotten I guess from any expert was a
24 fax a couple of days ago, and it basically was a
25 questionnaire. It was not a -- medical notes, medical

1 records, any diagnosis. It was just a questionnaire. I'm
2 finding out that there's other information out there because
3 today I'm seeing -- just moments ago I'm seeing there were
4 notes and it actually has people's names in it.

5 So it's caused me great concern. If she's going to put
6 this expert, I think we're going to be at the same spot that I
7 -- if --

8 THE COURT: Let's ask. Are you going to put up some sort
9 of expert about post-traumatic --

10 MS. WYSE: First of all, Your Honor, I never addressed
11 post-traumatic stress disorder at all in my opening statement;
12 so I'm not sure what he's talking about. Second of all, I was
13 given some notes back in December and basically they're
14 drawings by a counselor that the victim has seen. And I
15 showed these to Marcus. I had my assistant make copies of
16 them. Back -- you know, I showed them to him then. I gave
17 him copies of them then.

18 When we came in for docket last Monday, I showed them to
19 him again and I said do you have these. I just want to make
20 sure. And he said he did. I don't know exactly where he's
21 getting this idea that I have something that I haven't turned
22 over to him because I've given him everything I've got, and
23 I've also given him several opportunities to look at it.

24 THE COURT: I understand. Are you putting up an expert
25 that's saying the child has post-traumatic stress syndrome?

1 MS. WYSE: She is not a doctor. She is a counselor and
2 she has extensive back -- she has a background in psychology.
3 She's got over 20 years' experience working with sexual
4 assault victims. I was going to qualify her as an expert in
5 the field of sexual assault trauma and, you know, if -- she
6 did give me some stuff on PTSD. The first time I heard about
7 it was last week. As soon as I got it, I gave it to Mr.
8 Woodson.

9 If he wants to move to exclude anything about PTSD, then,
10 you know, that would be a motion to entertain at that time.
11 Like I said, she's not a medical doctor. She doesn't have an
12 M.D. or a Ph.D. behind her name.

13 THE COURT: Is she on your witness list?

14 MS. WYSE: She is.

15 THE COURT: All right.

16 MS. WYSE: And I also sent Mr. Woodson her resume and all
17 her stuff last week too.

18 THE COURT: Okay. Thank you.

19 MR. WOODSON: Your Honor, just for clarification, she is
20 correct that she has shown me those pictures, but the pictures
21 I have -- and I can show the Court -- they don't have any
22 notes on them. My argument is that today I was given
23 documentation with notes on it.

24 I have the same -- I have the picture. I just wasn't
25 aware that somebody came behind the child and was writing

1 notes and things that she said on the picture. I have not
2 seen this. I can show you -- and when we were sitting down
3 moments ago right here, I said, okay, let's flip and I was
4 flipping and flipping, and she saw everything that she had
5 sent me still stapled together and it was not this -- this
6 documentation with the -- with this person's handwritten notes
7 on it.

8 So my recollection is she did say PTSD during -- during
9 the -- the opening arguments. So if you want to review the
10 tape, you can, but that's going to be a major issue because I
11 don't want somebody who's not even a doctor saying that a
12 child has post-traumatic stress syndrome and then try to
13 relate it to a degree of reasonable medical certainty. I
14 don't think that that person is qualified, and we can address
15 that when we get to that road, but if her -- if the point of
16 qualifying her as an expert is to elicit that testimony then,
17 of course, I'm going to object.

18 THE COURT: Is that an issue?

19 MS. WYSE: Your Honor, the point of qualifying her as an
20 expert is the fact that she has tons of experience in sexual
21 assault trauma I mean and, you know, she can talk to the jury
22 about delayed disclosure. I mean she can just tell them a
23 whole lot of information that I can't and none of my other lay
24 witnesses can. That's the point of qualifying her as a --
25 well, that's one of the points of qualifying her as an expert

1 witness.

2 If he wants to make an objection to the PTSD, you know,
3 Your Honor, that's up to the Court to decide. She doesn't
4 have an M.D. behind her name and she doesn't have a Ph.D.
5 behind her name. So if that's something you want to --

6 THE COURT: Why don't we just cross that bridge when we
7 get there? I don't know who she is. I don't even know her
8 name or what her qualifications are. We'll just see when it
9 comes up and --

10 MS. WYSE: Okay.

11 THE COURT: -- certainly you can object at the
12 appropriate time. All right. Anything else?

13 MS. WYSE: Nothing further from the State.

14 THE COURT: Are you ready to go?

15 MR. WOODSON: Yes, sir.

16 THE COURT: Okay. Let's go ahead and bring them out.

17 THE BAILIFF: Yes, sir.

18 (Whereupon, the jury enters the courtroom at 10:35 a.m.)

19 THE COURT: All right. Good morning.

20 THE JURY: Good morning.

21 THE COURT: I want to mention though we have been out
22 here working trying to streamline this case. We're not just
23 sitting out here goofing off while you're stuck in the jury
24 room back there. I want to let you know that.

25 And I also noticed that one of the jurors has a

26

1 clipboard. Is that for taking notes? Or is that just a book
2 you're reading or --

3 THE JUROR: Just a book.

4 THE COURT: Okay. Good. We don't need to take any
5 notes. You just listen and pay attention and I think we'll
6 have everything we need.

7 All right. Mr. Woodson, I'll recognize you to continue
8 your cross examination.

9 MR. WOODSON: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. WOODSON:

12 Q: Good morning.

13 A: Good morning.

14 Q: During testimony yesterday, you indicated that you had
15 some additional notes. Were you able to locate some
16 additional notes?

17 A: I was.

18 Q: Okay. And where were those notes?

19 A: At my office.

20 Q: All right. And you have them with you now?

21 A: I do.

22 Q: Okay. And can you show the jury what your notes are
23 written on?

24 A: This is a manila folder.

25 Q: Okay.

1 MS. WYSE: Judge, I -- I can't hear her.

2 THE WITNESS: I'm sorry. Is it on? Okay. I'm sorry.

3 BY MR. WOODSON:

4 Q: And was anything in that folder?

5 A: Yes. The same thing that's in the forensic interview
6 and, of course, some phone numbers, like, the victim's date of
7 birth, the defendant's date of birth. You have a copy. I
8 don't think there's anything in this folder that hasn't been
9 put in your file.

10 Q: Okay. As of today; right?

11 A: Well --

12 Q: Of your notes?

13 A: Yes.

14 Q: Okay. All right. And is it standard for you to take
15 notes and not turn them over to the prosecutor?

16 A: Well, I wouldn't just -- I wouldn't say that this wasn't
17 turned over to the -- any information that's in here was
18 ultimately in the case file through the forensic interview or
19 my investigative narrative.

20 Q: Okay. Now, I want you to look at your notes and one of
21 the issues yesterday when I was cross-examining you is that
22 you said that it was your understanding that two incidents
23 happened on the same day.

24 A: That's correct. Based on the forensic interview, when
25 the child discloses incident three and four, she discloses it

1 together. So it was my assumption that that incident happened
2 around the same time or the same date. In my notes, you'll
3 see those two incidents combined in one paragraph together.

4 Q: And when did you allegedly write these notes?

5 A: As I was reviewing the video.

6 Q: Do you remember about when that was?

7 A: That was two years ago. I'm sorry.

8 Q: Okay. So the two incidents you're talking about are the
9 living room and the bedroom incident?

10 A: That's correct.

11 Q: All right. And you said -- well, is it your -- you said
12 you assumed that this happened on the same time, but you don't
13 have any -- after reviewing the reports, any documentation
14 that they happened on the same day?

15 A: The child discloses the living room and the bedroom at
16 the same time --

17 Q: But what can you --

18 A: -- in the forensic interview.

19 Q: What do you mean?

20 A: If you would like me to pull the forensic interview out,
21 I can --

22 Q: Well, no. Tell me what your understanding of that is.

23 A: When the forensic interviewer asked if any other
24 incidents occurred, she said yes, one in the living room and
25 one in the bedroom.

1 Q: Okay.

2 A: She discloses those incidents at the same time. So it
3 was my assumption at that time those incidents either happened
4 on the same day or around the same time because of the other
5 incidents were clearly defined separately.

6 Q: Okay. And again, you said that was your assumption;
7 correct?

8 A: That's correct.

9 Q: All right.

10 MR. WOODSON: Court's indulgence for one second. All
11 right.

12 Q: Do you have your report with you today?

13 A: My investigative narrative?

14 Q: Yes.

15 A: Yes.

16 Q: Okay. All right. Now, yesterday when we were talking
17 about the child being taken to Carolinas Hospital, is it your
18 understanding that the child was taken to Carolinas Hospital
19 on March the 6th?

20 A: Based on the report from the deputy, it says at that time
21 the complainant took her daughter to Carolinas Hospital, which
22 they referred her to her pediatrician.

23 Q: Okay. So she was taken to Carolinas Hospital?

24 A: Yes.

25 Q: All right. Did you review any medical records from

1 Carolinas Hospital or from the pediatrician?

2 A: I did not. She was sent to one of our doctors.

3 Q: Okay. And I think according to your notes, she was sent
4 to Dr. Kathy Saunders?

5 A: That's correct.

6 Q: What kind of doctor is she?

7 A: She's certified in the state, one of the top ten in child
8 physical and sexual abuse.

9 Q: Okay. And is she at the Care House?

10 A: No. She used to be at the Care House.

11 Q: Okay. And so you -- it's your understanding that she
12 actually went to Dr. Saunders?

13 A: That's correct.

14 Q: All right. And I just -- I saw Dr. Kathy Crawford. Is
15 that the same person as Dr. Kathy Saunders?

16 A: No. You did not see Dr. Craw -- Dr. Crawford in my
17 notes.

18 Q: Okay. Are you aware of a Dr. Crawford?

19 A: I believe she might be a therapist around the area.

20 Q: Okay. So those are two separate people. All right.

21 Now, I want to get into the time frames. Is -- based on your
22 notes and your report, your notes indicate that Denise
23 Richardson told you that she left -- I'm sorry. Teicher
24 Richardson told you that she left Mr. Gurley's home in 2011;
25 correct?

- 1 A: That's correct.
- 2 Q: She lived there between 2008 and 2011?
- 3 A: That's correct.
- 4 Q: So we're talking about a three-year time span?
- 5 A: That's correct.
- 6 Q: All right. Now, I think she testified on the stand --
- 7 you were in here when she testified; correct?
- 8 A: Yes.
- 9 Q: And do you recall her saying that she actually left in
- 10 2012?
- 11 A: I'm not sure to what she said about the dates.
- 12 Q: Well, if she had left in 2012, you would have put the
- 13 correct date in your notes; correct?
- 14 A: I called her on the telephone and I was talking to her
- 15 about this and I wrote down what she told me at the time.
- 16 Q: And your notes indicate 2011?
- 17 A: That's correct.
- 18 Q: All right. And also in your notes you indicate at the --
- 19 at the very end that the last incident your understanding was
- 20 -- it was your understanding that the last incident happened
- 21 in 2011?
- 22 A: September 2011.
- 23 Q: All right.
- 24 A: That's correct.
- 25 Q: Okay. And that was the incident going to Lake City?

1 A: Because she believed that she had the car rental around
2 September 2011 and that was the incident that the child
3 disclosed, yes.

4 Q: Okay. And at that time, did she indicate whether her
5 daughter was in high school or college in 2011?

6 A: She indicated the child that was in college that was in
7 the car.

8 Q: Okay. All right. And any -- any of the other testimony
9 regarding -- well, let me ask it this way. Did you talk to
10 the older sister or the grandmother?

11 A: No, I did not.

12 Q: Okay. Were you -- was there any information given to you
13 during your investigation from the grandmother or the sister
14 -- the older sister?

15 A: No. I did not.

16 Q: Okay. And isn't it true that even though your
17 investigative notes say that the last incident happened in
18 September 2011 that the allegation in the report is that was
19 the first incident? Do you understand what I'm saying?

20 MS. WYSE: Objection, Your Honor. He's basing his
21 question on hearsay. It's not in evidence.

22 THE COURT: Let me hear the question again, if you would.

23 MR. WOODSON: My question was, Your Honor, regarding the
24 dates and what her understanding of the dates. I don't
25 remember how exactly I worded it, but I was talking about

1 September 2011, and in her report -- I asked her did she
2 testify that that was the last incident and she said yes. And
3 my follow-up was isn't it correct that based on the report
4 that she's been referring to that that was the first incident,
5 and that's when the objection came in.

6 THE COURT: All right. If that's the case, I'm going to
7 overrule it. Go ahead and ask it.

8 BY MR. WOODSON:

9 Q: Is it your understanding that the -- the -- that was the
10 first incident?

11 A: The incidents were disclosed and I took the time frame of
12 the incident being in the car when I spoke to Ms. Teicher
13 Richardson of that being September 2011. So then I tried to
14 put them in order.

15 Q: You tried? Okay.

16 A: Yes.

17 Q: And that's -- that's -- that's where I'm going. How --
18 how did you come up with the dates?

19 A: In speaking with Ms. Richardson --

20 Q: Okay.

21 A: -- about the incident in the car. She said that she had
22 that rental car around September 2011. So that was how I was
23 able to date that.

24 Q: Okay. How were you able to date -- go back to the
25 November 2010?

1 A: November 2010 -- that was the -- around the holiday
2 incident because they were not there. It's
3 Thanksgiving/Christmas when the child --
4 Thanksgiving/Christmas 2010, they were still in the home, but
5 Thanksgiving/Christmas 2011, they were not since Ms.
6 Richardson told me that she left in September 2011.

7 Q: Okay. And did she give you any indication as to why she
8 left the home?

9 A: No, she did not.

10 Q: Okay.

11 MR. WOODSON: I don't have any other questions, Your
12 Honor.

13 THE COURT: All right. Thank you. Any redirect?

14 MS. WYSE: Just briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. WYSE:

17 Q: Investigator, when a warrant is signed and a person goes
18 through the bond proceedings, what is a common part of the
19 bond?

20 A: No contact with the victim or their family in any way,
21 shape or form.

22 Q: And that's indirect or direct; right?

23 A: That's correct.

24 Q: And that's just normal for almost every single case;
25 right?

1 A: I always advise the victim to have no contact because if
2 -- if a judge is going to tell the defendant no contact, both
3 need to have no contact.

4 Q: And that's just for safeguarding all the parties; right?

5 A: That's correct.

6 Q: Okay. Thank you.

7 MS. WYSE: I have no further questions.

8 THE COURT: Okay.

9 MR. WOODSON: Just to follow up with that.

10 RECROSS-EXAMINATION

11 BY MR. WOODSON:

12 Q: Are you aware that Ms. Richardson was trying to maintain
13 contact with Ms. Denise Gurley?

14 A: I cannot remember if Ms. Richardson told me that or not.

15 Q: Did -- did Ms. Richardson ever allege that she was
16 threatened to you by the Gurleys or anybody that came to her
17 house? Were you involved in that?

18 A: Again, that being over two years ago, I cannot right
19 offhand remember any -- any of that.

20 Q: Okay. That's a pretty serious allegation -- wouldn't you
21 agree? -- that if somebody is trying to tamper with a witness
22 or -- or intimidate them?

23 A: If I was advised, I would have done something about it.

24 Q: Okay. And do you recall being advised that somebody had
25 threatened or come to her house or tried to do her any harm?

1 my understanding -- I think Ms. Crawford is going to testify
2 about what the child said, and my understanding based on 17-
3 23-175, before she can give statements and things of that
4 nature, the child has to testify, and then the Court has to --
5 I think that that applies to expert -- I usually -- usually
6 deal with that statute when I'm talking about forensic
7 interviews and the hearing that has to be conducted before the
8 tape is admissible, but it -- the reading of the statute -- it
9 applies to any statement. If she's going to get up here and
10 say what the child says, she can't do that until after the
11 child testifies. That's my position based on the statute.

12 THE COURT: All right. Let me hear from the State.

13 MS. WYSE: I'm sorry, Your Honor. I was busy when he
14 read the statute out. What statute was that?

15 MR. WOODSON: It is 17-23-175. It talks about out-of-
16 court statements of a child under the age of twelve, and my
17 understanding is she's going to get up here and testify that
18 the child told her this, the child told her that. The child
19 has to testify first. But like I said, a lot of times we use
20 this statute in dealing with the forensic interviews, but --
21 but it also appears to be applicable to any expert.

22 MS. WYSE: Well, Your Honor, in response to that, I did
23 inform the Court that I'm planning to qualify her as an expert
24 in the area of child sexual trauma or sexual assault trauma.
25 Your Honor, as far as is actually concerned, she

1 still can only testify to time and place, and I think that's a
2 hearsay exception. I wouldn't try to get any other kind of
3 hearsay in through Ms. Crawford, but if that's cause of
4 concern, of course, I can go ahead and put on the
5 stand.

6 THE COURT: So if you do that, you've obviously solved
7 the problem with the statute, but if you just get into time
8 and place, that's not hearsay anyway. So it sounds like
9 either way is fine with me, just so long as you comply with
10 what you said.

11 MR. WOODSON: Okay. Then I guess we would also have
12 questions if she's going to testify. Subsection (a)(2) says
13 that there has to be a recording -- some sort of recording of
14 the -- of this statement of the child. So I don't know if
15 this person can testify based on this statute as to anything
16 the child said because it wasn't a recorded event which is
17 required by Subsection (a)(2). So we're still going to be in
18 the same spot.

19 THE COURT: Well, she can testify as to time and place
20 and her knowledge of --

21 MS. WYSE: Judge --

22 THE COURT: -- things like this --

23 MS. WYSE: Right.

24 THE COURT: -- but not what the child said.

25 MS. WYSE: Right, Judge. I mean it's -- she's an expert

1 witness and it wouldn't fall under this statute at all. I
2 mean her -- her testimony as an expert witness doesn't come in
3 under this statute. I mean she didn't do the forensic
4 interview; so this statute doesn't apply to her.

5 THE COURT: I see. I gotcha.

6 MR. WOODSON: This statute is not limited to forensic
7 interviews. It talks about any statement that a child makes
8 outside of court, and she's -- I mean her testimony -- she's
9 going to say that I examined this child, this is what I was
10 told. I mean that --

11 THE COURT: She's not going to do that according to what
12 the State just told me. Is that right? Other than time and
13 place?

14 MS. WYSE: Right. I mean, you know, basically, Judge, if
15 it -- if it would clear the matter up, I'll be happy to put
16 on the stand first. I'll be happy to call her
17 first, but I don't --

18 THE COURT: All right.

19 MS. WYSE: -- think that the objections Mr. Woodson is
20 making apply to this witness.

21 THE COURT: If you want to call the child first, go
22 ahead.

23 MS. WYSE: I will, Your Honor. Do I need to announce
24 that in front of the jury or what do you want me to do?

25 THE COURT: Yeah. Let's do that.

1 MS. WYSE: Okay.

2 THE COURT: All right. Go ahead and bring out the jury.

3 MS. WYSE: Oh, and, Your Honor, I would like to renew the
4 motion to clear the courtroom completely.

5 THE COURT: Are these any of your witnesses? If they're
6 not witnesses --

7 MS. WOODSON: No, Your Honor, but I think you had ruled
8 that when the child testifies, the courtroom --

9 THE COURT: Yes. That's right. That's a good idea.

10 MR. WOODSON: So you already ruled that.

11 THE COURT: All right. Everybody needs to leave the
12 courtroom while the child is testifying.

13 THE BAILIFF: Yes, sir.

14 THE COURT: If you'll go ahead and clear it.

15 MS. WYSE: And, Your Honor, you -- is it all right if the
16 investigator stays?

17 THE COURT: I have no objections.

18 MS. WYSE: Okay.

19 THE COURT: Do you, Mr. Woodson?

20 MR. WOODSON: No, I don't.

21 MS. WYSE: And then Mr. Richardson is going to stay
22 because he's assisting me.

23 THE COURT: He's your lawyer. That's fine.

24 (Whereupon, there is a pause in the proceedings as the
25 courtroom is cleared of audience, after which the

1 proceedings continue as follows.)

2 THE BAILIFF: Should I bring them out, Judge?

3 THE COURT: Yes. Go ahead and bring them out.

4 (Whereupon, the jury enters the courtroom at 10:55 a.m.)

5 (Whereupon, there is a pause in the proceedings until the
6 witness enters the courtroom, after which the proceedings
7 continue as follows.)

8 THE COURT: If the State will call your next witness.

9 MS. WYSE: Thank you, Your Honor. At this time, the
10 State would call to the stand.

11 THE COURT: Yes, ma'am.

12 THE CLERK: If you will, walk up there to the Bible and
13 put your left hand on the Bible for me and raise your right
14 hand.

15 THE COURT: Other hand.

16 THE CLERK: Switch the other hand.

17 THE COURT: Good job.

18 THE CLERK: There you go. Do you swear to tell the
19 truth, the whole truth, and nothing but the truth, so help you
20 God?

21 THE WITNESS: Yes, ma'am.

22 THE CLERK: Okay. Walk around and have a seat in that
23 chair and tell us your full name, please.

24 THE WITNESS:

25 MS. WYSE: Your Honor, may I approach the court reporter,

1 please?

2 THE COURT: Sure.

3 MS. WYSE: Thank you.

4 THE COURT: You may want to pull that microphone around
5 where she's looking towards it.

6 MS. WYSE: Talk right into that. Okay?

7 , being first
8 duly sworn, testifies as follows:

9 DIRECT EXAMINATION

10 BY MS. WYSE:

11 Q: Good morning, .

12 A: Good morning.

13 Q: You talk really loud into that microphone. Okay?

14 A: Yes, ma'am.

15 Q: Okay.

16 MS. WYSE: Can everybody hear her?

17 Q: How old are you?

18 A: Ten.

19 Q: What grade are you in?

20 A: Fourth grade.

21 Q: All right. And where do you go to school?

22 A: Briggs Elementary.

23 Q: Do you like school?

24 A: Yes, ma'am.

25 Q: Really?

1 A: Yeah.

2 Q: Okay. All right. , do you know why we're here
3 today?

4 A: Yes, ma'am.

5 Q: And can you tell us why you're here today?

6 A: Because I was sexually assaulted.

7 THE COURT: I think she's going to have to speak up just
8 a little bit to make sure that man back there can hear her.

9 A: Because I was sexually assaulted.

10 Q: Okay. Now, who sexually assaulted you?

11 A: B.G. Gurley.

12 Q: Can you say that one more time?

13 A: Bryant Gurley.

14 Q: Okay. Do you know if he's here today?

15 A: Yes, ma'am.

16 Q: Okay. Is he -- can you kind of point in his general
17 direction?

18 A: (Gesturing)

19 Q: All right. How do you know him?

20 A: He was my -- he's my god-brother.

21 THE COURT: I'm not sure if they can hear. If you can't
22 hear in the corner, let me know. If you don't raise your
23 hand, I'll assume you can hear her.

24 Q: Talk just a little bit louder, honey.

25 A: He was my god -- god-brother.

- DIRECT BY MS. WYSE

- 1 Q: All right. And did you ever live with his dad and his
2 stepmom?
- 3 A: Yes, ma'am.
- 4 Q: Do you remember when you lived with them?
- 5 A: Yes, ma'am.
- 6 Q: Can you tell us what grade you were in?
- 7 A: Between first and second.
- 8 Q: Okay. And who else lived there with you?
- 9 A: My mom.
- 10 Q: All right. Now, did Bryant live at the house all the
11 time?
- 12 A: No, ma'am.
- 13 Q: Can you tell us how often he would come by?
- 14 A: On the holidays and other days, like, some of the
15 holidays and some other days.
- 16 Q: Like weekends?
- 17 A: Yeah.
- 18 Q: Okay. Can you tell us what he did to you?
- 19 A: He put his hands on my private parts.
- 20 Q: Did he do this more than once?
- 21 A: Yes, ma'am.
- 22 Q: Can you remember how many times he did it?
- 23 A: Four.
- 24 Q: All right. Do you remember any details about any of
25 these incidents?

1 A: Yes, ma'am.

2 Q: Can you tell me what those details are?

3 A: Yes, ma'am.

4 Q: Take your time and just tell me what you remember.

5 A: First upstairs, then on the couch, then under the covers,

6 then in the back of the car.

7 Q: Okay. I'm going to show you some photographs -- or some

8 pictures and I want you to identify them for me. Okay?

9 A: Yes, ma'am.

10 Q: Can you tell me what that is?

11 A: Me under the covers with him.

12 Q: And that's one of the incidents that you're talking

13 about?

14 A: Yes, ma'am.

15 Q: Can you tell me what this is, if you -- and I want you to

16 look at that. Is that State's Exhibit Number 2?

17 A: Yes, ma'am.

18 Q: Okay. I want you to look at what's been marked as

19 State's Exhibit Number 3, and can you remember drawing that?

20 A: Yes, ma'am.

21 Q: Do you remember what that's about?

22 A: Me telling my mom about what was happening.

23 Q: And do you remember what you were telling her about in

24 that picture?

25 A: Yes, ma'am.

1 Q: And what was that?

2 A: That I was sexually assaulted.

3 Q: Okay. And I want you to look at what's been marked as
4 State's Exhibit Number 4, and can you tell me what that is?

5 A: Me in the back of the car and him.

6 Q: Do you remember how you felt in the back of the car?

7 A: Scared.

8 Q: Okay. All right.

9 MS. WYSE: Your Honor, at this time, I'd like to move
10 State's Exhibit Number 2, 3, and 4 into evidence, please.

11 THE COURT: All right. Any objections?

12 MR. WOODSON: No, Your Honor.

13 THE COURT: All right. State's 2, 3, and 4 are into
14 evidence without objection.

15 (Whereupon, State's Exhibit 2, 3, and 4, each a drawing,
16 are admitted into evidence.)

17 MS. WYSE: I want to beg the Court's indulgence --

18 THE COURT: Sure.

19 MS. WYSE: -- for just one minute. Okay? I'll be right
20 back.

21 (Whereupon, there is a pause in the proceedings.)

22 MS. WYSE: I don't have any further questions for you,
23 Please answer any questions that Mr. Woodson has
24 to ask you.

25 THE WITNESS: Yes, ma'am.

1 THE COURT: Okay. Thank you. Mr. Woodson?

2 MR. WOODSON: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. WOODSON:

5 Q: my name is Marcus, and I want to ask you a
6 couple of questions. Okay?

7 A: Yes, sir.?

8 Q: And I want you to relax. I'm not going to try to trick
9 you. I just want to get some information. Okay?

10 A: Yes, sir.

11 Q: All right. Are you okay?

12 A: Yes, sir.

13 Q: Okay. How old were you, if you can recall, when you
14 moved in with the Gurleys?

15 A: I can't remember that.

16 Q: You can't remember? Okay. Okay. And if I ask you
17 something and you don't remember or if I ask you something
18 that you don't understand, just say, look, I don't understand,
19 and I'll be glad to repeat it. Okay?

20 A: Yes, sir.

21 Q: All right. Who lived in the house with -- when you were
22 with the Gurleys, who all was in the house?

23 A: Me, my mom, and his mom and his dad and his brother.

24 Q: Okay. And at some point, you had a sister there?

25 A: Sometimes.

- 1 Q: Okay. And what's your sister's name?
- 2 A: Samantha Toney.
- 3 Q: Okay. She's a little bit older than you?
- 4 A: Yes, sir.
- 5 Q: Okay. And when -- when you were in the house, where did
- 6 y'all sleep?
- 7 A: We slept in another room near the -- near the upstairs.
- 8 Q: Okay. And was there a point where y'all moved
- 9 downstairs?
- 10 A: We were -- we stayed downstairs, like, the entire time.
- 11 Q: Okay.
- 12 A: But we were near the steps where we -- where you go
- 13 upstairs.
- 14 Q: Okay.
- 15 A: We were near there.
- 16 Q: Okay. All right. Now, at some point y'all moved out of
- 17 that house; is that right?
- 18 A: Yes, sir.
- 19 Q: Do you know why?
- 20 A: No, sir.
- 21 Q: Okay. After y'all moved out, do you know if your mom
- 22 still kept in touch with Ms. -- Ms. Denise and Mr. Ken? Big
- 23 Ken?
- 24 A: No, sir.
- 25 Q: Okay. How was your relationship with Denise and Big Ken?

1 A: It was good.

2 Q: It was good?

3 A: Yes, sir.

4 Q: Okay. And I heard you tell Ms. Catherine that -- well,
5 strike that. Strike that. There were a couple incidents that
6 you talked about, but I want to go way back. The morning that
7 you told your mom -- do you remember that morning?

8 A: Yes, sir.

9 Q: Tell me did she ask you what -- did anything happen to
10 you or was it a situation where you just started telling her
11 some things?

12 A: I started telling her some things.

13 Q: Okay. Prior to you saying those things, did she kind of
14 -- was she talking about anybody in the Gurleys' house?

15 A: No, sir.

16 Q: Okay. So was it a situation where you woke up and --
17 well, tell me what happened that morning?

18 A: I woke up. We were -- she was getting -- she was helping
19 me get ready for school and --

20 Q: And how does she typically do that? What does she do to
21 help you get ready for school?

22 A: She, like, woke me up and told me to go to take a shower
23 and to --

24 Q: Okay.

25 A: -- brush my teeth.

1 Q: Okay. And go ahead. And what happened?

2 A: And I just felt like I needed to tell her because I've
3 been keeping it. Like, I wasn't telling everybody. I wasn't
4 telling anybody. So I just went -- I just needed to tell her
5 that morning.

6 Q: Okay. And there were some drawings. Did you draw
7 anything that day?

8 A: No, sir.

9 Q: Okay. Did you talk to any police officers or anything of
10 that nature?

11 A: Yes.

12 Q: You did? Do you remember if it was that day? If you
13 don't, that's fine, but do you remember when it was?

14 A: No, sir.

15 Q: You don't? All right. Now, at some point did your mom
16 take you to the hospital?

17 A: Yes, sir.

18 Q: And then did you go to any -- do you have a family
19 doctor?

20 A: Yes, sir.

21 Q: Okay. And did you go to the family doctor after that?

22 A: No, sir.

23 Q: You don't recall? Okay. And, , if you need
24 any water to drink, I can -- I can get some for you. Are you
25 okay?

1 A: Yes, sir.

2 Q: All right. Let's talk about some of the different
3 incidents. One of the drawings -- and I'm just going to ask
4 you about what you drew. I'm going to just hand it to you.
5 Is that okay?

6 A: Yes.

7 (Whereupon, the witness is handed State's Exhibit Number
8 4 to review.)

9 Q: Just take a look at it. One of the drawings -- in that
10 drawing, is that supposed to be the time where y'all went to
11 Lake City?

12 A: Yes, sir.

13 THE COURT: Why don't you identify the number?

14 MR. WOODSON: I'm sorry, Judge. I didn't even think to
15 look at it. It -- this is State's Exhibit 4.

16 BY MR. WOODSON:

17 Q: Do you see the number four right there?

18 A: Yes, sir.

19 Q: Okay. Hold on to it. All right. Now, in that picture,
20 your mom is in the front seat; right?

21 A: Yes, sir.

22 Q: Is that -- that's the person that's behind the wheel?

23 A: Yes, sir.

24 Q: All right. When this was -- and I want to get an
25 understanding of what you're saying. When you say that this

1 happened, was your mom in the front seat?

2 A: No, sir.

3 Q: Where was your mom?

4 A: She was talking to my grandmother --

5 Q: Was she --

6 A: -- in her house.

7 Q: She was in the house?

8 A: Mm-hmm.

9 Q: And who was in the car with you?

10 A: My sister.

11 Q: Okay. And at this point, were you still in a car seat or
12 a booster seat? I'm sorry. Because you would -- you wouldn't
13 have been an infant. You would -- would you have been in a
14 booster seat?

15 A: Yes, sir.

16 Q: And were you sitting behind your sister or behind where
17 your mom -- where your mom was driving?

18 A: Where my mom was driving.

19 Q: Okay. All right. And do you remember what kind of car
20 it was?

21 A: No, sir.

22 Q: If you don't, that's fine. It's fine. It's not -- it's
23 not a big deal. So what was your -- well, let me ask this
24 way. Had -- were y'all getting ready to leave at that point
25 or had y'all just gotten to your grandmother's house?

1 A: We were getting ready to leave.

2 Q: Okay. So you and -- how did you -- how did everybody get
3 in the car? Did your mom tell you to leave and go get in the
4 car? How did that happen?

5 A: No. We just, like, all piled -- we -- there was two
6 people in the front and two people in the back.

7 Q: Okay.

8 A: So, yeah.

9 Q: Yes, ma'am. Let me -- let me -- let me ask it this way.
10 You said that your mom was still in the house talking to your
11 grandmother?

12 A: Mm-hmm.

13 Q: And you -- while your mom was talking to your
14 grandmother, you and your sister went out to the car?

15 A: No, sir. We were still in the car. We were just -- we
16 stayed in the car. My mom just, like, went out the car to
17 talk to her mom for a moment.

18 Q: Oh. So during that incident you never got out of the
19 car?

20 A: No, sir.

21 Q: Okay. So y'all drove to Lake City. Every -- you, your
22 sister, and you said Bryant stayed in the car?

23 A: Yes, sir.

24 Q: And then your mom went in?

25 A: Yes, sir.

- 1 Q: And how long was she in there?
- 2 A: For ten or fifteen minutes.
- 3 Q: Okay. And then she came back and drove off?
- 4 A: Yes, sir.
- 5 Q: Okay. Did you speak to your grandma that day?
- 6 A: No, sir.
- 7 Q: Okay. Do you remember how old you were?
- 8 A: No, sir.
- 9 Q: Okay. Okay. So how -- where was Bryant sitting? Where
- 10 do you say Bryant was sitting in this incident?
- 11 A: Behind my sister.
- 12 Q: He was directly behind your sister?
- 13 A: Yes, sir.
- 14 Q: Okay. And I'm trying to get an understanding. You said
- 15 that at that point -- at some point you said that he touched
- 16 you. Did he slide over closer to you?
- 17 A: Yes, sir.
- 18 Q: Okay. What was your sister doing?
- 19 A: She was, like, looking in front of the car and watching
- 20 to make sure nobody was trying to get in to take the car or
- 21 she was either looking at her phone.
- 22 Q: Okay. All right. And so when your mom came to the car,
- 23 was -- is it your -- are you saying that Bryant was still
- 24 sitting next to you?
- 25 A: No, sir.

- 1 Q: What happened? What are -- are you saying he moved over?
- 2 A: Yes, sir.
- 3 Q: Okay. And was this -- was this at night or was it during
- 4 the day?
- 5 A: During the day.
- 6 Q: Okay. And -- okay. All right. I don't know if I -- I
- 7 think I asked you this, but I'm not sure what your answer was.
- 8 Were you in a booster seat?
- 9 A: Yes, sir.
- 10 Q: You were in a booster seat?
- 11 A: Yes, sir.
- 12 Q: Did you have on a seatbelt at the time?
- 13 A: Yes, sir.
- 14 Q: Did you have a seatbelt on the whole time?
- 15 A: Yes, sir.
- 16 Q: Okay. All right. Just one second, . When --
- 17 when you were with the Gurleys, who was typically home? Was
- 18 Ms. Denise there a lot?
- 19 A: Yes, ma'am. Yes, sir.
- 20 Q: Okay. That's okay. And you -- would you ride the bus to
- 21 and from school?
- 22 A: Yes, sir.
- 23 Q: Who would get you off the bus?
- 24 A: My mom or Neecy.
- 25 Q: Your mom or -- I'm sorry.

1 A: My mom or Denise.

2 Q: Okay. Okay. Were there any times when Little -- did
3 y'all call him Little ?

4 A: Yes, sir.

5 Q: Did he get you off the bus too?

6 A: No, sir.

7 Q: Okay. Do you recall if there was a rule in the house
8 where -- that you weren't supposed to be in the bedroom
9 together with the older boys? Was that a rule of the house
10 that you remember?

11 A: Yes, sir.

12 Q: Okay. One of the incidents you say happened was upstairs
13 in the music room I think it's called?

14 A: Yes, sir.

15 Q: Okay. And -- and correct me if I'm wrong, but is it my
16 under -- it's my understanding that you said this was during,
17 like, a family get-together?

18 A: Yes, sir.

19 Q: Was it -- if you remember, was it the 4th of July?

20 A: I can't remember.

21 Q: Do you remember was it hot or cold at the time?

22 A: Hot.

23 Q: It was hot?

24 A: Yes, sir.

25 Q: Okay. And was it a lot of people?

- 1 A: Yes, sir.
- 2 Q: Okay. And I think you said that you had some cousins
3 there?
- 4 A: Yes, sir.
- 5 Q: Okay. And one of the things that you said is that a
6 friend walked up and that's why it stopped. Do you remember
7 saying that?
- 8 A: Yes, sir.
- 9 Q: Who was the friend?
- 10 A: I can't remember.
- 11 Q: You can't remember? Okay. Did you typically have
12 friends to come over and visit?
- 13 A: No, sir.
- 14 Q: Okay. So when the friend came in, that's the point where
15 you said it stopped; right?
- 16 A: Yes, sir.
- 17 Q: Did the friend come in and talk to you and -- and Bryant?
- 18 A: No. He was just trying to find out where I was.
- 19 Q: Okay. So it was a boy?
- 20 A: Yes.
- 21 Q: Was it an older boy or younger boy?
- 22 A: Younger.
- 23 Q: Younger than you?
- 24 A: No, sir.
- 25 Q: Okay. About how old would you say the friend was?

- 1 A: I guess he was the same age as me.
- 2 Q: Okay. And then what happened after that?
- 3 A: We went --
- 4 Q: Did y'all go downstairs?
- 5 A: Yes, sir.
- 6 Q: How did y'all end up getting upstairs? Do you understand
- 7 my question?
- 8 A: No, sir.
- 9 Q: Okay. Was it a situation where somebody said, hey, let's
- 10 go upstairs or were you upstairs and somebody came upstairs
- 11 while you were up there?
- 12 A: I was upstairs.
- 13 Q: You were already upstairs?
- 14 A: Yes, sir.
- 15 Q: What were you doing up there?
- 16 A: I was playing with my games and stuff.
- 17 Q: What kind of games did you play upstairs?
- 18 A: My, like, DS and --
- 19 Q: Okay. All right. And so I -- based on that, so you're
- 20 saying that you were upstairs and at some point I'm assuming
- 21 you say Bryant came upstairs?
- 22 A: Yes, sir.
- 23 Q: Okay. Was it -- was there --
- 24 MR. WOODSON: Strike that. Court's indulgence for one
- 25 second.

1 THE COURT: Mm-hmm.

2 MR. WOODSON: Thank you, Your Honor.

3 BY MR. WOODSON:

4 Q: All right. Another incident, -- let me back
5 up. Did -- does -- was there a video game system upstairs
6 that you remember?

7 A: No, sir.

8 Q: Okay. Was there a video game system in Ken -- Little
9 Ken's room?

10 A: Yes, sir.

11 Q: Okay. Were there times that you would play the video
12 game in Little Ken's room?

13 A: Yes, sir.

14 Q: All right. And when you did play the video game in that
15 room, Little Ken was always in there?

16 A: Yes, sir.

17 Q: Okay. All right. Now, you said there was another
18 incident I think in the bedroom; is that correct?

19 A: No, sir. It was in the living room.

20 Q: Okay. Okay. So --

21 THE COURT: If she would, speak up just a little louder.
22 He couldn't hear her.

23 MR. WOODSON: I'm sorry.

24 THE COURT: Do you want to re-ask it?

25 BY MR. WOODSON:

- 1 Q: You -- are you all right?
- 2 A: Yes, sir.
- 3 Q: Okay. Okay. You said the living room? Is that what you
- 4 just said?
- 5 A: Yes, sir.
- 6 Q: All right. So let me -- let me go through them now, and
- 7 correct me if I'm wrong.
- 8 A: Yes, sir.
- 9 Q: The vehicle --
- 10 A: Yes, sir.
- 11 Q: -- is one. Music room?
- 12 A: Yes, sir.
- 13 Q: And then you just said living room?
- 14 A: Yes, sir.
- 15 Q: And where was the last one that you say happened?
- 16 A: I can't remember.
- 17 Q: Okay. Did -- well, let me ask it this way. Did you tell
- 18 anybody that there was an incident in a bedroom while you were
- 19 watching TV?
- 20 A: No, sir.
- 21 Q: Okay. Do you remember where the fourth one was? And if
- 22 you want to -- I mean just think about it. You don't have to
- 23 rush to give an answer, but vehicle, music room, living room,
- 24 and do you recall where you say the fourth one was?
- 25 A: No, sir.

1 Q: Okay. That's okay. All right. And the -- the living
2 room incident -- is that the one with the arching of the
3 eyebrows?

4 A: Yes, sir.

5 Q: Okay. Do you -- do you have an iPhone or did you ever
6 have an iPhone at one point?

7 A: No, sir.

8 Q: Did you ever text anybody and -- did you ever text any of
9 Ms. Denise's brothers?

10 A: No, sir.

11 Q: Okay. All right. After the last time that you said that
12 something happened, did you see Bryant anymore?

13 A: No, sir.

14 Q: Okay. Do you remember the last time you saw Bryant?

15 A: No, sir.

16 Q: You don't?

17 MR. WOODSON: Court's indulgence. Last time, Your Honor.
18 All right.

19 BY MR. WOODSON:

20 Q: I'm about finished, . I've just got another --
21 do you -- do you recall going to the mall and seeing Bryant
22 when he was working with your mom?

23 A: Yes, sir.

24 Q: Okay. And do you think that would have been around the
25 last time you saw him?

1 A: Yes, sir.

2 Q: Okay. Have you talked to anybody other than your mom and
3 I guess to police and things like that? Have you talked to
4 anybody in Bryant's family?

5 A: No, sir.

6 Q: Okay. Were you -- were you upset when you moved out of
7 Bryant's house?

8 A: No, sir.

9 Q: Okay. Do you know if your mom was upset about moving
10 from Bryant's house?

11 A: No, sir.

12 Q: I'm saying Bryant's house. I apologize. Mr. Ken and Ms.
13 Denise's house?

14 A: No, sir.

15 Q: Okay. Where did y'all go to live after that?

16 A: We went to a hotel.

17 Q: Okay. How long were y'all in that hotel?

18 A: I can't remember.

19 Q: Was it a long time or a short time?

20 A: Short time.

21 Q: Okay. And then where did -- where did y'all go after
22 that?

23 A: We went to an apartment.

24 Q: Okay. Did your mom talk about the Gurleys any around
25 you?

1 A: No, sir.

2 Q: So after you moved she didn't mention their names?

3 A: No, sir.

4 Q: All right. When you were growing up, did your mom tell
5 you things about --

6 MR. WOODSON: Strike that, Your Honor. I don't have any
7 other questions, Your Honor.

8 THE COURT: All right. Any redirect?

9 MS. WYSE: No, Your Honor.

10 THE COURT: All right. You may step down. Thank you.
11 All right. If you will, call your next witness.

12 MS. WYSE: Thank you, Your Honor. The State would call
13 Kathy Crawford. Judge, I would ask at this time that Ms.
14 Floyd be released from her subpoena and be allowed to leave if
15 that is okay.

16 THE COURT: Any objections?

17 MR. WOODSON: No objection, Your Honor.

18 THE COURT: All right. She's released.

19 (Whereupon, there is a pause in the proceedings until the
20 witness enters the courtroom, after which the proceedings
21 continue as follows.)

22 MR. WOODSON: Your Honor?

23 THE COURT: Yes, sir?

24 MR. WOODSON: Can we approach?

25 THE COURT: Sure.

1 truth, so help you God?

2 THE WITNESS: Yes, I do.

3 THE CLERK: Please be seated and state your full name for
4 the record.

5 THE WITNESS: My name is Kathy Fox Crawford.

6 KATHY CRAWFORD, being first duly
7 sworn, testifies as follows:

8 DIRECT EXAMINATION

9 BY MS. WYSE:

10 Q: Good morning, Ms. Crawford. How are you doing?

11 A: I'm doing okay. Thank you for asking.

12 Q: Good. Good. Ms. Crawford, what do you do?

13 A: I'm a licensed counselor. I'm licensed in the field of
14 psychology. I have a master's degree, which is a couple of
15 years beyond a bachelor's degree. I've been working with
16 crime victims with sexual assault and criminal domestic
17 violence victims going on 26 years now.

18 Q: Wow. All right. Where did you get your college degree?

19 A: Okay. I'm from the Appalachian Mountains. I'm not from
20 South Carolina, but I've lived here almost 20 years. I got my
21 undergraduate degree from Mars Hill College. It's now a
22 university, but it was a college back in the '80s.

23 Q: And what -- what did you get a degree in?

24 A: I had a double major in psychology and education.

25 Q: All right. And then where did you go after that?

KATHY CRAWFORD - DIRECT BY MS. WYSE

1 A: Okay. I got my master's degree from Radford University
2 in Virginia.

3 Q: And what master's? You said you had a --

4 A: I got a master's degree -- a Master of Science degree in
5 counseling psychology.

6 Q: Okay. And where did you work after that?

7 A: Okay. I have worked with the state of South Carolina as
8 a psychologist up in Greenville, and been here in Florence at
9 Pee Dee Center, and I have been -- I taught at Greenville Tech
10 and Florence-Darlington Tech. I taught psychology, and I've
11 been in private practice since the late '90s.

12 Q: Okay. And what do you do in your private practice?

13 A: Okay. I work with adults and children and families, and
14 probably about 50 percent of my caseload -- I may see 30
15 people a week. About 50 percent of my caseload at any given
16 time is usually a crime victim or someone from -- that was
17 sexually assaulted or criminal domestic violence.

18 Q: Okay. Now, what kind of training have you had?

19 A: Okay. Before you can be licensed with the state, you
20 have to have the educational background. You have to take
21 several board exams, and then you have to have what's called
22 CEUs or continuing ed units. You have to have 20 a year. And
23 in addition to the continuing ed, I did a few years ago --
24 maybe three or four years ago, a year-long training through
25 Project Best. That was a collaboration between MUSC in

KATHY CRAWFORD - DIRECT BY MS. WYSE

1 Charleston and Duke University and was specifically on working
2 with children that had been sexually abused.

3 Q: All right. And what other kinds of clients do you have?

4 A: I work with people that experience depression, anxiety.
5 I work with kids, adolescents, and adults. I do some marriage
6 therapy. What I don't do is substance abuse.

7 Q: Okay.

8 A: So it sort of depends on who calls me and what they
9 present with.

10 Q: All right. Now, since the late '90s, how many children
11 would you say that you have seen professionally?

12 A: Oh, my gosh. I could not give you a number. I see, you
13 know, on an average of 30 -- 35 cases a week, and sometimes
14 half of those are kids, sometimes it's a little more, it's a
15 little less. I'm -- I'm a counselor. I'm not that good with
16 numbers and statistics. You would have to sort of multiply it
17 by the weeks and the years.

18 Q: That's fine. I'm not very good with numbers either.
19 Now, Ms. Crawford, you said that you work pretty specifically
20 with sexual assault victims?

21 A: Yes.

22 Q: Okay. And would you say that that covers adults and
23 children?

24 A: Oh, yes.

25 Q: All right. And throughout your studies and throughout

1 your experience, what has been your assessment of children who
2 have been victims of sexual assault?

3 MR. WOODSON: Objection, Your Honor.

4 THE COURT: All right. Y'all come on up here real quick.

5 (Whereupon, a bench conference is held in the presence of
6 the jury but out of the hearing of the jury as follows.)

7 THE COURT: All right. Go ahead, Mr. Woodson. What's
8 your objection?

9 MR. WOODSON: She's going to give a -- she's asking what
10 her assessment in general of children who have been victims of
11 sexual assault.

12 THE COURT: She hasn't even been -- you haven't qualified
13 her as an expert.

14 MS. WYSE: Oh, no. Okay. I'm sorry.

15 THE COURT: That's one thing.

16 MS. WYSE: I'm sorry.

17 THE COURT: You've got to do that first.

18 MS. WYSE: Okay, Judge.

19 THE COURT: And then I know both of y'all know about the
20 recent case law.

21 MS. WYSE: Right. Absolutely.

22 THE COURT: Okay. So we're not going there.

23 MS. WYSE: No.

24 THE COURT: Okay.

25 MS. WYSE: And I already told her that -- that there was

1 no mention of the truthfulness at all.

2 THE COURT: All right. Good. All right.

3 MS. WYSE: Okay.

4 THE COURT: You move, and then if you need an objection,
5 you can.

6 MS. WYSE: Okay.

7 (Whereupon, the bench conference ends, after which the
8 proceedings continue as follows.)

9 MS. WYSE: At this time, Your Honor, I would like to
10 qualify Ms. Crawford as an expert in the area of sexual
11 assault trauma.

12 THE COURT: Okay. Any objections?

13 MR. WOODSON: Yes, Your Honor.

14 THE COURT: All right. Would you like the jury to step
15 out or --

16 MR. WOODSON: No.

17 THE COURT: Okay. All right. Go ahead and state your
18 objection real quick.

19 MR. WOODSON: I would.

20 THE COURT: I would?

21 MR. WOODSON: I would not like the jury in while I state
22 my objection.

23 THE COURT: All right. If the jury -- if you would, step
24 into the jury room real quick.

25 (Whereupon, the jury exits the courtroom at 11:34 a.m.)

1 THE COURT: All right. And certainly you may ask
2 questions if you would like.

3 MR. WOODSON: Okay.

4 THE COURT: I'll be glad to hear from you.

5 MR. WOODSON: Your Honor, again, I renew my prior
6 objections because, obviously, she's going to testify that she
7 had some interaction and treatment of the child. I don't have
8 any of her notes regarding what the child told her. I just
9 have a questionnaire where they circled some things. So I
10 don't -- she's going to testify as to the basis of any general
11 reasons why she believes that children that have been involved
12 in this have I guess post-traumatic stress or some -- whatever
13 disorder she's going to say.

14 I think this -- all this is improper bolstering. I mean
15 she's going to basically sit there and explain the child's
16 testimony piece by piece when she hasn't submitted any records
17 to me or to the solicitor. I think all this testimony should
18 be limited.

19 This is -- I guess I'm making a motion in limine. I'm
20 actually asking that she not be allowed to testify to anything
21 regarding this child because she's going to have to get into
22 statements the child made. None of her interviews were
23 recorded like the statute says. I -- I have a problem with
24 all of this, Your Honor.

25 THE COURT: All right. Let me heard from the solicitor.

1 MS. WYSE: Thank you, Your Honor. Basically, I am
2 offering her as a witness -- or as an expert witness to talk
3 about, you know, how children disclose, and I hesitate to use
4 the word normal because no child abuse victim is ever -- you
5 can't qualify it as normal, but I basically want to ask her
6 what the normal, you know, behavior is for a kid. Do they
7 show any kind of outward symptoms? That kind of thing.

8 And then I would ask her a little bit about her times
9 with -- with . I mean she -- she's the one who
10 actually -- you know, drew these pictures for her.
11 As far as any notes that she has, that's a HIPAA violation. I
12 don't have them. I mean I don't have any notes. So I mean I
13 couldn't have given him any anyway. You know, that would have
14 been a confidentiality and I'm not asking him -- her any
15 questions other than time and place for and did she
16 draw these pictures.

17 I mean I'm not offering her to bolster the child's
18 testimony. I'm offering her to explain things like delayed
19 disclosure, which I think as an expert witness in this area
20 that she can certainly do.

21 THE COURT: I'm going to overrule your objection at this
22 time, but you may continue to object if something specific
23 comes up that you think needs addressing. And you may
24 question her a little bit right now if you'd like.

25 MR. WOODSON: Yes. Yes.

VOIR DIRE EXAMINATION

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BY MR. WOODSON:

Q: Ms. Crawford, have you -- are you a doctor?

A: No, sir, I am not. As I stated earlier, I have a master's degree.

Q: Okay. Can -- are you able to give a diagnosis on a child?

A: Yes, I am.

Q: And how -- how is that?

A: Well, I'm licensed by the state of South Carolina and have been for some years, and with every time I see a person, I have to diagnose them for payment with third-party insurance as part of my daily job.

Q: And you're a licensed psychologist? Psychiatrist?

A: LPC, licensed professional counselor.

Q: Okay. And can you prescribe medicine?

A: No. I am not a doctor. I'm not a physician.

Q: Okay.

A: Even if I had a Ph.D. in psychology, I could not prescribe medication.

Q: Okay.

A: Only an M.D. can prescribe medication.

Q: So you can give a diagnosis, but after you give the diagnosis, you would have to refer the person somewhere else for additional --

1 A: For medication.

2 Q: Okay.

3 A: Yes.

4 Q: All right.

5 MR. WOODSON: I don't have any other questions, but, Your
6 Honor, the only other thing is by them giving me her records
7 last week and then offering her as an expert to try to
8 correlate this child's -- I guess whatever she went through to
9 typical behavior of a person that's been through something
10 like this, I'm denied the opportunity to get an expert. I
11 mean by me just finding out that this child went there months
12 ago and me getting the records last week and then she's here
13 today to testify, I can't get an expert to refute it because I
14 just got this information.

15 THE COURT: All right. Let me hear from the State.

16 MS. WYSE: Judge, like I said, I gave him these pictures
17 back in December.

18 MR. WOODSON: I'm not talking about the pictures.

19 MS. WYSE: And then I, you know, tried to show them to
20 him again when we had this docket meeting. I sent him her
21 resume, her information. I did send him some stuff about PTSD
22 last week because she provided it to me last week. You know,
23 that's -- I mean I gave him everything I had.

24 MR. WOODSON: Your Honor, can I just say something?
25 These pictures were given to me in the original discovery

1 packet. There's no name on here. And according to the
2 incident report and the officer that has already testified,
3 there was some sort of pictures drawn that he was aware of.
4 That's in the police report.

5 So when I got these pictures, I had no way to correlate
6 these pictures were drawn at Ms. -- Ms. Crawford's office. I
7 didn't realize that actually until today that the pictures
8 were drawn there when I saw the notes. I did know that she --
9 I got her resume and documentation from her last week, but I
10 did not make the connection between the pictures and -- and
11 Dr. -- well, I'm sorry -- Ms. Crawford.

12 So I -- you know, this is just -- you know, my client
13 can't get an expert to refute anything she says, and she's
14 going to try to say that this is typical, you know, what this
15 child is going through, and I think it's highly prejudicial
16 and I can't refute it at the last minute like this.

17 THE COURT: All right. One last response.

18 MS. WYSE: Thank you, Judge. I'm allowed to call an
19 expert witness. I told him that I was going to. Your Honor,
20 I -- as far as I know, it's typical in cases like this to call
21 an expert witness a lot of times to explain to jurors what
22 delayed disclosure is, and I -- you know, I don't -- I don't
23 think that I've done anything wrong by this.

24 THE COURT: All right. I'm going to overrule the
25 objection. If you will, bring out the jury.

1 THE BAILIFF: Yes, sir.

2 (Whereupon, the jury enters the courtroom at 11:41 a.m.)

3 THE COURT: All right. If you will, call your next
4 witness.

5 MS. WYSE: Thank you, Your Honor. She's on the stand.

6 THE COURT: All right. I'm sorry. Go ahead. I had
7 people talking to me. Go ahead.

8 CONTINUED DIRECT EXAMINATION

9 BY MS. WYSE:

10 Q: Ms. Crawford, have you ever been qualified as an expert
11 witness before?

12 A: Yes, I have.

13 Q: Approximately how many times have you been qualified as
14 an expert witness?

15 A: Maybe ten or twelve.

16 Q: Okay.

17 MS. WYSE: Your Honor, at this time, I would like to
18 offer Ms. Crawford as an expert in the area of sexual -- of
19 child sexual trauma.

20 THE COURT: All right.

21 MR. WOODSON: Same objection, Your Honor.

22 THE COURT: All right. Overruled. I'll grant your
23 motion.

24 MS. WYSE: Thank you, Judge.

25 BY MS. WYSE:

1 Q: Ms. Crawford, will you please explain to the jury about
2 children who are victims of sexual trauma? Will you tell me
3 about patterns of their behavior, anything that you might
4 think is relevant?

5 A: Okay. In this -- what -- the information that I'm going
6 to give you not only applies to children, but a lot to adults
7 also. When someone has been sexually abused, often there is a
8 lot of embarrassment with that to begin with, and it is very
9 rare for someone to tell or report that immediately. There's
10 some studies that were done in the '90s that -- that indicated
11 about 75 percent of children --

12 MR. WOODSON: Objection.

13 A: -- and adults --

14 MR. WOODSON: Objection.

15 A: -- do not --

16 MR. WOODSON: Objection --

17 THE COURT: Hold on a second. Yes, sir?

18 MR. WOODSON: -- to any studies, Your Honor, as hearsay.

19 MS. WYSE: Your Honor, that's just --

20 THE COURT: Overruled.

21 MS. WYSE: Thank you.

22 THE COURT: You may continue.

23 BY MS. WYSE:

24 A: Okay. Indicate that about 75 percent of sexual assault
25 victims do not disclose immediately, and there's several

KATHY CRAWFORD - DIRECT BY MS. WYSE

1 different reasons for that. Sometimes, the person that has
2 done the abuse to them coaches them not to tell or tells them
3 if they do tell, something bad will happen to them. Sometimes
4 they're even told if you tell, you'll get in trouble. You did
5 the bad thing.

6 Often when people do disclose, they disclose after they
7 are in a safe place, for example, if they're in school or
8 neighbors. If they're in close proximity to the person that
9 abused them, often they will not disclose until they have
10 moved away and are at a safe place. That's -- that's very
11 typical.

12 Q: All right. Now, how long does it take for a child to
13 disclose?

14 A: Now that, there's no cookie cutter answer. I have some
15 women that are in their 40s and 50s that were abused at six --
16 seven -- eight years old and have never told. And usually in
17 those kind of cases, they do not tell because they are afraid
18 that their parent will not believe and protect them. So when
19 a child does disclose, that typically speaks highly of the
20 trust in the relationship between the parent and the child.

21 Q: All right. Now, what kinds of indicators can a child
22 give that might cause you to think that maybe there is some
23 sexual abuse going on?

24 MR. WOODSON: Objection, Your Honor.

25 THE COURT: Overruled. Go ahead.

1 BY MS. WYSE:

2 A: Okay. Well, there's -- there's a lot of studies about
3 symptoms. Just like when you have strep throat or any other
4 diagnosis, there's symptoms that go along with that. And when
5 someone has been sexually abused, it doesn't mean that they
6 have to have all of the symptoms, but they usually have some
7 of the symptoms, and some of those symptoms could include,
8 particularly in a young child -- because a child can't talk
9 and express themselves the way that you and I do.

10 So often when a child has been sexually abused, it comes
11 out in their play. You know, if you have a child who's, you
12 know, five -- six -- seven, and mama has another baby, that
13 child then has a baby doll and they're playing out what they
14 see. When you see a child that is of age that they should not
15 have really any sexual knowledge and you see them acting that
16 out in their play or their drawings, that is a big red flag.

17 Some examples would be, you know, if they have baby dolls
18 doing sexual things or they've got the Barbie and Ken dolls
19 doing things that a five- or six-year-old should not know
20 about sexually unless they have had it done to them or seen it
21 on pornography or something like that. In addition to -- to
22 sharing it in their play, you know, kids love to draw and
23 color, and sometimes it will come out in their drawings.
24 Young kids don't journal and write down things the way adults
25 do, and so their drawings are often a way to express, like

1 journaling would be.

2 But getting back to other symptoms, of course, expressing
3 it or acting it out in play is a big red flag. If there's any
4 sexual acting out, such as masturbating or being sexual with
5 another child, that is a big red flag that the child has been
6 sexually abused.

7 Sometimes, you see kids whose grades drop down. Not
8 always, because sometimes kids find their safe place at school
9 and they don't always do that, but sometimes you'll see grades
10 drop down.

11 Sometimes, you'll see a child sort of withdraw and stay
12 to themselves more and start having bad dreams. Sometimes,
13 you can see a change of appetite. Sometimes, you see
14 behavioral acting out because they don't have the verbal
15 skills to talk things out and so sometimes you'll think, oh,
16 gosh, that kid's acting really bad, and sometimes they're
17 expressing some things that happened. And what's really sad
18 is when kids are so young that they don't really even know
19 that what happened to them isn't the norm. Yeah.

20 Q: Could bed-wetting be an example?

21 A: Oh, definitely. Definitely. Now, if a child -- which,
22 you know, three or four years old and had never been totally
23 potty trained and was bed-wetting, then that would not be a
24 symptom, but if you had a kid that was, you know, five -- six
25 -- seven years old and they had been potty trained and had not

1 wet the bed for a few years, regressive behavior such as bed-
2 wetting definitely can be a red flag.

3 Q: All right. Now, when children do disclose, who do they
4 disclose to?

5 A: Someone they trust.

6 Q: Okay.

7 A: Someone they feel safe with.

8 Q: All right. And so examples of that could be?

9 A: A mom, a grandma, maybe a teacher if they feel very, very
10 close with the teacher. Someone that they think is going to
11 protect them.

12 Q: All right. Now, what -- as a child gets older, what are
13 some symptoms or some signs that they might show?

14 A: It's really interesting because a lot of girls that were
15 sexually abused as a child, when they get to be, like, puberty
16 age, sometimes they go one of two ways. Sometimes, they just,
17 like, become promiscuous because they were -- they were
18 prematurely exposed to sexuality and they think that's the
19 only way to get attention from males, and so sometimes there
20 is sexual acting out. And sometimes it is the opposite to
21 where they're really afraid and uncomfortable and they just
22 sort of withdraw and they don't want anything to do with
23 dating or boys, but it tends to go in extremes.

24 Q: Now, how long does it take for a child to completely
25 disclose?

1 MR. WOODSON: Objection.

2 THE COURT: Rephrase that.

3 BY MS. WYSE:

4 Q: How long --

5 MS. WYSE: Well, I'll strike the question, Your Honor.

6 Q: Now, did you actually meet with

7 A: Yes, I did.

8 Q: Okay. And about how long have you been -- are you
9 meeting with her now?

10 A: Yes.

11 Q: Okay. Now, about how long have you been meeting with
12 her?

13 A: Okay. I think she disclosed to her mom in the spring of
14 2013, and I believe that I started working with her around May
15 of 2013 through the present.

16 Q: What types of activities do you do during counseling
17 sessions with young children?

18 A: Okay. I start out meeting with a young child and their
19 parent together so they'll feel safe, and I give the parent
20 some tools to help them at home if they're having bad dreams
21 or if the child is very anxious and fearful, some things that
22 the parents can do to help when the child is not just in the
23 office with me.

24 And I don't sit and talk with a young child the way I'm
25 talking with you because they get really bored, but I -- I

1 tend to sit on the floor with them and sometimes we play games
2 that facilitate discussion, and drawing is a good tool to use
3 with young children because it's just easier for them to draw
4 pictures than to verbally talk about what happened.

5 Q: And did you draw pictures with -- or did draw
6 pictures for you?

7 A: Yes. I gave her an option of -- would it be easier for
8 her to talk about things or -- and I sometimes do this with
9 adults. I say would it be easier to talk about it or write it
10 out. But since wasn't really old enough to write
11 it out, I said would you prefer to have pencil and crayon and
12 paper and draw things out or talk, and she chose -- she said
13 she would feel easier drawing them out.

14 MS. WYSE: Permission to approach, Your Honor?

15 THE COURT: Sure.

16 MS. WYSE: Thank you.

17 BY MS. WYSE:

18 Q: I want to show you what's been marked as State's Exhibit
19 Number 2, 3, and 4. Will you please identify those to the
20 jury?

21 A: Okay. I might have to borrow somebody's reading glasses,
22 but these are drawings that did on December the 10th
23 in my office, December the 14th in my office, and December --
24 or excuse me -- yeah, December the 5th. So there are three
25 drawings.

1 Q: And are those some of the drawings that she used to
2 describe events to you?

3 A: Yes, they are.

4 Q: Okay. Do -- can you see them well enough to identify
5 them?

6 A: I think so, yes.

7 Q: Okay. And would you identify what State's Exhibit 2 is?

8 A: Okay. This is a drawing that she did of her and B.G.
9 Oh, gosh, I really wish I had my glasses on -- of her and B.G.
10 under a sheet or a blanket, and she drew a picture of the room
11 with the TV and there's a little white cartoon bubble. I
12 don't know if you can see. Maybe you can see better than I
13 can, but she's very small and he's much larger, and he's
14 saying don't tell.

15 Q: Okay. And can you identify what State's Exhibit Number 3
16 is?

17 A: Yes. Oh, my gosh. Okay. This is the one that she did
18 12/5/13. I can't see the writing.

19 Q: That's okay. If you can't see it, that's fine. Can you
20 tell us what State's Exhibit Number 4 is? Maybe you can see
21 that one better.

22 A: Yes. Yes. This one is -- this is one where she is
23 riding in the back seat. She and B.G. are in the back seat of
24 the car, and her mom was driving.

25 Q: Okay. Was Mrs. Richardson in the room when she drew

KATHY CRAWFORD - DIRECT BY MS. WYSE

1 these pictures?

2 A: Oh, no. No, ma'am.

3 Q: All right. Now, you said that in the beginning of your
4 counseling sessions Ms. Richardson was with you?

5 A: Well, like -- like, the first meeting that I have with a
6 young child, I have the parent in there just so the child will
7 feel safe and comfortable. I don't want them to feel like
8 they're dropped off for an hour with a stranger.

9 Q: And did you ever talk to Ms. Richardson about her
10 interaction with her daughter?

11 A: Yes. Ms. Richardson would -- would cry and was anxious,
12 and I advised Ms. Richardson not to talk with her daughter
13 about the abuse, to have the kind of relationship with her
14 daughter to where the door is open. We don't in any way want
15 the kid to think that it's taboo or that they can't talk about
16 it. It's very healing. You don't want to keep it secret.
17 That's -- that's unhealthy. You want the child to be free to
18 talk about it, but I wanted it to be at rate, not
19 at mama's rate.

20 And so I encouraged the -- the mom -- you know, if she
21 noticed a change in if got really quiet
22 or something, just say, you know, honey, tell me what you're
23 thinking about, but not specifically bring up the sexual
24 abuse. But I encouraged her that when did bring it
25 up that she listen and let know that it's okay to

1 talk about it. That when does bring it up to
2 always take time. Don't close her off. And to reassure her
3 that it wasn't her fault.

4 Q: And to your knowledge, did Ms. Richardson follow your
5 suggestions?

6 A: To my knowledge.

7 Q: All right. And now, Ms. Crawford, have you ever worked
8 with a child that's been coached?

9 A: The times that I believe that I have worked with children
10 that have been coached is usually when they are coached by the
11 offender not to tell.

12 Q: Okay. But do you know what I'm talking about when I say
13 coaching?

14 A: Yes. I mean what parent would want something like this
15 to happen to their child? And, you know, that -- that is not
16 that prevalent.

17 Q: Okay. Did you see any evidence of coaching with
18 ?

19 MR. WOODSON: Objection, Your Honor. She can't render an
20 opinion as to that.

21 THE COURT: Overruled.

22 MR. WOODSON: That's a jury question.

23 BY MS. WYSE:

24 A: All I can say is when I met with and when she
25 drew these pictures, we went back over and only and

1 I were in the room. The mother was not in the room at all.

2 And was very detailed about the location of where
3 it happened, and she was so detailed she even told me what
4 pictures were on the walls, what clothes she wore the time
5 that she was in the car.

6 Q: All right.

7 A: And she was consistent.

8 Q: Okay. And how many incidents did tell you
9 about?

10 A: She told me about three.

11 Q: Okay. And can you tell us the -- where those three
12 incidents took place?

13 A: Okay. The one in the car, there was one under the sheet
14 that she drew, and there was one that -- because she described
15 the room. There was a couch. There was photos on the wall.
16 I think a computer and maybe an aquarium there. I can't
17 remember whether that room was upstairs or downstairs, but I
18 remember she was very detailed about the room that it occurred
19 in.

20 Q: And she --

21 A: That was three times.

22 Q: Oh, I'm sorry. Please finish.

23 A: Yeah. There was three times, and she was very consistent
24 with that.

25 Q: Did she tell you how old she was during the time?

1 A: You know, children -- time for children is not perceived
2 like time for us that are, you know, in our 50s, you know. We
3 can blink our eye and two or three weeks can go by, but you
4 can ask a child when something happened and they're doing good
5 if they can say it's before Christmas or after Christmas.

6 Often, it's just developmentally. When you have a three
7 -- four -- five-year-old child, they get even the words before
8 and after confused. So time when working with a child and
9 getting information from a child is way different than working
10 with an adult because they just experience it and view it
11 differently.

12 I did have a copy of the police report, and it occurred
13 at a time when and her mother were living with B.G.
14 and his family, and I started seeing her when she was eight
15 years old, a few months before she turned nine, and to the
16 best of -- of what I remember, I think she was around six when
17 it happened.

18 Q: Okay. Now, when you see somebody -- anybody -- do you
19 have -- at the end of their visit, do you have to make some
20 kind of documentation so that their insurance company can pay
21 you?

22 A: Yes. I don't work for the state. I'm in private
23 practice, and that means that I can bill third-party payers,
24 like private insurance like Blue Cross Blue Shield or the
25 military Tricare, and so every time I see someone, before I

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1 can get reimbursed for my service, I have to submit a billing
2 on something called a HIPFA, and it has the date of service
3 and the diagnosis on the billing sheet every time something --
4 so that's something I do multiple times each week.

5 Q: All right. Now, are you a doctor?

6 A: I am not a medical doctor and neither do I have a Ph.D.
7 I have a master's degree in counseling psychology.

8 Q: And who allows you -- or through what are you allowed to
9 make a diagnosis?

10 A: Okay. I am licensed through the state of South Carolina,
11 and with my licensure that gives me legal permission to bill
12 through third parties, like Blue Cross Blue Shield, and it is
13 their normal way of doing business that you have to submit the
14 date of service and the diagnosis with every session met
15 before they'll reimburse you.

16 Q: Okay. And did you make a diagnosis on ?

17 A: Yes.

18 Q: And what did you base your diagnosis on?

19 A: I based my diagnosis on the symptoms that she presented
20 with.

21 Q: And who did you get that information from?

22 A: From and her mother.

23 Q: Okay. And what was your diagnosis?

24 MR. WOODSON: Objection, Your Honor.

25 THE COURT: Overruled.

KATHY CRAWFORD - DIRECT BY MS. WYSE

1 BY MS. WYSE:

2 A: My diagnosis had to do with adjustment disorder with
3 anxiety and depression with traits of PTSD, post-traumatic
4 stress disorder.

5 Q: Now, is that something that you normally see in --

6 A: Yes.

7 Q: -- victims of sexual assault?

8 A: Yes.

9 Q: Okay. All right. Now, based upon your years of
10 experience and your education, did Jacquelynn -- and to a
11 reasonable degree of your certainty through your
12 specializations and through your field, was
13 consistent with other children that have been sexually abused?

14 MR. WOODSON: Objection.

15 THE COURT: Hold on one second. Come on up here real
16 quick.

17 (Whereupon, a bench conference is held in the presence of
18 the jury but out of the hearing of the jury as follows.)

19 THE COURT: Is that getting into the credibility and the
20 believability of the child?

21 MS. WYSE: Well --

22 THE COURT: It's touching on it.

23 MS. WYSE: If you want me to stay away from it, I will.

24 THE COURT: That would probably be a good idea based on
25 recent case law.

1 MS. WYSE: Okay.

2 THE COURT: All right.

3 (Whereupon, the bench conference ends, after which the
4 proceedings continue as follows.)

5 THE COURT: I'll sustain your objection.

6 BY MS. WYSE:

7 Q: Are you continuing to see ?

8 A: Yes, I am.

9 Q: And do you know how long your treatment of
10 will take?

11 A: I like to work with children and their families until the
12 court date is completed because right now going through court
13 is a very stressful time where the -- reliving things, going
14 through some not happy memories, and I like to be with them
15 until this part is completed. And when symptoms are
16 decreasing, I'll back off. Instead of meeting with somebody
17 on a real regular basis, we may meet together every other week
18 or once a month until they don't need to be seen.

19 Q: Now, do you think that would be comfortable
20 talking to a lot of people about what happened to her?

21 A: I don't think she would. You would probably need to ask
22 her, but even with me and her just being one on one in a room,
23 she was more comfortable drawing it out and talking about it
24 that way.

25 Q: And is that unusual?

1 A: No.

2 Q: Okay. And would it be unusual for a child like
3 to have problems remembering this event?

4 A: Don't we all have problems remembering something, you
5 know, that happened that long ago? And let me go back.
6 Sometimes in severe trauma, people block out things that
7 happen. There may be some specific details, particularly like
8 with the timing of something, that may not
9 remember, but she is one of those that did not seem to block
10 things out. She was very consistent.

11 Q: And that was just with you one on one; right?

12 A: Yes.

13 Q: Okay. But do you know if she enjoys things like public
14 speaking or talking in front of her class?

15 A: I have never really talked to her about public speaking,
16 but I met with her Friday and she was afraid to be here and
17 talking today.

18 Q: Okay.

19 MS. WYSE: I beg the Court's indulgence for just one
20 moment. I have no further questions.

21 THE COURT: All right. Cross-examination?

22 MR. WOODSON: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. WOODSON:

25 Q: Ms. Crawford, as part of your testimony, you testified

- 1 that you have been meeting with since she was about
2 eight; is that correct?
- 3 A: I think it was a few months before her ninth birthday.
4 Around May 2013 is when I first started with her.
- 5 Q: So she would have been -- you're saying it was --
- 6 A: I think she was around --
- 7 Q: -- before she turned eight?
- 8 A: No. No. She was eight.
- 9 Q: Okay.
- 10 A: I believe, if my math is correct, sir.
- 11 Q: Okay. All right. As a part of your practice, do you
12 take notes from each visit that you had with ?
- 13 A: I -- well, just with everybody, I jot down my chicken
14 scratch to help me remember parts of that session so I will
15 know where to pick up the next time we meet together.
- 16 Q: Okay. So the answer is yes, you do take notes?
- 17 A: Yes.
- 18 Q: All right. And is it -- is it typical -- well, let me
19 ask it this way. When you bill for it, you have to do billing
20 codes for your services; is that correct?
- 21 A: In the -- the billing codes, yes.
- 22 Q: Okay. And do you have to keep records to go along with
23 those codes just in case you're audited or something --
- 24 A: Yes.
- 25 Q: -- of that nature?

1 A: Yes.

2 Q: So you do keep records in the regular course of your
3 business?

4 A: Yes.

5 Q: Do you recall turning over any of those records to the
6 Solicitor's Office?

7 A: Sir, the only thing that I turned over is what is here,
8 and then last week when Ms. Wyse asked me to send her my
9 resume, I said would it be helpful if I sent some copies of a
10 screening that had some of PTSD symptoms, and I
11 faxed that to her last week.

12 Q: Okay.

13 A: So I did not -- it is not my typical practice to turn
14 over all of my notes to anyone. That's a HIPAA violation and
15 I could lose my license.

16 Q: Okay. And as a matter of fact, in this case you didn't
17 turn over any of your notes. You just turned over something
18 last week regarding PTSD symptoms; is that correct?

19 A: Yes, sir.

20 Q: All right. So you kind of selectively chose what to
21 submit?

22 MS. WYSE: Objection. That's qualification.

23 THE COURT: Overruled. I'm going to let him cross-
24 examine.

25 BY MR. WOODSON:

- 1 A: I submitted the things that had to do with
2 specifically and not necessarily my techniques and what I did
3 with her.
- 4 Q: Okay. But now you said you -- you diagnosed her. Your
5 testimony -- and they brought you here to testify about a
6 diagnosis and -- I mean I don't have any records to when you
7 diagnosed this or what your diagnosis was.
- 8 A: The first date of service.
- 9 Q: The first date of service?
- 10 A: Yes.
- 11 Q: Okay. All right. The paperwork that you faxed over last
12 week doesn't have any indication of bedwetting. That would be
13 in some other notes that you don't have; is that correct?
- 14 A: I see a lot of people and I don't know about notes of
15 bedwetting.
- 16 Q: Okay. In this particular case, are you aware that there
17 was bedwetting or not?
- 18 A: I don't recall that. I'm sorry.
- 19 Q: Okay. This form that you faxed over to the Solicitor's
20 Office last week -- is this a form you filled out or is this a
21 form someone else filled out?
- 22 A: This is a form that I filled out. I told that
23 -- to pretend that I was her secretary and I asked her to true
24 and false questions or multiple choice questions and she -- I
25 would read them out to her and she would give me her response.

- 1 Q: And on that questionnaire or report, it was a scale from
2 zero to five; is that correct?
- 3 A: No, sir. The five -- let me see what you're referring
4 to. The five is "don't know." So it's actually a scale from
5 zero to four. None means it never happens. One is little.
6 It happens twice a month. Some is once or twice a week.
7 Three is two or three times a week. And most, four, is almost
8 every day.
- 9 Q: All right. If I can refer you to number six on the
10 questionnaire, my child has flashbacks of what happened. You
11 circled zero, which means none; right?
- 12 A: Wait a minute. Let me see what you have. I'm not sure
13 that it --
- 14 Q: Okay.
- 15 A: I don't think I have a copy of that up here. Now, I gave
16 two, one for the mother to fill out and one that I helped
17 fill out, and I'm not sure which one you have.
- 18 Q: Let me show you this just so we can clear this up. All
19 right.
- 20 A: Okay. Thank you.
- 21 Q: Is this your report?
- 22 A: Well, it's not -- it's -- it's my checklist.
- 23 Q: Okay. And you see where it says -- I apologize. You
24 don't have your glasses. Number six is what I was referring
25 to. Flashbacks. My child has flashbacks.

1 A: Okay. Yes. She -- the mother initially circled zero,
2 but she did not know what flashbacks were. And when I
3 described them, then she circled two, which means --

4 Q: Well --

5 A: -- two to three times a week.

6 Q: Okay.

7 A: Okay.

8 Q: So I'm just trying to get clarification. Is this
9 something you filled out or is this something she filled out?

10 A: Well, there's two separate ones. There's one that the
11 mom filled out and the one that I did with the child, and I
12 thought that I faxed the one that the child did. I may have
13 -- I may have not done what I intended to do, sir. I'm sorry.

14 Q: All right. Do -- but do you have this in front of you?
15 What I just showed you?

16 A: No. I need you to show me what you have.

17 Q: All right. One of the -- before I approach, one of the
18 things you said was that children -- one of the things that
19 they do is they draw pictures; is that correct?

20 A: I said that it comes out in their play.

21 Q: Okay.

22 A: That it can come out in their play and it can come out in
23 their pictures, yes.

24 Q: Okay. And the pictures that we submitted today have been
25 -- they were drawn in your office; is that correct?

- 1 A: Yes, sir.
- 2 Q: Okay. But you would be referring to drawing pictures,
3 like, at school or at home; is that correct?
- 4 A: Any -- anyplace.
- 5 Q: Okay.
- 6 A: Anyplace. Because I did not tell her specifically what
7 to draw.
- 8 Q: Okay. And as a matter of fact, on this questionnaire it
9 says that -- it says my child plays games or draws pictures,
10 and I'm right here on number 21.
- 11 A: Okay.
- 12 Q: Number 21 says my child plays games, draws pictures,
13 which is what you said is an indication, and the mother
14 circled zero, which is none; correct?
- 15 A: That is correct, but this -- she had not observed her
16 child doing this at home, yes.
- 17 Q: Okay. All right. So what we have is you said you are
18 not aware of any symptoms of bedwetting, you're --
- 19 A: No. I said I did not recall. I don't remember that.
20 I'm not saying it didn't --
- 21 Q: Did you -- as a part of -- before you met with
22 you said you reviewed the police report. Did you
23 review the Carolinas Hospital medical records?
- 24 A: No, sir, I did not.
- 25 Q: Did you review her pediatrician's records?

1 A: No, sir, I did not.

2 Q: Okay. Did you review the forensic interview report?

3 A: Was that done at the Durant Center or the Care House?

4 Q: It would have been done at the Care House in this case.

5 A: I may have done that. I don't recall, but I have a good
6 working relationship with both of the child advocacy centers,
7 and sometimes I'm able to get copies of those reports.

8 Q: Okay. You said you've testified before about ten or
9 twelve times as an expert witness. Have you ever testified
10 for the defense as a defense witness?

11 A: Explain that, because I'm not a lawyer and I'm not --

12 Q: I understand. Do you always testify for the prosecutor
13 when you -- when you testify?

14 A: It's not always the Solicitor's Office that is
15 subpoenaing me.

16 Q: Okay.

17 A: If that answers your question.

18 Q: Well, in criminal -- in the context of criminal work,
19 because I realize you may testify in a civil context or Family
20 Court context, but in criminal court, have you ever testified
21 as a defense witness? Do you understand? Or do you always
22 testify for the --

23 A: Are you asking do I testify in favor of the suspect or
24 the offender?

25 Q: Right. It's always for the -- your patient; correct?

1 A: My -- my specialty area is with crime victims. Dr. Sasha
2 Federer is the expert in this area for working with offenders,
3 and he usually testifies in that area.

4 Q: You -- you said something that caught my attention when
5 you were being questioned by Ms. Catherine Wyse. You said
6 that the child was very detailed in her description, so
7 detailed that she remembered what she was wearing and she
8 remembered what pictures were on the wall?

9 A: Yes.

10 Q: Okay. I'm not aware of any pictures on the wall
11 testimony or documentation of what she was wearing
12 specifically. What -- what do you mean pictures on the wall?

13 A: The room. One of the rooms where one of the sexual
14 assault incidents occurred -- there was portraits, maybe of
15 the family or -- but she was very specific. I don't have that
16 information in front of me, but she -- it was like a bit of a
17 blueprint where she mapped it out. So these are the stairs
18 for downstairs. This is the sofa. And she drew little
19 picture frames and portraits and told me who they were. It
20 was quite detailed.

21 Q: Okay. Now, the pictures that are in evidence don't have
22 any notes on them, but do you have pictures -- did you draw
23 around -- make notes on any of the pictures that you have?

24 A: I'm sure I did. I have to do things to help my memory.

25 Q: Okay. And you wouldn't have that with you, would you?

1 A: No, sir.

2 Q: Okay. Do you recall on the incident where -- that
3 supposedly happened upstairs that there was an allegation that
4 two -- two of her cousins were at the cookout? Does that
5 sound familiar?

6 A: The -- the times -- I'm sorry. I may have vague
7 recollection of there being other people, but I think that
8 when the incident happened that just she and B.G. were
9 together. I don't know about if people were --

10 Q: I want to ask -- I just --

11 A: Okay.

12 Q: I want to hand you something just to refresh your memory.

13 A: Thank you.

14 MS. WYSE: I don't think she's going to be able to see
15 it. You might have to read it to her.

16 THE COURT: I've got an extra pair of glasses.

17 THE WITNESS: Do you?

18 THE COURT: I can go get them. Do you want me to get
19 them?

20 THE COURT REPORTER: I've got some right here.

21 THE WITNESS: Thank you. I should have brought mine.
22 Thank you. Thank you. Okay.

23 BY MR. WOODSON:

24 Q: And this is just to refresh your memory.

25 A: Oh, gosh, yeah. You have the one where I wrote on it

1 then.

2 Q: All right.

3 A: Okay.

4 Q: Bottom left-hand corner.

5 A: Okay. This was from the one in October. The -- the blue
6 thing -- she says this is the sheet. It was white. We were
7 under the sheet. The big one is B.G. The little one is me.
8 There's an arrow pointing over here. This is the basement.
9 The keyboard and the drums are over here. The door leads to
10 the basement. This was a family get-together. We were
11 upstairs and everybody else was downstairs. I remember my
12 cousins, Reya, Ryla, and they -- they were there and we ate
13 doughnuts. It was nighttime.

14 Q: Okay. Thank you.

15 A: Yeah. Thank you. I did not -- I can't remember that on
16 my own. So thank you. Thank you for the glasses.

17 Q: Post-traumatic stress syndrome is something that not only
18 sexual assault victims suffer; is that correct? For example,
19 someone in the military -- you hear of them coming back from
20 overseas or something and they're diagnosed with PTSD; is that
21 correct?

22 A: Yes, sir.

23 Q: There are other triggers to that; is that correct?

24 A: What do you mean by the triggers?

25 A: For example, if you were involved in a divorce or if your

1 parents went through a divorce, that could be a trigger for
2 PTSD?

3 A: No, sir.

4 Q: It would not?

5 A: No. Specifically for PTSD to occur, they used to just
6 apply this -- they called it shell shock -- and they only --
7 it was associated with soldiers that had served in war-time,
8 and it's been more recent that they have found that people who
9 have experienced either a life-threatening situation or a
10 perceived life-threatening situation, such as even if you've
11 been in a bad car accident and you could have died or the
12 person that was in the car with you -- they died and you
13 lived, you could have PTSD. If you're in a hold-up, there
14 could be PTSD. If -- if you're raped or anything that is
15 perceived as a -- threatening, it has to be threatening.

16 So some people whose parents go through divorce -- that
17 does not always have to be threatening. It's at a time when
18 you feel personally that you are in danger or there is a
19 perceived threat and you feel totally out of control, like
20 there's no way that you can stop it. That has to be -- that's
21 the first criteria in diagnosing -- diagnosing PTSD.

22 Q: What about exposure to domestic violence? Would that be
23 a trigger for a child if they felt threatened or if they were
24 in a situation where there was domestic violence?

25 A: If that child witnessed one parent beating or threatening

1 to kill another parent, yes, that -- that could cause PTSD.

2 Q: And -- well, that's it. Thank you.

3 A: Okay.

4 THE COURT: All right. Redirect?

5 MS. WYSE: Nothing from the State.

6 THE COURT: All right. You may step down. Any
7 objections to her being excused?

8 MS. WYSE: No, Your Honor.

9 MR. WOODSON: No, Your Honor.

10 THE COURT: All right. You're excused. Have a nice day.

11 THE WITNESS: Thank you.

12 THE COURT: Do you have another short witness you could
13 call before lunch?

14 MS. WYSE: I do not. I heard some stomachs growling,
15 Your Honor.

16 THE COURT: All right.

17 MS. WYSE: I think it might be a good time to go.

18 THE COURT: Let me ask y'all. Do y'all need one hour or
19 do you need an hour and a half for lunch?

20 MS. WYSE: Judge, may we approach for just a minute?

21 THE COURT: You may.

22 MS. WYSE: Thank you.

23 THE COURT: And y'all can be thinking about that.

24 (Whereupon, a bench conference is held in the presence of
25 the jury but out of the hearing of the jury as follows.)

1 MS. WYSE: Williamson.

2 (Whereupon, there is a pause in the proceedings until the
3 witness enters the courtroom, after which the proceedings
4 continue as follows.)

5 THE COURT: All right. Anytime you're ready.

6 MS. WYSE: Thank you, Your Honor.

7 THE COURT: Do you want to swear her in?

8 THE CLERK: Oh, I'm sorry. Do you swear the testimony
9 you give in this case will be the truth, the whole truth, and
10 nothing but the truth, so help you God?

11 THE WITNESS: Yes, I do.

12 THE CLERK: Please be seated and state your full name for
13 the record.

14 THE WITNESS: My name is Sally Williamson.

15 SALLY WILLIAMSON, being first duly
16 sworn, testifies as follows:

17 PROFFERED DIRECT EXAMINATION

18 BY MS. WYSE:

19 Q: Good afternoon, Ms. Williamson.

20 A: Hi.

21 Q: Where do you work?

22 A: I work for the Care House of the Pee Dee here in
23 Florence.

24 Q: Okay. What do you do at the Care House of the Pee Dee?

25 A: I am a forensic interviewer, as well as a therapist.

1 Q: Okay. And as your job regarding being a forensic
2 interviewer, what do you do when you conduct a forensic
3 interview?

4 A: I provide assessments of children, typically ages three
5 to 17, sometimes special needs adults, for suspected cases of
6 child maltreatment.

7 Q: Okay. And while you do that, is the proceeding recorded?

8 A: Yes, it is.

9 Q: Okay. And is the child informed that at the time?

10 A: Yes, they are.

11 Q: Now, do you do this as a part of an investigative
12 interview?

13 A: It typically is in connection with an investigation of
14 some sort, although the procedure that we complete is not
15 actually an investigation.

16 Q: Okay.

17 A: But typically it is required or requested by an
18 investigative entity.

19 Q: Okay. Now, as part of your training as a forensic
20 interviewer, what types of questions do you ask?

21 A: We ask non-leading questions. The interview is typically
22 semi-structured and for fact-finding purposes.

23 Q: Okay. Now, are you trained in conducting investigative
24 interviews of children?

25 A: Yes, I am.

1 Q: Can you tell us about that kind of training?

2 A: I hold a master's degree in counseling, as well as I have
3 completed a 40-hour training course in forensic interviewing,
4 as well as a 25-hour advanced forensic interviewing course, as
5 well as 16 -- approximately 16 hours of training in forensic
6 interviewing with special needs children.

7 Q: And how long have you been working at the Care House?

8 A: Nearly four years. It will be four years this July. So
9 --

10 Q: Okay.

11 A: -- three-and-a-half years.

12 Q: I'm sorry. I didn't mean to --

13 A: No problem.

14 Q: What was the last thing you said?

15 A: Three-and-a-half years.

16 Q: Okay. And since you've been working at the Care House,
17 has your -- have you primarily been giving forensic
18 interviews?

19 A: I have. I've conducted therapy as well, but I have
20 conducted approximately 1,206 interviews as of last week.

21 Q: That's a lot of interviews.

22 MS. WYSE: Judge, I need just a second.

23 THE COURT: All right.

24 BY MS. WYSE:

25 Q: Do you remember meeting with ?

- 1 A: Yes, I do.
- 2 Q: And did you follow all the proceedings that you and I
- 3 spoke about just a few minutes ago?
- 4 A: Yes, I did.
- 5 Q: And you asked her non-leading questions?
- 6 A: That's correct, yes.
- 7 Q: And you videoed this?
- 8 A: Yes, I did.
- 9 Q: Okay. And as -- in her response to your questions, did
- 10 she give you any details about an offense that occurred?
- 11 A: She did make an allegation of sexual abuse or disclosure
- 12 of sexual abuse.
- 13 Q: Okay. And --
- 14 MS. WYSE: Judge, at this time, I'm going to ask her --
- 15 well, she's not going to know exactly what this is, but I
- 16 would ask her to identify it.
- 17 BY MS. WYSE:
- 18 Q: Will you please identify State's Exhibit Number 1?
- 19 A: It appears to be a DVD marked State versus Gurley.
- 20 Q: Okay.
- 21 MS. WYSE: And at this time, Your Honor, I'd like to
- 22 enter her forensic interview to be shown to you for the Court
- 23 to make a ruling.
- 24 THE COURT: All right. Any questions or objections?
- 25 MR. WOODSON: No objections, Your Honor.

1 THE COURT: All right. You can play it.

2 (Whereupon, the DVD containing the forensic interview is
3 marked for identification as State's Exhibit Number 1.)

4 MS. WYSE: And we need the screen.

5 THE COURT: Okay. Before you play it, let's see what
6 they want. They're knocking on the door. Real quick.

7 MS. WYSE: Okay. They are not going to be able to hear
8 this, are they?

9 THE COURT: Yeah. Just don't play it yet. When we close
10 the door, I think we'll be all right.

11 (Whereupon, there is a pause in the proceedings.)

12 THE COURT: Okay. You can go ahead.

13 MS. WYSE: Okay.

14 (Whereupon, State's Exhibit Number 1, the forensic
15 interview, is played for the Court, after which the
16 proceedings continue as follows. NOT TRANSCRIBED
17 HEREIN.)

18 THE COURT: Okay. Yes, ma'am?

19 MS. WYSE: Thank you, Your Honor. That's the -- the tape
20 in its entirety that we intend to publish to the jury.

21 THE COURT: All right. Any objections from the defense?

22 MR. WOODSON: Yes, Your Honor. Your Honor, I would point
23 to a couple of things.

24 First of all, the statute. There's -- there's four
25 prongs under it before the video comes in. Under prong three,

1 it says the child testifies at the proceeding, which she did,
2 and is subject to cross-examination on the elements of the
3 offense, which she was, and it says, "and the making of the
4 out-of-court statement." I don't recall any testimony of the
5 child regarding the making of that statement.

6 My other objection is that -- let me find it. There's
7 two objections in the video. The child is asked, after she
8 talks about -- I think it was the third incident were there
9 any other incidents, and she said no. Then the interviewer
10 says something happened in the bedroom. So she leads her to
11 say, oh, yeah, and it was -- it was another incident. Well,
12 that statement, as you know, is inconsistent with what she's
13 testified to today.

14 She -- I even asked her specifically. I went through
15 one, two, three, and I said was there a fourth in the bedroom
16 and she said no. So in that video, she's leading her to say
17 something in the video and she says something, you know, that
18 I believe is inconsistent with what was said, and I think she
19 was led into saying that.

20 The third thing -- the next thing I object to is that
21 there's -- in that video, she says B.G. broke the rules. Now,
22 of course, she would never be allowed to sit up there on the
23 stand and tell the jury that herself, but she's getting that
24 in, if the video comes in, through the video that B.G. broke
25 the rules. She's giving her opinion in the video and I think

1 that's -- well, that is objectionable.

2 So those are my objections to the video and then my
3 statutory objection that the child did not testify about the
4 making of the video.

5 THE COURT: All right. Any response to that?

6 MS. WYSE: Thank you, Your Honor. I'm looking at the
7 statute. I'm looking at prong number 3. The child testifies
8 at the proceeding and is subject to cross-examination on the
9 elements of the offense and the making of the out-of-court
10 statement. She was available for cross-examination. If he
11 wanted to ask her about it at that time, he could have. It
12 doesn't anywhere in here state that I have to ask her any
13 questions on the stand about that video.

14 THE COURT: All right.

15 MS. WYSE: As far as the leading statement that he's
16 saying that she made, in the beginning she is asked about some
17 places where things happened and she tells the interviewer the
18 places. Then once she starts going through the places, the
19 interviewer says, okay, is there anything else, and she says
20 no. She says, all right, well, you -- you said earlier about
21 the bedroom. She's reminding the child what the child already
22 said, and I think, you know, the jury, of course, can -- can
23 do whatever it wants to with that information.

24 As far as her inconsistencies on the stand, that's for
25 him in closing arguments, Your Honor, if he wants to make that

1 later.

2 THE COURT: What about B.G. broke the rules?

3 MS. WYSE: Oh, okay. And as far as B.G. broke the rules,
4 I mean I think given the totality of the circumstances and the
5 fact that she was in that room and the interviewer needed to
6 make the child feel safe, needed to make the child feel as if
7 she could say whatever she wanted to and that it would be
8 okay, and she told her the rules are you have to tell the
9 truth, I think that she was acting, you know, as she should
10 and would in any other circumstance, just like this. And if
11 she'd have said anything else or she had named another
12 perpetrator, I mean, you know, given the totality of the
13 circumstances, I think that everything that the forensic
14 interviewer said and asked was proper.

15 You know, of course, Mr. Woodson can -- can, you know,
16 later state, you know, as I'm sure he will, that these
17 incidents didn't happen so, therefore, B.G. didn't break the
18 rules, but I think that that was only for her benefit. I
19 don't think that the forensic interviewer was making some kind
20 of just blanket statement about B.G. I think that that was
21 only for the child's benefit and I think she did that in order
22 to make the child feel safe, and I think that's understandable
23 given the totality of the circumstances.

24 THE COURT: I think so too. I think the statute has been
25 complied with. I think the video is admissible and certainly

1 you can have wide latitude in cross-examination. All right.
2 Let's go ahead and bring out the jury.

3 MR. WOODSON: Your Honor, before we -- before we bring
4 the jury out, I noticed that when the video was being played,
5 the mom walked out and the sister kind of started crying. I
6 would ask the Court if that's going to be what they do in
7 front of the jury that they not do that in front of the jury.
8 If they can't watch it again without an emotional outburst
9 that they step outside because I don't think that is
10 appropriate.

11 THE COURT: All right. Can you comply with that?

12 (Whereupon, the mother and sister reply in the
13 affirmative.)

14 THE COURT: All right. Thank you. Be sure and do that.
15 All right. Anything? All right. Go ahead and bring out the
16 jury.

17 THE CLERK: Judge, some of them are out in the hallway.

18 THE COURT: Okay. Bring them in and then bring them out.

19 THE CLERK: Okay.

20 (Whereupon, the jurors from the hallway are taken through
21 the courtroom to the jury room at 2:48 p.m.)

22 MS. WYSE: Judge, do you want her to sit up there? For
23 her to just go ahead and stay up there or do you want me to
24 call her?

25 THE COURT: Have you -- you haven't called her yet. Then

1 have her sit behind you and just call her.

2 (Whereupon, the witness exits the witness stand.)

3 (Whereupon, the jury enters the courtroom at 2:50 p.m.)

4 THE COURT: All right. If you will, call your next
5 witness.

6 MS. WYSE: Thank you, Your Honor. May it please the
7 Court. The State would call Sally Williamson to the stand.

8 THE CLERK: Ma'am, if you will, please place your left
9 hand on the Bible and raise your right hand. Do you swear the
10 testimony you give in this case will be the truth, the whole
11 truth, and nothing but the truth, so help you God?

12 THE WITNESS: Yes, I do.

13 THE CLERK: Please be seated and state your full name for
14 the record.

15 THE WITNESS: My name is Sally Williamson.

16 SALLY WILLIAMSON, being first duly sworn,
17 testifies as follows:

18 DIRECT EXAMINATION

19 BY MS. WYSE:

20 Q: Good afternoon, Ms. Williamson.

21 A: Hi.

22 Q: How are you doing?

23 A: I'm good. Thank you.

24 Q: Good. Please make sure you speak right into that
25 microphone. Thank you so much.

1 A: Yes, ma'am.

2 Q: All right. What do you do, Ms. Williamson?

3 A: I am a forensic interviewer and therapist at the Care
4 House of the Pee Dee.

5 Q: And what is the Care House?

6 A: The Care House is a children' advocacy center, which
7 serves children and families with advocacy, therapy, and
8 forensic interviewing services.

9 Q: Okay. Now, how do cases get referred to the Care House?

10 A: Typically, cases are referred by investigative entities,
11 such as law enforcement, Social Services, and occasionally
12 medical referrals.

13 Q: Okay. Now, what -- what -- what is a forensic interview?

14 A: A forensic interview is a semi-structured, fact-finding
15 interview which is conducted as part of an investigation for
16 the purposes of assessing a child for possible child
17 maltreatment.

18 Q: Now, what is -- what kind of educational background do
19 you have?

20 A: I have a B.S. in psychology, as well as a master's in
21 counseling.

22 Q: And what kind of training do you have?

23 A: I am trained in forensic interviewing, which requires a
24 40-hour training course, as well as an additional 24-hour
25 advanced forensic interviewing course, as well as

1 approximately 16 hours of interviewing with special needs
2 populations.

3 Q: All right. And how long have you worked at the Care
4 House?

5 A: I've been at the Care House about three-and-a-half -- a
6 little over three-and-a-half years.

7 Q: And how many forensic interviews have you done?

8 A: As of last week, 1,206.

9 Q: And now, what -- what is the setting of the interview?

10 A: The setting is a small room with no toys, only a few
11 chairs in the room, and a flip chart. There is a closed-
12 circuit television system; so a small camera in the corner of
13 the room that leads to another room where investigators can
14 observe the interview live.

15 Q: All right. Now, why is the room structured the way it
16 is?

17 A: For various reasons. No toys or distractions in the room
18 so the child can hopefully sit and stay fairly focused on the
19 interviewer's questions. So there's very few distractions.
20 It's only the interviewer and the child present in order to
21 make it a sound interview. That's best practice in forensic
22 interviewing. And the closed-circuit television system is so
23 that an investigator can observe and also we can make a
24 recorded copy or documentation of the actual interview in case
25 they're not present, for example.

1 Q: All right. And was a -- was there a video of your
2 conversation with _____?

3 A: Yes, there was.

4 Q: Okay. Now, how do you approach interviews? What types
5 of methods do you use?

6 A: It's very important that a forensic interviewer uses
7 neutral, non-leading questions throughout the interview. The
8 standards of practice have changed a bit through the years,
9 but the protocol is basically to establish rapport with the
10 child. So ask a few questions and talk about the child's
11 interests to help them feel comfortable with the interview.
12 To identify parts of the body, anatomy, to establish a common
13 language with the child and to understand what words they use
14 for their body parts. To then move into talking about touches
15 that may seem okay, hugs, kisses, tickles. And then lead into
16 questions about any touches that the child may have
17 experienced that are not okay. And then closure, wrapping up
18 the interview, thanking the child for talking to the
19 interviewer.

20 Q: Now, based upon the age of the child, do you have any
21 differences in your approach?

22 A: Sure. I would use different terminology, and so an older
23 child I might use larger words that they are able to
24 understand. With a younger child, I would try to use words
25 that are appropriate for their developmental age.

1 Q: And as far as ages are concerned, you know, do you -- do
2 you have certain expectations of younger and middle-aged and
3 older?

4 A: Sure. During the rapport phase as I'm establishing
5 rapport with a child, I am briefly assessing their
6 developmental level by asking them questions that they should
7 be able to answer for their developmental age. What grade are
8 you in? Tell me who you live with, for example. Spell your
9 name.

10 Q: Now, as the interviews progress, do you -- do you use
11 case specifics throughout?

12 A: Sure. It's semi-structured in that initially we began
13 with very neutral questions, but as the child provides
14 information, we filter those questions slightly and make them
15 more focused, dependent upon what the child -- what
16 information the child has provided earlier in the interview.

17 Q: Okay. Now, what do you do when the interview is
18 concluded?

19 A: When it's concluded, we make an archive tape or a DVD of
20 the interview. We type up a written report that we send to
21 the referring agency or entity, such as law enforcement, and,
22 of course, keep the file as well with the written report and a
23 copy of the DVD as well.

24 Q: Okay. And now, this case involves Miss
25 . Did you meet with her?

1 A: Yes, ma'am.

2 Q: All right. When did that take place?

3 A: On March 12th of 2013.

4 Q: And who was present when you conducted this interview?

5 A: Do you mean when the actual interview was occurring or
6 who brought the child to the interview?

7 A: Well, I guess -- I think you've already answered one, but
8 go ahead and answer both.

9 A: Of course, during the interview itself it's just myself
10 and the child. I believe that it was the mother --

11 THE WITNESS: May I refer to my report, Your Honor?

12 THE COURT: Yes.

13 A: So the mother was present and brought the child to the
14 interview, but, of course, was not observing or present during
15 the actual interview itself.

16 Q: So when you started this interview with , what
17 kind of anatomical identification did she use?

18 A: Are you asking for the names that she used?

19 Q: Yes. I'm sorry. That is exactly what I was asking.

20 A: On the anatomical drawings, named the mouth,
21 the boobs, of course, the breasts, an arm, the private, which
22 was the vagina, the hand, back, and bottom.

23 Q: Is that on par with what you expected for her age group?

24 A: It's -- I explain to the child during the interview it's
25 not a test and so it's -- it's really -- we're not looking for

1 anatomically correct terminology. Instead, we're just looking
2 to find out the word that the child uses so if they refer to
3 that word during the interview, we'll know what they -- what
4 they mean. So we're not really assessing developmental level
5 at that point when we're doing anatomy identification.

6 Q: Okay. Now, how did this interview progress?

7 A: It progressed very similarly to how I explained, and I
8 believe I followed the exact steps that I explained. I built
9 rapport. We -- and I identified anatomy. We
10 discussed touches briefly. We discussed the abuse that she
11 disclosed, and then we closed the interview by reviewing
12 personal boundaries and safety, and me thanking her for
13 talking to me.

14 Q: And right in front of you is what's been marked as
15 State's Exhibit 1. Do you recognize that?

16 A: It appears to be a DVD marked State versus Gurley.

17 Q: Have you viewed the contents of that DVD?

18 A: Yes, I have.

19 Q: Okay. And are those the -- are the contents of that DVD
20 -- are they your meeting with

21 A: Yes, ma'am.

22 Q: Okay. Now, did the contents of that video -- did they
23 accurately depict the interview that took place?

24 A: Yes, they did.

25 MS. WYSE: At this time, Your Honor, I'd like to move

1 what's been previously marked as State's Exhibit 1 into
2 evidence.

3 THE COURT: Any objections?

4 MR. WOODSON: No, Your Honor.

5 THE COURT: All right. State's Number 1 in evidence
6 without objection.

7 (Whereupon, State's Exhibit Number 1, the DVD containing
8 the forensic interview of is
9 admitted into evidence.)

10 BY MS. WYSE:

11 Q: Now, what did you notice about her demeanor?

12 A: I would say that began the interview fairly
13 cheerful and, as the interview progressed, she became tearful
14 and put her head in her hands throughout the interview.

15 Q: All right. What was her emotional state?

16 A: She seemed to get progressively more upset throughout the
17 interview. She was still respondent to questions, but
18 responded much more briefly as the interview progressed.

19 Q: All right. Can you tell us about any time and place
20 disclosures that she made?

21 A: disclosed that the abuse occurred when she was
22 in first grade. She estimated 2010 to 2011, as there were
23 more than one occurrence occasions. And she identified
24 location -- two different locations, in the vehicle, as well
25 as in the Gurley residence.

1 Q: And do you remember anything about those different
2 disclosures? How many were there?

3 A: I believe there were four separate dis -- four separate
4 incidents during her disclosure.

5 Q: Okay. Now, was a written report prepared and submitted
6 to law enforcement?

7 A: Yes, it was.

8 Q: Okay.

9 MS. WYSE: Judge, at this time, I'd like to publish the
10 video to the jury.

11 THE COURT: All right. Any objections?

12 MR. WOODSON: Just subject to the previous objections
13 I've made about this portion.

14 THE COURT: I understand. Thank you. Overruled. Go
15 ahead and publish it.

16 (Whereupon, State's Exhibit Number 1, the DVD of the
17 forensic interview, is played in open court for the jury,
18 after which the proceedings continue as follows. NOT
19 TRANSCRIBED HEREIN.)

20 MS. WYSE: I don't have any further questions for you,
21 Ms. Williamson. Please answer any Mr. Woodson might have to
22 ask you.

23 CROSS-EXAMINATION

24 BY MR. WOODSON:

25 Q: Good afternoon, Ms. Williamson.

1 A: Good afternoon.

2 Q: You testified that at the Care House you did -- you all
3 do advocacy, therapy, and forensic interviews; is that
4 correct?

5 A: Yes, sir.

6 Q: And you're just on the forensic interview part?

7 A: I also provide therapy as well --

8 Q: Okay.

9 A: -- which is a very different role.

10 Q: Okay. In this particular case, you just did the forensic
11 interview; is that correct?

12 A: That's correct. Yes.

13 Q: All right. And after the forensic interview, is that the
14 extent of what you do? In this case, did you do any follow-up
15 or was it just the forensic interview?

16 A: I conducted the forensic interview and then afterwards, I
17 meet with the parents and tell them what, if anything, the
18 child disclosed.

19 Q: Okay. Prior to doing the interview, do you get police
20 reports, records, medical records, things of that nature?

21 A: Not medical records. Sometimes the police report is
22 submitted before the interview, but more often it's not prior
23 to the interview. Typically, we have a call-in referral from
24 law enforcement with just the basics of what typology. So is
25 it physical abuse or sexual abuse, what the child's name is

1 and their parent's name, and then contact information.

2 Q: Okay. Do you recall in this particular case whether you
3 reviewed any physical -- any medical records or police report?

4 A: No, sir. I wouldn't review any medical records prior.

5 Q: Okay. Did you do a physical exam as a part of this
6 particular interview?

7 A: No, sir.

8 Q: It was just the interview, what we saw, and then that's
9 it?

10 A: Yes, that's correct.

11 Q: Okay. All right. There was a -- there was a report
12 issued. Did you do the report? And I'm talking about a
13 report dated -- well, it just says forensic interview report
14 form, date of service March 12th, 2013.

15 A: Yes, sir.

16 Q: Is that a form you do?

17 A: Yes, it is.

18 Q: Okay. And is it kind of like an intake form that you
19 take care of?

20 A: Actually, the report is produced after the actual
21 interview occurs. So it's really a summary of the
22 information, the allegations, who lives in the home, any
23 issues that we need to be aware of before the interview, and
24 then a transcription of the actual interview itself.

25 Q: Okay. And who did she disclose lived in the home that

1 you recall?

2 A: She disclosed to Melissa Odom, who was the child advocate
3 at the time, that she lived with her mother, Teicher
4 Richardson.

5 Q: At the time of the interview?

6 A: Yes, sir.

7 Q: Okay. All right. Did -- did y'all get into who lived in
8 the home at the time of the alleged incidents?

9 A: I'm not sure if we did. I believe in the interview
10 itself I asked her who she lived with at the time of the
11 interview, and she mentioned throughout her interview, as you
12 heard, that during one or more of the incidents she and her
13 mother resided in the Gurley residence.

14 Q: Okay. Can I get you to flip to page 3 of the form that
15 you're referring to?

16 A: Yes, sir.

17 Q: Okay. Do you see a section called social history? It
18 may not -- well --

19 A: No, sir.

20 Q: You don't see it?

21 A: I don't see what area you're referring to that says
22 social history.

23 Q: I'm looking where it says page 3 of 13. I'll show you on
24 my copy. Is this a form that you did? Is that --

25 A: No, sir, it's not.

- 1 Q: Oh, that's not your form?
- 2 A: No, sir. I don't recognize that.
- 3 Q: Is -- is this your form from --
- 4 A: No, sir, it's not.
- 5 Q: Okay. And the form I'm referring to is the maltreatment
- 6 protocol. Is that a -- it's attached to your report. Is that
- 7 something that you would have reviewed or --
- 8 A: No, sir.
- 9 Q: Okay. Do you know who would have done that?
- 10 A: I'm not sure, no.
- 11 Q: Okay. And it's not something that you would have
- 12 reviewed before or after doing your interview?
- 13 A: No, sir.
- 14 Q: Okay. So the extent of what you did was that you asked
- 15 the child questions, as we saw in the video, and pretty much
- 16 that's it in this particular case?
- 17 A: Yes, sir.
- 18 Q: Okay.
- 19 MR. WOODSON: I don't have any other questions.
- 20 THE COURT: All right. Redirect?
- 21 REDIRECT EXAMINATION
- 22 BY MS. WYSE:
- 23 Q: never disclosed any kind of digital -- any
- 24 kind of penetration; right?
- 25 A: Not to my knowledge, no.

1 Q: To you?

2 A: No, ma'am.

3 Q: Okay. Thank you.

4 MS. WYSE: That's it.

5 THE COURT: Anything further?

6 MR. WOODSON: No, Your Honor.

7 THE COURT: All right. You may go. Thank you.

8 THE WITNESS: Thank you.

9 THE COURT: Any objections to her being excused?

10 MS. WYSE: None from the State, Your Honor.

11 MR. WOODSON: No, Your Honor.

12 THE COURT: All right. Have a good day.

13 THE WITNESS: Thank you. You too.

14 THE COURT: If you will, call your next witness.

15 MS. WYSE: Thank you, Your Honor. At this time, the
16 State rests.

17 THE COURT: All right. Thank you very much. Members of
18 the jury, if you would, step into the jury room for just a
19 moment and we'll be back with you.

20 (Whereupon, the jury exits the courtroom at 3:35 p.m.)

21 THE COURT: All right. Any motions?

22 MR. WOODSON: Yes, Your Honor. I would renew my motions
23 that I have made, and I do want to specifically go back to
24 one. When Kathy Crawford was on the stand, she was asked if
25 the child was coached. I did object at that time because I

1 don't think that's something that she could have testified to,
2 and I think that's in violation of State v. Kromah.

3 She's not a forensic interviewer, but the State v. Kromah
4 says that the forensic interviewer can't testify as to whether
5 -- an opinion as to whether the child's behavior indicated
6 that she was telling the truth. If the forensic interviewer
7 can't testify about the truthfulness, I don't think that any
8 other expert -- and I think that case goes on to say any
9 expert can't testify about truthfulness, but she says she
10 doesn't believe the child was coached, basically saying that
11 she believes the child is telling the truth.

12 So that, in addition to the other objections I've made,
13 I'd also make a motion for a directed verdict based on the
14 gross inconsistency of the testimony, Your Honor.

15 THE COURT: All right. Would the State like to reply?

16 MS. WYSE: Thank you, Your Honor. As far as my question
17 asking Ms. Crawford whether or not the child had been coached,
18 I was just merely asking if she -- well, first of all, I asked
19 her if she'd ever talked to a child that had been coached, at
20 which point in time she said that she generally saw children
21 that were coached by the defendant. She never said on the
22 stand that the child was coached by the defendant. She didn't
23 say that.

24 And then I asked her if -- if she knew what I meant when
25 I asked what coaching was. She said yes, and I asked her if

1 she thought that had been coached, at which point
2 in time she said no.

3 And obviously, I don't -- I don't know that based upon
4 the questions and the answers that she gave that it was
5 incredibly clear to the jury what I was asking. So I don't
6 think that any inference of truthfulness could be made based
7 upon her answers.

8 THE COURT: All right. Thank you. I'm going to deny
9 your motions, but I understand them. All right.

10 MS. WYSE: And then also as to the -- the -- the request
11 for a directed verdict, Your Honor, I think it --

12 THE COURT: I've heard enough.

13 MS. WYSE: Okay.

14 THE COURT: There's enough to go to the jury.

15 MS. WYSE: Thank you.

16 THE COURT: All right. Do you intend to put up any
17 witnesses today or --

18 MR. WOODSON: Yes, sir. I have one particular witness
19 that can only testify today.

20 THE COURT: Okay.

21 MR. WOODSON: So I'll probably put him up first, which
22 would be my client's brother.

23 THE COURT: Okay.

24 MR. WOODSON: And -- and if we have time, I may do one
25 other, but I don't know how long he'll take. I don't think

1 THE COURT: Sounds good.

2 (Whereupon, there is a break in the proceedings from 3:38
3 p.m. until 3:55 p.m., after which the proceedings
4 continue as follows.)

5 THE COURT: Go ahead and bring out the jury.

6 THE BAILIFF: Yes, sir.

7 (Whereupon, the jury enters the courtroom at 3:55 p.m.)

8 THE COURT: All right. If the defense will, call your
9 first witness.

10 MR. WOODSON: Your Honor, at this time, the defense
11 called -- calls Ken Gurley II to the stand.

12 THE CLERK: Sir, if you will, walk around and place your
13 left hand on the Bible and raise your right hand. Do you
14 swear the testimony you give in this case will be the truth,
15 the whole truth, and nothing but the truth, so help you God?

16 THE WITNESS: Yes.

17 THE CLERK: Please be seated and state your full name for
18 the record.

19 THE WITNESS: All right. Hi. My name is Kenrick Gurley
20 II.

21 MR. WOODSON: Thank you, Your Honor.

22 KEN GURLEY II, being first duly
23 sworn, testifies as follows:

24 DIRECT EXAMINATION

25 BY MR. WOODSON:

- 1 Q: Hi, Kenrick. Mr. Gurley, how old are you?
- 2 A: I'm 23.
- 3 Q: All right. And how are you related to Bryant Gurley?
- 4 A: That's my brother.
- 5 Q: Okay. And in 2010/2011, where were you living?
- 6 A: At -- in Florence at home.
- 7 Q: Okay. When you say at home, do you mean with your father
- 8 and -- and mother?
- 9 A: Yes.
- 10 Q: All right. Excuse me. And was there anybody else in the
- 11 home with you?
- 12 A: Ms. Richardson and her family.
- 13 Q: Okay. And the family would include and her
- 14 older sister, Samantha?
- 15 A: Yes.
- 16 Q: And are you and Samantha around the same age?
- 17 A: Yes.
- 18 Q: Okay. And because you and Samantha were the same age and
- 19 because there were two boys and there were two girls, like I
- 20 said, were there any rules in place in the house regarding --
- 21 A: Yes.
- 22 Q: -- being together? Explain that.
- 23 A: Well, we -- we were all in different rooms. So we knew
- 24 -- go ahead.
- 25 Q: I guess were -- were you allowed to go in say --

1 MS. WYSE: Objection. Leading.

2 THE COURT: Sustained.

3 MR. WOODSON: Okay.

4 BY MR. WOODSON:

5 Q: Go ahead and finish what you were saying.

6 A: Okay. Well --

7 MR. WOODSON: Judge, I want to --

8 THE COURT: Rephrase your question.

9 MR. WOODSON: Okay. Let me rephrase it because I know
10 it's kind of an open-ended question.

11 BY MR. WOODSON:

12 Q: Were there rules as far as -- could you go into
13 Samantha's room --

14 MS. WYSE: Objection. Leading.

15 THE COURT: Sustained. Just rephrase it. You can get
16 it.

17 BY MR. WOODSON:

18 Q: What were the rules regarding going in each other's
19 rooms?

20 A: Oh, well, the doors were always open in the room so there
21 was no -- if I -- if me or my brother ever went in the room,
22 there was never no closed doors. So that was about it.

23 Q: Okay. And prior to these allegations come -- coming
24 forward, what was your relationship with and
25 Samantha?

- 1 A: They were like sisters.
- 2 Q: Okay. And how long were they in the house?
- 3 A: I can't recall.
- 4 Q: Okay. Was it a couple of months or a couple of years?
- 5 A: Years. Couple years.
- 6 Q: Okay. And at some point, did they leave the house?
- 7 A: 2012.
- 8 Q: What's the best of your recollection of when they left?
- 9 A: I can't recall.
- 10 Q: Okay. My question is: what were the circumstances as to
- 11 -- your understanding of the circumstances as to why they left
- 12 the house? What happened?
- 13 A: I was accused of taking a ring, my brother's ring, and
- 14 that wasn't true.
- 15 Q: Okay. And was it -- was it a high school ring?
- 16 A: Yes, sir.
- 17 MR. WOODSON: Can I -- can I approach, Your Honor?
- 18 THE COURT: Sure.
- 19 BY MR. WOODSON:
- 20 A: Yes.
- 21 Q: Does that appear to be the ring?
- 22 A: Yes.
- 23 Q: Does it have a name written on it?
- 24 A: Yes.
- 25 Q: Whose name?

- 1 A: Bryant.
- 2 Q: Okay. Now, do you remember what day of the week this
3 was?
- 4 A: Sunday.
- 5 Q: Did you go to church that day?
- 6 A: Yes.
- 7 Q: And did this happen before or after church?
- 8 A: When we got home from church, that's when it all took
9 place.
- 10 Q: Okay. And tell me what happened?
- 11 A: We came in from church, and Ms. Richardson was at the
12 house. And when we came in, that's when my brother went
13 looking for his ring and he couldn't find it. So after that,
14 from my understanding, she tried to say the ring was --
- 15 MS. WYSE: Objection to --
- 16 THE COURT: Sustained.
- 17 MS. WYSE: -- hearsay.
- 18 THE COURT: Sustained.
- 19 BY MR. WOODSON:
- 20 Q: Just -- you can only say -- what she means is you can
21 only say what you -- what she told you, not what you heard.
- 22 A: Okay. Okay. Well --
- 23 Q: So just stick to what your conversation between you and
24 her was.
- 25 A: Well, when we came in -- in the house, my brother noticed

1 his ring was missing.

2 Q: Okay.

3 A: So we was looking for the ring. We went to the closet.

4 The ring -- I noticed the ring was in my -- my church pants.

5 So it was said that I took the ring, but how could I place the

6 ring in my church pants if I was gone all day? So prior to

7 that, the ring -- I don't know where the ring was prior to

8 that, but how could it get in my pants if I was gone?

9 Q: Okay.

10 A: So --

11 Q: So was -- was there any discussion between you and Ms.

12 Richardson about the ring?

13 A: Yeah. We got in an argument.

14 Q: An argument?

15 A: Yes.

16 Q: Okay. Was it a heated argument?

17 A: Yes.

18 Q: Okay. And tell me about that?

19 A: I can't recall the words that was said, but I just know

20 it was -- there was just a heated argument.

21 Q: Okay. And how long after that was -- did she leave the
22 house?

23 A: It was shortly after.

24 Q: Okay. And did she leave voluntarily or did -- was she
25 kind of put out?

1 A: She was put out.

2 Q: Okay. All right. Now, while she was in the house, did
3 you ever notice any -- did you ever notice whether
4 was afraid to be around your brother?

5 A: She was never afraid.

6 Q: Okay. Was there ever an incident where you, your
7 parents, and Ms. Richardson were locked in a room, and Bryant
8 and her were in the living room by themselves?

9 A: No.

10 MS. WYSE: Objection. Leading.

11 THE COURT: Sustained.

12 BY MR. WOODSON:

13 Q: Do you -- do you have a video game system in your room?

14 A: Yes.

15 Q: Okay. And did you play the video games in there?

16 A: Yes.

17 Q: Was ever in there with you?

18 A: Only if her sister or my brother was in there. That was
19 it.

20 Q: Was it -- was there ever any incident where they were in
21 your room, just your brother --

22 MS. WYSE: Objection. Leading.

23 THE COURT: You can rephrase it.

24 BY MR. WOODSON:

25 Q: Are you aware of any incident where it was just your

1 brother and in the room --

2 A: No.

3 Q: -- playing video games?

4 A: No.

5 Q: All right. Was there a video game system upstairs?

6 A: No.

7 Q: Okay. Does your father's house have a basement?

8 A: No.

9 Q: Okay. All right. Were you working during the time that
10 they were in the house?

11 A: Yes.

12 Q: Where did you work?

13 A: Food Lion.

14 Q: Here in Florence?

15 A: Yes. And FedEx.

16 Q: And was this a job where you worked just days or did you
17 work nights or both?

18 A: It varied.

19 Q: Okay. Were there times where you got off the
20 bus?

21 A: Yes.

22 Q: Okay. Did -- what was your relationship with Ms.
23 Richardson?

24 A: My godmother.

25 Q: Okay.

1 A: Yeah.

2 Q: Did she help you with homework or anything like that?

3 A: No.

4 Q: Okay. Who did things like that if you needed help?

5 A: My parents.

6 Q: Okay. All right.

7 MR. WOODSON: The Court's indulgence.

8 BY MR. WOODSON:

9 Q: You said that your relationship with and
10 Samantha -- they were like sisters. Was it a relationship
11 where they were --

12 MS. WYSE: Objection. Leading.

13 THE COURT: Sustained. You can rephrase it.

14 BY MR. WOODSON:

15 Q: Was your relationship such that they would confide in
16 you?

17 A: Yes.

18 Q: Okay. They felt free to talk to you?

19 A: Yes.

20 Q: Okay. Prior to the allegations being made, was there any
21 indication made to you that anything of this nature happened?

22 A: No.

23 Q: Okay.

24 MR. WOODSON: I don't have any other questions, Your
25 Honor.

1 truth, the whole truth, and nothing but the truth, so help you
2 God?

3 THE WITNESS: I affirm.

4 THE CLERK: Please be seated and state your full name for
5 the record.

6 THE WITNESS: I am Bishop Barry S. Mitchell.

7 MR. WOODSON: Thank you, Your Honor.

8 BARRY MITCHELL, being first duly sworn,
9 testifies as follows:

10 DIRECT EXAMINATION

11 BY MR. WOODSON:

12 Q: Bishop Mitchell, good afternoon.

13 A: Good afternoon.

14 Q: Where do you pastor at?

15 A: Open Door Christian Ministries in Columbia, South
16 Carolina.

17 Q: Okay. And how long have you been pastoring there?

18 A: Sixteen years.

19 Q: All right. And prior to that, you were a minister at
20 another ministry; is that correct?

21 A: Yes. At Bible Way Church of Atlas Road in Columbia.

22 Q: All right. And do you know the Gurleys, Ken Gurley,
23 Denise Gurley?

24 A: Yes, I do.

25 Q: All right. And how do you know them?

- 1 A: They are members of our church.
- 2 Q: Okay. And how long have they been members?
- 3 A: Almost eight years now.
- 4 Q: All right. And do you know Ms. Richardson?
- 5 A: Yes.
- 6 Q: All right. And how do you know her?
- 7 A: Through the Gurleys, first of all, by their association
- 8 with her, and then she would attend the church at some -- at
- 9 some point, and then eventually she actually joined the
- 10 church.
- 11 Q: Okay. And do you recall about when that was? I'm not
- 12 going to hold you to any dates, but do you recall?
- 13 A: 2011 I'm sure was --
- 14 Q: All right.
- 15 A: That was the year. The exact time, early part of the
- 16 year, but the month and date I'm not exactly sure.
- 17 Q: Okay. And -- and you know Bryant Gurley; is that
- 18 correct?
- 19 A: Yes.
- 20 Q: All right. Have you had interactions with him?
- 21 A: Yes, quite a bit.
- 22 Q: Did he do anything in the ministry?
- 23 A: He would play the drums sometimes when he -- when he was
- 24 there.
- 25 Q: Okay.

1 A: He would attend with his father. His father was our
2 organist.

3 Q: Okay.

4 A: And so he would attend with his father sometimes, not all
5 the time. But then sometimes when he would come, he would
6 play the drums, but that wasn't all the time either. But he
7 would come and just be there in the service.

8 Q: Okay. So he wasn't there, like, every Sunday or every
9 other Sunday --

10 A: No.

11 Q: -- or anything like that?

12 A: No.

13 Q: Okay. Did you have the opportunity to ever go to or come
14 to their house here in Florence County?

15 A: Yes. Several -- on several occasions.

16 Q: Okay. Would Bryant be there?

17 A: At times. Sometimes yes and sometimes no.

18 Q: Okay. And what kind of functions were at the house? Or
19 did you just go to visit?

20 A: Sometimes it was just a visit. Other times it was a
21 family gathering, like on the 4th of July.

22 Q: Okay.

23 A: We would be invited to come. It was almost like a family
24 picnic.

25 Q: Okay.

- 1 A: A barbecue there at the house.
- 2 Q: Okay. When you -- was there ever a time that you just
3 went for a visit where Ms. Richardson was there?
- 4 A: Yes.
- 5 Q: Okay. And did you ever talk with her during those
6 visits?
- 7 A: Yes.
- 8 Q: All right. And you said there was a time that you went
9 on the 4th of July; is that correct?
- 10 A: Yes. I'm sure more than once.
- 11 Q: On the -- on the 4th of July event, would it be a lot of
12 people?
- 13 A: Quite a few.
- 14 Q: Give me an estimate of how many people you think were
15 there?
- 16 A: Sixty. Seventy maybe.
- 17 Q: And would this be like a cookout-type of event?
- 18 A: Yes. A cookout and barbecue.
- 19 Q: Would everybody be outside or downstairs? Upstairs?
- 20 A: All of the above.
- 21 Q: Okay.
- 22 A: Inside, outside. Because there was so many people, they
23 were scattered around the house inside and out.
- 24 Q: Okay. And during those events, do you ever recall seeing
25 Ms. Richardson?

1 A: I want to say yes, but I'm not exactly sure. I can't say
2 specifically that I did see her there at one of those times
3 because there was so many people.

4 Q: Okay.

5 A: It was usually other times when it was only a few of us
6 at the house when I knew that she was there.

7 Q: Okay. When you were around Bryant, did he spend a lot of
8 time with kids his age or older people?

9 A: Bryant was usually around the older people because he was
10 always asking questions about fishing and hunting --

11 Q: Okay.

12 A: -- and things of that nature. So the kids didn't know
13 any -- didn't have any of those answers.

14 Q: So he was more of an outdoors kind of person?

15 A: Absolutely.

16 Q: All right. Did you ever have any problems with Bryant or
17 --

18 A: Never.

19 Q: -- know him to be any trouble?

20 A: Never.

21 Q: Okay.

22 A: No.

23 Q: Okay. Ms. -- Ms. Richardson -- you said she joined
24 possibly early in 2011. Was she a member that whole year?
25 Did she consistently come?

1 A: No. It was every now and then she would -- she would
2 come.

3 Q: Okay. At some point, did she stop coming?

4 A: Yes.

5 Q: Do you recall about when that was?

6 A: Maybe three to six months after she joined, we didn't see
7 her very much anymore.

8 Q: Okay. Was there any explanation given to you as to why
9 you didn't see her anymore?

10 A: No, not really.

11 MS. WYSE: Objection. That would be hearsay.

12 THE COURT: He said none.

13 MS. WYSE: Okay. Sorry.

14 BY MR. WOODSON:

15 Q: Okay. All right. Have you ever seen any interaction
16 between Bryant and Miss

17 A: Not any interaction other than sitting around watching
18 television or something of that nature --

19 Q: Okay.

20 A: -- at the house when I was there.

21 Q: And would they watch television in a private -- in a room
22 or would they watch it with the family?

23 A: With -- well, when I was there, it was like everybody was
24 in the same room, and would be there, as well as
25 Bryant when Bryant was there. He wasn't there all the time.

1 Q: Okay.

2 A: Each time I would go when the Richardsons were there, he
3 wasn't there all the time.

4 Q: Okay. And the times that you were there, everybody was
5 together? Is that your recollection?

6 A: That's my recollection.

7 Q: Okay.

8 A: Yes. I guess sometimes I wouldn't see -- I wouldn't know
9 exactly everybody who was there because I wouldn't see
10 everyone.

11 Q: Okay.

12 A: Because my visits sometimes would be short; so I wouldn't
13 know exactly who is there and who isn't there.

14 Q: Okay. Now, are you a musician?

15 A: Yes, I am.

16 Q: All right. Was there ever a time -- is there a music
17 room upstairs?

18 A: Yes, there is.

19 Q: And did you ever go up there?

20 A: Almost every time I went.

21 Q: Okay. And what would y'all do up there?

22 A: Play. Go over -- go over quite a bit of music that we --
23 the choir was doing or something Ken would want to show me --
24 excuse me -- something that I hadn't heard or I'd want to show
25 him something or we'd teach each other something or we'd just

1 get up there and just play.

2 Q: Okay.

3 A: There were several keyboards and I also play guitar.

4 Q: Okay. So when you were up there, was multiple people
5 there?

6 A: Most of the time. Sometimes, it was just Ken and I --

7 Q: Okay.

8 A: -- up there.

9 Q: Okay. Do you recall ever being upstairs at
10 any point in the music room while you were there?

11 A: Not that I recall.

12 Q: Okay. Okay.

13 MR. WOODSON: Court's indulgence.

14 THE COURT: Mm-hmm.

15 BY MR. WOODSON:

16 Q: I want to go back to the cookout. When -- when you were
17 at the cookout, were there children -- other children there?

18 A: Sure.

19 Q: Okay. All right. And do you know the Christmas routine
20 for the Gurleys?

21 A: Usually, Thanksgiving and Christmas holidays, the Gurleys
22 didn't come to church during that week simply because they
23 would always let me know that they would be visiting with
24 their relatives, and so we wouldn't see them that week at
25 church. And sometimes they would let me know that they're

1 either spending time with Mrs. Gurley's -- with Denise's
2 family or with Ken's family. So usually we wouldn't see them
3 at church, and he would always let me know when he was not
4 going to be there because he was our main musician.

5 Q: Okay. So he's pretty regular at your church?

6 A: Yes.

7 Q: He's there pretty much every Sunday?

8 A: Almost every Sunday. Now, he's not there. He's there,
9 like, two Sundays out of the month now because his job changed
10 within the past year or so.

11 Q: Okay. Thank you, Bishop.

12 THE COURT: All right. Cross?

13 MS. WYSE: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. WYSE:

16 Q: Good afternoon, Bishop.

17 A: Good afternoon.

18 Q: Did you ever talk to Bryant Gurley about these
19 allegations?

20 A: No. I never -- I've never spoken with him about it.

21 Q: And he never told you anything about it?

22 A: Never did.

23 Q: Okay.

24 MS. WYSE: I don't have any further questions, Your
25 Honor.

1 (Whereupon, there is a pause in the proceedings until the
2 witness enters the courtroom, after which the proceedings
3 continue as follows.)

4 THE CLERK: Please step -- Mr. Gurley Sr.?

5 THE WITNESS: Yes.

6 THE CLERK: Okay. Please step up to the witness stand.

7 THE BAILIFF: Right here, sir.

8 THE CLERK: Please place your left hand on the Bible and
9 raise your right hand. Do you swear or affirm the testimony
10 you give in this case will be the truth, the whole truth, and
11 nothing but the truth, so help you God?

12 THE WITNESS: Yes, ma'am.

13 THE CLERK: Please be seated and then state your name for
14 the record.

15 THE WITNESS: My name is Kenrick Xavier Gurley Sr.

16 THE COURT: All right. Yes, sir?

17 MR. WOODSON: Thank you, Your Honor.

18 KEN GURLEY SR., being first duly sworn,
19 testifies as follows:

20 DIRECT EXAMINATION

21 BY MR. WOODSON:

22 Q: Mr. Gurley, how are you related to Bryant Gurley?

23 A: I'm his father.

24 Q: And how are you related to Kenrick Gurley II?

25 A: I'm his father.

1 Q: That's an obvious question. Are you married?

2 A: Yes, I am.

3 Q: What is your wife's name?

4 A: Denise Gurley.

5 Q: Okay. And how long have you been married?

6 A: We've been married 14 years.

7 Q: That's awesome. What type of work do you do now?

8 A: I'm a corrugator supervisor at Carolina Container.

9 Q: Okay. And were you working back in 2010/2011?

10 A: Yes, I was. I was employed at Rock Tenn --

11 Q: Okay.

12 A: -- in Latta, South Carolina.

13 Q: All right. And how long did you work at Rock Tenn?

14 A: I worked there 22 years.

15 Q: All right. What -- do you know Teicher Richardson?

16 A: I do, through my wife.

17 Q: Okay. And how long have you known her?

18 A: Ever since from 2008 to 2011.

19 Q: Okay. And was there a point where she came to live with
20 you?

21 A: Yes, it was.

22 Q: How did that come about?

23 A: When -- one night, she came over and I think that her and
24 her husband was having problems, and she wanted to know if she
25 could leave the kids at the house with us. And she brought

- 1 the kids over and she left and she went back.
- 2 Q: Okay. So initially, the children just lived there?
- 3 A: The children came first.
- 4 Q: Okay. And then, at some point, did she move in?
- 5 A: Yes, she did.
- 6 Q: All right. When the children were there without Ms.
- 7 Richardson, where were they? What room were they in?
- 8 A: They were staying in my downstairs room.
- 9 Q: Okay. And did -- and they shared the room?
- 10 A: They shared the room.
- 11 Q: Okay. Anybody else in the room with the two of them?
- 12 A: No, it wasn't.
- 13 Q: All right. And do you recall how long after she dropped
- 14 the kids off with you that she came and stayed there also?
- 15 A: Maybe about a week or two. It wasn't long.
- 16 Q: Okay. And did she indicate why she was coming there?
- 17 A: Not to me. Maybe to my wife. Yeah.
- 18 Q: Okay. Now, during the time -- and I'm talking about the
- 19 2010/2011 time frame -- did your son, Bryant, come to visit
- 20 your house?
- 21 A: Yes, he did.
- 22 Q: All right. And how often did he come visit you?
- 23 A: He might have come once a month, if once a month, because
- 24 I worked third shift and so it was hard for me to bring him
- 25 over because I worked hours from -- I was on twelve-hour

1 shifts. So if I went to work at nine, I worked from nine to
2 nine. If I went to work at eleven, I worked from eleven to
3 eleven.

4 Q: All right. And what was your -- as far as days of the
5 week are concerned, was it a Monday through Friday job? Was
6 it a seven-day-a-week job?

7 A: It was Monday through Saturday.

8 Q: Monday through Saturday?

9 A: A lot of days, I got off Saturday around noon or, like I
10 said, nine o'clock or eleven, according to when I had to go
11 in.

12 Q: Okay. Can you pull the mic a little closer to you?

13 A: Sure.

14 Q: I can hear you, but I want to make sure everybody hears
15 you.

16 A: Okay.

17 Q: And say that again? You said you --

18 A: We worked from nine to nine or eleven to eleven. It was
19 according to when I was told to come in.

20 Q: Okay. Were there times where you would get Bryant on a
21 Friday night?

22 A: I never could because I had to go to work on Friday. He
23 never came over on Fridays.

24 Q: So when you would get him, what day of the week would it
25 be?

KEN GURLEY SR. - DIRECT BY MR. WOODSON

- 1 A: It was always Saturday.
- 2 Q: Okay. And would you go get him?
- 3 A: I would. I was the one that got him and brought him
- 4 back.
- 5 Q: Okay. And were there times where he would be brought to
- 6 your house by his mother?
- 7 A: No.
- 8 Q: Okay. All right. And about how old do you recall Bryant
- 9 being back in 2010?
- 10 A: It was either 15 or either 14, one of the two.
- 11 Q: Okay. He was a teenager?
- 12 A: He was a teenager.
- 13 Q: All right. And when Bryant came to your house, where did
- 14 he sleep?
- 15 A: He slept with his brother. They had two bunk -- they had
- 16 two sleigh beds.
- 17 Q: Okay.
- 18 A: And he slept in one bed and his brother slept in the
- 19 other bed.
- 20 Q: Okay. And were you always in the home when Bryant was
- 21 there?
- 22 A: Always.
- 23 Q: And how many people were in the home typically when
- 24 Bryant was there?
- 25 A: Everybody. Me, my wife, Bryant, his brother, Teicher,

1 and Sam when she was there, and

2 Q: Okay. And you -- all right. And you said Sam when she
3 was there. Was there some point that she moved out of your
4 house?

5 A: She left and went to college.

6 Q: Okay. And do you remember about when that was?

7 A: It was in 2010.

8 Q: Okay.

9 A: August.

10 Q: All right. Now, did you have any rules in place
11 regarding the children and the room situation?

12 A: Yes, I did.

13 Q: What were your rules?

14 A: I told Teicher she had girls, I had boys. No doors was
15 to be closed.

16 Q: Okay.

17 A: All doors stayed open at all times, and I watched the
18 house at all times. There was nobody to be left alone in the
19 house.

20 Q: Okay. All right. And did they comply with the rules as
21 far as you know?

22 A: Yes, they did. The only time the doors was closed was at
23 night when everybody went to bed.

24 Q: Okay. When -- and you -- you became aware -- well, let
25 me -- strike that. When the children were there, what was

1 your relationship? And when I say the children, when Samantha
2 and . were there, what was your relationship with
3 them? Was it good?

4 A: It was good.

5 Q: Okay.

6 A: It was good. I had no problem with Samantha nor
7

8 Q: Okay.

9 A: I love -- I love both of them.

10 Q: Okay. All right. Did they talk to you?

11 A: All the time.

12 Q: Okay. Were there times -- and let me ask it this way.
13 Did Ms. Richardson work during the time she was in your house?

14 A: She didn't have a 40-hour week job. She -- I think she
15 was, like, a auditor, and she maybe worked, like, one or two
16 days out of the week, if she did that sometime, and I know one
17 time she started filing -- doing taxes later in the years.

18 Q: Okay. So she would be in your house a good bit?

19 A: Yes. Because she couldn't -- she didn't have any
20 transportation. She had to use my truck.

21 Q: Okay.

22 A: That was the only transportation she had.

23 Q: Okay. And did she pay you rent?

24 A: No, she didn't.

25 Q: Did she give you lump sums of money during tax time?

- 1 A: No, she didn't.
- 2 Q: Did she pay any of the bills?
- 3 A: No, she didn't.
- 4 Q: Was this a situation where you were trying to help her?
- 5 A: I was trying to help her and the kids because they had no
- 6 place to stay.
- 7 Q: Okay.
- 8 A: And I -- she stayed in the house, like I said, about
- 9 three-and-a-half years.
- 10 Q: Okay.
- 11 A: And I never asked her for rent or nothing. I was just
- 12 trying to help her kids --
- 13 Q: Okay.
- 14 A: -- and her.
- 15 Q: Now, do you attend church?
- 16 A: Yes, I do.
- 17 Q: Where do you attend church?
- 18 A: Open Door Christian Ministries in Columbia, South
- 19 Carolina.
- 20 Q: Okay. And your pastor is Barry Mitchell; is that
- 21 correct?
- 22 A: Bishop Barry Mitchell.
- 23 Q: All right. And at some point, did Ms. Richardson go to
- 24 that church as well?
- 25 A: Yes, she did.

1 Q: All right. And do you have any function at that
2 particular church?

3 A: I am a deacon in the church, and I'm the church organist.

4 Q: Okay. And do you have a music room in your house?

5 A: Yes, I do.

6 Q: And where is it located?

7 A: It's in the up -- it's my upstairs.

8 Q: Okay. Now, is there furniture up there?

9 A: No, there's not.

10 Q: All right. At some point, did -- did Ms. Richardson and
11 the child stay in that room?

12 A: Yes, they did.

13 Q: Tell me about that?

14 A: They -- they stayed in my upstairs. I didn't have any
15 furniture up there. I had a television up there, and they had
16 an air mattress that they slept on.

17 Q: Okay.

18 A: Because that's where I went to practice. I had my organ,
19 my keyboards, and my computer. So really, nobody was allowed
20 in that room unless there was an adult in that room. That was
21 my rules in the house because that was the most expensive room
22 that I had in my house. All my stuff was up there, and I
23 didn't really want nobody up there.

24 Q: Okay. And at -- and you -- you said earlier that --
25 well, let me ask it this way. Was there -- was there some

1 point where they moved from the air mattress upstairs -- and
2 when I say they, I mean Ms. Richardson and to
3 the downstairs?

4 A: Yes, they did.

5 Q: When was that?

6 A: That was in 2010, August, when Sam went to college, and I
7 told them that everybody was coming downstairs because my
8 house ran on two different units upstairs and my bill was
9 doubling, and I said I'm not going to do this anymore. So I
10 moved everybody downstairs when she left. She took -- her and
11 took Samantha's room.

12 Q: Okay. So from -- is it fair to say from August 2010
13 forward they were --

14 A: They were downstairs.

15 Q: -- downstairs? Okay. All right. All right. Was there
16 some point where you became aware of -- well, you were told
17 that there was some money coming to --

18 MS. WYSE: Objection. Leading, Your Honor.

19 THE COURT: Sustained.

20 MR. WOODSON: I'll rephrase it, Your Honor.

21 BY MR. WOODSON:

22 Q: Did -- did you -- did you come to find out about any
23 money that was coming to Ms. Richardson?

24 A: Yes.

25 Q: All right. Tell me about that?

1 A: I came home from work one morning and she walked to my
2 bedroom and she had this piece of paper, and she told me that
3 she won the lottery.

4 MS. WYSE: Objection to hearsay.

5 THE COURT: Sustained.

6 BY MR. WOODSON:

7 Q: Without saying what she said, tell me what you saw?

8 A: I saw a check for half a million dollars.

9 Q: It was a check?

10 A: It was -- it was on a piece of paper where she had won
11 this money.

12 Q: Okay.

13 A: From the South Carolina state lottery.

14 Q: What -- when you say a check, was it an actual check?

15 A: It wasn't a check. It was, like, in a -- it was printed
16 up like a piece of paper --

17 Q: Was it --

18 A: -- where it said South Carolina. Like, just a regular
19 piece of paper like that.

20 Q: Like an eight by eleven piece of paper?

21 A: Yes.

22 Q: Okay. Was it black and white or was it --

23 A: It was -- it was -- it was said -- the half a million was
24 black and white, and it had South Carolina state because I
25 looked at it.

1 Q: Okay.

2 A: And where she had signed it and everything.

3 Q: Okay. All right. And so as a result of that, did you

4 get a vehicle?

5 A: I did.

6 Q: Okay. What type of vehicle?

7 A: I had a -- a F-150 Ford Ranger.

8 Q: Okay. Now, let me back up. Before the -- the F-150

9 Ranger, what -- what vehicle did you have?

10 A: I had my own personal -- it was a F-150.

11 Q: Okay.

12 A: Another -- it's red.

13 Q: Okay. And so at this point, you had another F-150?

14 A: Yes.

15 Q: Was it a newer model?

16 A: It was a newer model. She took me down to Mike

17 Reichenbach and she had bought a -- a Ford Escape. She bought

18 two vehicles.

19 Q: Mm-hmm.

20 A: And she had got me a F-150 Ford Ranger.

21 Q: Okay. And do you recall about when that was?

22 A: It was in June. It was June 6th, 2010.

23 Q: Okay.

24 A: I'm sorry. That was June 6th, 2011. 2011. That's when

25 that happened, 2011.

1 Q: Okay.

2 A: 2011.

3 Q: And how long did you have the vehicle?

4 A: I had it for 30 days.

5 Q: Okay. And after the 30 days, what, if anything,
6 happened?

7 A: Mike Reichenbach -- the guys called me back and told me
8 that they needed the vehicle back because nothing had been
9 paid on the vehicle, and I told them I had no problem bringing
10 it back because I didn't want no trouble. And I drove the
11 truck back down to Mike Reichenbach on July 8th, and my wife
12 came and picked me back up.

13 Q: Okay. Is -- was anybody else in your house given a
14 vehicle?

15 A: No.

16 Q: Okay. Now, was there also an incident -- so this was
17 during, you said, June of 2011; correct?

18 A: 2011.

19 Q: Was there also an incident in the summer of 2011
20 involving a ring?

21 A: Yes, it was.

22 Q: Okay. Tell me about that?

23 A: Some --

24 MS. WYSE: Judge, I'm going to object to this. I don't
25 know why the ring and the testimony about the ring is

1 relevant.

2 THE COURT: Overruled. I think we'll find out.

3 BY MR. WOODSON:

4 Q: Go ahead and tell me about the ring.

5 A: We got up Sunday morning to go to church. Bryant had his
6 high school ring. He showed us all -- everybody the high
7 school ring.

8 Q: Is this -- is this the ring? Let me show it to you. Is
9 this the ring that we're talking about?

10 A: Yes, it is.

11 Q: Okay. And does it have a name on it?

12 A: It has his name on the front of the ring.

13 Q: Okay.

14 A: Yes. Bryant.

15 Q: All right. Go ahead.

16 A: We went to church that morning, and it was me, Bryant,
17 and Ken, and Denise. We drove to Columbia. Ms. Richardson
18 and them didn't go to church with us that morning. And so we
19 came back home and my wife -- she cooked dinner, and then I
20 was getting ready to take him back home. He said, "Daddy, I
21 can't find my ring." And I said, "Where's the ring?" He
22 said, "I can't find it." So I --

23 MS. WYSE: Objection to hearsay.

24 THE COURT: Sustained.

25 BY MR. WOODSON:

1 Q: Okay. Continue. I'm sorry.

2 A: I asked -- I asked Little Ken, I said, "Where's the
3 ring?" He said, "Daddy" -- he said, "I don't have a ring."
4 So I asked Ms. Richardson. I said, "Who has the ring?" She
5 said, "I don't have the ring." So I asked my wife. I said,
6 "Do you have the ring?" I asked everybody in the house.
7 Nobody had the ring. I said, "Okay. From this point on,
8 nobody leaves out this house until this ring comes up."

9 And so we started searching the house. We went -- I
10 started with Ken's room because that's where he stayed. He
11 said he left the ring on the dresser before he went to church.
12 That's where the ring was at. So we come back and I went
13 through all his clothes. There was nothing in the clothes. I
14 went through his bed. I flipped his bed upside-down. There
15 was nothing in his bed. I flipped -- and his dresser. I took
16 every drawer out and emptied it on the bed. I combed his
17 room.

18 Q: So is it fair to say you -- it -- you went through all
19 the clothes in that room?

20 A: I went through all the clothes in that room.

21 Q: And would that include --

22 A: Shoes and --

23 Q: -- both children's clothes?

24 A: Both children's clothes.

25 Q: Okay. Go ahead.

1 A: And I found nothing.

2 Q: Okay.

3 A: So about that time, there was still no ring.

4 Q: And was this an expensive ring?

5 A: Yes, it was.

6 Q: Do you know about how much?

7 A: I don't. His mom bought the ring for him.

8 Q: Okay. Go ahead.

9 A: And so we kept on looking through the room and looking
10 through. We could not find the ring. About that time, Ms.
11 Richardson -- she goes into the room and, all of a sudden, she
12 said she found the ring.

13 MS. WYSE: Objection. Hearsay.

14 THE COURT: Sustained.

15 BY MR. WOODSON:

16 A: She found the ring, and she said it fell out of Ken's --

17 MS. WYSE: Objection. Hearsay.

18 THE COURT: Sustained. You can't say what other people
19 said.

20 BY MR. WOODSON:

21 Q: What is your understanding of where the ring supposedly
22 showed up?

23 A: It fell out -- it came out of Ken's pocket. That's what
24 she said.

25 Q: Okay. All right. And was there a discussion between

1 your son and Ms. Richardson?

2 A: There was a heated argument.

3 Q: It was a heated argument?

4 A: Yes. Because what happened after that, she said that he
5 stole the ring.

6 MS. WYSE: Objection. Hearsay.

7 THE COURT: No, no, no, no.

8 MR. WOODSON: Don't say --

9 THE COURT: Don't say anything anybody else said.

10 THE WITNESS: Okay.

11 THE COURT: All right.

12 BY MR. WOODSON:

13 Q: I know we're in court and the rules are a little
14 different.

15 A: Okay.

16 Q: So don't say what was said, but -- okay. The -- there
17 was an argument over the ring; is that -- is that correct?

18 A: That is fair enough, yes.

19 Q: All right. And were there accusations? Without saying
20 what the accusations were, but --

21 A: Yes, there were accusations.

22 Q: Okay. Because your son has testified.

23 A: Right.

24 Q: Did your son deny the accusations?

25 A: Yes, he did.

1 Q: Okay. What -- were there kind of, like, hard feelings
2 after that point?

3 MS. WYSE: Objection. Leading.

4 THE COURT: Sustained.

5 MR. WOODSON: I'll rephrase it.

6 BY MR. WOODSON:

7 Q: Did it -- how did it affect, if at all, the relationship?

8 A: There was no talking --

9 Q: Okay.

10 A: -- between the two of them. And after that, I told her
11 -- we -- I took Bryant home --

12 Q: Okay.

13 A: -- once we got the ring. I took him home and she went in
14 the room and she shut the door. She did not come back out,
15 and I come and I knocked on the door and I said, "We all need
16 to talk." Me, her, and my wife. And I told her from this day
17 on -- I said from this point on that y'all -- it's best that
18 y'all leave because it was a bunch of animosity in my house
19 and I didn't want my family tore up.

20 Q: Okay. All right. And you said that was the next day?

21 A: That was the -- that was the same night, but I told her
22 she had to leave the next day.

23 Q: Okay. And how long -- did she -- when did she leave?

24 A: She left. She left that day.

25 Q: Okay. Do you know where she went after she left?

1 A: There was an apartment she had on Cashua. Jim Stroud
2 owned those apartments. He built four condos.
3 Q: I'm sorry?
4 A: Jim Stroud --
5 Q: Uh-huh.
6 A: -- owned -- off Cashua, he built four condos, and she
7 moved over there.
8 Q: Okay. Did she have a lot to move out?
9 A: Not really.
10 Q: Okay. Any furniture?
11 A: No.
12 Q: Okay.
13 A: Just clothes.
14 Q: Okay. I want to back up to August. Did you go on any
15 trips that particular summer?
16 A: July. It was our church convention in Orlando, Florida.
17 Q: Okay.
18 A: And we went to Orlando, Florida.
19 Q: Okay.
20 A: July 28th -- July 29th through July -- through August the
21 4th.
22 Q: Okay. And who all went to the convention?
23 A: Just me and my wife, Denise.
24 Q: Okay. And was Ms. Richardson supposed to come there with
25 you?

1 A: She said she was. She said if --

2 MS. WYSE: Objection.

3 THE COURT: Sustained. Don't say what anybody else said.

4 BY MR. WOODSON:

5 A: If everything cleared, she was going to come.

6 Q: Okay. And by everything clearing, is that referring to
7 the lottery situation?

8 A: Yes.

9 Q: Okay. When did you find out about the allegations
10 against your son?

11 A: It was 2013. I was in the police academy in Columbia.
12 It was a week before I graduated on Good Friday.

13 Q: It was on a Good Friday?

14 A: No. I graduated Good Friday of 2013. It was the -- it
15 was the week before.

16 Q: Okay.

17 A: So it about April -- I graduated on the 22nd. It was the
18 week before that.

19 Q: Okay.

20 A: Because I came home every Friday.

21 Q: Okay. And who -- and don't say what you were told. I
22 know it's kind of hard in this situation, but just tell me who
23 told you of the allegations?

24 A: My wife.

25 Q: All right. As a result of the allegations -- and don't

1 say what anybody said, but did you talk to your son about the
2 allegations at some point?

3 A: At that point, no, I didn't, because I was -- I was --
4 like I said, she told me when I got home. So what we did --
5 we called him and Hattie, his mom, to the house.

6 Q: Okay.

7 A: And that's when we asked the question.

8 Q: Okay. All right. Now -- and let me back up. When --
9 when Ms. Richardson was in your house, do you recall any
10 situations of bedwetting?

11 A: No, I don't.

12 Q: Okay. Who did the laundry in your house?

13 A: My wife.

14 Q: Okay. If -- if there had been bedwetting, would that
15 have been something that your wife would have told you about?

16 A: Yes.

17 Q: Okay. While was in your house, did you notice
18 any behavioral changes?

19 A: No. Because --

20 MS. WYSE: Objection, Your Honor. He's leading the
21 witness.

22 THE COURT: I'll overrule that one. Go ahead with that
23 question.

24 BY MR. WOODSON:

25 A: No. I mean she loved to watch television and that's what

1 she did.

2 Q: Okay. Where did she watch television?

3 A: She watched television in her room.

4 Q: Okay. And was Bryant ever in the room watching
5 television alone with her?

6 A: No. They was not allowed to go in the room.

7 Q: All right. Did -- did you notice any situation where
8 was afraid to be around your son?

9 A: I never noticed that because she always just -- when she
10 wasn't watching television, she would come out and talk and
11 then she would go back into her room.

12 Q: Okay.

13 A: But she -- she stayed in her room pretty much watching
14 television the whole time. That's what she -- that's what she
15 did.

16 Q: Okay. All right. As a result of the allegations, was
17 your son able to -- well, did he graduate from high school?

18 A: He was able to graduate.

19 Q: But was he able to march?

20 A: He was able to march.

21 Q: Okay.

22 A: They were trying to not let him march, but they let him
23 march.

24 Q: Okay. Now, I want to get into the actual allegations
25 because in the one of the incidents, your -- your name was

- 1 called. Do you -- have you -- do you know how to arch
2 eyebrows?
- 3 A: Yes. I'm a master barber.
- 4 Q: Okay. And have you ever arched Ms. Richardson's
5 eyebrows?
- 6 A: Plenty of times.
- 7 Q: Okay. Now, when you would arch her eyebrows, where would
8 you do that?
- 9 A: In the kitchen at the kitchen table.
- 10 Q: Okay. And would your wife be there?
- 11 A: Yes.
- 12 Q: Okay. And if you remember, was your wife typically there
13 when you arched her eyebrows?
- 14 A: Yes.
- 15 Q: Okay. And tell me about the layout of your home. If you
16 were in the kitchen -- you said you would do it in the
17 kitchen; correct?
- 18 A: Yes.
- 19 Q: Can you see the bedroom?
- 20 A: Yes. I can see all my bedrooms except for my son's
21 bedroom because my kitchen table sits here. Everything is
22 open and, if you look directly to the right, which was the
23 room that and Teicher slept in -- and the door was
24 always -- there was no closed doors in my house.
- 25 Q: Okay.

1 A: And now, my son's -- his was, like, a little bit -- it
2 was their room, the bathroom, and then Little Ken's room,
3 which was a little slight hallway. And then if you looked
4 back to the left, it was the living room and my bedroom.

5 Q: Okay. Do you ever recall a time where you were arching
6 Ms. Richardson's eyebrows and Bryant went into a bedroom?

7 A: No.

8 Q: Okay.

9 A: Because, like, Bryant -- he always would sit out there
10 and watch television in the foyer.

11 Q: Okay.

12 A: And Ken -- he was always in his room with the door closed
13 watching -- playing his video games.

14 Q: Okay. Now, you -- and you could -- you said he was
15 watching television. You could see him from the kitchen?

16 A: Yes.

17 Q: Okay. All right. And one incident allegedly happened in
18 the music room. Are you aware of that allegation?

19 A: I read it on the report.

20 Q: Okay. Let me -- let me ask it this way. Do you have an
21 event in July?

22 A: Yes, I do.

23 Q: Tell me about that?

24 A: I have a cookout for the 4th of July for all of my family
25 and all of my wife's family and all of my friends, and

1 everybody just come over. I do all the cooking, and they just
2 eat. It's about 65 to 70 people there every year.

3 Q: Okay. All right. And is everybody downstairs or are
4 there people downstairs and upstairs during that time?

5 A: Everybody is downstairs, outside, and nobody is allowed
6 to go upstairs because I have musician friends and we would
7 always go up there and play on the instruments.

8 Q: Okay.

9 A: Nobody would go up there but us because I have sisters
10 and we have a lot of small kids, and nobody was -- no kids was
11 allowed up there.

12 Q: Okay. Did -- did have any friends that would
13 come to the cookout?

14 A: She never had -- they never had any friends come to the
15 cookout. Only one time they -- we had the cookout, Teicher's
16 mother came, Ms. Lillie, and Eric. They came briefly and they
17 left.

18 Q: Okay. And Ms. Lillie and Eric would be seated over here
19 --

20 A: Yes.

21 Q: -- behind that side of the jury? All right. And you
22 said they came and --

23 A: And they came and spoke and they left.

24 Q: Okay. Did -- did Eric bring his children?

25 A: No.

1 Q: Do you know his children's names?

2 A: I know her brother Kenny's kids.

3 Q: Okay. Did any of them come?

4 A: They didn't come.

5 Q: Okay. All right. And do you recall any -- any incident
6 -- well, do you recall anybody going up to the music room
7 other than you and your musician friends during any of those
8 cookouts?

9 A: No.

10 Q: Okay. Another incident -- well, let me ask it this way.
11 During the time that you testified that Ms. Richardson had a
12 -- it was an SUV?

13 A: It was a small SUV. It was a Ford Escape. I wouldn't
14 even call it SUV because it's very small.

15 Q: Okay. During that time she did have that vehicle, did --
16 do you recall her going to Lake City with your son?

17 A: The only time I recall her going to Lake City with my son
18 -- they drove my truck -- my red truck.

19 Q: Okay. It's a -- it's a Ford F-150?

20 A: The Ford F-150.

21 Q: Okay. And the time that you remember them driving the
22 truck, what -- were you there when they left?

23 A: I was there when they left.

24 Q: Tell me about the seating arrangement?

25 A: Now, when I seen them, Bryant was in the front seat.

1 Samantha and was in the back seat. Ms. Richardson
2 was driving.

3 Q: Okay.

4 A: When they left out of my yard, that's what I seen.

5 Q: Okay. All right. Tell me about your arrangements during
6 the holidays -- the Thanksgiving and Christmas holidays?

7 A: Thanksgiving, we always went to my mom's house to eat,
8 and Ms. Richardson -- she was always left at the house. Her
9 and and when Sam was in town, they would be at the
10 house. We never -- we never had to celebrate holidays at our
11 house. It was always at a family member's house. My mom
12 always cooked dinner for us.

13 And so when we would leave, we would leave that morning,
14 me, my wife, Ken Jr. We would go to my wife's brother's
15 house. We would stay over there for about an hour, and then
16 we would go to Latta and we would stay to my mom's house. And
17 then after we'd eat dinner, we would watch the game, and me
18 and my wife -- we always went out of town for Thanksgiving.
19 That was our getaway time. That was always our getaway time
20 Thanksgiving weekend.

21 Q: Okay. So how would Bryant be involved in that? When
22 would -- would you see him during Thanksgiving?

23 A: I would see him, but he would come to my mom's house and
24 eat Thanksgiving there, and then he would go back home.

25 Q: Your mom lives where?

1 A: She lives in Latta.

2 Q: Bryant lives where?

3 A: He lives in Latta.

4 Q: Okay. So was there a situation during the Thanksgiving
5 holiday where Bryant would be in your house?

6 A: No. Because me and my wife always -- after we ate
7 dinner, we went out of town. I only had two days off work.

8 Q: Okay.

9 A: And I would never go to church that weekend. Me and my
10 wife -- that was the -- the whole weekend was hers. So when I
11 came back in town for Sunday, we would go home, unpack, and I
12 would get ready for work Monday.

13 Q: Okay. So no contact -- well, let me ask it this way.
14 Would there have been any contact during any Thanksgiving,
15 even -- I refer you to 2010 and '11, but in general, would
16 there be times where Bryant would be around Ms. Richardson or
17 her daughter during Thanksgiving?

18 A: No.

19 Q: All right.

20 A: Because he was -- he was in Latta and we always went to
21 Latta.

22 Q: Okay. Now, tell me about Christmas?

23 A: Christmas -- we ate dinner at my sister's -- at my wife's
24 mother's house. That was family tradition, always been. We
25 would get up Christmas morning, we would open our presents,

1 and we would leave because we had to be in Timmons ville by
2 twelve o'clock.

3 Q: Okay. Your wife is from Timmons ville?

4 A: My wife is from Timmons ville.

5 Q: Okay. And how would Bryant be involved in that?

6 A: Only in 2010 he came over for Christmas. He did come
7 over. I went and got him.

8 Q: To Timmons ville?

9 A: In Timmons ville.

10 Q: Okay.

11 A: He came to the house. He stayed that night. We got him
12 Christmas Eve. He stayed Christmas Eve night with us.

13 Q: Okay.

14 A: And then that morning we got up and we went to
15 Timmons ville. We left Timmons ville. We ate. We stayed until
16 about four o'clock and then we went to see my side of the
17 family --

18 Q: Okay.

19 A: -- which was in Latta.

20 Q: About what time did you get him on Christmas Eve?

21 A: It was -- we probably went and picked him up around noon,
22 me and my wife.

23 Q: Okay. All right. And where did you go after that? You
24 came back home?

25 A: We came back Christmas Eve because we always had a

1 Christmas function in Sumter at my cousin's house. So after
2 we picked him up, we went straight to Sumter.

3 Q: Okay.

4 A: And we would stay in Sumter until about ten o'clock that
5 Christmas Eve night.

6 Q: Okay. And when you got back that Christmas Eve night, do
7 you recall whether was still awake?

8 A: I can't recall.

9 Q: Okay.

10 A: But it was late and everybody went to their rooms and
11 everybody went to sleep.

12 Q: Okay. You did not arch eyebrows that -- well, did you
13 arch eyebrows that night?

14 A: No.

15 Q: Okay.

16 (Whereupon, the fire alarm rings and then stops.)

17 THE CLERK: It's just a test.

18 THE COURT: We're fine. I think she said it's just a
19 test.

20 MR. WOODSON: Oh, okay.

21 (Whereupon, the fire alarm rings again and then stops.)

22 THE CLERK: It's just a test.

23 THE COURT: All right. You can continue.

24 MR. WOODSON: All right.

25 BY MR. WOODSON:

- 1 Q: What type of activities was Bryant involved in?
- 2 A: He was in band and he was on the football team.
- 3 Q: Okay. And so I think your testimony was that you didn't
- 4 get him on Fridays anyway.
- 5 A: I never --
- 6 Q: Would he have been available Fridays for pickup?
- 7 A: No.
- 8 Q: Okay.
- 9 A: Because the only -- like I said, I always -- my -- my
- 10 shift ended on Saturday morning -- Saturday afternoon, and
- 11 there was no way I was going to go to Latta, pick him up, and
- 12 then come back and then turn around and go back to work. And
- 13 then a lot of times when he did want to come over, I told him
- 14 no because I had to work.
- 15 Q: Okay. During -- well, after Ms. Richardson left you, did
- 16 you -- left your house, did you have contact with her?
- 17 A: Yes. We still -- we still interacted because she still
- 18 didn't have a ride and I would let her drive my -- I would
- 19 take my truck to her so she could have transportation for her
- 20 and still.
- 21 Q: Did -- did you ever make any threats to her or show up at
- 22 her house to make any threats to her?
- 23 A: I did not.
- 24 Q: Okay. Are you aware -- well, did you ever become aware
- 25 that that was an allegation?

1 A: Yes.

2 Q: All right. Ever sent her any text messages?

3 A: I haven't.

4 Q: Okay. After the allegations came out, did you have any
5 contact with her?

6 A: I did not.

7 Q: Okay.

8 MR. WOODSON: The Court's indulgence.

9 THE COURT: Yes.

10 MR. WOODSON: I think I'm about finished, Your Honor.

11 BY MR. WOODSON:

12 Q: While Ms. Richardson was in your house, do you recall any
13 other things that went missing?

14 A: Yes.

15 Q: What type of things were those?

16 A: I had -- I had a grinder, and it always stayed up under
17 my garage, and the first time I looked, it was there, and I
18 come back home again, it was gone. I called my wife. I said,
19 "Where is my grinder at?" And she said, "Ken --"

20 THE COURT: No. Hearsay. You can't say what somebody
21 else said.

22 BY MR. WOODSON:

23 A: And it wasn't there.

24 Q: Okay.

25 A: And then I -- I made a phone call to Ms. Richardson and I

1 said, "Where's my grinder?" and she said --

2 MS. WYSE: Objection, Your Honor.

3 THE COURT: Sustained. Don't say what anybody else said.

4 BY MR. WOODSON:

5 A: Ms. Richardson had it.

6 Q: Okay.

7 A: She was going to -- she told me she was going to go get a
8 shelf built so I could -- she had it going to get it measured
9 and she was going to put it up under my garage for me. And my
10 reply to her was I didn't ask for that. I said, "I want my
11 grinder back and I want it now." And it did return.

12 Q: Okay.

13 A: Then I took it and I locked it in my barn. Everybody in
14 the house knew where the key was. So a couple of months
15 later, I was going to give it to one of the elders at the
16 church. I said, "Stay here. I got one for you." I went. My
17 grinder was gone again. I asked about it. She said she
18 didn't have it.

19 Q: Anything else?

20 A: I had some bowling balls -- I bowled on the league -- my
21 wife had bought me, and they were all gone. And I know I left
22 them up in the garage because it was too heavy. That's where
23 I always put them at. I took them out of the car and set them
24 on the garage. They were all gone.

25 Q: After she moved out of your house, did -- did she

1 supervise her -- that you were aware of?

2 A: Well, a few times when she was staying out -- first, she
3 stayed on Cashua. Then she moved out to Cashua and she moved
4 on 52 and, like I said, when I would come home in the morning,
5 I would call her and I said if you need to use the truck
6 today, you're more than welcome, and I would stop and I would
7 pick her up.

8 And I gave her a time because I had to be -- sometimes,
9 like I said, I had to be at work at nine or eleven. The
10 majority of the time, it was eleven unless I was called and
11 they told me to come in at nine. And I would say to be to my
12 house at nine o'clock to pick me up, and sometimes she would
13 come and wouldn't be with her where she had left
14 her in the hotel, and I would get on her. Why you left the
15 baby in the hotel? You can't do that.

16 Q: Okay. All right. So you were concerned about
17 welfare?

18 A: I was.

19 Q: Okay.

20 A: Because it happened -- it happened one time at my house
21 when nobody was there and -- you know, and I said if this
22 house catch on fire, I'm going to be at fault for this. I
23 said don't let it happen again.

24 MR. WOODSON: I don't have any other questions, Your
25 Honor.

1 THE COURT: All right. Cross?

2 MS. WYSE: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. WYSE:

5 Q: Good -- good morning, Mr. Gurley.

6 A: Good morning.

7 Q: I want to -- I just want to ask you a couple of
8 questions. Did you file a police report about the grinder?

9 A: I did not.

10 Q: Did you file a police report about your bowling balls?

11 A: I did not.

12 Q: Okay. All right. You testified earlier that you love
13 ?

14 A: Yes, I do.

15 Q: Do you still love her?

16 A: Yes, I do.

17 Q: How was -- was she a good kid when she was at your house?

18 A: Yes, she was.

19 Q: Did you ever have any problems with her?

20 A: One incident where she wrote on the wall.

21 Q: Sometimes little kids do that.

22 A: And that was -- that was the only incident.

23 Q: All right. Now, you talked a little bit about a cookout.

24 You said about 60 to 70 people were there?

25 A: That's every year.

- 1 Q: Okay. And that's for July 4th?
2 A: July 4th.
3 Q: Do you provide the food?
4 A: I provide everything. The only thing they got going is
5 an empty stomach.
6 Q: And you said you -- you cook; right?
7 A: I cook and my brother-in-law cooks.
8 Q: You grill? You grill outside?
9 A: I grill outside.
10 Q: Okay. Do you have cameras set up in your home?
11 A: I don't.
12 Q: Okay. All right. Now, how many children do you have?
13 A: Two boys.
14 Q: Okay. And there's Kenrick -- Little Ken?
15 A: Little Ken.
16 Q: All right. And there's --
17 A: And B.G.
18 Q: -- B.G. All right. They're brothers?
19 A: They're brothers.
20 Q: Now, who is Ken's mom?
21 A: Hattie.
22 Q: Okay. And he didn't live with her? He didn't live with
23 her in Latta?
24 A: No.
25 Q: Okay. But B.G. lived --

- 1 A: B.G. stayed in Latta. Ken stayed with me.
- 2 Q: Okay. All right. Now, did you ever have any problems
3 with Little Ken?
- 4 A: No more than just in school.
- 5 Q: And what kind of problems were those?
- 6 A: Talking.
- 7 Q: Did he ever have trouble with his studies?
- 8 A: Yes. He didn't love to study.
- 9 Q: I understand. Now --
- 10 MS. WYSE: I beg the Court's indulgence for just a
11 minute, please.
- 12 THE COURT: Okay.
- 13 BY MS. WYSE:
- 14 Q: Was Teicher involved with your children? I mean, you
15 know, did she -- did she help?
- 16 A: I mean she talked to Ken. Yes, she did.
- 17 Q: All right. Did she talk to him about, you know, doing
18 better in school?
- 19 A: Yes, she did.
- 20 Q: And did she help him with his homework?
- 21 A: Not as I ever can recall.
- 22 Q: Okay. And do you know if Samantha ever helped him with
23 his homework?
- 24 A: Yes.
- 25 Q: She's a smart girl; right?

1 A: She's very smart.

2 Q: Did you ever have any problems with Samantha while she
3 lived at your house?

4 A: No.

5 Q: All right. So it's safe to say that both those kids are
6 pretty good?

7 A: Yes.

8 Q: All right. Now, you testified earlier that you were
9 always there when B.G. was there. So you never left the
10 house?

11 A: Because Ms. Richardson had my vehicle.

12 Q: Okay.

13 A: I had two vehicles. I had a Ford F-150 and my wife had a
14 Sequoia.

15 Q: Okay.

16 A: So when she left, I was at the house.

17 Q: All right. But you said she -- she didn't work
18 regularly; right?

19 A: No.

20 Q: Okay. Now -- so you never -- you never went to the
21 grocery store?

22 A: I worked third shift. I was asleep.

23 Q: I understand. So you -- but just to clarify that, you
24 never -- you never went to CVS, you never went to the grocery
25 store?

KEN GURLEY SR. - CROSS BY MS. WYSE

- 1 A: No. My wife -- she did everything.
- 2 Q: Okay.
- 3 A: I worked. I worked 60 to 70 hours a week and I worked
- 4 graveyard shift. So the only thing I wanted to do was stay
- 5 home and sleep.
- 6 Q: I don't blame you. Now, you said that -- you testified a
- 7 couple of times that Ms. Richardson had used your car. So did
- 8 she have a key to your car?
- 9 A: Yes, she did. I gave her one.
- 10 Q: Okay. And did she have a key to your house?
- 11 A: Yes, she did.
- 12 Q: And did you take the keys? When she left, did you take
- 13 the keys back?
- 14 A: Yes, I did.
- 15 Q: Okay. Did you take the keys back to your car?
- 16 A: Yes, I did.
- 17 Q: So when -- when you let her use your car after she left,
- 18 you'd just give her the keys?
- 19 A: I'd give her the keys.
- 20 Q: Okay. Okay. I just wanted to clear that up. Now, you
- 21 testified about a piece of paper that you saw that had a half-
- 22 a-million-dollar sum on it?
- 23 A: Yes, I did.
- 24 Q: And you said it was just -- it was -- I mean for lack of
- 25 a better way to put it that it was kind of on a piece of paper

1 like this?

2 A: It was on a piece of paper, but it was printed up like it
3 came off of a printer --

4 Q: Okay.

5 A: -- with South Carolina Lottery on it.

6 Q: Did it have -- did it say who it was made payable to?

7 A: Yes.

8 Q: And who was that?

9 A: Teicher Richardson.

10 Q: Okay. And do you know -- did you go with her to pick up
11 the money from --

12 A: I work third shift.

13 Q: Oh, okay. I'm sorry. I -- I don't know when she --

14 A: Yeah.

15 Q: -- went. Do you know when she went?

16 A: I don't know when she went.

17 Q: Okay.

18 A: The only thing that she told me was she won the money,
19 and I couldn't believe it.

20 Q: All right. That is pretty lucky. Now -- I'm sorry.
21 Just give me just a second, Mr. Gurley. Now, you said that in
22 2013 you were at the police academy; right?

23 A: Yes.

24 Q: And you graduated?

25 A: Yes.

- 1 Q: And I guess you said you graduated on Good Friday?
- 2 A: I graduated on Good Friday.
- 3 Q: All right. Where do you work now?
- 4 A: I work at Carolina Container in High Point, NC.
- 5 Q: So you didn't -- did you not --
- 6 A: I worked --
- 7 Q: -- pursue --
- 8 A: It was -- I went to the academy, but it was for SCDC.
- 9 Q: Okay.
- 10 A: South Carolina Department of Corrections.
- 11 Q: Okay. And did you --
- 12 A: I worked there until August --
- 13 Q: Okay.
- 14 A: -- of 2013. I started in January of 2013 and worked from
- 15 January to August of 2013. August 24th, 2013 --
- 16 Q: Okay.
- 17 A: -- I started at Carolina Container.
- 18 Q: All right. Why did you leave?
- 19 A: I didn't like it.
- 20 Q: Okay.
- 21 A: It wasn't cut for me.
- 22 Q: All right. I imagine --
- 23 A: And the pay wasn't good.
- 24 Q: Yeah. I was getting ready to say that. I imagine that
- 25 it was quite the pay cut. Do you know whether or not Teicher

1 was ever involved with Little Ken and helping him with school
2 stuff?

3 A: No more than, like I said, she would talk to him when he
4 would get off track sometimes, say you need to do better, and
5 that was it.

6 Q: And when -- Little Ken went to West Florence; right?

7 A: Yes.

8 Q: Now, of course, when a -- when a child goes to school,
9 you have to put down contact information for the school so
10 that they know who is allowed to come pick them up or who to
11 contact in an emergency; isn't that right?

12 A: Yes.

13 Q: Do you remember who that you put down as a contact for
14 Little Ken?

15 A: I can't recall. She -- I know she had went to the school
16 a few times, but I can't -- I can't recall because, like I
17 said, she had my truck and if things needed to be done, I
18 slept during the day. Either she would help or my wife would
19 do it.

20 Q: Would it surprise you to find out that Teicher was one of
21 the contact people for emergencies for Little Ken at West
22 Florence?

23 A: No, it wasn't because -- it wouldn't because we were down
24 for contacts for also. So we -- we -- we
25 interacted like that.

1 Q: And you actually knew Teicher for a while; right? You've
2 --
3 A: Yes.
4 Q: -- known her for a while?
5 A: I knew of her through my wife.
6 Q: Okay. And are you the godfather for her children?
7 A: Yes.
8 Q: Okay. And is she also the godmother for your kids? Or
9 was she at the -- at a time?
10 A: I -- I never called her my kids' godmother. I don't know
11 if they -- they always called her Ms. Teicher.
12 Q: Okay. All right. But you were actually
13 godfather?
14 A: Yes, I was.
15 Q: And Samantha's too?
16 A: Yes.
17 Q: Okay. All right. Now, you love your son; right?
18 A: Yes, I do.
19 Q: You love both your sons?
20 A: I love both my sons.
21 Q: Did they ever fight?
22 A: No.
23 Q: Never? Do you -- who is Ms. Evelyn? Is that your mother
24 or --
25 A: Who?

1 Q: -- is that -- Ms. Evelyn. Is that --

2 A: That's my mother.

3 Q: Your mother?

4 A: Yes.

5 Q: Did she ever take B.G. and Little Ken to Carowinds? Do
6 you know?

7 A: Yes, they went.

8 Q: And while they were on that trip, did you know if -- that
9 B.G. and Little Ken got into a physical fight?

10 A: I don't know. I didn't go and I never heard anything of
11 that.

12 Q: Okay. So that -- but your testimony today is that the
13 two of them just didn't fight?

14 A: Not in my presence, no.

15 Q: Okay.

16 A: Because I didn't allow that.

17 Q: All right. And you said, of course, that you love both
18 your sons; right?

19 A: Yes, I do.

20 Q: And you don't want to see anything bad happen to them;
21 right?

22 A: I don't.

23 Q: All right.

24 MS. WYSE: I have no further questions, Your Honor.

25 THE COURT: All right. Any redirect?

1 MR. WOODSON: Court's indulgence. Yes, Your Honor, very
2 briefly.

3 REDIRECT EXAMINATION

4 BY MR. WOODSON:

5 Q: Ms. Wyse was asking you about Ms. Richardson's
6 involvement with Little Ken, and I want to kind of follow up
7 on that. Was there ever a situation where you, your wife, Ms.
8 Richardson, and Little Ken would have been locked in a room
9 talking about anything?

10 A: There was no doors closed at my house, and if I had to
11 discuss anything about Little Ken, it would be between me and
12 my wife.

13 Q: Okay.

14 MR. WOODSON: I don't have any other questions.

15 THE COURT: Anything further?

16 MS. WYSE: No, Your Honor.

17 THE COURT: All right. You may step down. Thank you.
18 If you will, call your next witness.

19 MR. WOODSON: Your Honor, the defense calls Ms. Denise
20 Gurley.

21 (Whereupon, there is a pause in the proceedings.)

22 MR. WOODSON: Oh, Your Honor?

23 THE COURT: Yes, sir?

24 MR. WOODSON: Could I -- I was just told that one of my
25 other witnesses is here and she has to go to work. Can I

1 truth.

2 THE CLERK: Please be seated and state your name for the
3 record.

4 THE WITNESS: Denise Gurley.

5 MR. WOODSON: All right.

6 DENISE GURLEY, being first duly sworn,
7 testifies as follows:

8 DIRECT EXAMINATION

9 BY MR. WOODSON:

10 Q: And, Ms. Gurley, you are the wife of Ken Gurley?

11 A: Yes.

12 Q: And the stepmother of Bryant Gurley?

13 A: Yes.

14 Q: All right. And I gave him a quiz. I asked him how long
15 had he been married. How long have y'all been married?

16 A: We got married in 2001 I think; so that's 13 years.

17 Q: Now, see, this is backwards. Usually, people don't
18 remember sometimes and usually it's the man. So it's how many
19 years?

20 A: It'll be 14 years this year.

21 Q: Okay. That's what he said.

22 A: Okay.

23 Q: Okay. Okay. And you're originally from where?

24 A: Timmons ville.

25 Q: Okay.

- 1 A: South Carolina.
- 2 Q: All right. And since y'all have been married, where have
3 y'all lived?
- 4 A: In Florence.
- 5 Q: All right. All right. And do you know Teicher
6 Richardson?
- 7 A: Yes.
- 8 Q: All right. And how do you know her?
- 9 A: I met Teicher at Olan Mills maybe about 30-some years
10 ago.
- 11 Q: Okay.
- 12 A: Mm-hmm.
- 13 Q: All right. Y'all worked together?
- 14 A: Yes.
- 15 Q: Is that fair to say?
- 16 A: We worked together at Olan Mills.
- 17 Q: All right. And as a result of that, y'all became
18 friends?
- 19 A: Yes.
- 20 Q: All right. And so at some point, she moved in with you?
- 21 A: Yes.
- 22 Q: Well, tell me how that occurred?
- 23 A: She got married. Well, you know, we were -- we were
24 friends, and through the years we lost contact -- contact,
25 but we always, you know, came back together, and she moved in

- 1 with me. Her and her husband was having some issues. Well,
2 she didn't move at first. The girls came, and the girls
3 stayed with me for a while, and her and her husband was going
4 through some things. And her oldest daughter -- you know, she
5 kind of, you know, dropped her grades in school. So they
6 stayed with us, and she came in later -- later maybe a few
7 months. I can't really remember exactly how long, but maybe
8 -- the kids may have stayed with us for a couple of months,
9 and she would come and, you know, get them prepared for
10 whatever.
- 11 Q: Okay. All right. During that time, did you take care of
12 the kids?
- 13 A: Yes. Yes.
- 14 Q: All right. Was -- how old was ? Do you
15 recall?
- 16 A: may have been maybe two-and-a-half or three
17 because she wasn't potty trained at that time. So I'm -- I
18 don't know. Maybe two-and-a-half to three.
- 19 Q: Okay.
- 20 A: Yeah.
- 21 Q: Who potty trained her?
- 22 A: I -- I potty trained her.
- 23 Q: Okay.
- 24 A: Yeah.
- 25 Q: All right.

1 A: Because her mom was -- she was working with this company
2 off and on. It was a seasonal job. Audit or -- audit --

3 Q: Auditor?

4 A: Yes.

5 Q: Mm-hmm.

6 A: And so I would, you know, have .

7 Q: Okay. And then you said at some point Teicher moved in
8 the house?

9 A: Yes. At some point, she moved in.

10 Q: All right. And what was the relationship between your
11 family and her family?

12 A: We had a good relationship because we were friends, you
13 know. She -- you know, we was not going to put her out with
14 the kids, you know. We loved the kids. We was attached to
15 the kids, and so our relationship was fine.

16 Q: Okay.

17 A: Mm-hmm.

18 Q: Do you -- and do you remember the dates? I'm not going
19 to pin you down to a specific date, but do you remember kind
20 of the years that she was there?

21 A: I'll say maybe they came in -- I don't know -- maybe 2008
22 -- 2009, because she was back and forth because she came in.
23 When she finally moved with us, she stayed with us for a
24 while, and then she went back to the house in Quinby.

25 Q: Okay.

1 A: And she stayed there for a while, and by that time her
2 husband had left the home. And so it was her and the girls in
3 Quinby. And so something happened and anyway she had to move
4 out the house in Quinby. So she came back to us --

5 Q: Okay.

6 A: -- to stay for a while.

7 Q: Okay. When is the last year that you recall her living
8 in the house with you?

9 A: The last year -- well, Teicher was in and out our house
10 three or four times because she moved into an apartment, and
11 then something happened with the department -- the apartment;
12 so she came back to live with us again. So we -- we kept her
13 there, and she stayed there. Then she got an apartment on the
14 other side of town, and so she stayed with us until 2011.

15 Q: Okay. All right. And after 2011, did you keep in
16 contact with her?

17 A: Yes.

18 Q: Okay.

19 A: Yes.

20 Q: All right. And at some point, did you learn of some
21 allegations against Bryant?

22 A: Yes.

23 Q: Okay. Tell me how that came about?

24 A: She came to me -- well, she called me and I can't
25 remember. I know my husband was in the police academy when

1 she came to me because he wasn't there. She came to me and
2 she called me. She said, "I need to come see you." She said,
3 " has something to tell you."

4 MS. WYSE: Objection to --

5 THE COURT: Sustained.

6 MS. WYSE: -- hearsay.

7 THE COURT: Sustained.

8 BY MR. WOODSON:

9 A: Huh?

10 Q: It's -- you -- in here, you can't say what somebody said.

11 A: Oh, okay.

12 Q: But --

13 A: Well, she came -- I'll say it. Okay. She came to my
14 house.

15 Q: Okay.

16 A: And she said -- well, she came to my house and she told
17 me that --

18 Q: Well --

19 MS. WYSE: Objection.

20 Q: It's tough. I know it's tough.

21 A: I know.

22 Q: It's tough, but --

23 A: I know.

24 Q: She relayed some allegations; is that correct?

25 A: She relayed some allegations to me --

1 Q: Okay.

2 A: -- about Bryant.

3 Q: What was your reaction?

4 A: Well, my heart dropped when -- my heart dropped and I got
5 nervous and -- and I started to cry because I was, like, what
6 are you saying? You know, tell me what you're saying. And so
7 she told me -- she said what the allegations were, and I just
8 -- I just couldn't get what she was saying. So I just kind of
9 -- you know, I started shaking. I got nervous. I started to
10 cry. I -- I just didn't know what to do. I just -- you know,
11 my husband wasn't home at the time.

12 Q: Now, was she relaying the allegations or did -- did the
13 child say anything to you that you recall?

14 A: The mom started out telling me. Then started
15 too. Her mom kind of told her to tell me what was going on.

16 Q: Okay. And did she mimic what her mom said? Did she say
17 --

18 A: Yes.

19 Q: -- what her mom said?

20 A: Yes.

21 Q: Okay. And what happened after that? Well -- no. Well,
22 tell me -- did you tell them anything as far as what to do?

23 A: I did not because at that time I was so upset I couldn't
24 think of anything to do with myself. I couldn't think of
25 anything to do. I didn't know.

1 Q: Okay. Did she indicate that she was taking -- that she
2 had taken her daughter anywhere?

3 MS. WYSE: Objection. Leading question.

4 THE COURT: Sustained.

5 BY MR. WOODSON:

6 Q: What was your understanding -- well, let me ask it this
7 way. Did any -- did she relay anything happened the day
8 before she came to you?

9 A: No.

10 Q: Okay. And without saying what she said, did she relay
11 anything that she was going to do after she left you?

12 A: Yes.

13 Q: What was your understanding of where she was going to go
14 or what she was going to do?

15 A: My understanding of it -- she said that she --

16 MS. WYSE: Objection.

17 THE COURT: Sustained.

18 BY MR. WOODSON:

19 A: Oh.

20 Q: Your understanding of what -- what she was going to --

21 A: My understanding was that they were going to go to a
22 counselor at -- I can't remember the place that she named.

23 Q: Okay.

24 A: But they were going to go to a counselor.

25 Q: All right. Did you talk to your husband that day?

1 A: I did not talk to my husband because he was in the
2 process of finishing at the police academy. He was taking
3 tests all week. So I didn't tell him until he came home on
4 Friday.

5 Q: Okay. And when he came home Friday, you discussed it
6 with him?

7 A: Yes.

8 Q: All right.

9 A: That's when I told him.

10 Q: Okay. And do you recall anything that your husband did
11 after you told him?

12 A: My husband cried. So we talked to Bryant the next day
13 with his mom and stepdad. They came over and --

14 Q: Okay.

15 A: Yes.

16 Q: All right. I want to ask you about a couple of
17 incidents. Did -- were you aware that your husband arched Ms.
18 Richardson's eye -- Ms. Richardson's --

19 A: Yes.

20 Q: -- eyebrows?

21 A: Yes.

22 Q: Where would he do that?

23 A: In the kitchen at the table.

24 Q: Okay. And would you be there?

25 A: Yes.

- 1 Q: Okay. Was there ever a time where Bryant was there when
2 the eyebrows were arched?
- 3 A: I really don't recall. I can't say.
- 4 Q: Okay. Let me ask it this way. Do you ever recall Bryant
5 going into a room alone with ?
- 6 A: No.
- 7 Q: Okay.
- 8 A: No.
- 9 Q: Was there -- was there -- were there situations -- not
10 just with eyebrow arching, but were there situations where you
11 would see Bryant alone with the young lady in a bedroom?
- 12 A: No. Our rules were doors stay open. Nobody is in the
13 bedroom alone. No.
- 14 Q: Okay. All right. During -- well, at some point, did you
15 hear anything about any sort of lottery winnings?
- 16 A: Yes.
- 17 Q: Tell me about that?
- 18 A: Well, I didn't see the paper. My husband saw the paper.
19 There was some money won, \$500,000.
- 20 Q: Okay.
- 21 A: And so she was going to purchase my husband a truck and
22 -- which she did, but she -- she -- the truck got taken back.
23 So --
- 24 Q: And what -- what about any clothing?
- 25 A: Yes. We went down to a boutique downtown and --

1 Q: Was it Ms. Ella's Boutique?

2 A: Yes. Ella's Boutique.

3 Q: Okay.

4 A: And we ordered some suits, and she told me I could pick
5 out what I wanted and I did. I picked out some suits.

6 Q: Did -- did you ever get the suits though?

7 A: No.

8 Q: Okay.

9 A: No.

10 Q: How did it come about that -- that Ms. Richardson and her
11 daughter left the home?

12 A: It happened one Sunday. We were -- came from church. We
13 were in the process of taking Bryant back home, and Bryant
14 said he couldn't find his graduation ring. And I think his
15 mom had spent pretty good on the ring. Anyway -- and so my
16 husband said nobody leaves the house until --

17 MS. WYSE: Objection. Same hearsay.

18 THE COURT: Sustained.

19 BY MR. WOODSON:

20 Q: Okay.

21 A: Okay.

22 Q: Without saying what he said --

23 A: Okay.

24 Q: -- what did y'all do as far as the ring?

25 A: We went through the bedroom looking for the ring. We

1 turned the bedroom upside-down. So we questioned Bryant as to
2 whether he had the ring, and he said he did have the ring. So
3 we couldn't find the ring anywhere in the house.

4 Q: Okay. And how did the ring -- did the ring appear at
5 some point?

6 A: The ring appeared.

7 Q: How?

8 A: Teicher went in the bedroom and she came out with the
9 ring.

10 Q: Okay. Do you recall if she went to church that
11 particular Sunday?

12 A: I don't recall.

13 Q: Okay. All right. And was there -- without saying what
14 anybody said because I know it's kind of hard --

15 A: Yeah.

16 Q: What -- did she -- was there an argument that happened
17 after about the ring?

18 A: Yes.

19 Q: Okay. And at some point after that, she left the house?

20 A: Yes.

21 Q: Okay. And the argument was between who?

22 A: Bryant -- I mean Ken.

23 Q: And?

24 A: Teicher.

25 Q: Okay. Now, while -- before all this happened and they

1 were in the house, did you notice any behavioral changes in
2 ?

3 A: No.

4 Q: Was she afraid to be around Bryant?

5 A: No.

6 Q: All right. Who washed the clothes in the house?

7 A: I did.

8 Q: Okay. Were you aware of any bedwetting?

9 A: No. Only when she was being potty trained.

10 Q: Okay.

11 A: When she was going from pull-ups to panties, she would
12 have some accidents.

13 Q: Okay. But once she was maybe in kindergarten I guess in
14 2010/2011, do you recall any bedwetting incidents?

15 A: No.

16 Q: If she had wet the bed, would that have been something
17 you would have known about as the person who washed --

18 A: Yes.

19 Q: -- the clothes? Okay.

20 A: Yes.

21 Q: All right. All right. The -- is there an event that
22 happens the 4th of July?

23 A: Yes.

24 Q: Okay. And is it -- is it a big event?

25 A: Yes.

1 Q: All right. And tell me where people are located in the
2 house?

3 A: It's a big event, anywhere from 50 to 70 people, and
4 everybody is all over my house except the bed -- my bedroom is
5 closed off.

6 Q: Okay. All right. Is there a music room upstairs?

7 A: Yes.

8 Q: Is there any music playing or -- or things of that nature
9 during the cookout?

10 A: Yes.

11 Q: Okay.

12 A: Yes.

13 Q: So there would have been people upstairs?

14 A: Yes.

15 Q: All right. Like who?

16 A: My husband, his friends, and he has some cousins that
17 sing. So they're playing and singing.

18 Q: Okay. Were -- are you -- were you aware of any incident
19 where your -- where Bryant would have been up there alone with
20

21 A: No.

22 Q: Okay. Did anybody inform you that anything like that
23 happened?

24 A: No.

25 Q: Did anybody tell you they saw anything that had happened?

- 1 A: No.
- 2 Q: Okay. Tell me about the holidays. On Thanksgiving, what
3 do you typically do?
- 4 A: Thanksgiving, we're in Latta.
- 5 Q: Okay. And where in Latta?
- 6 A: At his mom's house.
- 7 Q: Okay.
- 8 A: Yes.
- 9 Q: And so how was Bryant involved? Does Bryant go to
10 Florence or --
- 11 A: Bryant stays in Latta.
- 12 Q: Okay. And after Thanksgiving, does he go to Florence?
- 13 A: No. We -- no. On Thanksgiving Day, Bryant is with his
14 mom and we eat dinner there and, after dinner, we're heading
15 out of town.
- 16 Q: Okay. Tell me about Christmas?
- 17 A: Christmas, we're at my family's house in Timmonsville
18 every year.
- 19 Q: Okay. Do you remember in 2010 whether -- whether Bryant
20 came to Christmas dinner in Timmonsville?
- 21 A: 2010? I don't recall.
- 22 Q: Okay. All right. Typically, you said it would have
23 happened in Timmonsville though; is that correct?
- 24 A: Yes.
- 25 Q: All right.

1 A: Yes.

2 Q: Do you recall if Bryant would have come back to your
3 house after Christmas dinner or --

4 A: No, because we don't go back to our house after Christmas
5 dinner. We go to Latta. If Bryant would have been with us on
6 Christmas Day, we would have dropped him off in Latta. We'd
7 leave Latta and go to Dillon.

8 Q: Okay.

9 A: Because we have to go to his mom's and his aunt's house.

10 Q: Okay. All right. When -- at the cookout in July, who
11 does the cooking?

12 A: My brother.

13 Q: What's his name?

14 A: Conyers.

15 Q: All right.

16 MR. WOODSON: The Court's indulgence for one second. No
17 further questions, Your Honor.

18 THE COURT: All right. Cross?

19 MS. WYSE: Thank you, Your Honor, just briefly.

20 CROSS-EXAMINATION

21 BY MS. WYSE:

22 Q: Good morning, Ms. Gurley.

23 A: Good morning.

24 Q: How are you doing?

25 A: I'm fine. Thank you.

1 Q: Good. I know this is a stressful event. So please take
2 your time.

3 A: It is.

4 Q: Ms. Gurley, you told us earlier that -- that you and Mr.
5 Gurley are married; right?

6 A: Yes.

7 Q: And do you have any children, Ms. Gurley?

8 A: I do not.

9 Q: Okay. Can you speak into that microphone? I can't hear
10 you very well.

11 A: Okay. I do not --

12 Q: Okay.

13 A: -- have any kids.

14 Q: All right. Now, Mr. Gurley testified earlier and it's
15 been testified throughout that Little Ken -- do you call him
16 Little Ken?

17 A: I do sometimes.

18 Q: Okay.

19 A: Yes.

20 Q: Little Ken lived at the house with you guys in Florence;
21 right?

22 A: Yes.

23 Q: Okay. And B.G. lived in Latta?

24 A: Yes.

25 Q: And he would come sometimes for visitation; right?

- 1 A: Yes.
- 2 Q: Okay. All right. How long have you been in their lives?
- 3 A: Ever since 2000 when I met my husband.
- 4 Q: Okay. And how old were -- do you remember how old they
- 5 were then?
- 6 A: Maybe eight -- seven or nine -- something.
- 7 Q: Which one?
- 8 A: Let me see. That's 13 -- 14 years ago. Maybe -- maybe
- 9 six and nine or something like that.
- 10 Q: Okay.
- 11 A: Seven and nine.
- 12 Q: All right. Thank you. Is B.G. in the Army?
- 13 A: No.
- 14 Q: All right. You -- when did you say that Teicher moved
- 15 her kids in? Do you -- do you remember the year?
- 16 A: I can't remember the year. Maybe 2008. I'm not really
- 17 sure.
- 18 Q: Okay. All right.
- 19 A: Because I know was between two-and-a-half and
- 20 three.
- 21 Q: Okay. Are you godmother?
- 22 A: Yes, I am.
- 23 Q: And were you there when she was born?
- 24 A: No.
- 25 Q: All right. How -- I don't -- I don't have a godmother so

1 I'm going to ask you.

2 A: Mm-hmm.

3 Q: How -- how do you get to be a godmother? Is there, like,
4 a ceremony or anything like that?

5 A: At some point in time, there are ceremonies for
6 godparents, but Teicher and I didn't have a ceremony because
7 she and I was friends, and the kids -- my husband and I are
8 really attached to the kids and so we just -- it's just kind
9 of something that fell into place.

10 Q: Okay.

11 A: No ceremony.

12 Q: And so did Sam come when moved in?

13 A: Yes.

14 Q: And did you have a good relationship with Sam too?

15 A: Oh, very good, yes.

16 Q: And is it safe to say that you love those girls?

17 A: Yes, we do.

18 Q: And do you still love them?

19 A: Yes, we do.

20 Q: Did you have any problems with either one of them while
21 they were living at your house?

22 A: No.

23 Q: Okay. And you said that you potty trained

24 A: Yes.

25 Q: And you said that Teicher was in or out of your home

1 about three or four times?

2 A: Yes.

3 Q: Okay. How long -- I know you said that you met Teicher
4 at Olan Mills, but how many years have the two of you been
5 friends?

6 A: I think -- I'm -- I'm going to say I met Teicher in 19 --
7 I'm going to say '98.

8 Q: '98?

9 A: '89. I'm sorry.

10 Q: Okay.

11 A: In 1989. I want to -- I'm going to say maybe '89.

12 Q: It's hard to remember back that far.

13 A: It is. It is, but it was somewhere along then because
14 she and I worked together, and I had been out of the state.
15 So I came back in the state in '88, and I started working at
16 Olan Mills. So it had to be '89.

17 Q: Okay. All right. Now, is it safe to say that the two of
18 you were close friends?

19 A: Yes.

20 Q: And, in fact, you were such good friends that she came
21 and lived with you; right?

22 A: Yes.

23 Q: And did -- did Teicher know B.G. and Little Ken and Big
24 Ken prior to coming to live at the house?

25 A: Yes.

1 Q: Had they all met?

2 A: Yes.

3 Q: And, you know, was it a surprise to Big Ken that you were
4 okay with letting her live there with her children?

5 A: Well, he and I talked about it.

6 Q: Okay. All right. Did -- did you ever work for Teicher?

7 A: I worked for Teicher in 2012, yes.

8 Q: And where was that?

9 A: At Hickory Farms.

10 Q: And did B.G. also work for Teicher?

11 A: Yes, same year.

12 Q: And now, you said Hickory Farms, but just for the benefit
13 of everybody in here, what -- what was that?

14 A: It's a seasonal job that comes in November and it's maybe
15 two months -- two-and-a-half months working at the mall. It's
16 a cheese -- a place where you buy cheese, nuts, and that kind
17 of thing.

18 Q: Sausage?

19 A: Yeah. That kind of thing, you know gift packets and
20 that.

21 Q: All right. And you said that you worked for her when?

22 A: 2012.

23 Q: Okay. All right. And do you know -- and B.G. worked for
24 her in 2012 too?

25 A: Yes.

- 1 Q: Okay. So you -- in 2012 at Christmastime, you worked for
2 Teicher?
- 3 A: Yes.
- 4 Q: Did Denise attend church with you guys in Columbia?
- 5 A: Pardon me?
- 6 Q: Did Denise attend church with you guys in Columbia?
- 7 A: Did who?
- 8 Q: I'm sorry. Did Teicher attend church with you guys in
9 Columbia?
- 10 A: Yes.
- 11 Q: Okay. And did she go with you for a while?
- 12 A: For a short while, yes.
- 13 Q: Did y'all all ride together?
- 14 A: Yes.
- 15 Q: And what car did you take when y'all rode together?
- 16 A: My truck.
- 17 Q: Your Sequoia?
- 18 A: Yes.
- 19 Q: Okay. Now, since these allegations were brought forth,
20 have you been in -- have you had contact with Teicher?
- 21 A: Yes. Teicher texts me; I text her back. Yes.
- 22 Q: Y'all were still friends after this came out; right?
23 Would it be safe to say that?
- 24 A: At first, yes.
- 25 Q: Okay.

- 1 A: Yes.
- 2 Q: And did you still see each other?
- 3 A: I went a couple of times to her job to take her mail.
- 4 Jacob Plumbing.
- 5 Q: Okay.
- 6 A: And she -- and I went there and I was advised just to
- 7 mail her her mail or just put it back into the post office.
- 8 Q: All right.
- 9 A: So that's what I did.
- 10 Q: All right. In fact, there's a bunch of text messages
- 11 between the two of you; right?
- 12 A: Yes.
- 13 Q: And when was the last time you tried to give her her
- 14 mail?
- 15 A: Maybe about two years ago or a year and a half.
- 16 Q: When were you advised not to give her -- not to -- not to
- 17 do that anymore?
- 18 A: I can't recall. It's been over a year.
- 19 Q: Okay.
- 20 A: Yes.
- 21 Q: All right. And do you still drive a Sequoia?
- 22 A: I do.
- 23 Q: All right. And did you go to her job sometime before
- 24 Christmas of this year?
- 25 A: No.

- 1 Q: You didn't?
- 2 A: No.
- 3 Q: You didn't? You didn't go to Jacob's Plumbing?
- 4 A: I haven't been to Jacob's Plumbing any last year.
- 5 Q: Okay. And so when you didn't go to Jacob's Plumbing, you
- 6 didn't back into a light and put your taillight out?
- 7 A: No, I did not.
- 8 Q: And you don't have a taillight out on your car right now?
- 9 A: Oh, yeah. I hit a post at my friend's house in Savannah
- 10 Grove.
- 11 Q: Okay. And did you -- actually, do you have the taillight
- 12 that you broke?
- 13 A: I don't.
- 14 (Whereupon, the witness is shown a plastic bag.)
- 15 Q: This isn't it, Ms. Gurley?
- 16 A: I don't think -- I don't think so.
- 17 Q: You said earlier that you and Big Ken had a talk with
- 18 B.G.; is that right? After the allegations came out?
- 19 A: Yes.
- 20 Q: And you waited until Friday -- you said Friday when your
- 21 husband came home to tell him?
- 22 A: Yes.
- 23 Q: Okay. And did you have a conversation with B.G.?
- 24 A: My husband did.
- 25 Q: But you were present; right?

1 A: Yes, I was.

2 Q: In fact, he told you at that -- at that meeting that he
3 did exactly what said; right?

4 A: No, he did not.

5 Q: He didn't say that to you?

6 A: No, ma'am.

7 Q: Do you love B.G.?

8 A: I do.

9 Q: Do you love Little Ken?

10 A: I do.

11 Q: And you also love Samantha?

12 A: Yes.

13 Q: And you also love

14 A: Yes.

15 Q: And you don't want to see anything bad happen to B.G., do
16 you?

17 A: I do not.

18 Q: Okay.

19 MS. WYSE: I have no further questions, Your Honor.

20 THE COURT: All right. Any redirect?

21 MR. WOODSON: Yes, briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. WOODSON:

24 Q: You were asked a moment ago about contact with Ms.

25 Richardson after you found out about the allegations, and I

1 think your answer was you were texting back and forth;

2 correct?

3 A: Yes.

4 Q: Any threats in those text messages?

5 A: No threats.

6 Q: Okay. Did you show up at her house in a threatening
7 manner?

8 A: I have not.

9 Q: Okay. Was there an allegation at some point where you
10 were -- supposedly had done that?

11 A: No.

12 Q: Okay. All right. You also mentioned riding to Columbia
13 in your vehicle for church; is that correct?

14 A: Yes.

15 Q: Would Ken be in the -- not Ken. I'm sorry. Would Bryant
16 be in the car with you?

17 A: Yes, when he was over.

18 Q: Okay. Did you ever notice anything unusual in the
19 vehicle when you were headed to church?

20 A: No.

21 Q: What would be the seating arrangements?

22 A: Very rarely Bryant was with us because it was me, my
23 husband would be in the front, Teicher and Samantha would be
24 in the second seat, and Ken and would be in the
25 third seat.

1 Q: Okay.

2 A: And when Bryant did ride with us, the boys was in the
3 back and she would be in the middle. Samantha --

4 Q: She who?

5 A: would be in the middle.

6 Q: Okay.

7 A: And Samantha and Teicher would be in the second seat and
8 my husband and I in the first seat.

9 Q: Okay.

10 MR. WOODSON: Thank you.

11 THE COURT: All right. Anything further?

12 MS. WYSE: Just brief redirect, Your Honor.

13 RECROSS-EXAMINATION

14 BY MS. WYSE:

15 Q: Can you please identify this picture for me, please?

16 I'll take it to you.

17 A: That's my truck.

18 Q: It is your truck?

19 A: Yes.

20 Q: And is that your -- a picture of your taillight out or
21 part of your taillight out?

22 A: Yes, it is.

23 Q: Thank you very much.

24 MS. WYSE: Judge, at this time, I'd like to mark this as
25 an exhibit.

26

1 a.m.)

2 THE COURT: All right. Are you ready to proceed?

3 MR. WOODSON: Yes, Your Honor.

4 THE COURT: Okay. We'll march them back out. Let's take
5 all twelve of them back out.

6 THE BAILIFF: Yes, sir.

7 (Whereupon, the jury enters the courtroom at 11:36 a.m.)

8 THE COURT: All right. If the defense will, call your
9 next witness.

10 MR. WOODSON: Your Honor, the defense would call George
11 Liebenrood. George Liebenrood.

12 (Whereupon, there is a pause in the proceedings until the
13 witness enters the courtroom, after which the proceedings
14 continue as follows.)

15 THE CLERK: If you will, sir, come to the witness stand.
16 Place your left hand on the Bible and raise your right hand.
17 Do you swear to tell the truth, the whole truth, and nothing
18 but the truth, so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Please be seated and state your full name for
21 the record.

22 THE WITNESS: George Harold Liebenrood Jr.

23 GEORGE LIEBENROOD, being first duly sworn,
24 testifies as follows:

25 DIRECT EXAMINATION

1 BY MR. WOODSON:

2 Q: And, Mr. Liebenrood, what is your occupation?

3 A: I am principal of Latta High School.

4 Q: And how long have you been principal?

5 A: I've been principal for eleven years. I came to Latta
6 High School in 1980 as band director. I was band director for
7 22 years, and then became principal.

8 Q: Okay. And during your time as a principal, did you have
9 the opportunity to know Bryant Gurley?

10 A: Yes, sir. I know -- I know B.G.

11 Q: Okay. And was he a pretty good student?

12 A: Yeah. He was a polite young man in school, played
13 football, was in the band, very respectful. Yes, sir. No,
14 sir. Yes, ma'am. Was polite to his teachers. Just a good
15 kid in school.

16 Q: Okay. And did he graduate from your school?

17 A: Yes, he did.

18 Q: Okay. And was he allowed to march?

19 A: When all of this happened, I got concerned that --
20 because it ended up in the newspaper. We have some -- some
21 latitudes at Latta High School that when something like this
22 happened to try to work some things out. I was afraid that
23 somebody might say something, things get out of hand; so I
24 kind of kept him low, but he came to me and we talked and I
25 talked to his parents, and got him through school. He went to

1 his classes. He followed the rules that I had set for him,
2 and he was able to graduate.

3 Q: Okay.

4 A: He did not participate in commencement.

5 Q: Okay. Do you know if he had any plans for after high
6 school?

7 A: Yeah. He and I had had a conversation at some point in
8 high school that he --

9 MS. WYSE: Objection, Your Honor. I don't --

10 MR. WOODSON: Don't --

11 MS. WYSE: -- know how this testimony is relevant.

12 THE COURT: All right. How is it relevant?

13 MR. WOODSON: Just what his plans were, Your Honor.

14 After -- he doesn't have to say what he was told, but what his
15 understanding of his post-graduate plans.

16 THE COURT: Okay. Y'all come on up.

17 (Whereupon, a bench conference is held in the presence of
18 the jury but out of the hearing of the jury as follows.)

19 THE COURT: Just what's this got to do with whether he's
20 guilty or not?

21 MR. WOODSON: It doesn't. It's basically, like,
22 character evidence.

23 THE COURT: Character evidence is inadmissible.

24 MR. WOODSON: Well, unless I bring it up that way.

25 THE COURT: What's that?

1 MR. WOODSON: Unless I bring it up. I mean they can't
2 bring it up, but if I bring it up, then that means they can
3 bring up opposing --

4 MS. WYSE: Judge, I just -- I feel like he's chasing some
5 breeze here, these rabbit trails.

6 MR. WOODSON: That -- that will be --

7 MS. WYSE: When the bishop testified yesterday, I tried
8 to figure out what in the world his testimony said that was
9 actually relevant, and I can't. And I -- you know, I just --

10 THE COURT: I don't think he's going to. He disputes
11 problems and I think that's where it's going. That's the way
12 I see it.

13 MS. WYSE: Okay.

14 THE COURT: I'm not for sure where this --

15 MR. WOODSON: That will be my last question.

16 THE COURT: Last question.

17 MS. WYSE: Okay. Thanks.

18 (Whereupon, the bench conference ends and the proceedings
19 continue as follows.)

20 BY MR. WOODSON:

21 Q: All right. This will be my last question, Principal.
22 What was your -- don't say what he said, but what was your
23 understanding of Bryant's plan after high school?

24 A: That he was going to go into the military.

25 Q: Okay.

26

DIRECT EXAMINATION

1
2 BY MR. WOODSON:

3 Q: Ms. Davis, thank you for coming this morning. I -- this
4 will be really brief, but do you know Ken Gurley and Denise
5 Gurley?

6 A: I know them very well. They've been my next-door
7 neighbors for, like, the last twelve or so years.

8 Q: Okay. And do you know Bryant Gurley?

9 A: I do know Bryant.

10 Q: Okay. And how -- have you known him since he was
11 younger?

12 A: I have known him the entire time I've been out there,
13 yes.

14 Q: Okay. And do you know his brother?

15 A: I do. I know Ken.

16 Q: All right. Have you had the opportunity to meet Ms.
17 Teicher Richardson?

18 A: Yes, I have.

19 Q: All right. Have you ever seen them at the house or in
20 the yard?

21 A: Yes, as a group. Mm-hmm.

22 Q: Okay. And their interactions have been positive?

23 A: Yes. Mm-hmm.

24 Q: Okay. One of the things that -- one of the main reasons
25 I called you to the stand -- do you recall when Ms. Richardson

1 moved out from Mr. Gurley's house?

2 A: It was in August of 2011.

3 Q: Okay. Thank you.

4 A: You're welcome.

5 THE COURT: Any cross?

6 MS. WYSE: No, Your Honor.

7 THE COURT: All right. You may step down. If you will,
8 call your next witness.

9 MR. WOODSON: Your Honor, I'd call Pastor Eddie Watson to
10 the stand.

11 (Whereupon, there is a pause in the proceedings until the
12 witness enters the courtroom, after which the proceedings
13 continue as follows.)

14 THE BAILIFF: Right here, sir.

15 THE CLERK: If you will, sir, come to the witness stand
16 and place your left hand on the Bible and raise your right
17 hand. Do you swear to tell the truth, the whole truth, and
18 nothing but the truth, so help you God?

19 THE WITNESS: I affirm that I will tell the truth.

20 THE CLERK: Thank you, sir. Please be seated.

21 THE WITNESS: Where?

22 THE CLERK: Right there in the witness stand. And state
23 your full name for the record.

24 THE WITNESS: My name is Eddie Daniel Watson.

25 MR. WOODSON: All right

1 EDDIE WATSON, being first duly sworn,
2 testifies as follows:

3 DIRECT EXAMINATION

4 BY MR. WOODSON:

5 Q: And, Pastor Watson, tell me what is it -- what is your
6 occupation?

7 A: Well, I have a couple. I'm a minister of the gospel.
8 I'm also -- I work with the Small Business Development Center
9 here in Florence.

10 Q: Okay. And do you know Bryant and -- Bryant Gurley?

11 A: Yes, I do.

12 Q: And how do you know him?

13 A: Well, two ways. He's my nephew. He's also in my musical
14 department at church.

15 Q: Okay. And what does he do at church?

16 A: He's a drummer.

17 Q: All right. And when -- when does your church have
18 services?

19 A: Every week. Friday we have our Bible study, and on
20 Sundays we have our regular Sunday service.

21 Q: Okay. And was -- was Bryant in church on a regular
22 basis?

23 A: Oh, yes. I require that because he's -- he's in my
24 musical department.

25 Q: Okay.

1 A: So he's there regularly.

2 Q: Okay.

3 MS. WYSE: Objection again, Your Honor, to relevance at
4 this point.

5 THE COURT: All right. Y'all come on up.

6 (Whereupon, a bench conference is held in the presence of
7 the jury but out of the hearing of the jury as follows.)

8 THE COURT: Where are we going with it?

9 MR. WOODSON: I'm going to get into the time frames. If
10 he was in -- you know, if he was there on Fridays and Sundays.
11 I'm just trying to get into the time frame.

12 THE COURT: All right.

13 MS. WYSE: And what does time --

14 THE COURT: Time is critical because of the allegations
15 of when it happened --

16 MR. WOODSON: Yeah.

17 THE COURT: -- and if he isn't in the house when it
18 allegedly took place and things like that.

19 MS. WYSE: Okay.

20 THE COURT: Go ahead.

21 (Whereupon, the bench conference ends and the proceedings
22 continue as follows.)

23 BY MR. WOODSON:

24 Q: So, Pastor, he was -- you said he was a regular member?

25 A: Oh, yes. Yes, definitely.

- 1 Q: Were there times that you are aware of that he was not in
2 church?
- 3 A: Yeah, occasionally.
- 4 Q: What was your understanding of where he would be during
5 those times?
- 6 A: Well, he would be with his father.
- 7 Q: Okay. And --
- 8 A: Or either he was -- he was involved in sports in high
9 school; so on Friday nights sometimes he would be at the
10 basketball game.
- 11 Q: Okay.
- 12 A: Other than that, he's -- you know.
- 13 Q: Other than that, would he be in church?
- 14 A: Other than that, he's usually at church.
- 15 Q: All right.
- 16 A: Or if he's not -- now, since he has a job, on Friday
17 nights sometimes he's at the job working.
- 18 Q: Okay.
- 19 A: And if he's not there, he's usually in church.
- 20 Q: Okay. Do you know anything about any holidays and where
21 they spend them? You said you're his uncle?
- 22 A: Yes.
- 23 Q: Is that correct?
- 24 A: Yes.
- 25 Q: Do you know anything about the holidays and where they

1 spend time? Where Bryant would be spending time on the
2 holidays?

3 A: Usually, as far as the holidays goes, I know with
4 Christmas or -- and Thanksgiving, I know where he is usually.
5 He's usually at my sister's house.

6 Q: Okay.

7 A: Because that's -- she invites family members to her house
8 on those days, and Bryant is usually there.

9 Q: Okay. All right. And Bryant lives in Latta with his
10 mother; is that correct?

11 A: That's correct.

12 Q: All right.

13 MR. WOODSON: Court's indulgence.

14 THE COURT: Mm-hmm.

15 MR. WOODSON: No further questions, Your Honor.

16 THE COURT: All right. Cross?

17 MS. WYSE: Just briefly, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. WYSE:

20 Q: You said that you are his uncle?

21 A: Yes.

22 Q: Okay. And is B.G. in the Army?

23 A: Is he in the Army?

24 Q: Yes, sir.

25 A: To my knowledge, no.

1 Q: You love your nephew; right?

2 A: Sure. I love all my nieces and nephews.

3 Q: All right.

4 MS. WYSE: I have no further questions, Your Honor.

5 THE COURT: All right. Thank you.

6 MR. WOODSON: Briefly.

7 REDIRECT EXAMINATION

8 BY MR. WOODSON:

9 Q: Do you know if he was planning to go to the Army?

10 A: At one time, I think that he was.

11 Q: Okay.

12 MR. WOODSON: I don't -- I don't have any other
13 questions.

14 THE COURT: All right. You may step down. Thank you.
15 If you will, call your next witness.

16 MR. WOODSON: Can I call -- well, Your Honor, at this
17 time, the defense would call Conyers Wilson to the stand.
18 Conyers Wilson.

19 (Whereupon, there is a pause in the proceedings until the
20 witness enters the courtroom, after which the proceedings
21 continue as follows.)

22 THE CLERK: If you will, sir, come to the witness stand.
23 Place your left hand on the Bible and raise your right hand.
24 Do you swear to tell the truth, the whole truth, and nothing
25 but the truth, so help you God?

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

2 THE CLERK: Please be seated in the witness chair, and
3 state your full name for the record.

4 THE WITNESS: My name is Conyers Bethon [phonetic]
5 Wilson.

6 MR. WOODSON: All right.

7 CONYERS WILSON, being first duly sworn,
8 testifies as follows:

9 DIRECT EXAMINATION

10 BY MR. WOODSON:

11 Q: And, Mr. Wilson -- Mr. Wilson, how do you know Bryant
12 Gurley?

13 A: Bryant is my nephew --

14 Q: Okay.

15 A: -- through my sister's husband.

16 Q: Okay. So Denise Gurley is your sister?

17 A: Yes.

18 Q: All right. So you've known him for quite some time?

19 A: Quite some time.

20 Q: All right. And I want to ask you a couple of questions
21 about a couple of events. First of all, do you talk to your
22 sister and brother-in-law on a regular basis?

23 A: Weekly. Weekly.

24 Q: Weekly? I'm sorry.

25 A: Yes.

- 1 Q: And are you aware of any events at their house, like,
2 during the summer?
- 3 A: Yes.
- 4 Q: Tell me about it?
- 5 A: During the summer, we -- they have a 4th of July cookout.
- 6 Q: Okay.
- 7 A: And everybody from his family comes over, and I come over
8 and cook for them because he gets off, like, Saturday morning.
9 So him and Bryant -- we tend to do the cooking.
- 10 Q: Okay.
- 11 A: The meat and stuff.
- 12 Q: So Bryant --
- 13 A: Right. He would be cooking.
- 14 Q: He would help you cook?
- 15 A: Right.
- 16 Q: All right. Would that be a regular thing?
- 17 A: It would be every year.
- 18 Q: Okay. And would this be an all-afternoon event or how
19 long would it last typically?
- 20 A: It would last over into evening time.
- 21 Q: Okay. And --
- 22 A: Late evening.
- 23 Q: Were there other people there Bryant's age?
- 24 A: Not unless it would be my granddaughter or his brother,
25 Ken.

1 Q: Okay. And would Bryant -- who would Bryant spend the
2 time with? You said he helped you cook. Who would he
3 typically spend the time with?

4 A: He was --

5 MS. WYSE: Objection to leading, Your Honor.

6 MR. WOODSON: I didn't.

7 THE COURT: Overruled.

8 BY MR. WOODSON:

9 A: He was mostly with adults because either we'd be on the
10 back porch where the grill is at with the guys talking or
11 either we're looking at football and, you know, he would
12 always be with us with football and basketball that was going
13 on at the time.

14 Q: Okay. Now, as far as you know, did you ever see Bryant
15 go alone with the young lady?

16 A: No, not at the cookout.

17 Q: Okay.

18 A: Because most of the kids would play outside and the guys
19 in the garage would watch the kids in the street and them
20 playing.

21 Q: Okay. All right. And do -- you are aware that Bryant
22 played some sports in high school?

23 A: Yes.

24 Q: All right. Do you know what his plans were after high
25 school?

1 A: Yes. He was to go into -- excuse me -- go in the
2 military.

3 Q: Okay.

4 A: I had been talking to him for two years, you know, to
5 keep his record straight --

6 Q: Okay.

7 A: -- so he can get in.

8 Q: Were you in the military?

9 A: Yes.

10 Q: What branch?

11 A: Twenty-four years.

12 Q: I'm sorry? Twenty-four years?

13 A: Twenty-four years, yes.

14 Q: What branch?

15 A: Air Force.

16 Q: Okay. And you said you had been talking to him about
17 going into the military?

18 A: Right.

19 Q: All right. Do you know why he didn't go into the
20 military?

21 A: Yes.

22 Q: Why?

23 A: Because -- well, he -- he went to Columbia and he passed
24 his physical. He got sworn in, and then this incident came up
25 and that's what put it on hold. He was -- he had a date to

1 leave and everything.

2 Q: Okay.

3 MR. WOODSON: The Court's indulgence. I think I'm about
4 finished.

5 THE COURT: All right.

6 BY MR. WOODSON:

7 Q: When -- when is your understanding of when Teicher
8 Richardson moved out of the home of the Gurleys?

9 A: August of 2011.

10 Q: Okay. And how do you know that?

11 A: I was notified probably the first week of September. I
12 -- she called me to borrow \$100 to open up a checking account
13 at Wachovia, and so I was -- took it to Wachovia in Columbia
14 and I wrote out a check to Wachovia and they transferred it to
15 her account down here in Florence.

16 Q: And what was that for?

17 A: And that was to get money put in the account so she can
18 pay her rent or for a year lease on a condo that she had --

19 Q: Okay.

20 A: -- put in for.

21 Q: Okay. All right.

22 MR. WOODSON: I don't have any other questions, Your
23 Honor.

24 THE COURT: All right.

25 CROSS-EXAMINATION

1 BY MS. WYSE:

2 Q: Good after -- good morning, Mr. Wilson.

3 A: How you doing?

4 Q: Good. How do you -- do you know Teicher Richardson?

5 A: Yes.

6 Q: And do you know her daughters, Sam and

7 A: Yes.

8 Q: And have you ever talked to those daughters of hers?

9 A: Probably the oldest daughter more so than anything before

10 she went off to college, and just interacting when she was

11 with the family.

12 Q: Okay. You said that you -- you helped your brother-in-

13 law cook on the 4th of July?

14 A: Every 4th of July.

15 Q: All right. And you said that there are a lot -- are

16 there a lot of people there?

17 A: Yes.

18 Q: All right. You said that B.G. told you he wanted to go

19 in the Army?

20 A: Well, he had already been accepted in the Army.

21 Q: Okay. Did you know that he's actually telling people

22 that he is in the Army?

23 MR. WOODSON: Objection. Hearsay.

24 THE COURT: Overruled.

25 BY MS. WYSE:

1 Q: Did you know that?

2 A: Well, when you get sworn in and you have a date to
3 report, you are officially in, and when something like this
4 come up, they put everything on hold.

5 Q: Okay. So -- but he's not -- he's not actually in the
6 Army right now?

7 A: He's not on active duty, yes.

8 Q: Okay. All right. Did you ever have a conversation with
9 Sam where you told her that she needed to warn her mother that
10 this whole thing was going to get really ugly and that she
11 needed to --

12 A: No, ma'am.

13 Q: -- tell her?

14 A: No, ma'am.

15 Q: Okay. All right. Now, is B.G. -- he's your nephew;
16 right?

17 A: Yes.

18 Q: And you love him; right?

19 A: Yes.

20 Q: And you love his brother too; right?

21 A: I love my family.

22 Q: And you don't want to see anything bad happen to them;
23 right?

24 A: I mean if he did anything wrong, I mean, you know, you
25 have to pay for your crime.

1 THE CLERK: State your full name for the record.

2 THE WITNESS: My full name is Evelyn Johnson.

3 EVELYN JOHNSON, being first duly
4 sworn, testifies as follows:

5 DIRECT EXAMINATION

6 BY MR. WOODSON:

7 Q: Good morning, Ms. Johnson.

8 A: Good morning.

9 Q: Tell me how you are related to Ken Johnson?

10 A: I beg your pardon?

11 Q: Ken Gurley. I'm sorry.

12 A: Uh-huh. How am I related to him?

13 Q: Yes.

14 A: That's my son.

15 Q: Okay. And so Bryant is your grandson?

16 A: Yes, sir.

17 Q: All right. And I want to ask you a couple of questions
18 mainly about the holidays.

19 A: Okay.

20 Q: Tell me where -- what were your arrangements for the
21 holidays, like Thanksgiving and Christmas?

22 A: Thanksgiving is my holiday. I love Thanksgiving because
23 that's my special holiday. I like that because I get to spend
24 time with my family, and at least at Thanksgiving everybody in
25 the world is thankful for something, and that's why I love

1 Thanksgiving so much. And so I always have my family over to
2 my home at Thanksgiving, and we have our interaction and we
3 have our Thanksgiving dinner, and then we -- we just have a
4 good time at Thanksgiving. It's a wonderful time of the year
5 for me.

6 Q: Okay. And during Thanksgiving, did -- well, first of
7 all, do you know Ms. Teicher Richardson?

8 A: I do.

9 Q: Okay. And do you know her daughters?

10 A: Yes, sir, I do.

11 Q: Okay. Was Thanksgiving a time that they would come to
12 your house?

13 A: No, sir. Ms. Teicher has never been to my home.

14 Q: Okay. And what -- what did -- do you know what Bryant
15 did for Christmas?

16 A: What we did for Christmas?

17 Q: Yes.

18 A: Christmas usually we just -- after -- I have dinner at my
19 house, but Ken and those don't come at Christmas for dinner,
20 but after they have dinner to the other side of the family's
21 house, then they would come to my house and we would exchange
22 gifts.

23 Q: Okay. And does Bryant participate in that at Christmas?

24 A: Yes, he did.

25 Q: All right. And are Denise and -- I'm sorry. Are Teicher

1 and her daughters there during Christmas?

2 A: No, sir.

3 Q: All right. So Christmas and Thanksgiving are pretty much
4 seasons where it's your understanding that Bryant's not
5 around?

6 A: That's when we have our little gathering. And then at
7 Thanksgiving, sometimes we sit around and look at football
8 afterward. And then after that, sometimes Denise and them
9 would gather up and they'd go out of town, and B.G. was always
10 -- always really excited about Thanksgiving because he -- he
11 calls me MeMa. He loves to come at MeMa's house, and he would
12 be the first one to call and say, "Mema, what time is dinner?"

13 Q: Okay. How often did you -- or did you talk to Ms.
14 Richardson, the mother, Teicher Richardson?

15 A: Well, I really never talked to her that much, but if I
16 would go to Ken's house or she was there, then we would talk.

17 Q: Okay.

18 A: Yeah.

19 Q: And when you went to Ken's house, would there be
20 occasions where Bryant would be there also?

21 A: Yes, sir. There was at times.

22 Q: Okay. Did you ever notice whether Bryant was ever alone
23 with

24 A: No, sir, I didn't. I didn't never notice that.

25 Q: Okay. Do you know anything about the 4th of July event?

- 1 A: Yes, sir.
- 2 Q: Did you participate in that?
- 3 A: I did.
- 4 Q: Okay. Did you do any cooking?
- 5 A: Yes.
- 6 Q: Okay. You like to cook?
- 7 A: I do the chicken bog.
- 8 Q: Okay. All right. And did Bryant help anyone cook that
- 9 you can recall?
- 10 A: Yes, sir. Him -- him and Uncle Irby would be a lot of
- 11 times on the grill, you know.
- 12 Q: Okay. Okay. And Irby is one of Niecy's brothers as
- 13 well?
- 14 A: Yes, sir.
- 15 Q: Okay. All right.. And would Conyers do any cooking that
- 16 you can recall?
- 17 A: I don't remember.
- 18 Q: Okay.
- 19 A: Because for a while I didn't -- I couldn't tell. Between
- 20 the two brothers, I didn't know so I -- you know.
- 21 Q: Okay.
- 22 A: I just know names.
- 23 Q: Okay.
- 24 A: Yeah.
- 25 Q: Okay. But everybody would kind of be together

1 downstairs?

2 A: I beg your pardon?

3 Q: Would everybody kind of be together downstairs or either
4 outside?

5 A: Well, they -- there was so many people there the rooms
6 couldn't -- you know, we'd always -- people would be outside
7 and we'd be in the downstairs and -- you know, and there was
8 just a lot of people.

9 Q: Okay. All right.

10 MR. WOODSON: Court's indulgence.

11 THE COURT: Mm-hmm.

12 BY MR. WOODSON:

13 Q: Okay. Are you aware of anything that would have happened
14 upstairs where people would be upstairs as well?

15 A: The biggest thing that I see people upstairs was a lot of
16 -- Ken has music up there and a lot of the pastors -- if you
17 didn't find a pastor, they'd be upstairs, or the preachers a
18 lot of times or the musicians and stuff, they'd be upstairs.
19 You could hear the organ going off. So they'd be upstairs
20 with the organ a lot of the times.

21 Q: Okay. All right.

22 MR. WOODSON: I don't have any other questions. Thank
23 you.

24 THE COURT: All right. Cross?

25 MS. WYSE: Thank you, Your Honor.

1 MR. WOODSON: Thank you. That's it.

2 THE COURT: All right. You have a good day. You can go.

3 THE WITNESS: Okay.

4 THE COURT: If you would, call your next witness.

5 MR. WOODSON: Your Honor, at this time, I would call --
6 well, Court's indulgence. Your Honor, at this time, I -- I
7 would call Hattie Couser to the stand.

8 (Whereupon, there is a pause in the proceedings until the
9 witness enters the courtroom, after which the proceedings
10 continue as follows.)

11 THE CLERK: If you will, ma'am, place your left hand on
12 the Bible and raise your right hand. Do you swear or affirm
13 to tell the truth, the whole truth, and nothing but the truth,
14 so help you God?

15 THE WITNESS: I affirm that the statements I say are
16 true.

17 THE CLERK: Please be seated in the witness chair and
18 state your full name for the record.

19 THE WITNESS: Hattie Mae Couser.

20 HATTIE COUSER, being first duly sworn,
21 testifies as follows:

22 DIRECT EXAMINATION

23 BY MR. WOODSON:

24 Q: Ms. Couser, how are you related to Bryant Gurley?

25 A: He's my son.

- 1 Q: Okay. And where do you live?
- 2 A: I live at
- 3 Q: Okay. And Bryant went to school in Latta?
- 4 A: Yes.
- 5 Q: Okay. And did he graduate?
- 6 A: Yes.
- 7 Q: And what was your understanding of what he was going to
- 8 do after he graduated?
- 9 A: Attend the military.
- 10 Q: Okay. Now, while he was in high school, did he play
- 11 sports?
- 12 A: Yes, he did.
- 13 Q: What did he play?
- 14 A: He played basketball and football.
- 15 Q: And what day of the week would the games be on for
- 16 football? Let's start with football.
- 17 A: Fridays.
- 18 Q: Was basketball the same?
- 19 A: Yes.
- 20 Q: Okay. Was he -- did he have any other extracurricular
- 21 activities?
- 22 A: He played in the band.
- 23 Q: Okay. What instrument?
- 24 A: He played the -- he started out with the trumpet and then
- 25 he -- he went to the percussion.

1 Q: Okay. And did he also play the percussion, the drums, at
2 your church?

3 A: Yes.

4 Q: Okay. And what are your church nights?

5 A: Friday nights and Sundays.

6 Q: Okay. Did he play Fridays and Sundays?

7 A: Yes.

8 Q: All right. Now, Bryant at some points visited his
9 father; correct?

10 A: Yes.

11 Q: How often did he visit his father?

12 A: He didn't go that often.

13 Q: Okay. You know, some arrangements people have is, like,
14 every other weekend. Was that the situation with you or was
15 it less?

16 A: It was less.

17 Q: Okay. And what was the arrangement during holidays?

18 A: He would go to his dad on Thanksgiving where they would
19 go to his -- his parents' house. You know, my ex -- my ex-
20 husband would go to his parents' house on Thanksgiving.

21 Q: And would Bryant meet them there?

22 A: Yes.

23 Q: Now, do you know Ms. Denise Richardson? Denise -- I'm
24 sorry. Teicher Richardson?

25 A: No, I do not.

- 1 Q: Okay. Do you know her daughters?
- 2 A: No, I do not.
- 3 Q: Okay. You've not met them?
- 4 A: No, I have not.
- 5 Q: All right. When -- when there would be the visitation
- 6 exchange, would -- how would Bryant get to be at Ken's house?
- 7 A: He would -- either Ken would come pick him up or I would
- 8 take him.
- 9 Q: Okay. You would take Bryant to Ken's house?
- 10 A: Yes.
- 11 Q: All right. When you took Bryant to Ken's house, did you
- 12 go in the house?
- 13 A: No.
- 14 Q: Okay. All right. So no interaction between you and --
- 15 A: No.
- 16 Q: -- Ms. Richardson? All right. And you said that was the
- 17 arrangement -- well -- and you said during Thanksgiving that's
- 18 when he -- he would be in Latta with his grandmother?
- 19 A: Mm-hmm.
- 20 Q: That's a yes?
- 21 A: Correct.
- 22 Q: Okay. And during Christmas, what would be your
- 23 arrangement?
- 24 A: That he would go with his dad for Christmas. He would go
- 25 there for Christmas.

- 1 Q: Okay.
- 2 A: Mm-hmm.
- 3 Q: And do you know if they -- they would spend time in Ken's
- 4 house or whether they would go somewhere else?
- 5 A: I'm not aware.
- 6 Q: Okay. All right. When did you first find out about
- 7 these allegations?
- 8 A: It came in March of 2000 -- let's see -- '11 -- must have
- 9 been March of 2011.
- 10 Q: Okay. And how did -- well, I mean how did you find out?
- 11 Was it over the phone or in person?
- 12 A: It was over the phone.
- 13 Q: Okay. All right. And what was your reaction?
- 14 A: I was shocked.
- 15 Q: Okay. And is -- was there a point where you met with Ken
- 16 and y'all say down and talked about it?
- 17 A: Yes.
- 18 Q: Okay.
- 19 A: We did.
- 20 Q: And tell me about that discussion?
- 21 A: We went -- when I got the first allegations, then they
- 22 called me. We met at their house and we sat and we talked.
- 23 Q: Okay. All right. Was your son able to graduate from
- 24 high school?
- 25 A: Yes.

- 1 Q: Okay. He still was able to graduate?
- 2 A: Yes, he was.
- 3 Q: All right. After the allegations came out, did you have
- 4 any contact with Ms. Teicher or her children?
- 5 A: No, I did not.
- 6 Q: Okay. All right. Did you attend any of the events at
- 7 Ken's house? For example, the 4th of July event?
- 8 A: I did.
- 9 Q: Okay. During the 4th of July event, did you ever come
- 10 into contact with Ms. Richardson or her children?
- 11 A: No, I did not.
- 12 Q: So you -- you just don't know them?
- 13 A: I didn't know they was even there.
- 14 Q: Okay. All right. Tell me about your son at the -- at
- 15 those -- at the 4th of July event? What would he be doing, if
- 16 anything?
- 17 A: Bryant loves -- he loves older -- to be around older
- 18 people. So he was outside with them when they was grilling.
- 19 Q: Okay.
- 20 A: He would be outside --
- 21 Q: Okay.
- 22 A: -- with the older guys, you know.
- 23 Q: Okay. Do you know anything about a music room upstairs?
- 24 A: Not no more than what Bryant told me.
- 25 Q: Okay. All right. You've not been up there; right?

1 A: I have not.

2 Q: All right. All right. And so you -- so you don't --
3 you're not aware if Bryant had any --

4 MR. WOODSON: Strike that. Court's indulgence.

5 BY MR. WOODSON:

6 Q: All right. All right. Did Bryant work at some point?

7 A: Yes.

8 Q: Where did he work?

9 A: He worked -- when he -- he worked at Hickory Farms.

10 Q: Okay. And do you remember about how old he was? Is this
11 before he graduated or after?

12 A: This was before he graduated.

13 Q: Okay.

14 A: Mm-hmm.

15 Q: So do you know about how old he was during that time?

16 A: Sixteen. 2010, so he would be about 16.

17 Q: Okay. And this Hickory Farms would be -- would have been
18 where?

19 A: At the mall.

20 Q: Okay. And how would he get to work?

21 A: Me and my husband would take him and pick him up.

22 Q: Okay.

23 A: Because he had just got his license and we didn't want
24 him to be driving that far during the holidays.

25 Q: Okay. So -- so he would go from Latta to -- y'all would

HATTIE COUSER - DIRECT BY MR. WOODSON

1 take him from Latta to Florence?

2 A: Yes.

3 Q: And pick him up?

4 A: Yes.

5 Q: Okay. How long a drive is that?

6 A: Like, 35 minutes.

7 Q: Okay. All right. And do you remember what year that
8 was? What holiday it was?

9 A: It would have been 2010.

10 Q: Okay.

11 A: If I'm not mistaken.

12 Q: All right.

13 MR. WOODSON: Thank you. I don't have any other
14 questions.

15 THE COURT: All right. Cross?

16 MS. WYSE: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. WYSE:

19 Q: Good afternoon, Ms. Couser. I don't think I said that
20 right.

21 A: Couser.

22 Q: Couser?

23 A: Mm-hmm.

24 Q: Sorry about that. I just have a couple questions I want
25 to ask you. How many children do you have?

VONTRA WILSON - DIRECT BY MR. WOODSON

1 THE WITNESS: Yes, ma'am.

2 THE CLERK: Please be seated and state your full name for
3 the record.

4 THE WITNESS: Vontra Maria Wilson.

5 MR. WOODSON: Okay.

6 VONTRA WILSON, being first duly sworn,
7 testifies as follows:

8 DIRECT EXAMINATION

9 BY MR. WILSON:

10 Q: And, Ms. Wilson, I'll be brief. How do you know Ken
11 Gurley?

12 A: He's my brother-in-law. He's my sister's husband.

13 Q: Okay. So you're Denise Gurley's sister?

14 A: Yes, I am.

15 Q: Okay. And one of the reasons I wanted to call you was
16 because I wanted to ask you about holidays.

17 A: Okay.

18 Q: Did you see Ken, Denise, and Bryant during the holidays?

19 A: Thanksgiving, no, but Christmas, I did.

20 Q: Okay. And tell me about Christmas?

21 A: Christmas is family in our house.

22 Q: Okay.

23 A: And we all have -- we always have Christmas at our
24 mother's house in Timmonsville.

25 Q: Okay.

- 1 A: So it's family only.
- 2 Q: All right. Have -- have you ever had occasion to have
3 Ms. Teicher Richardson or her children come to your home
4 during the Christmas holiday?
- 5 A: No, sir. They has never been in our house on Christmas
6 Day.
- 7 Q: Okay. Do you know her?
- 8 A: Yes, I know her.
- 9 Q: Okay. And do you have any understanding of what your
10 family does during Thanksgiving?
- 11 A: We have been to our brother's house on Thanksgiving for a
12 number of years now.
- 13 Q: Which brother?
- 14 A: Irby. He lives here in Florence.
- 15 Q: Okay.
- 16 A: Mm-hmm.
- 17 Q: And do you know if they have occasion to go to any other
18 place during Thanksgiving? I'm talking specifically Bryant.
- 19 A: He's with his father --
- 20 Q: Okay.
- 21 A: -- on Thanksgiving.
- 22 Q: Okay.
- 23 A: Mm-hmm.
- 24 Q: And so he's not with Irby?
- 25 A: No, no, no. He's not with Irby.

1 Q: Okay.

2 MS. WYSE: I don't have any further questions.

3 THE COURT: All right. Anything further?

4 MR. WOODSON: No, Your Honor.

5 THE COURT: All right. You have a good day. Thank you.

6 THE WITNESS: Thank you, sir.

7 THE COURT: All right. If you will, call your next
8 witness.

9 MR. WOODSON: I think this will be my final witness. Mr.
10 Irby Wilson.

11 (Whereupon, there is a pause in the proceedings until the
12 witness enters the courtroom, after which the proceedings
13 continue as follows.)

14 THE CLERK: If you will, sir, come and place your left
15 hand on the Bible and raise your right hand. Do you swear or
16 affirm to tell the truth, the whole truth, and nothing but the
17 truth, so help you God?

18 THE WITNESS: Yes.

19 THE CLERK: Please be seated and state your full name for
20 the record.

21 THE WITNESS: Irby Wilson.

22 MR. WOODSON: All right.

23 IRBY WILSON, being first duly sworn,
24 testifies as follows:

25 DIRECT EXAMINATION

1 BY MR. WOODSON:

2 Q: Good afternoon, Mr. Wilson.

3 A: How are you?

4 Q: Good. Are you related to Diane Gurley? I'm sorry.

5 Denise Gurley?

6 A: Yes. That's my sister.

7 Q: Okay. And do you know Ms. Teicher Richardson?

8 A: I do.

9 Q: Okay. And tell me how you know her?

10 A: Just through acquaintance by my sister.

11 Q: Okay. Have you had conversations with her and her

12 children?

13 A: I absolutely have.

14 Q: Okay. Prior to these allegations, what was your

15 relationship with them? Was it -- how would you describe it?

16 A: Just knowing her through my sister. Visiting my sister's

17 house, she would be there. Just communicating through that

18 way.

19 Q: Okay. Okay. And tell -- what -- what do you do?

20 A: I am director of operations for the KFC and Arby's here

21 in Florence and Sumter.

22 Q: Okay. All right. And so you're a pretty busy fellow?

23 A: I am. That keeps me on my toes.

24 Q: Yes, sir. Are you aware -- well, I know you are, but

25 tell me about holidays. What do your -- what does your family

1 do on holidays?

2 A: Holidays for us is pretty traditional. Starting on
3 Thanksgiving, normally -- I have eight -- well, seven
4 siblings; so we have a tendency to spend Thanksgiving Day
5 cooking for our in-laws. Normally, I'll cook dinner for my
6 two sisters and a couple guests at my house. And Christmas,
7 we normally gather at the main house on Christmas Day to
8 celebrate Christmas --

9 Q: Okay.

10 A: -- with all my family.

11 Q: During either holiday, did you come into contact with Ms.
12 Richardson or her daughters?

13 A: On Thanksgiving Day, normally what happens -- I hang
14 around the house, cook Thanksgiving Day. My sister normally
15 stops by the house on their way out, and that's pretty much
16 all I saw. Christmas -- it's all about family on Christmas.
17 I never saw Teicher on Christmas there at the house.

18 Q: Okay. All right. Prior to the allegations -- well, at
19 any time, did you ever receive any text messages from

20

21 A: I have received some in the past. Just -- I think she
22 was asking me how I was doing, how was things in school.

23 Q: Okay.

24 A: And I responded back to her.

25 Q: So she knew how to text?

- 1 A: She did, absolutely.
- 2 Q: Okay. Was this prior to the allegations or after?
- 3 A: That was prior.
- 4 Q: Okay. All right. Tell me about the 4th of July?
- 5 A: The 4th of July is pretty simple for me. I didn't do a
- 6 whole lot. My sister normally had a function at her house for
- 7 her husband's family, and we normally gathered for a while. I
- 8 normally stayed for about an hour or so, and I leave. It's
- 9 too crowded for me there; so I would just normally leave and
- 10 stay there.
- 11 Q: All right. Do you help cook?
- 12 A: No. I don't help cook. I go eat, but I don't cook.
- 13 Q: Okay.
- 14 A: Not on that day.
- 15 Q: Okay. Does your brother, Conyers, cook?
- 16 A: Conyers was the head chef, I think, at that day.
- 17 Q: Okay. Do you know if Bryant had any duties during the
- 18 cookouts in July?
- 19 A: I don't know about duties, but he was there. I'm pretty
- 20 sure he had something on his father. He had some duties.
- 21 Q: Okay. But were there people -- you're saying there was a
- 22 lot of people?
- 23 A: There was people there, a lot of people there.
- 24 Q: Okay. Do you -- do you recall or did -- I know you said
- 25 you left early --

1 A: Normally, I just spent an hour there or so.

2 Q: Okay. Do you recall anything happening upstairs in the
3 music room or anything of that nature?

4 A: Normally when I comes up, I hear the sound of them
5 playing the organ and stuff like that, but that's about it.

6 Q: Okay.

7 A: I don't -- I didn't go upstairs.

8 Q: Okay. So upstairs would have -- and I'm asking would --
9 would it have been a place where people would have been?

10 A: Yes, absolutely.

11 Q: Okay.

12 MR. WOODSON: I have no further questions.

13 THE COURT: All right. Cross?

14 MS. WYSE: Your Honor, I have no questions for this
15 witness.

16 THE COURT: All right. You may step down. Have a good
17 day.

18 THE WITNESS: All right. Thank you.

19 THE COURT: All right. Members of the jury, if you
20 would, step into the jury room for just a moment. We have to
21 take up a couple of matters, and we'll be back with you.

22 (Whereupon, the jury exits the courtroom at 2:17 p.m.)

23 THE COURT: All right. Mr. Gurley, after I went over
24 your constitutional rights to remain silent, have you talked
25 with your lawyer about whether you want to testify or not?

1 THE DEFENDANT: Yes, sir, I have.

2 THE COURT: Do you have any questions after you've had
3 time to think about what I told you?

4 THE DEFENDANT: No, sir.

5 THE COURT: And your rights? Do you have any questions
6 at all for me or your lawyer?

7 THE DEFENDANT: No, sir.

8 THE COURT: And what have you decided to do?

9 THE DEFENDANT: I will not testify.

10 THE COURT: Okay. I'll make the finding that he is doing
11 so freely, intelligently, and with the advice of competent
12 counsel. Thank you. You may have a seat.

13 MR. WOODSON: Thank you, Your Honor.

14 THE COURT: All right. We'll bring the jury back out and
15 you want to rest on the record?

16 MR. WOODSON: Yes, Your Honor.

17 THE COURT: All right. And then what do you want to do
18 after that?

19 MR. WOODSON: Your Honor, I -- if -- if I rest and you
20 give instructions, they're going to get the -- it's going to
21 be three o'clock and that would only give them two hours. I
22 would prefer to do opening arguments in the morning.

23 THE COURT: Is that okay with the State?

24 MS. WYSE: Judge, I have a completely different
25 housekeeping matter. Based upon some of the testimony the

1 defense has placed into evidence through the witness stand, I
2 have two rebuttal witnesses that I would like to call. One of
3 them is a teacher and she's supposed to be here at 3:30, and
4 the other one is supposed to be here in the morning. And,
5 Judge, I don't -- I don't know what you want to do about that.
6 I wasn't certain whether or not Mr. Gurley would testify or
7 not, and I know that Mr. Woodson said that his witnesses were
8 short, but I thought 3:30 would certainly be soon enough.

9 THE COURT: Well, why don't we bring the jury back out.
10 We'll let Mr. Woodson rest on the record, and then why don't
11 we come back at 9:30 in the morning and do the two rebuttal
12 witnesses, and then we'll do --

13 MR. WOODSON: Your Honor? I'm sorry. Go ahead.

14 THE COURT: Go ahead.

15 MR. WOODSON: My only concern is these witnesses aren't
16 listed -- well, are they listed on the witness list?

17 MS. WYSE: They are, Your Honor, and they haven't been
18 here the whole time. They were not a part of any of the
19 witnesses that were here or any of the ones who testified.
20 They would be completely different people.

21 THE COURT: Can you get them -- can you get them here
22 today by chance so we could go ahead and get it over with?

23 MR. WOODSON: What are their names?

24 MS. WYSE: One of them is a teacher.

25 MR. WOODSON: The guidance counselor? Is that one?

1 you know, were you aware of any threats? You know, he even
2 asked Jennifer Floyd when she was on the stand if he -- if she
3 was made aware of it that there were any threats. You know,
4 Mr. Woodson has made it a part of --

5 THE COURT: And you're saying this is a threat? This car
6 wreck?

7 MS. WYSE: No. I'm saying it's not. I'm just saying
8 that she did -- wasn't truthful on the stand, and if she
9 wasn't truthful about that, then what else was she not
10 truthful about? That would be -- of course, and I asked that
11 question and that would be, of course, an inference to the
12 jury.

13 THE COURT: That would take about five minutes?

14 MS. WYSE: I think so and, Judge, as far as the -- the
15 teacher is concerned, I spoke with Suzette New. She was
16 teacher, not this year but last year, at Briggs.
17 And she -- I asked her, you know, to tell me about
18 tell me about your relationship with , tell me about
19 Teicher.

20 She said that was an excellent student. She
21 never got in trouble. That she was well cared for. That her
22 mother was incredibly attentive and participated in all of the
23 activities that took place in school. That she was
24 one of the room mothers. She also told me that was
25 always clean, she was always prepared, her work was always

1 done.

2 And I think that when Mr. Woodson was asking Mr. Gurley
3 on the stand earlier about Teicher, he was saying that Teicher
4 used to leave at a hotel room and she left her at
5 the house. And I think that there was some allegations or
6 some inferences that Ms. Richardson wasn't a good mother, and
7 I was going to specifically rebut that testimony through the
8 teacher.

9 THE COURT: And how is that relevant to this case?

10 MS. WYSE: Well, Your Honor, it's relevant because Mr.
11 Woodson asked Mr. Gurley about it. Now it's in front of the
12 jury. You know, Mr. Woodson has time and again brought --
13 over the State's objections, has brought Ms. Richardson into
14 this case. He's trying to say that she's a liar, that she --
15 you know, he's making allegations that she's stolen things
16 from the family. He's making allegations that, you know, she
17 promised everybody all this money and she couldn't -- she
18 couldn't pay out on it.

19 I mean, you know, I think it's very relevant to the fact
20 that, in fact, Ms. Richardson is a good mother, that she took
21 excellent care of her child. Who better than a non-biased
22 teacher, somebody who hasn't been present this entire week, to
23 testify on that.

24 THE COURT: All right. I'll hear from you.

25 MR. WOODSON: Your Honor, my client mentioned one

1 incident involving her leaving the child, nothing related to
2 the school, you know, or anything of that nature. Nothing
3 related to the child being clean or what Catherine is trying
4 to say. So I don't think that's relevant at this point.

5 I mean if she wanted to rebut, for example, that specific
6 allegation, I think that's the purpose of rebuttal -- to say
7 okay, she didn't leave the child alone, to rebut that one
8 allegation. But to get up and say, well, we're going to talk
9 about she's a good mother, she's a wonderful mother, is not
10 rebutting. That's I guess character evidence and things of
11 that nature.

12 THE COURT: The State cannot offer evidence of a victim's
13 -- but you're not talking about the victim. I think all of
14 those issues have come up, and I think that's been your
15 argument throughout the whole trial as to her character and
16 reference to buying clothes and buying cars and not paying for
17 the cars and having money that she didn't have and whether she
18 left the child at so-and-so unattended and whether she was
19 there and who was there.

20 They're two really short witnesses. I don't know how
21 much of a difference any of that is going to make, but I'm
22 going to allow it and, of course, give you the opportunity to
23 cross-examine them however you see fit.

24 MR. WOODSON: Okay.

25 THE COURT: Hopefully, it wouldn't take 20 minutes total.

SUZETTE NEW - DIRECT BY MS. WYSE

1 hand. Place your left hand; raise your right hand. Do you
2 swear to tell the truth, the whole truth, and nothing but the
3 truth, so help you God?

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

5 THE CLERK: Please be seated right there in the witness
6 chair and state your full name for the record.

7 THE WITNESS: Suzette Beasley New.

8 SUZETTE NEW, being first duly sworn,
9 testifies as follows:

10 DIRECT EXAMINATION

11 BY MS. WYSE:

12 Q: Good morning, Ms. New.

13 A: Good morning.

14 Q: Will you sit close to that microphone, please?

15 A: Yes, ma'am.

16 Q: Thank you. Where do you work?

17 A: I work at Briggs Elementary here in Florence.

18 Q: And how long have you been in education?

19 A: I've been in education for 26 years.

20 Q: Okay. And do you know

21 A: Yes, ma'am, I do.

22 Q: And how do you know her?

23 A: She was in my third grade class last year.

24 Q: And was that the school year -- what -- what years did
25 that school year include?

SUZETTE NEW - DIRECT BY MS. WYSE

- 1 A: Let's see. That would be last year. '13-'14.
- 2 Q: Okay.
- 3 A: I guess.
- 4 Q: It's hard to think in time.
- 5 A: I'm thinking of my son's graduation backing up. Yes,
- 6 '13-'14 from August until the beginning of June.
- 7 Q: Okay. Now, what kind of student was
- 8 A: She was a very good student, hard-working, good listener,
- 9 always had her homework, did everything she was supposed to
- 10 do.
- 11 Q: Did she get in trouble in class?
- 12 A: No, ma'am, not really. She was just a good student,
- 13 sweet girl to have in class.
- 14 Q: And do you know Mrs. Richardson?
- 15 A: Yes, ma'am, I do.
- 16 Q: And how do you know Mrs. Richardson?
- 17 A: She is the mother of .. So she was a parent,
- 18 one of my parents in my classroom.
- 19 Q: And was she involved in your class?
- 20 A: Yes, she was.
- 21 Q: Can you tell us how?
- 22 A: She would -- she would -- she came for
- 23 birthday and brought treats for the lunch for her birthday.
- 24 She came and helped with the Christmas party. She would ask
- 25 if I needed anything. She would come if I needed, you know,

1 any volunteers for anything in the classroom. She always made
2 sure she signed everything that needed to be signed. She
3 always was checking in with me if I needed anything.

4 Q: And who picked up from school?

5 A: Her mother did.

6 Q: And could you tell whether or not Teicher was involved in
7 school life?

8 A: Yes, she was. When she had difficulty in class, I knew a
9 couple of times she had a few skills that she wasn't quite
10 sure about, and so her mother asked me if I could please send
11 some extra work to give her, you know, extra practice at home,
12 and it didn't take long for her to catch on very quickly. And
13 I knew -- she told me -- she said, "My mom helped me."

14 Q: Good. And did you have a good relationship with Ms.
15 Richardson?

16 A: Yes, I did.

17 Q: And can you tell us about that?

18 A: She was very -- she was always very positive with me. We
19 had -- I just felt like we had a good parent/teacher
20 relationship. We sent home a folder on Tuesdays and I have a
21 sheet in there where, you know, I put down, you know, how she
22 did for the week. And if I made a comment, she would send a
23 comment back. Thank you for helping her, you know, or let me
24 know if I need to work on multiplication or things like that.
25 She always signed everything I needed for her to do. If I

1 needed something for the classroom, you know, she would say
2 what can I send and help you?

3 Q: Did you ever think that Ms. Richardson neglected her
4 child?

5 A: No, I didn't.

6 Q: Okay.

7 MS. WYSE: I have no further questions.

8 THE COURT: All right. Cross?

9 MR. WOODSON: Court's indulgence. No questions, Your
10 Honor.

11 THE COURT: All right. You have a good day.

12 THE WITNESS: Thank you, sir.

13 THE COURT: All right. Any other witnesses?

14 MS. WYSE: No, Your Honor.

15 THE COURT: All right. Members of the jury, we're going
16 to take a short break with you. We have to take up some
17 matters of law. We'll come back to you in about ten minutes
18 we'll wrap this case up.

19 (Whereupon, the jury exits the courtroom at 9:52 a.m.)

20 MS. WYSE: Judge, I didn't excuse her. I forgot.

21 THE COURT: You don't have any --

22 MR. WOODSON: Oh, I don't have any objection to that.

23 THE COURT: Yeah.

24 MS. WYSE: Thank you, Judge.

25 THE COURT: Is that door closed?

1 MS. WYSE: It is.

2 THE COURT: Any motions?

3 MR. WOODSON: Yes, Your Honor. At this time, I would
4 renew my motion for a directed verdict. Also, my motion for a
5 mistrial and my other objections throughout this trial, Your
6 Honor.

7 THE COURT: All right. I'm going to deny those motions.
8 Anything further before we come back and do closings and
9 charge?

10 MS. WYSE: No, Your Honor. I would like to use the easel
11 that's in there.

12 THE COURT: All right.

13 MS. WYSE: I don't -- do you want me to go ahead and get
14 it out? When do you want me to get it out?

15 THE COURT: Whenever suits you.

16 MS. WYSE: Okay.

17 THE COURT: What we're going to do is we're going to have
18 the defense close and you're going to close and I'm going to
19 charge and send them out.

20 MS. WYSE: All right.

21 THE COURT: All right. Y'all about ready?

22 MR. WOODSON: Yes, sir.

23 THE COURT: All right. Go ahead and get your easel set
24 up, as long as it's not in his way.

25 MR. WOODSON: Judge, can I run across the hall? Judge?

1 either party, the opportunity for the witness to have seen the
2 matters and things about which the witness may testify, and
3 the way the witness acts on the witness stand.

4 Furthermore, evidence may be direct or circumstantial.
5 Direct evidence is testimony by a witness about what the
6 witness personally saw or heard or did. Circumstantial
7 evidence is indirect evidence. That is it is proof of one or
8 more facts from which one can find another fact.

9 You are to consider both direct and circumstantial
10 evidence equally. The law permits you to give equal weight to
11 both, but it is for you to decide how much weight to give to
12 any evidence.

13 The rules of evidence ordinarily do not permit witnesses
14 to testify to opinions or conclusions. An exception to this
15 rule exists for witnesses we call expert witnesses. A witness
16 who by education and experience has become an expert in some
17 art, science, profession or calling may state an opinion as to
18 relevant and material matters in which the witness claims to
19 be an expert and may also state the reasons for the opinions.

20 You should consider an expert opinion received in
21 evidence in this case and, like any other evidence, give it
22 the weight you think it deserves. If you decide that the
23 opinion of an expert witness is not based on sufficient
24 education and experience or if you conclude that the reasons
25 given in support of the opinion are not sound or that the

1 opinion is outweighed by other evidence, you may disregard the
2 opinion entirely.

3 An expert witness' testimony is to be given no greater
4 weight than that of any other witness simply because the
5 witness is an expert. Furthermore, you are not required to
6 accept an expert's opinion even though it is uncontradicted.

7 I further instruct you the fact that the defendant in
8 this trial did not testify on his own behalf is not a factor
9 to be considered by you in any way in your deliberations and
10 in your consideration on the question of guilt or innocence.
11 In this regard, a defendant has the constitutional right to
12 remain silent, and the exercise of this right must not be
13 considered by you in your deliberations. The fact that the
14 defendant did not testify should not even be discussed in the
15 jury room.

16 The burden of proof, as I have stated to you, is on the
17 State of South Carolina. The defendant has no obligation to
18 prove his innocence. The burden of proof remains with the
19 State to prove the defendant's guilt beyond a reasonable
20 doubt, and the fact that a defendant did not testify is not a
21 factor to be considered by you in deciding the guilt or
22 innocence of the defendant.

23 When you consider the whole case, if you have a
24 reasonable doubt as to the guilt or innocence of the
25 defendant, then he is entitled to that reasonable doubt and

1 out here. So, yeah.

2 THE COURT: All right. Go ahead and set it up and let me
3 know when it's ready and we're going to call them out.

4 MR. KEITH GODBOLT: All right.

5 (Whereupon, there is a pause in the proceedings.)

6 MR. KEITH GODBOLT: I'm ready, Judge.

7 THE COURT: All right. Go ahead and bring out the jury.

8 THE BAILIFF: Yes, sir.

9 (Whereupon, the jury enters the courtroom at 11:24 a.m.)

10 THE COURT: All right. Anytime you're ready.

11 (Whereupon, State's Exhibit Number 1, the DVD of the
12 forensic interview, is played in open court for the jury,
13 after which the proceedings continue as follows. NOT
14 TRANSCRIBED HEREIN.)

15 THE COURT: All right. You may retire to the jury room
16 and continue. Lunch should be here about one o'clock.

17 (Whereupon, the jury exits the courtroom at 11:52 a.m.)

18 (Whereupon, the jury note is marked as Court's Exhibit
19 Number 1.)

20 (Whereupon, there is a break in the proceedings from
21 11:53 a.m. until 12:09 p.m., after which the proceedings
22 continue as follows.)

23 THE COURT: All right. We have another question. It
24 says: Can we get the transcripts from witness testimony?

25 MS. WYSE: That's not possible, is it?

1 THE COURT: All right. If you cannot comply with that,
2 if anybody wants to leave the courtroom, they need to leave
3 now.

4 All right. With that being said, if I hear an outburst,
5 I'm going to give you ten days in jail right now today. So I
6 want everybody to be clear as to what I expect before we bring
7 in that jury. Are we good?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Let's go ahead and bring in the
10 jury.

11 THE BAILIFF: Yes, sir.

12 (Whereupon, the jury enters the courtroom at 2:52 p.m.)

13 THE COURT: All right. Ms. Forelady, has the jury
14 reached a verdict?

15 THE FORELADY: Yes, we have.

16 THE COURT: If you would be so kind as to hand it to the
17 bailiff, please, ma'am?

18 (Whereupon, the forelady complies, and the verdict form
19 is delivered to the Court.)

20 THE COURT: All right. Thank you. All right. I find
21 the verdict form in order. It has been signed and dated and,
22 Ms. Clerk, if you would, publish it.

23 VERDICT

24 THE CLERK: State of South Carolina versus Bryant
25 Christopher Gurley, Indictment Number 2013-GS-21-01353.

1 As to the charge of lewd act on a minor, we, the jury,
2 unanimously find the defendant, Bryant Christopher Gurley,
3 guilty.

4 Dated January 29th, 2015. Signed, Kristina Hughes,
5 Foreperson.

6 Members of the jury, if this is your verdict, please
7 raise your right hand.

8 (Whereupon, all jurors comply.)

9 THE CLERK: That is everyone.

10 THE COURT: All right. Is there a need for further
11 polling from the defense?

12 MR. WOODSON: No, Your Honor.

13 THE COURT: All right. Thank you very much. All right.
14 Members of the jury, I want to thank you for your service.
15 You have completed your service for the week. You have earned
16 a three-year exemption as well from any further service in
17 this court, and you will be paid each day that you have been
18 here. It's not a whole lot of money, and if you don't like
19 it, why don't you blame Sammy over there instead of us because
20 I didn't have anything to do with it.

21 But I hope you have a good day and -- and you are
22 dismissed. Everybody else remain seated.

23 (Whereupon, the jury exits the courtroom at 2:54 p.m.)

24 THE COURT: All right. I'm ready whenever you are.

25 MS. WYSE: Thank you, Your Honor. I need to get a

1 sentencing sheet, please.

2 THE COURT: All right. Why don't we hear any motions
3 that the defense might have? And you can go ahead and prepare
4 that for her. All right.

5 MR. WOODSON: Your Honor, I make a motion to set aside
6 the verdict based on contradictory evidence.

7 THE COURT: All right. I'm going to respectfully deny
8 those motions. Thank you.

9 MR. WOODSON: And also I'd like to renew my motions made
10 throughout the trial.

11 THE COURT: All right. Those motions are denied. All
12 right. So we'll wait on you to get your verdict form.

13 MS. WYSE: Thank you, Judge.

14 THE COURT: Sentencing form.

15 (Whereupon, there is a pause in the proceedings.)

16 MR. JEPERTINGER: May we approach, Your Honor?

17 THE COURT: All right. Mr. Woodson?

18 (Whereupon, a bench conference is held as follows.)

19 MR. JEPERTINGER: I noticed because -- you know, that
20 this is under the old law under lewd act now.

21 THE COURT: Right.

22 MR. JEPERTINGER: You might want to verify if it was
23 violent at the time, and I don't -- I didn't have a copy. I
24 just have a copy of --

25 MR. WOODSON: I have the old book.

1 his right to trial. I would ask that you be as lenient on him
2 as possible, Your Honor, under the circumstances. You know,
3 he's not had any contact with this child for -- for several
4 years and won't have any contact with this child. So I'd ask
5 that you would be as lenient as possible.

6 SENTENCE

7 THE COURT: All right. The sentence of the Court is
8 eight years.

9 MS. WYSE: Thank you, Judge.

10 THE COURT: Thank you.

11 (Whereupon, the proceedings end at 3:04 p.m.)

12

13 --- END REQUESTED TRANSCRIPT ---

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CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g) of the South Carolina Appellate Court Rules, counsel for appellant certifies that this record on appeal contains all material proposed to be included by any of the parties (except the exhibit being transported to the South Carolina Court of Appeals pursuant to the Court's Order dated October 19, 2015, as noted in the index to this Record on Appeal, at page iii) and not any other material.

Counsel further certifies that this record on appeal complies with the Order of the Supreme Court of South Carolina entitled *Re: Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings*, 375 S.C. 56, 650 S.E.2d 462 (August 13, 2007).

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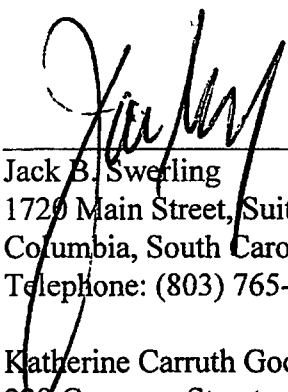
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
General Sessions Court
William H. Seals, Jr., Circuit Court Judge

Case No. 2013-GS-21-01353
Appellate Case No. 2015-000235

The State,

Respondent,

v.

Bryant Christopher Gurley,

Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in admitting the video recording of a forensic interview of the complaining witness?
2. Did the trial court err in qualifying the complaining witness's counselor as an expert and in admitting the counselor's testimony?
3. Did the trial court err in allowing rebuttal testimony, which was not responsive to any evidence introduced by the defense and which was improper character evidence?
4. Did the trial court err in allowing testimony of the mother of the complaining witness that exceeded the limitation on admission of out-of-court statements of alleged victims of sexual assault, except as to time and place?
5. Should appellant be granted a new trial based on the cumulative prejudice from the multiple errors of the trial court and the resulting denial of a fair trial?

STATEMENT OF THE CASE

Appellant, Bryant Christopher Gurley, was indicted in Florence County in 2013 on a charge of committing a lewd act upon a child under the age of 16, pursuant to former S.C. Code Ann. § 16-15-140. R. pp. 1-2. He was tried by a jury in Florence County General Sessions Court January 26-29, 2015, Judge William Seals, Jr., presiding. R. p. 4. He was found guilty, and Judge Seals sentenced him to eight years' imprisonment. R. pp. 3, 297-98, 300.

ARGUMENT

This case arose from allegations first made by a child in 2013, when she was eight years of age, that several years earlier appellant had touched her "privates" with his hand

on four occasions. The incidents were alleged to have occurred during a period of time when the child, her mother, and her older sister were living in the home of appellant's father, stepmother, and stepbrother, on occasions when appellant, who was then a teenager and living with his mother, was visiting.

The child's trial testimony about the alleged incidents was inconsistent with her earlier statements made in a forensic interview. Although she claimed there were four incidents and stated in the forensic interview that one was in the bedroom, at trial she denied having said an incident occurred in the bedroom and she could not say where the alleged fourth incident occurred. State's Exhibit 1; R. p. 88. Her trial testimony was also inconsistent with her counselor's testimony that the child described only three incidents. R. pp. 110, 113. Her testimony was also starkly inconsistent with the testimony of her mother, sister, and grandmother concerning the circumstances surrounding one of the alleged incidents, which the child claimed occurred in a car. The car incident was alleged to have occurred on an occasion when the child's mother drove herself, her daughters, and appellant to her mother's house in Lake City. R. pp. 16, 20-24, 26-27, 79-82. The child testified only the mother got out of the car and went inside, and the incident occurred while she, her sister, and appellant stayed in the car. R. pp. 81-82. The mother, sister, and grandmother contradicted this account, stating that everyone went inside and that, when they returned to the car to leave, the child refused to get in, became upset, and cried. R. pp. 16, 20-24, 26-27. The officer who took the initial report of the allegations and interviewed the mother did not include in his written report that the child was crying and had to be forced into the car, as these witnesses testified at trial. R. pp. 35, 37.

The child's testimony was also contradicted by defense witnesses who testified that appellant could not have been present for one incident alleged to have occurred during holidays because of where the family spent their holidays. R. pp. 199-203, 233-34, 255, 264-66, 277-78, 281. The defense also presented evidence to demonstrate that the other incidents could not have occurred in the manner described by the child. R. pp. 197-99, 231-32, 258-59, 267-68, 272, 274-75, 282-83.

I. THE TRIAL COURT ERRED IN ADMITTING THE VIDEO RECORDING OF THE FORENSIC INTERVIEW.

The state introduced a video recording of the forensic interview, which the court admitted over defense objections. Near the close of the interview, the interviewer made the statement, "B.G. broke the rules." One of the defense's objections to admission of the video was based on this statement, which was an opinion expressed by the interviewer concerning the child's disclosures. R. pp. 136-37. The court admitted the video, it was published to the jury during the trial, and it was played for the jurors again during their deliberations. R. pp. 138-39, 148, 296. Admission of the video was reversible error.

The South Carolina Supreme Court has emphatically announced in recent decisions a clear directive that a forensic interviewer or expert witness may not render an opinion that an alleged victim of sexual assault has told the truth and may not otherwise vouch for or bolster the alleged victim's credibility. *See State v. Chavis*, 412 S.C. 101, 109, 771 S.E.2d 336, 340 (2015); *State v. Kromah*, 401 S.C. 340, 358-360, 737 S.E.2d 490, 499-501 (2013); *State v. Jennings*, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011). This rule is grounded in the fundamental principle that the assessment of witness credibility is within the exclusive province of the jury. *See Kromah*, 401 S.C. at 358-59,

737 S.E.2d at 499-500; *State v. McKerley*, 397 S.C. 461, 464-65, 725 S.E.2d 139, 141-42 (Ct. App. 2012); Rule 608(a), SCRE.

In *Kromah*, the Court listed five examples of the kinds of statements that a forensic interviewer should avoid. Among those examples are “a direct opinion as to a child’s veracity,” “any statement that indirectly vouches for the child’s believability,” and “any statement to indicate to a jury that the interviewer believes the child’s allegations in the current matter.” *See Kromah*, 401 S.C. at 360, 737 S.E.2d at 500.

In this case, the interviewer’s statement that “B.G. broke the rules” fits squarely within these categories of impermissible bolstering. The interviewer made the statement to the child after the child had told the interviewer what the child claimed had occurred. The interviewer’s comment was one in a series of comments she made to the child near the end of the interview:

Well, I am proud of you, [name redacted]. I want you to know you are not in any kind of trouble at all, and you haven’t done anything wrong at all. Okay? None of this is your fault. B.G. broke the rules. Nobody ever gets to touch your private parts or make you touch theirs. I’m really, really proud of you. It takes a very brave girl to tell about what happened.

State’s Exhibit 1. These comments were a clear and unequivocal expression by the interviewer that she believed the child had told the truth. Telling the child that “B.G. broke the rules” was the equivalent of telling the child she believed her. Allowing the jury to hear this opinion was tantamount to allowing the interviewer to tell the jury she believed the child. As trial counsel argued, the interviewer would not be allowed to state from the witness stand to the jury that “B.G. broke the rules.” R. pp. 136-37. However, by admitting the video, the jury was able to hear exactly that statement. The prohibition against admission of such evidence is not limited to testimony from a witness; it also

applies to other forms of evidence containing an opinion as to the truthfulness of the alleged victim's account. *See Jennings*, 394 S.C. at 480, 716 S.E.2d at 94 (written reports containing forensic interviewer's impermissible comment that children provided a compelling disclosure of abuse by defendant were inadmissible).

The comment by the interviewer at the conclusion of the interview, which unequivocally expressed her belief the child was being truthful, is the kind of opinion evidence the *Kromah* line of cases prohibits. *See, e.g., Chavis*, 412 S.C. at 108-09, 771 S.E.2d at 340 (expert's recommendation that victim "not be around [defendant] for any reason" could only be interpreted as her believing victim's claim that defendant sexually abused her); *Kromah*, 401 S.C. at 359, 737 S.E.2d at 500 (interviewer's report that child made "compelling finding" of abuse was equivalent of stating child was telling the truth); *Jennings*, 394 S.C. at 480, 716 S.E.2d at 94 (interviewer's reports that children made "compelling disclosure" could only be interpreted to mean interviewer believed children were being truthful). Like the comments in those cases, the statement that appellant "broke the rules" is the equivalent of the interviewer saying she believed the child, and the video containing this comment should not have been admitted into evidence.

The admission of the video containing this statement was not harmless. As noted above, the child's allegations were not contemporaneous with the alleged incidents. The state's evidence was not strong. The only inculpatory evidence against appellant was the testimony of the child. There was no corroborating physical evidence and no testimony from any eyewitness concerning the allegations. Indeed, according to the child, her college-aged sister, was *present in the car* when one of the incidents was alleged to have occurred, but the sister did not testify in corroboration of the child's account. In fact, the

sister, mother, and grandmother contradicted the particulars of the child's account of the incident in the car, undermining the child's credibility. Moreover, defense witnesses testified to the circumstances that existed on the occasions of other alleged incidents, circumstances that prevented those incidents from having occurred as the child alleged. The case depended entirely on whether the jury believed the child, and her credibility was questionable on many levels – the internal inconsistency of her own statements and the contradiction of those statements by both prosecution and defense witnesses. Where the case against appellant was very weak, the effect of admitting the interviewer's statement that appellant "broke the rules" and that vouched for the child's truthfulness cannot be deemed harmless.

II. THE TRIAL COURT ERRED IN QUALIFYING THE CHILD'S COUNSELOR AS AN EXPERT AND IN ADMITTING THE COUNSELOR'S TESTIMONY.

The state also introduced the testimony of a counselor who had been seeing the child since May 2013 and was still seeing the child as of the trial in January 2015. R. pp. 108, 117. The defense objected to her testimony on multiple grounds, including that it was improper bolstering. R. p. 97. Over defense objections, the counselor was qualified as an expert in "child sexual trauma" and allowed to testify generally concerning child victims of sexual assault, delayed disclosure, and indicators a child can give to show sexual abuse has occurred. R. pp. 97, 102-07. Over a hearsay objection, she was allowed to testify concerning information contained in unspecified "studies" of behavior of children who are victims of child sexual abuse. R. p. 103.

But this witness's testimony was not limited to testimony about child victims of sexual abuse in general. Rather, she testified concerning her sessions with *this particular child*, her methodology in eliciting information from the child, the child's account of the

alleged incidents, and her opinions about the information provided by the child, in particular that the child had not been coached. R. pp. 108-13. The defense asserted numerous objections to this testimony. It objected that the testimony was improper bolstering. R. p. 97. It objected because the witness would be testifying to her own interaction with the child, would be explaining the child's testimony piece by piece, and would be getting into the statements the child had made. R. p. 97. It objected to testimony about the child's statements in the counseling sessions because the statements had not been recorded in accordance with S.C. Code Ann. § 17-23-175. R. p. 97. It objected to testimony that this child's experience is typical of child victims, which would be highly prejudicial. R. p. 101.

The defense also objected to any testimony from this witness about post-traumatic stress disorder. R. pp. 50-54, 97. Over the defense's objections, the witness, who was a "licensed professional counselor" but not a medical doctor, psychiatrist, or licensed psychologist, was allowed to testify that she had diagnosed the child with "adjustment disorder with anxiety and depression with traits of PTSD, post-traumatic stress disorder," a diagnosis she testified was something normally seen in victims of sexual assault. R. pp. 53, 97, 99, 115-16. The defense also objected to this aspect of the witness's testimony because the state did not provide the defense with information concerning its expected use of an expert in this area until the week before trial, and the defense was thereby deprived of an opportunity to procure a rebuttal expert. R. pp. 100-01.

Significantly, the state asked the witness if she saw any evidence that the child had been coached. R. p. 112. The defense objected, arguing that the witness could not render an opinion on that issue, which was a jury question. R. p. 112. The court

overruled the objection, and the witness proceeded to explain that the child was “very detailed” and “consistent” in the information she provided, and the witness later *twice* reiterated that the child was “very consistent.” R. pp. 112-13, 118. The defense reasserted the objection to this improper bolstering opinion testimony after the state rested its case. R. pp. 153-54. For the many reasons articulated by the defense in its multiple objections, all of the testimony of this witness should have been excluded.

A. Improper bolstering with opinion as to child’s truthfulness.

This witness’s testimony in general, and the testimony in response to the question about coaching in particular, was improper opinion testimony elicited to bolster and vouch for the child’s credibility. Like the opinion evidence addressed in the cases cited in Argument I, *supra* pp. 3-5, the only purpose for the question about whether the child had been coached and the witness’s response that the information provided by the child was very detailed and very consistent was to convey to the jury the counselor’s belief that the child was being truthful. *See, e.g., Chavis*, 412 S.C. at 108-09, 771 S.E.2d at 340; *Kromah*, 401 S.C. at 359, 737 S.E.2d at 500; *Jennings*, 394 S.C. at 480, 716 S.E.2d at 94. Like the offending evidence in those cases, this testimony cannot be interpreted in any other way.

This testimony is also akin to that disapproved by the Court of Appeals in *State v. McKerley*. There, a forensic interviewer testified about the factors she was evaluating during an interview, including, among other things, that she was “looking for accuracy”; looking for “a level of detail that . . . they would be able to tell [only] if something were to have happened”; “looking at . . . are there other possible reasons, are there other possible explanations,” “looking to be sure it adds up,” and “looking to see if what they

tell us throughout the interview is the same from the beginning to the end.” *See McKerley*, 397 S.C. at 466, 725 S.E.2d at 142. She reiterated that she was looking for “whether it is detailed, does it have consistency, does it have the sensory level of detail that a child typically wouldn’t have” *Id.*, 397 S.C. at 467, 725 S.E.2d at 142. The Court of Appeals disapproved, finding “none of this testimony has any relevance except insofar as it informs the jury [the witness] believes the story told by the victim.” *Id.*, 397 S.C. at 467, 725 S.E.2d at 143. Similarly, the counselor’s testimony in this case that the child’s testimony was “very detailed” and “very consistent,” in answer to the question whether she had seen evidence of coaching, had no relevance except to inform the jury that she believed the child. Such testimony is absolutely impermissible and inadmissible.

B. Improper qualification as expert and additional improper bolstering.

Moreover, the remainder of the witness’s testimony was inappropriate and inadmissible for a number of reasons. First, the witness should not have been qualified as an expert. Testimony on the characteristics of child victims of sexual abuse and delayed disclosure is not a proper subject of expert testimony and improperly bolsters the child’s credibility. *See* Rule 702, SCRE. Although the Court of Appeals rejected a similar argument in *State v. Brown*, 411 S.C. 332, 768 S.E.2d 246 (Ct. App. 2015), that decision is not final – a petition for a writ of certiorari is currently pending in the South Carolina Supreme Court, challenging the Court of Appeals’ holding that such testimony is a proper subject for expert testimony. If the Supreme Court reverses *Brown* on this basis, the qualification of the counselor as an expert in this case and the admission of her testimony concerning the characteristics and behaviors of child victims of sexual abuse, including her testimony about delayed disclosure, should also be reversed.

However, even if *Brown* is upheld, the admission of the counselor's testimony in this case should nonetheless be reversed, because the circumstances of this case and this witness are outside the parameters for the admission of such expert testimony, as articulated by the Court of Appeals in *Brown* and endorsed more recently by the Supreme Court in *State v. Anderson*, 413 S.C. 212, 218-19, 776 S.E.2d 76, 79 (2015). Although the counselor was qualified as an expert on sexual abuse trauma and allowed to testify generally about child victims of sexual abuse, her involvement in the case and her testimony concerning *this particular child* went far beyond what *Brown* found to be admissible testimony from such an expert.

In *Brown*, the Court of Appeals upheld the admission of testimony by an expert on "child abuse dynamics and delayed disclosures." The Court rejected an argument that the witness's testimony improperly bolstered the victim's testimony, based on the fact that the witness "never interviewed the victims and had no knowledge of the facts of the case beyond her discussions with the solicitor's office prior to trial." *Brown*, 411 S.C. at 344, 768 S.E.2d at 252. In this case, however, the person qualified as an expert had *extensive* involvement with the case and the child. She had been the child's counselor for a year and eight months and was still the child's counselor at the time of trial. R. pp. 108, 117. She had met the child the Friday before trial and testified the child was afraid to come to trial and talk. R. p. 118. She had reviewed the police report. R. p. 114. In the counseling sessions, she had questioned the child about what had occurred and had elicited the child's statement through drawings and verbal descriptions of the alleged incidents. R. pp. 109-10, 113. After testifying about what the child told her, the counselor opined that the child might not remember the specific details, drawing a

comparison to people who have suffered severe trauma, but then stated the child “did not seem to block things out” and reiterated “[s]he was very consistent.” R. p. 118. Unlike the expert who testified in *Brown*, this counselor was intricately and intimately involved with this child, had interviewed her repeatedly over a year-and-eight-month course of counseling sessions, and had extensive knowledge of the case and the details of the allegations.

In *Anderson*, the Supreme Court recognized the potential for improper vouching where the person offered as an expert was involved with the child:

The better practice, however, is not to have the individual who examined the alleged victim testify, but rather to call an independent expert. To allow the person who examined the child to testify to the characteristics of victims runs the risk that the expert will vouch for the alleged victim’s credibility.

See Anderson, 413 S.C. at 218-19, 776 S.E.2d at 79. Here, that very problem occurred. This counselor testified concerning the characteristics of child victims of sexual abuse with reference to the behaviors that this child had manifested and the “symptoms that she presented with,” as described by the child and her mother and as observed by this counselor. R. pp. 19, 106, 115-16.

In *Brown*, the Court of Appeals also found that the expert testimony did not improperly bolster the victim’s testimony because the witness “never commented – directly or indirectly – about the credibility of the victims’ allegations or testimony, nor did she make any of the statements prohibited by our supreme court in *Kromah*.” *Id.* (citation omitted). Here, as previously noted, *supra* pp. 7-9, the counselor *did* comment on the credibility of the child, stating the reasons she believed the child was not coached and further stating she did not seem to have difficulty remembering the alleged incidents

and was very consistent. R. pp. 113, 118. She expressed her opinion as to a diagnosis, made outside her field of expertise, that the child suffered from “adjustment disorder with anxiety and depression with traits of PTSD” and her further opinion that this diagnosis was normally seen in victims of sexual assault, a further comment on the credibility of the complaining witness. R. p. 116. Under these circumstances, unlike the admissible testimony in *Brown*, the testimony of this counselor was wholly inappropriate bolstering of the child and highly prejudicial to appellant. The court erred in admitting her testimony in its entirety.

C. Non-compliance with S.C. Code Ann. § 17-23-175.

The witness’s testimony about the pictorial statements of the child and the child’s additional verbal statements to the counselor concerning the alleged incidents was also inadmissible under S.C. Code Ann. § 17-23-175. These out-of-court statements were not preserved with an audio and visual recording of the statements, as required by Section 17-23-175(A). Nor did the trial court conduct the required analysis, under Section 17-23-175(F), of an electronically unrecorded out-of-court statement made by a child to a professional in his professional capacity. After the defense objected on the basis that the statements were unrecorded, R. p. 97, the court failed to conduct the proper analysis under sub-part (F) of the statute and failed to make the requisite findings under each factor and, in particular, whether the statements possessed particularized guarantees of trustworthiness, in order to find the child’s out-of-court statements to the counselor admissible under Section 17-23-175(F). Having failed to conduct the required analysis, the court erred in admitting the counselor’s testimony concerning the statements.

The errors in admitting the counselor's testimony were highly prejudicial and not harmless. As explained in Argument I, *supra* pp. 5-6, the state's case was weak. The child's testimony was the *only* evidence against appellant, and it was contradicted by the child's own prior statements, by her mother, sister, and grandmother who testified for the state, and by defense witnesses. There was no corroborating physical evidence and no testimony from any eyewitness concerning the allegations, not even the sister who the child claimed was present during one of the incidents. The counselor's improper opinion testimony that bolstered the child's credibility and the comparison of the child's behavior to other child victims of sexual abuse told the jury, repeatedly, that the child was telling the truth. The impact of this improper bolstering was even greater because it was done under the imprimatur of an expert. Under these circumstances, the improper evidence was not harmless, and appellant is entitled to a new trial.

III. THE TRIAL COURT ERRED IN ALLOWING REBUTTAL TESTIMONY, WHICH WAS NOT RESPONSIVE TO ANY EVIDENCE INTRODUCED BY THE DEFENSE AND WHICH WAS IMPROPER CHARACTER EVIDENCE.

Appellant's father testified as a defense witness. During his testimony, he described several occasions when the child's mother was using his truck after she and the child had moved from his residence to a hotel room. He indicated that sometimes she came to pick him up and the child was not with her, the mother having left her in the hotel room, and he would tell the mother she should not do that. R. p. 207.

At the close of the defense's case, the state sought to call two rebuttal witnesses, one of whom had been the child's teacher the previous year. R. p. 286. The state sought to have the teacher testify about the child and the child's mother, ostensibly in rebuttal to the comment of appellant's father, above, but clearly also intended to dispel the

implication from other testimony that the child's mother may have stolen things from the family and lied about certain matters. R. p. 287. The state claimed the testimony was relevant to the fact that she is a good mother and took excellent care of her child. R. p. 287. The state said the witness would testify that the child was an excellent student, never got in trouble, was well cared for, was always clean, and was always prepared and that her mother was attentive and participated in the child's activities. R. p. 286. The defense argued this testimony was not proper rebuttal because there was no testimony concerning anything related to the school or the child being clean and the other testimony the state said it would elicit, and the only proper rebuttal of appellant's father's testimony would be to elicit evidence that the mother did not leave the child alone. R. p. 288. The defense contended testimony the state proposed to introduce was improper character evidence. R. p. 288. The court allowed the testimony. R. p. 288.

The teacher took the stand and proceeded to bestow accolades on both the child and the mother, painting a picture of a sweet, hard-working student who always did what she was supposed to do and who never got in trouble and further painting a picture of the perfect parent who was involved in the class, came to birthdays and brought treats, helped with parties, and did whatever the teacher needed; who signed everything that needed to be signed; and who was attentive to how the child was doing in school. R. pp. 290-91. She described the good parent/teacher relationship she had with the mother and provided details concerning the mother's participation in the child's schooling. R. pp. 291-92. She testified she never thought the mother neglected the child. R. p. 292.

This testimony was inadmissible character evidence – both with respect to the child and with respect to the mother. No evidence was presented by the defense to attack

the character of the child, but the teacher was allowed to describe the child in the most complimentary of terms. Generally, character evidence is not admissible, except as provided in Rule 404 of the South Carolina Rules of Evidence. The only exceptions applicable to an alleged victim are contained in Rule 404(a)(2). The relevant part of Rule 404(a)(2) allows “[e]vidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same.” Here, where the accused did not offer *any* evidence of a character trait of the child, the teacher’s testimony about the child could not be evidence “by the prosecution to rebut the same.” *See* Rule 404(a)(2), SCRE.

Nor did the defense introduce any character evidence about the mother. The only character evidence about the mother was elicited by the state, which presented evidence of the mother’s extensive criminal history, including two convictions for breach of trust with fraudulent intent, three forgery convictions, a conviction for failure to return rented objects, and convictions for bank fraud and fraudulent checks. R. pp. 6-7. The evidence the state introduced through the teacher did not rebut any fact about which appellant’s father testified. Rather, the teacher’s testimony was pure character evidence, inadmissible under the rules of evidence pertaining to character evidence.

Rule 404(a)(3) of the South Carolina Evidence Rules allows evidence of the character of a witness, as provided in Rules 607, 608, and 609. Only Rule 608, which pertains to evidence of a witness’s character for truthfulness or untruthfulness, is relevant to the issue presented here. The state asserted and the court found that the defense put the mother’s character for truthfulness in issue. If this finding were correct, this rebuttal testimony offered by the state is not within the requirements of Rule 608(a), which

provides “evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.” The rebuttal testimony of the child’s teacher was not “evidence of truthful character” allowed by Rule 608(a). Rather, it was evidence designed to convey to the jury that the child’s mother was a good person and a good mother, a purpose not allowed by the rules pertaining to character evidence. As the defense correctly argued, this evidence was not proper rebuttal of the testimony of appellant’s father, and it should not have been admitted.

The evidence was prejudicial. The state’s evidence was not strong. The child’s credibility was very much an issue for the jury, and the defense had pointed out the many inconsistencies in the child’s accounts of what she claimed had occurred and the contradictions of her account by her mother, sister, and grandmother and by defense witnesses. There was no corroboration of her account, except for the improper corroborating, bolstering evidence discussed in Arguments I and II, *supra* pp. 3-13. The last evidence the jury heard before beginning its deliberations was the teacher’s improper testimony with respect to the character of both the child and the mother. This improper rebuttal evidence was offered by the state to enhance its case and its chances of obtaining a guilty verdict. The evidence played to the jury’s prejudices, invoking sympathy for the child and mother. The evidence likely influenced the jury to reach a guilty verdict on the basis of that sympathy, rather than upon the evidence that was relevant and probative of appellant’s guilt or innocence. The court’s ruling allowing this improper character evidence cannot be deemed harmless.

IV. THE TRIAL COURT ERRED IN ALLOWING TESTIMONY OF THE CHILD'S MOTHER THAT EXCEEDED THE LIMITATION ON ADMISSION OF OUT-OF-COURT STATEMENTS OF ALLEGED VICTIMS OF SEXUAL ASSAULT, EXCEPT AS TO TIME AND PLACE.

During the examination of the child's mother, the defense objected to testimony concerning statements the child had made to her. R. p. 15. The court overruled the objection, under the place and time exception to the hearsay rule. R. p. 16. The witness then testified concerning what the child had described. Exceeding the scope of the exception for such testimony as to time and place only, the witness testified appellant went into the room to the child. R. p. 17. The defense again objected on hearsay grounds, because the witness had gone beyond time and place. R. p. 17. The state contended the witness was testifying from her own personal knowledge, and the court allowed the testimony on this basis. R. p. 18. When the testimony resumed, the witness stated that her testimony was based on what she saw herself "as she [the child] explained them to me" and remembering "everything she was explaining to me." R. pp. 18-19. This testimony, based on *what the child had explained to her*, was improper bolstering hearsay testimony.

The rule against hearsay prohibits admission of an out-of-court statement to prove the truth of the matter asserted unless an exception to the rule applies. *See* Rules 801(c), 802, SCRE; *Dawkins v. State*, 346 S.C. 151, 156, 551 S.E.2d 260, 263 (2001); *Jolly v. State*, 314 S.C. 17, 20, 443 S.E.2d 566, 568 (1994). Where the alleged victim of a sexual assault testifies and is subject to cross-examination, evidence that she reported the alleged assault may be introduced to corroborate her testimony, but such evidence is strictly limited to time and place. *See* Rule 801(d)(1)(D), SCRE; *Smith v. State*, 386 S.C. 562, 566, 689 S.E.2d 629, 631-32 (2010); *Dawkins*, 346 S.C. at 156, 551 S.E.2d at 263; *Jolly*,

314 S.C. at 20, 443 S.E.2d at 568; *State v. Barrett*, 299 S.C. 485, 486-87, 386 S.E.2d 242, 243 (1989). The details and particulars of the assault set forth in the prior statement are inadmissible. *Smith*, 386 S.C. at 566, 689 S.E.2d at 632; *Dawkins*, 346 S.C. at 156, 551 S.E.2d at 263; *Jolly*, 314 S.C. at 20, 443 S.E.2d at 568; *Barrett*, 299 S.C. at 486-87, 386 S.E.2d at 242; *Vail v. State*, 402 S.C. 77, 85, 738 S.E.2d 503, 507 (Ct. App. 2013). The details other than time or place are not allowed because such evidence impermissibly corroborates the victim and bolsters her credibility. *Smith*, 386 S.C. at 567, 689 S.E.2d at 632; *Jolly*, 314 S.C. at 21, 443 S.E.2d at 569; *Barrett*, 299 S.C. at 487, 386 S.E.2d at 242.

This witness's testimony that appellant went into the bedroom to the child was clearly based on what the child told the mother and clearly exceeded the limitation as to time and place. The mother's own testimony established that it was premised on *what the child explained to her*. Her claim that she then remembered the occasion after hearing what the child said does not negate the fact that her testimony also informed the jury the child had stated appellant came into the bedroom where she was. This is the very kind of corroboration testimony prohibited under the limitation as to time and place. It was highly prejudicial because no other testimony or corroborative evidence tended to establish an incident in the bedroom, and the child herself gave inconsistent accounts with respect to an incident in the bedroom. Admission of this bolstering testimony was error, and the error was not harmless. As is more fully discussed in Arguments I and II, *supra* pp. 5-6, 12-13, the state's case was weak and turned entirely on the credibility of the child, whose account was contradicted by her own statements, the testimony of other prosecution witnesses, and the evidence offered by the defense. The improper evidence that bolstered the child's credibility can only be deemed prejudicial, not harmless.

V. APPELLANT IS ENTITLED TO A NEW TRIAL BASED ON CUMULATIVE PREJUDICE FROM THE MULTIPLE ERRORS COMMITTED BY THE TRIAL COURT AND THE RESULTING DENIAL OF A FAIR TRIAL.

As argued throughout this brief, each of appellant's claims of error was prejudicial and cannot be deemed harmless in light of the weakness of the state's case. However, if this Court finds error with respect to all or some of the issues argued above but finds that no single error sufficiently prejudiced appellant that it undermined his right to a fair trial, it should nonetheless find that the cumulative effect of the errors was so prejudicial as to deprive appellant of the fairness required by due process. *See* U.S. Const. amends. V, XIV; S.C. Const. art. I, § 3; *State v. Blurton*, 342 S.C. 500, 512-13, 537 S.E.2d 291, 297-98 (Ct. App. 2000) (finding cumulative effect of improper comments in closing argument and erroneous exclusion of certain evidence warranted reversal), *rev'd on other grounds*, 352 S.C. 203, 573 S.E.2d 802 (2002) (finding additional error with respect to a jury charge); *State v. Freeman*, 319 S.C. 110, 123-24, 459 S.E.2d 867, 875 (Ct. App. 1995) (reversing conviction based on combined effect of court's limitation of cross-examination and court's improper comments interjected during the trial).

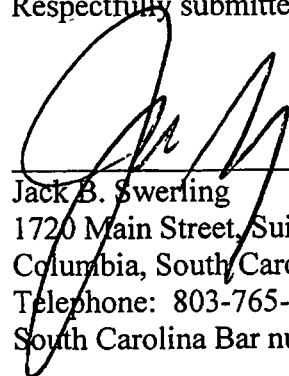
The cumulative error doctrine requires reversal when multiple errors, deemed insignificant or harmless in isolation, in combination prevent the defendant from receiving a fair trial and affect the outcome of his trial. In this case, where there was no physical evidence and no proper corroborative evidence, the outcome depended entirely on the credibility of the complaining witness. The trial court admitted improper evidence to corroborate her testimony and to bolster her credibility, rulings challenged in this appeal. The court also allowed improper character evidence with respect to both the

child and her mother and allowed improper bolstering testimony through the child's out-of-court statements to her mother. If this Court finds no single error was sufficiently prejudicial to warrant reversal, it should review the prejudicial effect of the errors in combination. The multiple trial errors viewed together so tainted these proceedings that they deprived appellant of a fair trial.

CONCLUSION

For the foregoing reasons, this Court should reverse and grant appellant a new trial.

Respectfully submitted,



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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
General Sessions Court
William H. Seals, Jr., Circuit Court Judge

Case No. 2013-GS-21-01353
Appellate Case No. 2015-000235

The State,

Respondent,

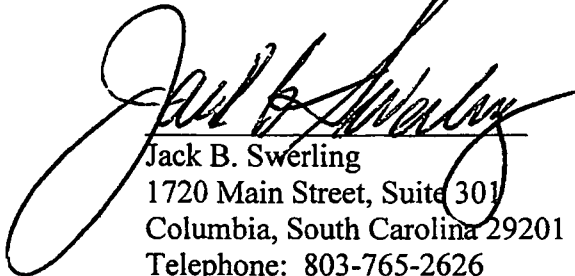
v.

Bryant Christopher Gurley,

Appellant.

CERTIFICATE OF COUNSEL

Counsel hereby certifies that the final brief and final reply brief of appellant comply with Rule 211(b) of the South Carolina Appellate Court Rules. Counsel further certifies that the final brief and final reply brief of appellant comply with the Order of the Supreme Court of South Carolina, *Re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings* (April 15, 2014).



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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY

Court of General Sessions

William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2015-000235

THE STATE,

Respondent,

v.

BRYANT CHRISTOPHER GURLEY,

Appellant.

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STATEMENT OF ISSUES ON APPEAL**I.**

The trial court properly admitted the video recording of Victim's forensic interview because it met the requirements of the statute and did not contain statements that constituted improper bolstering.

II.

The trial court properly qualified Kathy Crawford, Victim's counselor, as an expert in sexual assault trauma and properly admitted her testimony regarding how children disclose sexual abuse, normal behavior for child victims, and types of symptoms a child might show.

III.

The trial court correctly allowed the State to present rebuttal testimony that was responsive to evidence introduced by Appellant regarding Victim's mother's character.

IV.

Appellant's argument that Victim's mother's testimony regarding things Victim explained to her is not preserved, but even if preserved, the trial court properly limited Victim's mother's testimony to time and place.

V.

Appellant's argument that the cumulative prejudice of multiple errors requires a new trial is not preserved, but even if preserved, the trial court conducted a fair trial and Appellant is not entitled to a new trial.

STATEMENT OF THE CASE

A Florence County Grand Jury indicted Appellant for lewd act on a minor. (R.1-2) On January 26–29, 2015, Appellant proceeded to a trial before the Honorable William H. Seals, Jr., and a jury. Marcus Woodson, Esquire, represented Appellant, and Assistant Solicitor Catherine Wyse, Esquire, represented the State. The jury found Appellant guilty, and Judge Seals sentenced him to eight years’ imprisonment. (R. 298–299.)

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

One morning when Victim's mother (Mother) was getting her ready for school, Victim reported to her mother that Appellant, a family friend, had touched her private area. (R. 12, line 18–R. 13, line 8.) Mother first called Appellant's mother, Denise Gurley, and had Victim tell Denise what happened. (R. 13, lines 14–24.) Mother then spoke to someone at a children's center who advised her to call law enforcement. (R. 14, lines 1–3.) She met with an officer at her home and he filed a report. (R. 14, lines 4–8; R. 35, line 18–R. 36, line 14.) The officer, Deputy John Austin Meggs of the Florence County Sheriff's Office, then contacted Investigator Jennifer Floyd. (R. 35, line 4–R. 36, line 25; R. 38, lines 16–19.) Based on information she received, Investigator Floyd got a warrant for Appellant's arrest for lewd act on a minor. (R. 40, line 16–R. 41, line 15.)

Appellant was charged as an adult and proceeded to trial. (R. 42, lines 4–7.) The State began by calling Mother to the stand. (R. 5.) She explained how she and her daughters had stayed with her friend Denise and her family after Mother was divorced. (R. 8, line 8–R. 9, line 23.) Appellant would spend weekends at the Gurley home. (R. 10, lines 14–16.) Mother testified Victim disclosed to her that Appellant had touched her inappropriately. (R. 12, lines 17–23.) When the solicitor asked Mother to describe where the incidents took place, defense counsel objected on hearsay grounds. (R. 15, lines 22–25.) The trial court overruled the objection, citing the time and place exception to hearsay in this type of case. (R. 16, lines 2–3.) Mother then began describing the incidents: one in the living room, one in the back seat of the car, one in her bedroom. (R. 16, line 9–R. 17, line 7.) Defense counsel again objected to hearsay, and the trial judge held a bench conference. (R. 17, lines 8–13.) Defense counsel argued it went way beyond time and place because she was saying what Victim said. (R. 17, lines 14–17.)

Defense counsel argued, “I mean she’s testifying what the girl told her. Unless she— she’s going to say she saw him go in the bedroom.” (R. 18, lines 5–7.) The solicitor stated, “That’s exactly what she said.” (R. 18, line 9.) The trial court asked, “She’s testifying as to what she saw?” and then stated, “If she’s not, you can object. If she’s doing that, it’s fine.” (R. 18, lines 9–14.) The State asked Mother, “Those were where [Victim] told you these incidents occurred?” to which she replied, “Yes.” (R. 18, lines 20–22.) Appellant did not object. The State then asked, “And those are things that you saw yourself?” to which she replied, “As she explained them to me, I could see in my— remember back in my mind the exact everything she was explaining to me. I just never pinpointed to what she was trying to explain to me happened.” (R. 18, line 23–R. 19, line 2.) Appellant still did not object.

One of the incidents Mother described was when she drove Victim and Appellant to her mother’s house in Lake City. She recounted that when they were ready to leave, Victim started crying and kicked the car door, saying she did not want to get in the back seat. (R. 16, lines 17–25.) Victim’s grandmother, Lillie Daniels, also testified about the incident where Victim did not want to get in the car and cried. (R. 23, lines 1–8.) Samantha Toney, Victim’s sister, likewise testified about the incident. (R. 26–27.) She recalled that when they left to go back to Florence, Victim was not happy about getting in the back seat and begged not to ride back there. (R. 27, lines 1–9.)

Investigator Jennifer Floyd of the Florence County Sheriff’s Office testified regarding her involvement in the case. She made appointments for Victim to have a forensic interview and a medical examination. (R. 39, lines 6–11.) Based on what Victim disclosed during the forensic interview, Investigator Floyd secured a warrant for Appellant’s arrest for lewd act on a minor. (R. 40, lines 16–25.)

The State called Kathy Crawford, and Appellant objected based on the assumption Crawford was going to testify about what Victim said, arguing Victim had to testify first in accordance with section 17-23-175. (R. 65, lines 1–11.) The State offered to allow Victim to testify first but also argued the witness did not fall under that particular statute because she was not the forensic interviewer. (R. 66, line 2–R. 67, line 4.)

The State called Victim to the stand. (R. 69, lines 9–10.) Victim testified she was sexually assaulted by Appellant. (R. 71, line 5–18.) She testified he put his hands on her private parts four times. (R. 72, lines 18–23.) She recounted that the incidents happened “[f]irst upstairs, then on the couch, then under the covers, then in the back of the car.” (R. 72, line 24–R. 73, line 6.) The State showed Victim three pictures she had drawn and asked her to identify them. (R. 73, lines 7–9.) Victim explained that Exhibit Number 2 showed her under the covers with Appellant; that Exhibit Number 3 showed her telling her mom about what was happening, specifically that she was sexually assaulted; and that Exhibit Number 4 showed her in the back of the car with Appellant, feeling scared. (R. 73, line 10–R. 74, line 7.) The trial court admitted the exhibits into evidence without objection. (R. 74, lines 9–16.)

On cross-examination, defense counsel questioned Victim about Exhibit Number 4, the drawing of the car trip to Lake City. (R. 79, lines 7–18.) Victim testified that she had drawn her mother in the front seat behind the wheel, but she stated her mother was not actually in the car when the incident took place because she was inside the house talking to her grandmother. (R. 79, line 19–R. 80, line 8.) Defense counsel asked her whether they were getting ready to leave at that point or if they had just gotten there, and Victim told him they were getting ready to leave. (R. 80, line 23–R. 81, line 1.) She then explained that the only one who got out of the car was her mother and that everyone else

stayed in the car the whole time. (R. 81, lines 13–25.) Victim testified Appellant slid over toward her in the back seat and touched her. (R. 82, lines 9–17.) The next incident defense counsel questioned her about happened in the music room upstairs during a family get-together. (R. 84, lines 12–18.) He asked her whether she remembered saying that a friend walked up and that was why it stopped and she said, “Yes, sir.” (R. 85, lines 5–8.) Victim remembered another incident in the living room but could not remember the fourth incident. (R. 87, line 17–R. 88, line 25.)

Next the State offered Kathy Crawford, a licensed counselor, as an expert in the area of sexual assault trauma, to which Appellant objected. (R. 96, lines 9–13.) He argued her testimony was improper bolstering and that her testimony should be limited. (R. 97, lines 14–18.) He made a motion in limine that “she not be allowed to testify to anything regarding this child because she’s going to have to get into statements the child made.” (R. 97, lines 19–22.) Specifically, he complained that none of her interviews were recorded “like the statute says.” (Rr.974, lines 22–23.) The State explained it was offering her as an expert witness to talk about how children disclose, what “normal” behavior is for a child abuse victim, and some questions about time and place regarding Victim and whether Victim drew the pictures. (R. 98, lines 1–16.) The trial court overruled Appellant’s objection but encouraged him to continue to object if something specific came up that needed addressing. (R. 98, lines 21–23.)

After engaging in voir dire with Crawford, Appellant then argued he only got her records last week and did not have time to obtain his own expert to refute her testimony. (R. 100, lines 5–14.) The solicitor maintained she provided everything about the expert timely and the only new material provided in the last week was some information regarding PTSD Crawford had just given her the week before trial. (R. 100, lines 16–23.)

The trial court overruled Appellant's objection. (R. 101, lines 24–25.) The trial court qualified Crawford as an expert in the area of child sexual trauma over Appellant's objection. (R. 102, lines 17–24.)

Crawford testified about patterns of behavior for victims of sexual trauma and cited some studies that indicated about 75% of children do not disclose immediately. (R. 103, lines 1–25.) At that point, Appellant objected to the studies as hearsay, which the trial court overruled. (R. 103, lines 12–20.) Appellant also objected when the State asked what kinds of indicators might make her think sexual abuse is going on, but the trial court overruled it. (R. 104, lines 21–25.) Crawford testified she began working with Victim in May 2013 and described how Victim chose to draw pictures rather than talk or write about what happened to her. (R. 108, lines 11–15; R. 109, lines 2–13.) She identified three drawings Victim had done depicting incidents of abuse. (R. 109, line 18–R. 110, line 24.) The State asked Crawford if she had ever worked with a child who had been coached, and she answered, “The times that I believed that I have worked with children that have been coached is usually when they are coached by the offender not to tell.” (R. 112, lines 7–11.) The State then asked if she saw any signs of coaching with Victim, and Appellant objected, arguing she could not render an opinion on that and that it was a jury question. (R. 112, lines 17–22.) The trial court overruled the objection. (R. 112, line 21.)

Crawford testified Victim was very detailed in her descriptions of the incidents, even remembering what she was wearing at the time and what pictures were on the wall. (R. 113, lines 2–24.) Crawford explained she was able to diagnose patients through her state licensure as a counselor and that her normal business practice was to submit a date of service and a diagnosis to insurance companies. (R. 115, lines 8–15.) She diagnosed

Victim based on the symptoms she presented with. (R. 115, lines 16-22.) Appellant objected when the State asked what Victim's diagnosis was, and the trial court overruled. (R. 115, lines 23-25.) Crawford testified her diagnosis of Victim was adjustment disorder with anxiety and depression with traits of PTSD, post-traumatic stress disorder, which is something she normally sees in victims of sexual assault. (R. 116, lines 2-8.) When the State asked if Victim was consistent with other children who have been sexually abused, Appellant objected and the trial court held the following bench conference:

The Court: Is that getting into the credibility and the believability of the child?

[The State]: Well--

The Court: It's touching on it.

[The State]: If you want me to stay away from it, I will.

The Court: That would probably be a good idea based on recent case law.

(R. 116, lines 17-25.) The State agreed, and the trial court sustained the objection. (R. 117, lines 1-5.)

Next, the State proffered the testimony of Sally Williamson in order to introduce the forensic interview video so that the trial judge could watch it and make a ruling. (R. 131, line 15-R. 134, line 23.) Appellant had no objection. (R. 134, lines 24-25.) After the trial court viewed the video, Appellant objected on several bases. (R. 135, lines 14-23.) First, he argued the third prong of the statute was not complied with because Victim did not testify regarding the making of the statement. (R. 135, line 24-R. 136, line 5.) Second, he argued that after Victim talked about the third incident, she answered, "No," when asked if there were any other incidents, but the interviewer questioned her about

whether something happened in the bedroom. (R. 136, lines 6-11.) He argued that the statement was inconsistent with her testimony at trial. (R. 136, lines 11-19.) Third, he argued the interviewer gave her opinion by saying Appellant broke the rules. (R. 136, line 20-R. 137, line 1.)

The solicitor argued the third prong of the statute was satisfied because the victim was made available for cross-examination such that Appellant could have asked her about her statement in the video, and she also pointed out the statute does not mandate having to ask the victim about the video. (R. 137, lines 6-13.) As for the second objection about a leading question concerning the fourth incident, she explained that Victim began the interview by telling the interviewer all the places the incidents took place, so when the interviewer asked about the bedroom she was merely reminding Victim about something she had already said earlier. (R. 137, lines 15-23.) She further pointed out that any inconsistencies between the video and the trial testimony could be addressed in closing argument. (R. 137, lines 24-25.) Finally, the State explained the interviewer's statement, "B.G. broke the rules" as a way to make the child victim feel safe rather than making her own statement about Appellant. (R. 138, lines 3-23.) The trial court agreed with the State, ruled that the statute had been complied with, and found the video admissible. (R. 138, lines 24-25.)

Ms. Williamson then testified before the jury, confirming Exhibit 1 was a DVD of a video of her forensic interview with Victim on March 12, 2013, and explaining her interview approach. (R. 143, line 1-R. 146, line 25.) The State then moved Exhibit 1 into evidence without objection. (R. 146, line 25-R. 147, line 9.) Williamson described Victim's demeanor during the interview and testified regarding the time and place of the disclosures she made. (R. 147, lines 11-25.) She stated she believed four separate

disclosures were made and testified she submitted a written report to law enforcement. (R. 148, lines 1-7.) The State then published the video to the jury, subject to Appellant's previous objections, which the trial court overruled. (R. 148, lines 9-19.) Following the viewing of the video, Appellant conducted cross-examination. (R. 148, line 24-R. 151, line 19.) After a brief redirect, the State rested. (R. 151, line 21-R. 152, line 16.)

Appellant renewed all motions and specifically revisited his objection regarding coaching when Kathy Crawford was on the stand. (R. 152, lines 21-25.) He argued that even though Crawford was not a forensic interviewer, any expert should not indicate her opinion about whether a child victim is telling the truth, based on State v. Kromah.¹ He asserted that by saying the child was not coached, Crawford was basically saying she believed the child was telling the truth. (R. 154, lines 3-11.) He then moved for a directed verdict "based on the gross inconsistency of the testimony." (R. 154, lines 12-14.) The trial court denied all motions. (R. 155, lines 8-14.)

Appellant presented a defense, calling multiple witnesses including family members, a neighbor, two pastors, and two witnesses who testified regarding their knowledge of Victim's mother. Ken Gurley, Sr., Appellant's father, testified about picking up Victim's mother sometimes when she needed his truck. (R. 207, lines 2-11.) Specifically, he explained that she would sometimes not have Victim with her when he picked her up and he felt concerned for the child's welfare being left in a hotel alone. (R. 207, lines 11-18.)

After the defense rested, the State decided it needed to call two rebuttal witnesses based on what the defense put into evidence. (R. 284, line 24-R. 285, line 2.) The State wanted to call Victim's former teacher to rebut allegations and inferences made by the

¹ 401 S.C. 340, 737 S.E.2d 490 (2013).

defense that Victim's mother was not a good mother because she used to leave her alone in a hotel room. (R. 287, lines 2-8.) The State argued the testimony was relevant because the non-biased teacher could provide testimony that Victim's mother was a good mother and took excellent care of her. (R. 287, lines 19-23.) Appellant argued he only elicited one incident from Gurley, Sr., involving the leaving of the child and it was not related to school or even to the cleanliness of the child and that testimony about her being a good mother in general would be character evidence, not rebuttal. (R. 287, line 25-R. 288, line 11.) The trial judge pointed out that the defense's argument the whole time involved Victim's mother's character, including testimony about buying clothes and cars and not paying, saying she had money she did not have, and leaving the child unattended and he allowed the rebuttal testimony and pointed out that Appellant would have the opportunity to cross-examine her. (R. 288, lines 12-23.)

The State called Suzette New, Victim's former teacher, to the stand. (R. 289, lines 5-9.) She testified she taught Victim the year before when she was in the third grade and described her as a very good student who did everything she was supposed to. (R. 287, line 20-R. 290, line 10.) She described Victim's mother as someone who brought treats for her birthday, helped with the Christmas party, would come if needed, and signed everything that needed to be signed. (R. 290, line 14-R. 291, line 3.) She also stated that Victim's mother asked for extra work for her daughter and helped her with it. (R. 291, lines 6-13.) She testified she never thought Victim's mother neglected Victim. (R. 292, lines 3-5.) Appellant did not object, and he did not cross-examine her. (R. 292, lines 9-10.)

Ultimately, the jury found Appellant guilty, and the trial court sentenced him to eight years' imprisonment. (R. 298–299.)

ARGUMENT

I.

The trial court properly admitted the video recording of Victim's forensic interview because it met the requirements of the statute and did not contain statements that constituted improper bolstering.

Appellant argues the trial court erred in admitting the video recording of the forensic interview because the interviewer expressed an opinion concerning the child's disclosures. Specifically, he argues the interviewer's statement to Victim that "[Appellant] broke the rules" was impermissible bolstering because it was the equivalent of telling the child she believed her. On the contrary, the interviewer's statement did not improperly bolster the child or express an opinion regarding her credibility. The statement was made by the interviewer to the child and did not express the interviewer's belief the child was being truthful. Thus, the trial court correctly admitted the video, and this Court should affirm its ruling.

Our appellate courts have made clear forensic interviewers should not opine whether a victim of criminal sexual conduct has told the truth or in any way vouch for or bolster the victim's credibility. See also State v. Chavis, 412 S.C. 101, 771 S.E.2d 336 (2015); State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011).

"[E]ven though experts are permitted to give an opinion, they may not offer an opinion regarding the credibility of others." State v. Kromah, 401 S.C. 340, 358, 737 S.E.2d 490, 499 (2013). "For an expert to comment on the veracity of a [victim's] accusations of sexual abuse is improper." State v. Jennings, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011).

Improper bolstering occurs when an expert witness is allowed to give his or her opinion as to whether the

complaining witness is telling the truth, because that is an ultimate issue of fact and the inference to be drawn is not beyond the ken of the average juror. Generally, the prohibition against bolstering is for the purpose of preventing a witness from testifying whether another witness is telling the truth and to maintain the assessment of witness credibility . . . within the exclusive province of the jury.

State v. Taylor, 404 S.C. 506, 514-15, 745 S.E.2d 124, 128 (Ct. App. 2013) (citations and internal quotations omitted).

During the forensic interview, the interviewer said to Victim, “[Appellant] broke the rules.” Appellant argues that by making this statement to Victim, the interviewer was telling the child she believed her and, in essence, telling the jury she believed her. He argues allowing the jury to hear her say that statement in the video was the same as if the interviewer stated to the jury that Appellant broke the rules. However, it is not the same. The interviewer made the statement to Victim, not to the jury, in the context of telling Victim nothing was her fault and she was proud of her. It was also a follow-up to the beginning of the interview when the interviewer asked Victim to point out the parts of the body nobody is allowed to touch and then asked her if anyone had ever done that, to which she replied that Appellant did. This is no different from repeating something a child said to carry the conversation forward.

Appellant compares the statement to the expert’s recommendation in Chavis that the victim not be around the defendant for any reason, where the Court found the recommendation could only be interpreted as believing the victim’s claim of sexual abuse. While a recommendation to keep an accused away from a child victim would indicate an interviewer believes the allegations made by the child, nothing about a statement to a child about people breaking the rules when they touch your private parts

indicates believability or makes any sort of credibility determination. And the harm meant to be prevented by the prohibition against improper bolstering is so that the jury will not be told whether to believe the child. A statement *to the child* is simply not the same as a recommendation to a third party. The State admits that in some circumstances, a statement to a child victim could certainly indicate the interviewer believed her: for instance, if the interviewer told the child she believed her or thanked her for telling the truth. However, that is not what happened in this case. Saying that Appellant broke the rules simply processed what Victim told her by combining their conversation about people not being allowed to touch certain parts and Victim's statement that Appellant did.

Similarly, Appellant claims the comment fits within State v. Kromah's list of types of statements a forensic interviewer should avoid—"a direct opinion as to a child's veracity," "any statement that indirectly vouches for the child's believability," and "any statement to indicate to a jury that the interviewer believes the child's allegations in the current matter." 401 S.C. at 360, 737 S.E.2d at 500. In explaining how this case is like Kromah, Appellant mentions the interviewer's report of a "compelling finding" of abuse being equivalent to stating the child was telling the truth. However, the situation in Kromah was completely different because it involved trial testimony of the forensic interviewer where she stated *to the jury*, "I made a decision that the child had given compelling—a compelling finding." Id. at 351, 737 S.E.2d at 496. Furthermore, Appellant compares this situation to State v. Jennings, 394 S.C. at 480, 716 S.E.2d at 94, where the interviewer there also reported the children made "compelling disclosures" and the Court determined it could only be interpreted to mean she believed the children were being truthful. The word "compelling" is itself a qualitative assessment of credibility similar to "convincing" or "believable." No such qualitative remark was made here.

Unlike in the above cases, the comment here was not part of the interviewer's testimony to the jury. Rather, it was part of the forensic interview itself and was said *to the child*. Thus, even though the jury viewed the video and heard the interviewer say the statement to the child, the same dangers of improper vouching simply do not exist here. Making a statement back to a child that reflects what she has told the interviewer is not the same as an interviewer making a recommendation that a victim not be around a defendant or a report that a child has made a compelling disclosure. Not only does this situation differ because it did not involve testimony stated before the jury, it also had nothing to do with improper vouching for the child's truthfulness. Rather, after listening to Victim tell her version of what happened, the interviewer was wrapping up the session by telling her she was proud of her, assuring Victim she was not in trouble, reminding her that she had done nothing wrong, and telling her Appellant broke the rules because "nobody ever gets to touch your private parts." (State's Exhibit 1-DVD of forensic interview.) As the State pointed out at trial, the statement about Appellant breaking the rules was done for Victim's benefit and was meant to make Victim feel safe, not to make a judgment or "blanket statement" about Appellant's credibility. (R. 138, lines 2-25.) None of this type of rapport between interviewer and child victim has been deemed improper by our Courts. Indeed, the comment would have been equally appropriate whether the interviewer actually believed the victim or not.

We know what constitutes improper bolstering by a forensic interviewer as a result of the Supreme Court's guidance in Kromah. The Court specifically listed the kinds of statements that a forensic interviewer should avoid at trial: that the child was told to be truthful; a direct opinion as to a child's veracity or tendency to tell the truth; any statement that indirectly vouches for the child's believability, such as stating the

interviewer has made a “compelling finding” of abuse; any statement to indicate to a jury that the interviewer believes the child’s allegations in the current matter; or an opinion that the child’s behavior indicated the child was telling the truth. Kromah, 401 S.C. at 360, 737 S.E.2d at 500. While the list was not meant to be exclusive, the statement made to the Victim here, “B.G. broke the rules,” certainly does not fit “squarely within these categories,” as Appellant argues.

Error is harmless when it could not reasonably have affected the result of the trial. State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990). “The key factor for determining whether a trial error constitutes reversible error is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” State v. Tapp, 398 S.C. 376, 728 S.E.2d 468 (2012) (citations and internal quotation marks omitted). Here, any error is harmless given Victim’s clear trial testimony and the lack of any direct testimony about Appellant “breaking the rules.”

II.

The trial court properly qualified Kathy Crawford, Victim's counselor, as an expert in sexual assault trauma and properly admitted her testimony regarding how children disclose sexual abuse, normal behavior for child victims, and types of symptoms a child might show.

Appellant argues the trial court erred in qualifying Victim's counselor as an expert in sexual assault trauma and in admitting her testimony regarding how children disclose sexual abuse, normal behavior for child victims, and types of symptoms a child might show. On the contrary, the trial court correctly qualified her and allowed her testimony, and this Court should affirm the trial court's decision.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). The conduct of a criminal trial is left largely to the sound discretion of the presiding judge and the appellate court will not interfere unless it clearly appears that the rights of the complaining party were abused or prejudiced in some way. State v. Commander, 396 S.C. 254, 262, 721 S.E.2d 413, 417 (2011) (quoting State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982)). Thus, the admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice. State v. Kromah, 401 S.C. 340, 349, 737 S.E.2d 490, 494-95 (2013); State v. Brown, 401 S.C. 82, 87, 736 S.E.2d 263, 265 (2012); State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006); State v. Rice, 375 S.C. 302, 314, 652 S.E.2d 409, 415 (Ct. App. 2007). Indeed, the qualification of an

expert witness and the admissibility of the expert's testimony are matters within the trial court's discretion. Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997). A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of that discretion. State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009); State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. Kromah, 401 S.C. at 349, 737 S.E.2d at 495; Douglas, 369 S.C. at 429-30, 632 S.E.2d at 848; Gooding, 326 S.C. at 252, 487 S.E.2d at 598; Lee v. Suess, 318 S.C. 283, 457 S.E.2d 344 (1995).

Expert testimony about common behavioral characteristics of sexual assault victims, and the range of responses to sexual assault encountered by experts, is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault. State v. Brown, 411 S.C. 332, 768 S.E.2d 246 (Ct. App. 2015) (*cert. denied* Aug. 6, 2015). It assists the jury in understanding some aspects of victims' behavior and provides insight into a sexually abused child's often strange demeanor. Id.; see also State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859, 862 (1993) (expert testimony and behavioral evidence are admissible as rape trauma evidence to prove a sexual offense occurred where the probative value outweighs the prejudicial effect); State v. White, 361 S.C. 407, 605 S.E.2d 540, 544 (2004) (expert behavioral testimony is admissible in prosecutions where the victim of sexual abuse is an adult); State v. Weaverling, 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999) (expert behavioral testimony was relevant and simply explained effects of sexual abuse on a victim's subsequent behavior); State v. Lujan, 967 P.2d 123 (Ariz. 1998) (when facts of case raise questions of credibility or accuracy that might not be explained by experiences common to jurors—like reactions of

child victims of sexual abuse—expert testimony on general behavioral characteristics of such victims should be admitted).²

Crawford's testimony in this case is the type of expert behavioral testimony approved in Schumpert, White, Brown and Weaverling. Her testimony was relevant and assisted the jury in understanding the evidence and determining a fact in issue. See Rule 702, SCRE (expert with specialized knowledge may testify if it will assist the trier of fact to understand the evidence or determine a fact in issue). Therefore, the circuit court properly exercised its discretion in allowing her testimony.

All relevant evidence in some way bolsters the strength of the offering party's case, and a trial court may not exclude evidence that bolsters other evidence absent a constitutional, statutory or rule-based principle of law providing for exclusion.

State v. Perry, 410 S.C. 191, 763 S.E.2d 603, 611 (Ct. App. 2014) (Few, C.J., concurring in part and dissenting in part), *cert. denied*, February 4, 2015. “Improper bolstering occurs when an expert witness is allowed to give his or her opinion as to whether the complaining witness is telling the truth, because that is an ultimate issue of fact and the inference to be drawn is not beyond the ken of the average juror.” State v. Taylor, 404 S.C. 506, 745 S.E.2d 124, 128 (Ct. App. 2013) (quoting State v. Douglas, 367 S.C. 498,

²In addition to South Carolina, numerous jurisdictions considering this issue found behavioral traits testimony is appropriate testimony for an expert in child sex abuse cases. See John E. B. Meyers, Expert Testimony in Child Sexual Abuse Litigation: Consensus and Confusion, 14 U.C. Davis J. Juv. L. & Pol'y 1, 45-46 (2010) (“Psychological research demonstrates that delayed reporting is common among sexually abused children. Frequently when children finally disclose, they give slightly different versions of the abuse to different interviewers. Finally, although there is debate about how many sexually abused children recant, it is undisputed that some children recant and some recant their recantation. Thus, from a psychological point of view, expert testimony about delay, inconsistency, and recantation is not controversial. From the legal perspective, such testimony is not worrisome.” [footnotes omitted]). Therefore, acceptance of such testimony is well established and wide spread.

626 S.E.2d 59 (Ct. App. 2006), *rev'd in part on other grounds*, 380 S.C. 499, 671 S.E.2d 606 (2009)) (emphasis added). Generally, bolstering is prohibited to prevent a witness from testifying whether another witness is credible, which is exclusively within the province of the jury. *Id.*; *see also Brown*, 411 S.C. at 343-44, 768 S.E.2d at 252; *State v. McKerley*, 397 S.C. 461, 725 S.E.2d 139, 141 (Ct. App. 2012). It is improper for a witness to state an opinion about the credibility of a victim in a child sexual abuse case. *Kromah*, 737 S.E.2d at 500.

At trial, the State called Kathy Crawford, a licensed counselor with a Master's degree in psychology. When asking about her experience, the State asked, "[W]hat has been your assessment of children who have been victims of sexual assault?" and Appellant objected, arguing the solicitor was asking what Crawford's assessment in general of children who have been victims of sexual assault was. (R. 95, lines 1-11.) At that time, the trial judge reminded the State that it had not yet qualified Crawford as an expert. (R. 95, lines 12-18.) He also reminded both parties about "recent case law" and said, "So we're not going there." (R. 95, lines 19-24.) In response, the State replied, "And I already told her that—that there was no mention of the truthfulness at all." (R. 95, line 25-R. 96, line 1.) Once the State moved to qualify Crawford as an expert in the area of sexual assault trauma, Appellant objected. (R. 96, lines 9-13.) He renewed his prior objection based on the fact that Crawford had some interaction and treatment of the child victim. He also pointed out that Crawford was going to testify about general reasons children might have post-traumatic stress disorder (PTSD). He argued all of that is improper bolstering, asserting that Crawford would "sit there and explain the child's testimony piece by piece when she hasn't submitted any records to me or the solicitor." He asked the trial court to limit the testimony. (R. 97, lines 5-18.) He articulated that he

was making a motion in limine, asking that Crawford not be allowed to testify to anything regarding this particular child because “she’s going to have to get into statements the child made.” (R. 97, lines 19–22.) Further, he argued the interviews were not “recorded like the statute says.” (R. 97, lines 22–24.)

The State told the trial court it was offering Crawford as an expert witness to talk about how children disclose, what normal behavior is for a child, and what kind of outward symptoms a child might show. Further, the solicitor stated she would ask Crawford about time she spent with Victim but only to include time and place and whether she drew some pictures. She confirmed she had no notes from Crawford. (R. 98, lines 1–16.) The trial court overruled Appellant’s motion in limine but encouraged him to object if something specific came up and allowed him to question Crawford. (R. 98, lines 21–24.) Appellant then complained that he had only received records last week and that he was unable to get an expert to refute what Crawford would say about typical behavior. (R. 100, lines 5–14.) The solicitor admitted she gave Appellant information about PTSD the week before trial because that was when it was provided to her. (R. 100, lines 19–23.) The trial court overruled Appellant’s objection. (R. 101, lines 24–25.)

Initially, the State submits the trial court acted well within its broad discretion in qualifying Crawford as an expert in “sexual assault trauma” based on her education, training, and experience. Furthermore, the trial court properly admitted Crawford’s expert testimony pursuant to Rule 702, SCRE, because she possessed scientific, technical or other specialized knowledge which could assist the jury to understand the evidence or to determine a fact in issue. Her diagnosis of adjustment disorder with anxiety and depression with traits of PTSD was based on the information she received from Victim and her mother, and symptoms presented by Victim. Victim’s detailed testimony was the

strongest evidence of the sexual abuse committed by Appellant; thus, her credibility was central to the jury's determination of the facts in issue. To the extent that credibility could be challenged or attacked by Appellant because of the manner in which Victim disclosed the abuse, Crawford's evaluation of Victim's psychological symptoms, diagnosis of PTSD, and therapy could assist the trier of fact. Thus, her testimony was clearly relevant. In addition, despite Appellant's claims to the contrary, Crawford's testimony can be construed as serving the precise purpose for which it was offered, as a professional explanation for what a layperson may believe to be the victim's unusual course of disclosure. As such, Appellant's case is absolutely distinguishable from Kromah and other cases which involved testimony of a non-scientific "forensic interviewer" who offered either: (1) a "direct opinion as to the child's veracity," (2) a statement that "indirectly vouches for the child's believability," (3) a statement "to indicate to a jury that the interviewer believes the child's allegations in the current manner," or (4) "an opinion that the child's behavior indicated the child was telling the truth." Kromah, 401 S.C. at 360, 737 S.E.2d at 500. The testimony was properly admitted and did not improperly bolster the victim's credibility; therefore, Appellant's convictions should be affirmed.

Improper bolstering

Appellant argues Crawford's testimony, particularly her response to whether Victim was coached, was "improper opinion testimony elicited to bolster and vouch for the child's credibility." (App.Br.8.) Specifically, he argues Crawford's response that Victim was very detailed and consistent could only have been for the purpose of conveying to the jury Crawford's belief that Victim was being truthful. After the solicitor asked the question, Appellant objected and was overruled. Then Crawford

began describing how detailed Victim was about the location of where the abuse happened, right down to what pictures were on the walls and what clothes she was wearing. She then went on to discuss what incidents Victim told her about and again reiterated how detailed and consistent her descriptions were. However, the State submits this issue is not preserved for this Court's review because Appellant did not object to those statements. See State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge.").

In the event this Court determines the issue is properly preserved, Appellant's argument that Crawford's statements were similar to those in McKerley is completely without merit. In State v. McKerley, a forensic interviewer testified she found the child victim's interview to be **compelling for sexual abuse** and then articulated what she looks for in making such a determination including accuracy of information, level of detail, and whether the victim's statements were consistent with other information. 397 S.C. 461. 725 S.E.2d 139 (Ct. App. 2012). So the interviewer in McKerley only used the words "detail" and "consistent" to further elaborate on how she could tell the child's interview was "compelling for sexual abuse." This Court's decision in McKerley that this type of statement by a forensic interviewer indicates she believes the victim is being truthful is consistent with State v. Jennings and other cases that have been decided since, including Kromah.

Here, the situation is vastly different. Crawford never made a statement that in any way indicated she made "a compelling finding." The terms "detailed" and "consistent" were troublesome in McKerley because they were part of the forensic interviewer's explanation of what a compelling finding was. In explaining what a

compelling finding would be, the interviewer in McKerley stated, “The compelling findings are the things that we look at, that we talked about looking at earlier in terms of how the disclosure comes about in the interview with me; whether it is detailed, does it have consistency, does it have the sensory level of detail that a child typically wouldn’t have, or *only would have if something had happened to them.*” McKerley, 397 S.C. at 467, 725 S.E.2d at 142.

Improper qualification as expert and additional improper bolstering

Next, Appellant argues Crawford’s testimony was inadmissible because the trial court should not have qualified her as an expert witness. Specifically, he argues “characteristics of child victims of sexual abuse and delayed disclosure” are not proper subjects for expert testimony. On the contrary, our appellate courts have found this type of expert testimony proper. Thus, this Court should affirm the trial court’s ruling.

This Court and the South Carolina Supreme Court have acknowledged the benefit and necessity of expert testimony in child sexual abuse cases. “Expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible.” Weaverling, 337 S.C. at 474, 523 S.E.2d at 794. “Such testimony is **relevant** and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault.” Id. at 475, 523 S.E.2d at 794 (emphasis added); see also State v. White, 361 S.C. 407, 415, 605 S.E.2d 540, 544 (2004) (acknowledging the importance of rape trauma and behavioral evidence in a sexual abuse case whether the victim is an adult or a child); Schumpert, 312 S.C. 502, 435 S.E.2d 859 (finding both expert testimony and behavioral evidence are admissible as rape trauma evidence).

Most recently, in State v. Anderson, our Supreme Court confirmed the findings of Schumpert, Weaverling, and White when it stated, “Certainly we recognize that there is such an expertise [as child abuse assessment]: this is the type of expert who can, for example, testify to the behavioral characteristics of sex abuse victims.” 413 S.C. 212, 218, 776 S.E.2d 76, 79 (2015). Although the Court in Anderson determined the “better practice” was to not have the individual who examined the victim testify because it runs the risk of vouching for the victim’s credibility, it did not go so far as to rule that any time an expert has examined the child the result is reversible error. The Anderson court reversed based on the improper vouching allowed by the trial judge. That type of vouching did not happen here.

Further, this Court, as well as the South Carolina Supreme Court, has allowed behavioral testimony to be admitted at trial. In Schumpert, 312 S.C. 502, 435 S.E.2d 859, the South Carolina Supreme Court considered expert testimony regarding rape trauma syndrome. The expert testified to behavior and characteristics commonly found in sexual assault victims. The Supreme Court overturned its holding in State v. Hudnall, 293 S.C. 97, 359 S.E.2d 59 (1987) (finding expert testimony of common behavioral characteristics of a child victim of sexual abuse only admissible to rebut a defense claim the victim’s response was inconsistent with such a trauma), and specifically found: “both expert testimony and behavioral evidence are admissible as rape trauma evidence to prove a sexual offense occurred where the probative value of such evidence outweighs its prejudicial effect.” Id. at 506, 435 S.E.2d at 862.

This Court had a chance to address similar behavior testimony in State v. Weaverling, 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999). In Weaverling, an expert testified regarding behavior and characteristics of a sexual abuse victim. This Court

stated: “Expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible.” *Id.* at 474, 523 S.E.2d at 794 (citing Frenzel v. State, 849 P.2d 741 (Wyo. 1993); *see also* State v. Lujan, 967 P.2d 123 (Ariz. 1998) (opinion testimony describing behavioral characteristics outside jurors’ common experience is permitted as long as it meets other admissibility requirements)). This Court explained:

Such testimony is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault. It assists the jury in understanding some of the aspects of the behavior of victims and provides insight into the sexually abused child’s often strange demeanor.

Weaverling, 337 S.C. at 475, 523 S.E.2d at 794 (emphasis added and citations omitted); *see also* Lujan, 967 P.2d 123 (when facts of case raise questions of credibility or accuracy that might not be explained by experiences common to jurors—like reactions of child victims of sexual abuse—expert testimony on general behavioral characteristics of such victims should be admitted).

In State v. Brown, 411 S.C. 332, 341, 768 S.E.2d 246, 250 (Ct. App. 2015) (*cert. denied* Aug. 6, 2015), this Court cited its holding in Weaverling that expert testimony in the areas of child abuse dynamics and disclosure “was properly admitted because it was **relevant** and explained the effect of sexual abuse on a victim’s subsequent conduct.” (emphasis added). This Court also cited White, 361 S.C. at 415, 605 S.E.2d at 544, in which the Supreme Court “confirmed the admissibility of expert testimony and behavioral evidence in sexual abuse cases, holding such testimony was **relevant** regardless of the victim’s age.” (emphasis added). Accordingly, this Court found the expert’s “specialized knowledge of the behavioral characteristics of child sex abuse victims was **relevant** and crucial in assisting the jury’s understanding of why children

might delay disclosing sexual abuse” Brown, 411 S.C. at 341-42, 768 S.E.2d at 251 (emphasis added).³

Furthermore, other jurisdictions have recognized the value of such testimony. See, e.g., State v. Reser, 767 P.2d 1277, 1282 (Kan. 1989) (“There are numerous cases from other jurisdictions where expert testimony regarding characteristics of sexually abused children has been held properly admitted as providing helpful background information to the jury.”); People v. Spicola, 947 N.E.2d 620, 635 (N.Y. 2011) (recognizing the majority of states permit expert testimony to explain delayed reporting, recantation, inconsistency, and other traits of abused children); State v. Carpenter, 556 S.E.2d 316 (N.C. Ct. App. 2001) (finding no error in allowing expert testimony regarding the fact delayed and incomplete disclosure is not unusual in cases of child sexual abuse); State v. Roenfeldt, 486 N.W.2d 197, 204 (Neb. 1992) (finding rationale behind rule allowing expert to testify about sexual abuse in generalities is that few jurors understand the dynamic and it is often contrary to what a typical adult would expect); State v. Cardany, 646 A.2d 291, 294 (Conn. App. Ct. 1994) (“It is natural for a jury to discount the credibility of a victim who did not immediately report alleged incidents of abuse whether or not the defense emphasizes the delay in cross-examination. Thus, testimony that explains to the jury why a minor victim of sexual abuse might delay in reporting the incidents of abuse should be allowed as part of the state’s case-in-chief.”); State v. Perry,

³ Appellant argued in his brief that if the Supreme Court reversed Brown, this case should also be reversed. The Supreme Court denied certiorari on August 6, 2015. Appellant also argued even if Brown was upheld, this case goes outside the parameters of Brown because the counselor interviewed this victim. However, all this Court said in Brown was that the interviewers in Kromah, Smith, and McKerley had each indicated they believed the victim was being truthful. Thus, the significance of those experts interviewing the victims was that it led to their improper vouching for the victims’ credibility. That did not happen here, where the counselor did not improperly bolster or vouch for the victim’s credibility.

218 P.3d 95 (Or. 2009) (finding expert testimony on the phenomenon of delayed disclosure by victims of child sexual abuse admissible); State v. Friday, 73 So.3d 913, 931-32 (La. Ct. App. 2011) (allowing broad testimony “about the general characteristics of sexual abuse victims, namely how such victims delay disclosure and some of the reasons why disclosure may be delayed, such as fear or shame”); Commonwealth v. Bougas, 795 N.E.2d 1230, 1236 (Mass. Ct. App. 2003) (“Expert testimony that abused children often delay reporting the abuse . . . informs the jury that the victim’s failure to disclose in a timely fashion does not necessarily exonerate the defendant without suggesting that the particular child witness in the case was or was not abused.”); McCoy v. State, 629 S.E.2d 493, 494 (Ga. Ct. App. 2006) (finding testimony about child sexual abuse syndrome, including testimony about delayed disclosure, admissible); Keri v. State, 347 S.E.2d 236, 238 (Ga. App. 1986) (finding expert testimony assisted jury in understanding why sexually abused children are secretive, why they were frightened, why they act out and become disciplinary problems, and why the children could not give specific dates for the acts they say were committed by the defendant); State v. Robins, 297 P.3d 1213, 1217 (Mont. 2013) (upholding the use of experts to explain the complexities of child sexual abuse, recognizing it is a topic that most jurors have no common experience with, and thus educate and enlighten the jury so it can then make an informed decision when assessing the victim’s credibility); Wheat v. State, 527 A.2d 269, 273 (Del. 1987) (finding that “[e]xposing jurors to the unique interpersonal dynamics involved in prosecutions for . . . child sexual abuse can provide jurors with possible alternative explanations for complainant actions and statements that are, to average laypeople, “superficially bizarre,” “seemingly unusual,” “seemingly inconsistent,” or normally attributable to “inaccuracy or prevarication”).

Further, the trial court charged the jury regarding expert testimony. The trial court explained the jury was to give the expert's testimony "the weight you think it deserves." (R. 294, lines 20–22.) The trial court also told the jury it could disregard the opinion of the expert entirely and was not required to accept the expert's opinion even if it is not contradicted. Additionally, the trial court explained: "An expert witness'[s] testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert." (R. 295, lines 3–5.)

Accordingly, the trial court properly qualified Crawford as an expert in sexual assault trauma given her background, experience, and education as well as the fact her testimony as an expert would assist the trier of fact. Her testimony educated the jury regarding the "normal" behaviors of child sexual abuse victims and disabused the jury of any misconceptions regarding "normal" behavior. Specifically, the "specialized knowledge" of Crawford "assist[ed] the trier of fact to understand the evidence or determine a fact in issue" by providing the jury with the tools and information necessary to properly judge the credibility of the victim and determine whether she was sexually abused by Appellant. See Rule 702, SCRE. Crawford's testimony assisted the jury in understanding the evidence, including Victim's delay in disclosing the abuse. The trial court's ruling should be affirmed.

Non-compliance with S.C. Code Ann. § 17-23-175

Appellant argues Crawford's testimony regarding Victim's drawings and statements was inadmissible under S.C. Code Ann. § 17-23-175 because they were not recorded as required by subsection (A). However, the statute applies to "questioning conducted during an investigative interview of the child." See S.C. Code Ann. § 17-23-175 (providing an out-of-court statement by a child under twelve is admissible if given in

response to questioning conducted during an investigative interview of the child). Appellant objected on this basis at trial, and the trial court overruled the objection without specifically addressing the statute. While he now argues on appeal that subsection (F) required the trial court to conduct an analysis and make findings, he did not argue that at trial, nor did he request the trial court make those findings. Thus, this issue is not preserved for review by this Court. See State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003) (“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge.”).

Furthermore, the only reference to out-of-court statements made by the child was in the following testimony from Crawford: “And [Victim] was very detailed about the location of where it happened, and she was so detailed she even told me what pictures were on the walls, what clothes she wore the time that she was in the car,” “[S]he described the room. There was a couch. There was [sic] photos on the wall. I think a computer and maybe an aquarium there.” (R. 113, lines 2–5, 13–16.) Appellant made no objection to these statements. To the extent Appellant is arguing the drawings are statements that should have been recorded, they are “recorded” in the only way a drawing could be.

III.

The trial court correctly allowed the State to present rebuttal testimony that was responsive to evidence introduced by Appellant regarding Victim's mother's character.

Appellant argues the trial court erred in allowing rebuttal testimony that was not responsive to any evidence introduced by Appellant and that was improper character evidence. However, the trial court correctly allowed Victim's teacher to testify regarding her impression of Victim's mother in response to testimony Appellant presented through Ken Gurley, Sr., that Victim's mother left Victim alone in a hotel room, implying she was not a good mother. This Court should affirm the trial court's ruling.

In criminal cases, the appellate court only reviews errors of law and is bound by the trial court's factual findings unless the findings are clearly erroneous. State v. Huckabee, 388 S.C. 232, 240, 694 S.E.2d 781, 785 (Ct. App. 2010). The admission of reply testimony is within the sound discretion of the trial court and will only result in reversal if the admission of such testimony is found to be prejudicial. Id. (citing State v. Farrow, 332 S.C. 190, 194, 504 S.E.2d 131, 133 (Ct. App. 1998); see also State v. Todd, 290 S.C. 212, 214, 349 S.E.2d 339, 340 (1986) ("The admission of reply testimony is within the sound discretion of the trial judge, and there is no abuse of discretion if the testimony is arguably contradictory of and in reply to earlier testimony."); State v. Stewart, 283 S.C. 104, 106–07, 320 S.E.2d 447, 449 (1984) ("The admission of testimony which is arguably contradictory of and in reply to earlier testimony does not constitute an abuse of discretion.")).

An appellant cannot complain about the admission of evidence where he opened the door to the evidence. See State v. Robinson, 305 S.C. 469, 409 S.E.2d 404 (1991)

(where appellant opened door to evidence, he cannot complain of prejudice from its admission); State v. Sullivan, 277 S.C. 35, 282 S.E.2d 838 (1981) (appellant cannot complain of prejudice from admission of evidence if he opened the door to its admission). Further, when a party introduces evidence about a particular matter, the other party is entitled to explain it or rebut it, even if the latter evidence would have been incompetent or irrelevant had it been offered initially. State v. Stroman, 281 S.C. 508, 316 S.E.2d 395 (1984). A party may not complain of error caused by his own conduct. State v. Beam, 336 S.C. 45, 52-53, 518 S.E.2d 297, 301 (Ct. App. 1999).

When Appellant objected to Victim's teacher—Suzette New—testifying, the solicitor explained to the trial judge that because Appellant made some inferences that Victim's mother was not a good mother, she intended to introduce New's testimony to rebut that allegation. Specifically, the solicitor intended to call New to testify that Victim was well cared for and that her mother was incredibly attentive and participated in school activities. (R. 286, line 14–R. 287, line 8.) The trial court then asked her to explain how the testimony was relevant to the case, and she stated that Appellant had put the issue in front of the jury when he brought forth testimony about Victim's mother's character by asking Ken Gurley, Sr., about her being a liar, stealing things from the family, and promising money she could not pay. Specifically, the solicitor noted it was very relevant to the fact that Victim's mother was a good mother who took excellent care of her child. (R. 287, lines 9–23.)

Appellant then argued the only incident mentioned involved the mother leaving her child, not anything related to being clean, and therefore was not relevant. He argued rather than rebutting that one allegation, she was presenting character evidence. However, even though Appellant initially questioned Victim's mother regarding

instances of character that would show truthfulness or non-truthfulness, he went beyond that in asking about a specific instance of leaving the child alone in a hotel room. At that point, he opened the door by attacking her as a bad mother. Subsequently, the trial court pointed out that all of those issues had already been brought up when Appellant argued throughout the trial about Victim's mother's character, including "references to buying clothes and buying cars and not paying for the cars and having money that she didn't have and whether she left the child at so-and-so unattended." (R. 288, lines 13–19.) The trial court allowed the rebuttal witnesses and gave Appellant the opportunity to cross-examine as he saw fit. Appellant made no objections during New's testimony and did not cross-examine her.

One of Appellant's arguments as to this testimony by New is that it was character evidence of the child victim because it described her "in the most complementary of terms." (App.Br.15.) He argues that because he did not offer any character evidence regarding Victim, but only her mother, it was improper for the State to offer any because there was nothing to rebut. Specifically, he cites Rule 404(a)(2): "Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except: Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor."

To the extent Appellant is arguing the solicitor elicited improper character evidence regarding Victim, this argument was not made at trial and is not preserved for this Court's review. Appellant did not object to any of the testimony he now argues "describe[d] the child in the most complementary of terms." (App.Br.15.) In fact, he

made no objections during New's testimony and cannot now complain. See State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge.").

However, to the extent the issue is preserved, the testimony was elicited to reflect on Victim's mother's character, not on Victim herself. Any "complementary" things New had to say about Victim were said to show that her mother took good care of her for the purpose of rebutting the defense's allegation of her being a bad mother, not to introduce character evidence about Victim.

IV.

Appellant's argument that Victim's mother's testimony regarding things Victim explained to her is not preserved, but even if preserved, the trial court properly limited Victim's mother's testimony to time and place.

Appellant argues the trial court erred in allowing testimony of Victim's mother that exceeded the limitation on admission of out-of-court statements of the sexual assault, except as to time and place. Specifically, Appellant contends Victim's mother's testimony exceeded time and place because she testified to things Victim had explained to her and, thus, the testimony was improper bolstering hearsay testimony. However, because Appellant did not object to that particular portion of the testimony, the issue is not preserved for review. To the extent Appellant did object to the mother's testimony, the trial court placed proper limitations on it regarding time and place in accordance with the rules of evidence.

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge." State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003). Here, Appellant made no objection to the portion of the testimony he now complains exceeded the scope of time and place restrictions.

When Victim's mother (Mother) began testifying about the sexual abuse, the State asked her whether Victim told her where and when these incidents occurred. (R. 15, lines 16–23.) Appellant objected on the grounds of hearsay, arguing Victim had not testified yet. (R. 15, line 24–R. 16, line 1.) The trial court overruled the objection, correctly noting that "[w]here and when is the exception to the hearsay rule in cases like this." (R. 16, lines 2–3.) Mother then continued to testify about what Victim told her occurred, describing where the incidents took place. (R. 16, lines 7–25.) While describing one

incident, Mother stated that Appellant “went in the room to her again.” (R. 17, lines 6–7.) Appellant objected on the basis of hearsay, and the trial judge held a bench conference. (R. 17, lines 8–13.) He argued the testimony was going way beyond time and place because Mother was testifying to what Victim said and that Appellant went in the room and what he did. (R. 17, lines 14–17.) The following exchange took place:

The Court: What was your question just now?

[The State]: I just asked her to tell me where the incidents occurred, and she said that the daughter was in the bedroom and she had gotten her dressed for church and she was wearing her dress. And then she was with Denise and with Mr.—Mr. Gurly, the father, and he was arching her eyebrows. That’s what she said.

[Appellant]: But—well—and then she went beyond that and she said that he went into the bedroom with the girl. That’s not in any of the reports, but—

The Court: I think that’s her testimony. You can cross her.

[Appellant]: But—well—and that’s—I mean she’s testifying what the girl told her. Unless she—unless she’s going to say she saw him go in the bedroom.

[The State]: Yes, she did. That’s exactly what she said.

The Court: She’s testifying as to what she saw?

[Appellant]: She’s not testified to this before.

[The State]: Yeah.

[Appellant]: She’s not said that before.

The Court: **If she’s not, you can object.** If she’s doing that, it’s fine.

(R. 17, line 18–R. 18, line 14.) (emphasis added.)

The State then asked Mother if those were where Victim told her the incidents occurred, and she said yes. Next, the State asked if she saw those things for herself, and

Mother answered, “As she explained them to me, I could see in my—remember back in my mind the exact everything she was explaining to me. I just never pinpointed to what she was trying to explain to me happened.” (R. 18, line 20–R. 19, line 2.) Appellant did not object. Because the Court specifically told Appellant to object if Mother was not testifying to what she saw, the State submits either Appellant was satisfied by her answer that she saw the things that happened and then put it all together after hearing Victim’s explanation and, thus, did not feel an objection was appropriate, or he simply did not object. Either way, Appellant’s lack of objection to this question and answer, after being told by the trial court to object if Mother was exceeding limitations, forfeits any claim to an issue because it was not preserved.

The South Carolina Rules of Evidence define hearsay as: “[A] statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Rule 801(c), SCRE. The Rules, however, further provide that:

A statement is not hearsay if . . . The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . consistent with the declarant’s testimony in a criminal sexual conduct case or attempted criminal sexual conduct case where the declarant is the alleged victim and the statement is limited to the time and place of the incident.

Rule 801(d), SCRE.

Appellant argues in his brief that the prejudicial effect of allowing testimony by Victim’s mother that based on Victim’s explanation, she could remember back in her mind everything that happened but did not “pinpoint” what she was trying to explain to her until then “is the very kind of corroboration testimony prohibited under the limitation as to time and place.” (App.Br.18.) Specifically, he argues “no other testimony or

corroborative evidence tended to establish an incident in the bedroom, and the child herself gave inconsistent accounts with respect to an incident in the bedroom.”

(App.Br.18.) In the forensic video, Victim clearly described an incident in the bedroom.

On direct, Victim also testified that four incidents occurred: “First upstairs, then on the couch, **then under the covers**, then in the back of the car.” (R. 73, lines 5–6.) (emphasis

added.) Only on cross-examination did Victim waiver regarding whether one of the incidents occurred in the bedroom. However, this inconsistency does not render the rest of Victim’s testimony invalid. The jury was charged with making its own determination regarding Victim’s credibility (as well as the other witnesses’) and was able to consider the forensic interview video, Victim’s testimony on both direct- and cross-examination, the counselor’s testimony, Victim’s drawings, and Victim’s mother’s testimony.

Victim’s mother actually testified, “[W]hile I was getting my eyebrows arched, [Appellant] went in the room to her again.” (R. 17, lines 6–7.) She never testified that was only something Victim told her. But even if the mother had testified that Victim was the one who said something about Appellant going into the bedroom, that testimony would be relatively insignificant in the larger context.

V.

Appellant's argument that the cumulative prejudice of multiple errors requires a new trial is not preserved, but even if preserved, the trial court conducted a fair trial and Appellant is not entitled to a new trial.

Appellant argues the cumulative prejudice of multiple errors requires a new trial. However, this issue is not preserved for review because no such claim was made at trial. See State v. Beekman, 405 S.C. 225, 236-37, 746 S.E.2d 483, 489-90 (Ct. App. 2013) (finding cumulative error doctrine issue not preserved when appellant did not specifically raise doctrine to the trial court or argue he was entitled to a new trial based upon errors made during the trial). Furthermore, “[a]n appellant must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; rather, he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground.” Beekman, 405 S.C. at 237, 746 S.E.2d at 490. Rather than showing how the errors adversely affected his right to a fair trial, Appellant merely restated the errors he had already fully argued in his brief and alleged the combination of errors had tainted the proceedings based on the prejudicial effect. As discussed in detail above, the trial court did not err. If it did, any errors were harmless and no cumulative prejudicial effect existed that so tainted the trial it deprived Appellant of his right to a fair trial.

CONCLUSION

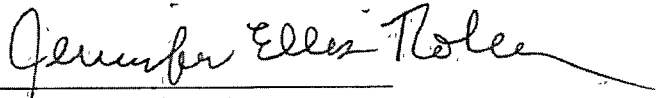
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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March 1, 2016

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of General Sessions

William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2015-000235

THE STATE,

Respondent,

v.

BRYANT CHRISTOPHER GURLEY,

Appellant.

CERTIFICATE OF COUNSEL

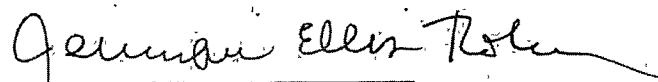
The undersigned hereby certifies the Final Brief of Respondent complies with Rule
211(b), SCACR

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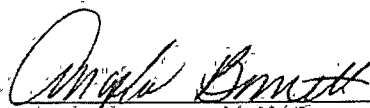
PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 1st day of March, 2016.



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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General Sessions Court
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The State,

Respondent,

v.

Bryant Christopher Gurley,

Appellant.

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in admitting the video recording of a forensic interview of the complaining witness?
2. Did the trial court err in qualifying the complaining witness's counselor as an expert and in admitting the counselor's testimony?
3. Did the trial court err in allowing rebuttal testimony, which was not responsive to any evidence introduced by the defense and which was improper character evidence?
4. Did the trial court err in allowing testimony of the mother of the complaining witness that exceeded the limitation on admission of out-of-court statements of alleged victims of sexual assault, except as to time and place?
5. Should appellant be granted a new trial based on the cumulative prejudice from the multiple errors of the trial court and the resulting denial of a fair trial?

ARGUMENT IN REPLY

Appellant's principal brief asserts four claims of error committed by the lower court in the trial of the charge against appellant and an additional claim of cumulative prejudice resulting from the multiple errors in this case, as framed in the statement of issues on appeal, above. Appellant relies on the arguments made in his principal brief and submits this reply brief not to repeat those arguments but only to respond to specific points made in the state's brief of respondent.

- I. THE TRIAL COURT ERRED IN ADMITTING THE VIDEO RECORDING OF THE FORENSIC INTERVIEW.

Appellant challenges the admission of a recording of a forensic interview in which the interviewer, after hearing the child's account, stated "B.G. broke the rules."

State's Exhibit 1. This statement was an impermissible expression of the interviewer's belief in the truthfulness of the child's account, amounting to improper vouching for and bolstering of the child's credibility, as prohibited by recent decisions of the South Carolina Supreme Court and Court of Appeals. See *State v. Chavis*, 412 S.C. 101, 109, 771 S.E.2d 336, 340 (2015); *State v. Kromah*, 401 S.C. 340, 358-360, 737 S.E.2d 490, 499-501 (2013); *State v. Jennings*, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011); *State v. McKerley*, 397 S.C. 461, 464-65, 725 S.E.2d 139, 141-42 (Ct. App. 2012).

The state asserts the interviewer's statement that appellant "broke the rules" did not bolster the child or express an opinion as to the child's credibility. This assertion is disingenuous. The statement came at the conclusion of the child's account of the events she claimed had occurred involving appellant. It could only convey to the child and to anyone else who heard and saw the recording, including the jurors, that the interviewer believed the child's account – hence, the interviewer's conclusion that "B.G. broke the rules."

The state's attempts to characterize this statement as something other than a comment on the child's believability and to somehow place it in a different context are of no avail. Indeed, the context in which the comment was made emphasizes that it was an expression of the interviewer's opinion as to the child's truthfulness. The comment was made after the interviewer told the child that the interviewer was proud of her, that she was not in trouble, that she had done nothing wrong, and that none of this was her fault. After telling the child "B.G. broke the rules," the interviewer went on to tell her that nobody gets to touch her privates or make her touch theirs. The interviewer then reiterated, "I'm really, really proud of you," and added, "It takes a very brave girl to tell

about what happened.” State’s Exhibit 1. The only conclusion that can be drawn from the interviewer’s entire statement is that she was telling the child she believed her. All of the interviewer’s comments, including the comment that appellant “broke the rules,” conveyed her opinion that she believed the child. The entire passage and the specific comment that “B.G. broke the rules” constitute improper bolstering of the child by expressing an opinion as to her credibility.

The state attempts an end run on the prohibition of such statements by arguing this statement was made to the child, not to the jury. This argument is also disingenuous. That the improper comment was made directly to the child and not to the jury from the witness stand does not diminish the impact of the jury’s hearing the comment and does not circumvent the prohibition on such improper expressions of opinion as to the child’s believability. Indeed, the Supreme Court recognized this fact in *Jennings*. There, the improper expressions of opinion by a forensic interviewer as to three children’s believability were not from the lips of the interviewer on the witness stand. Instead, they were contained in the interviewer’s written reports introduced into evidence. *See Jennings*, 394 S.C. at 477, 479-80, 716 S.E.2d at 93, 94-95. The Supreme Court found the statements in the written reports were improper vouching and their admission was prejudicial, not harmless, error. *See id.*, 394 S.C. at 480, 716 S.E.2d at 94-95.

In *Jennings*, the Court did not draw any distinction based on the statements not having been made directly to the jury by the interviewer from the witness stand. The Court found admission of the statements prejudicial because the credibility of the children was the most critical determination to be made by the jury in the case. *See id.*, 394 S.C. at 480, 716 S.E.2d at 95. *Jennings* demonstrates that the Supreme Court

recognizes the resulting prejudice from admission of such improper vouching *in any form*, because the expression of the interviewer's opinion as to the child's believability impacts the jury's consideration of the critical credibility determination. *Cf. McKerley*, 397 S.C. at 463-64, 725 S.E.2d at 141 (Court of Appeals rejected state's attempt to distinguish between in-court and out-of-court statements that impermissibly bolster the child's credibility). Here, contrary to the state's argument, the fact that the interviewer's comment was made to the child during the interview and not to the jury from the witness stand does not negate the improper bolstering effect of the statement and does not negate the prejudicial effect of the improper comment on the child's credibility.

The state also contends the offending comment in this case is not akin to the recommendation in *Chavis* that the complaining witness not be around the defendant for any reason. The state further contends the comment was about people breaking the rules when they touch someone's private parts. To the contrary, this statement was not a generic statement about the conduct of people in general. It was *specific* to *this defendant* and it affirmatively stated a *definite conclusion* as to his conduct: "B.G. broke the rules." Unlike the recommendation in *Chavis* not to be around the defendant, this interviewer's comment was a direct comment on appellant's alleged conduct and a clear affirmation that the interviewer believed the child's account. Even more so than the recommendation in *Chavis*, this direct comment on appellant's alleged conduct can only be interpreted as a statement that the interviewer believed the child. *Cf. Chavis*, 412 S.C. at 108-09, 771 S.E.2d at 340.

The state argues the interviewer's comment is not within the categories of improper comments listed in *Kromah*. It appears the state would limit the applicability of

the prohibition of improper vouching to those instances in which the interviewer uses the descriptive term “compelling” in describing a child’s account, as in *Kromah* and *Jennings*. See *Kromah*, 401 S.C. at 359, 737 S.E.2d at 500 (addressing interviewer’s reference to a “compelling” finding); *Jennings*, 394 S.C. at 480, 716 S.E.2d at 94 (addressing interviewer’s reference to “compelling” disclosures). But our appellate courts have not limited the prohibition of improper vouching to any specific verbiage. Rather, as *Chavis* demonstrates, the prohibition applies to *any comment* that conveys to the jury the interviewer’s opinion as to the child’s truthfulness. See *Chavis*, 412 S.C. at 108-09, 771 S.E.2d at 340.

Finally, the state argues that the comment was not improper because it was made for the child’s benefit and was meant to make the child feel safe. This argument is meritless. The inadmissibility of improper bolstering evidence does not turn on the interviewer’s motives in making the comment. The admissibility of the evidence must be evaluated based on its *substance and import* and its *prejudicial effect*. Here, the comment “B.G. broke the rules” could only convey to the jury that the interviewer believed the child’s allegations concerning appellant’s conduct. Moreover, its prejudicial effect was substantial. There was no physical evidence corroborating the child’s allegations. There was a significant delay in her making the allegations. The child’s accounts were internally inconsistent. As to one alleged incident, the child’s account was contradicted by her own family members that were present. Other witnesses undermined her account with respect to other alleged incidents, giving testimony that appellant was elsewhere when the incidents were alleged to have occurred. With so many weaknesses in the state’s case and with the verdict depending solely on the jury’s assessment of the

child's believability, the interviewer's comment vouching for the child's credibility and essentially conveying to the jury her belief in the child's account cannot be deemed harmless. This Court should reverse the admission of the video containing this impermissible, prejudicial bolstering comment and grant appellant a new trial.

II. THE TRIAL COURT ERRED IN QUALIFYING THE CHILD'S COUNSELOR AS AN EXPERT AND IN ADMITTING THE COUNSELOR'S TESTIMONY.

Appellant challenges the qualification of the child's counselor as an expert in "child sexual trauma" and challenges the admission of the counselor's testimony on multiple grounds.

A. Improper bolstering in answer to question about coaching.

One of appellant's arguments under this issue is the improper bolstering of the child's credibility in response to a question by the solicitor concerning whether the child had been coached. Although the defense objected when the solicitor asked the question and the court overruled the objection, the state contends the issue is not preserved because the defense did not renew the objection during the witness's answer explaining why she did not believe the child had been coached. This argument is spurious. All that is required to preserve an issue for appellate review is that the issue be fairly raised to and ruled upon by the trial court. *See State v. Oxner*, 391 S.C. 132, 134, 705 S.E.2d 51, 52 (2011); *State v. Brannon*, 388 S.C. 498, 502, 697 S.E.2d 593, 595-96 (2010); *State v. Taylor*, 338 S.C. 624, 626 n.1, 527 S.E.2d 395, 396 n.1 (Ct. App. 2000). Once an objection has been made to the admission of evidence, no further reservation of rights concerning the objection is required. *See* Rule 17, S.C.R.Crim.P. Indeed, the rules prohibit further argument after the court's ruling has been pronounced. *See* Rule 18(a), S.C.R.Crim.P.

Here, the defense had articulated multiple objections to the testimony of this witness, including that her testimony was improper bolstering, that the witness was going to explain the child's testimony piece by piece, and that the witness should not be able to get into statements the child had made. R. p. 97, lines 14-22. The court overruled the defense objections and allowed the witness to testify. R. p. 101, lines 24-25. When the witness was asked about coaching, the defense interposed essentially the same objections, arguing the witness could not render an opinion on that subject and it was a jury question. R. p. 112, lines 19-22. When the court overruled the objection, the witness proceeded to answer the question about coaching by explaining that the mother had not been present when the counselor met with the child. The witness testified that the child's account, given verbally and by drawing pictures, was "very detailed" and "very consistent." Because the objection had been overruled, it was not incumbent upon the defense to further object to the answer given by the witness.

In addressing the merits of this issue, the state argues the testimony that the child's account was "very detailed" and "very consistent" is not problematic in this case because those terms were not used in the context of explaining the witness's belief that the child's statement was "compelling for sexual abuse." *Cf. McKerley*, 397 S.C. at 463, 725 S.E.2d at 141. On the contrary, as in *McKerley*, the purpose of the witness's testimony about detail and consistency was to bolster the child's credibility in the eyes of the jury. Whether explaining why the witness found the child's account to be compelling or explaining why the witness believed the child had not been coached, the impact is the same: the testimony improperly invades the province of the jury to make credibility determinations and impermissibly vouches for the child's truthfulness.

B. Improper qualification as expert and additional improper bolstering.

In response to appellant's argument that the witness was improperly qualified as an expert, the state addresses this state's and other states' precedents that allow expert testimony on the behavior of sexual assault victims. However, the state's argument sidesteps the fundamental problem with the qualification of this particular witness as such an expert. The crux of the issue in this case is that the individual who was allowed to testify as an expert was the child's own counselor and her testimony exceeded the parameters of what is allowed with respect to behavioral evidence in sexual abuse cases. *See State v. Anderson*, 413 S.C. 212, 218-19, 776 S.E.2d 76, 79 (2015); *State v. Brown*, 411 S.C. 332, 343-45, 768 S.E.2d 246, 251-53 (Ct. App. 2015).

This witness had been seeing the child *as her counselor* since May 2013, and she *was still seeing the child* as of the January 2015 trial of this charge. R. pp. 108, 117. Indeed, she had seen the child the Friday before the start of trial. R. p. 118. Her testimony was not limited to a discussion of the behaviors exhibited by child victims of sexual abuse in general. Her testimony was specific to the behaviors of *this particular child*. *Cf. Brown*, 411 S.C. at 344-45, 768 S.E.2d at 252-53 (upholding qualification of witness as expert on "child abuse dynamics and delayed disclosures" where witness "never interviewed the victims and had no knowledge of the facts of the case beyond her discussions with the solicitor's office prior to trial" and "never commented – directly or indirectly – about the credibility of the victims' allegations or testimony").

Although the state tries to minimize the comments of the Supreme Court in *Anderson* concerning calling as an expert a person who was personally involved with the child, the discussion in *Anderson* is important, because the very circumstance

contemplated by *Anderson* occurred here. The *Anderson* Court discouraged using an individual who personally examined the child because of the risk that such an individual will vouch for the child's credibility. See *Anderson*, 413 S.C. at 218-19, 776 S.E.2d at 79. Contrary to the state's conclusory assertion that no such vouching occurred in this case, the testimony of the child's counselor who was qualified as an expert witness (addressed in detail in the principal brief at pages 10-12) did vouch for the child's credibility. R. pp. 108-18. As in *Anderson*, the counselor specifically addressed the characteristics displayed by *this child*, not just child victims of sexual abuse in general. See *id.*, 413 S.C. at 219, 776 S.E.2d at 79. Moreover, she referenced the account of the alleged incidents given by *this child*. Indeed, she even described the specifics of the child's statements and testified concerning the "very detailed" and "very consistent" nature of the child's statements. The qualification of this witness as an expert and the admission of her improper bolstering testimony is reversible error.

C. Non-compliance with S.C. Code Ann. § 17-23-175.

Appellant also challenges the admissibility of the testimony of this witness under S.C. Code Ann. § 17-23-175. The state contends this issue is not preserved because the defense did not ask the court to conduct the analysis required by Section 17-23-175(F). No such request was necessary. The defense objected to the admission of the witness's testimony concerning statements the child made during unrecorded counseling sessions and specifically invoked the statute as the basis for its objection. Once the defense invoked the statute, the responsibility to conduct the statutorily-mandated analysis rested upon the trial court. Nothing further was required of the defense to preserve the issue raised on appeal.

The state further contends the issue is not preserved, arguing the defense did not object to the specific testimony of the witness concerning the child's statements. To the contrary, as noted in greater detail in the discussion of Issue II, A, *supra* at 6-7, the defense did object to such testimony, both before the witness testified and again when the solicitor asked the question that elicited the testimony concerning the child's statements. R. pp. 97, 112-13. The objections were raised and ruled upon, and the issue is preserved.

Finally, the state contends the child's drawings were tantamount to a recording of her statements. This argument is baseless. The witness's own testimony makes clear that the drawings were made in conjunction with the child's verbal statements. The drawings themselves are no substitute for an audio and visual recording of the counseling sessions in which the child's statements (both verbal and pictorial) were elicited. The "electronically unrecorded statement" of this child "made to a professional in [her] professional capacity" should not have been admitted without conducting the analysis mandated by Section 17-23-175(F).

III. THE TRIAL COURT ERRED IN ALLOWING REBUTTAL TESTIMONY, WHICH WAS NOT RESPONSIVE TO ANY EVIDENCE INTRODUCED BY THE DEFENSE AND WHICH WAS IMPROPER CHARACTER EVIDENCE.

Appellant challenges the court's ruling allowing the child's former teacher to testify as a rebuttal witness. The state responds with an argument that the defense somehow opened the door to this witness's testimony in rebuttal, but the state does not specify how the character evidence elicited from the teacher rebutted the particular testimony given by appellant's father. The state's failure to do so is for good reason: the testimony allowed in rebuttal was simply not responsive to the evidence presented by the defense and therefore was not proper rebuttal.

The testimony of the teacher was ostensibly to rebut testimony that the child's mother had left her alone in a hotel room and additional testimony implying that the mother may have stolen things or lied about certain matters. R. p. 287. The only evidence that would have been responsive to this testimony and proper rebuttal would have been evidence that the mother had not left the child alone and had not stolen or lied. The solicitor's stated purpose for offering the teacher's testimony was to show the mother was a good mother and took excellent care of the child. R. p. 287. But there had been no testimony to the contrary to make this testimony proper rebuttal evidence. The state's purpose was to do what the rules of evidence prohibit – to introduce impermissible character evidence where the particular traits of character had not been put in issue. *See* Rules 404(a)(2), 404(a)(3), and 608(a), SCRE. For the reasons set forth in the principal brief, this improper character evidence was both inadmissible and prejudicial.

IV. THE TRIAL COURT ERRED IN ALLOWING TESTIMONY OF THE CHILD'S MOTHER THAT EXCEEDED THE LIMITATION ON ADMISSION OF OUT-OF-COURT STATEMENTS OF ALLEGED VICTIMS OF SEXUAL ASSAULT, EXCEPT AS TO TIME AND PLACE.

Appellant relies on the argument of this issue in his principal brief. As stated therein, the admission of the mother's testimony concerning statements the child made to her exceeded the exception for hearsay as to time and place. Her testimony was impermissibly premised on what the child explained to her. It was improper corroborative evidence, and its admission was reversible error.

The state attempts to contradict the assertion in appellant's principal brief that there was no corroborative evidence tending to establish that an incident occurred in a bedroom. Appellant's assertion is correct. The child's reference to an incident "under the covers" is not *corroborative* evidence. Moreover, the child testified twice during

cross-examination that she could not remember where a fourth incident occurred. R. p. 88, lines 15-16, 21-25. She specifically denied telling anyone there was an incident in a bedroom. R. p. 88, lines 17-20. Under these circumstances, for the mother to be allowed to testify concerning the child's statement about this alleged fourth incident and to further testify that, based on what the child explained to her, she remembered the occasion the child described, cannot be deemed harmless.

V. APPELLANT IS ENTITLED TO A NEW TRIAL BASED ON CUMULATIVE PREJUDICE FROM THE MULTIPLE ERRORS COMMITTED BY THE TRIAL COURT AND THE RESULTING DENIAL OF A FAIR TRIAL.

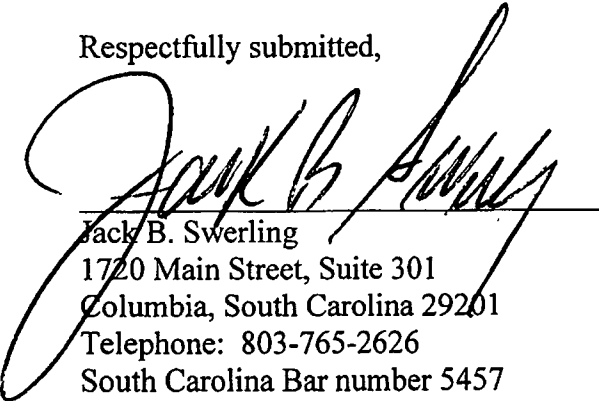
The state claims the cumulative prejudice argument is not preserved, citing the Court of Appeals decision in *State v. Beekman*, 405 S.C. 225, 746 S.E.2d 483 (Ct. App. 2013), for the proposition that cumulative error is not preserved where the defendant did not specifically raise the doctrine to the trial court or argue he was entitled to a new trial based upon errors made during the trial. Appellant disputes that *Beekman* stands for the sweeping proposition the state asserts, and the South Carolina Supreme Court has not announced such a rule of preservation as to a claim of cumulative prejudice from errors in a criminal trial. In fact, *Beekman* relied upon a *dissenting* opinion of a Court of Appeals judge in a case in which both the Court of Appeals majority and the Supreme Court found reversible error and further relied upon a Court of Appeals decision addressing a claim that the cumulative effect of improper jury charges warranted a new trial in a *civil* case. See *Beekman*, 405 S.C. at 236-237, 746 S.E.2d at 490, citing *State v. Covert*, 368 S.C. 188, 214, 628 S.E.2d 482, 496 (Ct. App. 2006) (Goolsby, J., dissenting), *majority aff'd as modified*, 382 S.C. 205, 675 S.E.2d 740 (2009), and *Wells v. Halyard*, 341 S.C. 234, 240, 533 S.E.2d 341, 344 (Ct. App. 2000). Appellant submits his claim of cumulative prejudice is preserved by the objections made throughout the trial. Each

individual error was properly preserved at the time it arose, and trial counsel renewed its objections made throughout the trial at the close of the evidence. R. p. 293. Appellant's cumulative prejudice argument is appropriately before the appellate court. If this Court finds the trial court's multiple errors were harmless standing alone, it should review the prejudice resulting from those errors in combination and find that the cumulative prejudice affected the outcome and denied appellant a fair trial. *See* U.S. Const. amends. V, XIV; S.C. Const. art. I, § 3.

CONCLUSION

For the foregoing reasons and the additional reasons set forth in appellant's principal brief, this Court should reverse appellant's conviction and grant him a new trial.

Respectfully submitted,



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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
General Sessions Court
William H. Seals, Jr., Circuit Court Judge

Case No. 2013-GS-21-01353
Appellate Case No. 2015-000235

The State,

Respondent,

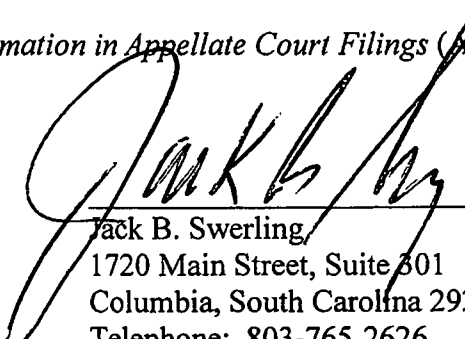
v.

Bryant Christopher Gurley,

Appellant.

CERTIFICATE OF COUNSEL

Counsel hereby certifies that the final brief and final reply brief of appellant comply with Rule 211(b) of the South Carolina Appellate Court Rules. Counsel further certifies that the final brief and final reply brief of appellant comply with the Order of the Supreme Court of South Carolina, *Re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings* (April 15, 2014).



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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Bryant Christopher Gurley, Appellant.

Appellate Case No. 2015-000235

Appeal From Florence County
William H. Seals, Jr., Circuit Court Judge

Unpublished Opinion No. 2017-UP-342
Heard May 3, 2017 – Filed August 9, 2017

REVERSED

Katherine Carruth Goode, of Winnsboro, and Jack B.
Swerling, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Jennifer Ellis Roberts, both of
Columbia; and Solicitor Edgar Lewis Clements, III, of
Florence, for Respondent.

PER CURIAM: Bryant Gurley appeals his conviction and sentence for committing a lewd act on a minor child.¹ Gurley argues the trial court erred by (1) admitting the video recording of Victim's forensic interview; (2) qualifying Victim's counselor as an expert and admitting her testimony; (3) admitting improper rebuttal and character evidence; and (4) allowing testimony by Victim's Mother that exceeded the time and place hearsay exception. Gurley also seeks a new trial based on the cumulative prejudice of these alleged errors. We reverse.

I.

Around 2008, Victim's Mother separated from her husband. She and her two daughters, one of whom is Victim, moved in with her friend Denise Gurley, who is married to Gurley's father and is Gurley's stepmother. Gurley lived with his mother but visited his father on holidays and weekends about once a month. Victim alleged that between 2010 and 2011, Gurley sexually assaulted her by putting his hands on her private parts. At the time of the alleged assaults, Victim was in first and second grade and Gurley was between fourteen and fifteen years old.

Victim testified Gurley assaulted her four times: "upstairs, . . . on the couch, . . . under the covers, [and] in the back of the car." On cross-examination, Victim stated there were only three incidents of abuse; she denied a fourth incident took place in a bedroom and denied telling anyone there was a fourth incident. Instead, Victim testified an incident occurred in the living room while Mother was getting her eyebrows arched in the adjacent kitchen. The "car" incident allegedly occurred when Mother took Victim, Sister, and Gurley to visit Victim's Grandmother in Lake City. Victim and Gurley rode in the back, while Sister sat up front. According to Victim, Mother went into Grandmother's home for ten to fifteen minutes, while everyone else stayed in the car. Victim said she never spoke to Grandmother. Victim testified that while Mother was in Grandmother's home, Gurley touched her private parts.

As to the "upstairs" incident, Victim testified this incident took place in the music room of the Gurley home during a family get-together. Victim testified Gurley stopped touching her because a friend came looking for her, but Victim could not identify the friend. Victim testified she disclosed these incidents to Mother one morning before school.

¹ Now classified as criminal sexual conduct with a minor in the third degree. S.C. Code Ann. § 16-3-655(C) (2015).

Mother confirmed Victim's disclosure and testified she once saw Victim and Gurley go into a bedroom while she was having her eyebrows arched in the kitchen by Gurley's father. As to the car incident, Mother, Grandmother, and Sister testified everyone got out of the car and went into Grandmother's home. Grandmother added that everyone stayed at her house about an hour. Grandmother and Sister both testified that when everyone was getting ready to leave, Victim became upset because she did not want to ride in the back seat, although she did not say why. Sister also testified she did not see anything happen in the back seat and could not recall any other time when Victim cried while around Gurley.

The State also called Kathy Crawford, a licensed professional counselor. Crawford began counseling Victim in May of 2013 and was still counseling her at the time of trial. Over Gurley's objection, the trial court qualified Crawford as an expert in child sexual trauma.

Crawford testified about child-sexual-abuse indicators and disclosure by sexual assault victims. She stated Victim told her about three incidents of abuse. During Crawford's testimony, the State asked her about "coaching":

[State]: Ms. Crawford, have you ever worked with a child that's been coached?

[Crawford]: The times that I believe that I have worked with children that have been coached is usually when they are coached by the offender not to tell.

...

[State]: Okay. Did you see any evidence of coaching with [Victim]?

[Gurley]: Objection, Your Honor. She can't render an opinion as to that.

[The Court]: Overruled.

...

[Crawford]: All I can say is when I met with [Victim] and when she drew these pictures, we went back over and only

[Victim] and I were in the room. The mother was not in the room at all. And [Victim] was very detailed about the location of where it happened, and she was so detailed she even told me what pictures were on the walls, what clothes she wore the time that she was in the car.

[State]: All right.

[Crawford]: And she was consistent.

The State then proffered the testimony of Sally Williamson, the forensic interviewer who interviewed Victim, and played the video of Victim's forensic interview. Gurley objected to admission of the video because at the end of the interview, Williamson said, "[Gurley] broke the rules."² The State argued Williamson was "acting" and made the statement for Victim's benefit to make her feel safe. The trial court agreed and the video was played for the jury.

Gurley called numerous witnesses. Regarding the "upstairs" incident, which Victim stated took place in the music room, several of Gurley's family members and one of his pastors testified the Gurleys hosted an annual Fourth of July cookout at their home that was attended by fifty to seventy people. Gurley's father testified children were not allowed in the music room because it contained expensive equipment. There was also testimony that during the cookout, Gurley helped cook and hung out with the adults talking about sports as he was usually the oldest child in attendance.

As to the living room incident, Gurley's father, a master barber, testified he had arched Mother's eyebrows on several occasions, but never saw Victim and Gurley go into a bedroom alone.

² Williamson's remarks in full were:

Well, I am proud of you, [Victim]. I want you to know you are not in any kind of trouble at all, and you haven't done anything wrong at all. Okay? None of this is your fault. B.G. broke the rules. Nobody ever gets to touch your private parts or make you touch theirs. I'm really, really proud of you. It takes a very brave girl to tell about what happened.

The jury found Gurley guilty of lewd act on a minor child. The trial court sentenced him to eight years in prison.

II.

Gurley argues the trial court erred by admitting the video of Victim's forensic interview because Williamson's statement "[Gurley] broke the rules" constituted improper bolstering. We agree.

We review trial court rulings on the admissibility of evidence for abuse of discretion. *State v. Halcomb*, 382 S.C. 432, 443, 676 S.E.2d 149, 154 (Ct. App. 2009). It is well settled "that it is improper for a witness to give testimony as to his or her opinion about the credibility of a child victim in a sexual abuse matter." *State v. Hill*, 394 S.C. 280, 294, 715 S.E.2d 368, 376 (Ct. App. 2011). Because assessing witness credibility is "the exclusive province of the jury," one witness may not improperly bolster the testimony of another. *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012). If "there is no way to interpret [the witness]'s testimony other than as her opinion that the victim was telling the truth," the testimony is inadmissible. *Id.* at 465, 725 S.E.2d at 142.

State v. Kromah recognized the "undeniable . . . primary purpose for calling a 'forensic interviewer' as a witness is to lend credibility to the victim's allegations." 401 S.C. 340, 358, 737 S.E.2d 490, 499 (2013). In light of this reality, the court directed forensic interviewers to avoid five kinds of statements:

that the child was told to be truthful; a direct opinion as to a child's veracity or tendency to tell the truth; any statement that indirectly vouches for the child's believability, such as stating the interviewer has made a "compelling finding" of abuse; any statement to indicate to a jury that the interviewer believes the child's allegations in the current matter; or an opinion that the child's behavior indicated the child was telling the truth.

Id. at 360, 737 S.E.2d at 500. *Kromah* approved the following subjects: "the time, date, and circumstances of the interview; any personal observations regarding the child's behavior or demeanor; or a statement as to events that occurred within the personal knowledge of the interviewer." *Id.*

Williamson's statement that "[Gurley] broke the rules" does not fall within the subjects approved by *Kromah*. Nor are we persuaded by the State's argument Williamson was merely acting to put Victim at ease. Williamson made the challenged statement at the conclusion of the interview, after Victim had told her about the alleged assaults. Furthermore, Williamson's subjective intent in making the statement is immaterial. The relevant inquiry is whether there is a way to interpret the statement other than as an expression of the witness' belief Victim told the truth. See *McKerley*, 397 S.C. at 465, 725 S.E.2d at 142 (finding that even though the forensic interviewer "never testified directly that she believed what the victim stated in her interviews or in her testimony . . . there [wa]s no way to interpret [the interviewer]'s testimony other than as her opinion that the victim was telling the truth"); *State v. Jennings*, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011) ("There is no other way to interpret the language used in the reports other than to mean the forensic interviewer believed the children were being truthful.").

We conclude there is no rational way to interpret Williamson's statement other than as her opinion Victim told the truth. If, as Williamson stated during the interview, the rules were "[n]obody ever gets to touch your private parts or make you touch theirs," then the only way Gurley could have "broke[n] the rules" is if Victim's allegations were true. Thus, this statement indirectly vouched for Victim's believability and suggested to the jury that Williamson believed Victim's allegations, both of which *Kromah* prohibits. See 401 S.C. at 360, 737 S.E.2d at 500.

The State argues that because Williamson's statement "[Gurley] broke the rules" occurred on video and was not made from the witness stand, the same dangers of improper vouching do not exist. We find this artificial distinction untenable. Our supreme court found as much in *Jennings* when it held a forensic interviewer's *written reports* improperly vouched for the victims' veracity. See 394 S.C. at 480, 716 S.E.2d at 94 ("We find the trial court abused its discretion in allowing the State to introduce the reports because they *allowed the forensic interviewer to improperly vouch for the children's veracity*." (emphasis added)). Moreover, in *McKerley*, this court declined to draw a similar distinction between live testimony and written reports. See 397 S.C. at 463–64, 725 S.E.2d at 141 ("The State argues *Jennings* is distinguishable from this case because the offending statement in *Jennings* was contained in a written report, whereas the statement here was introduced as live testimony. We find *Jennings* controlling and hold the trial court erred in admitting this portion of [the interviewer's] testimony."). Thus, Williamson's statement "[Gurley] broke the rules" was not innocuous simply because it appeared on video and was not uttered from the witness stand. Therefore, admission of the video was error.

III.

Gurley also challenges Crawford's response to the State's question, "Did you see any evidence of coaching with [Victim]?" In *State v. Hill*, this court considered a situation in which a forensic interviewer was qualified as an expert and testified about signs of coaching. 394 S.C. at 285–86, 715 S.E.2d at 371. This court found no reversible error in the admission of this testimony, stating,

[T]he forensic interviewer never addressed the veracity of Victim. He testified only that he saw the types of details in Victim's interview that he would look for to determine whether a child had been coached. He gave no opinion on whether Victim was being truthful, or even that Victim had not, in fact, been coached.

Id. at 295, 715 S.E.2d at 376–77 (footnote omitted).

Here, however, Crawford's testimony went further. The State's question, "Did you see any evidence of coaching with [Victim]," sought Crawford's opinion on whether Victim had been coached. Although Crawford did not expressly state whether Victim had been coached, her answer can only be interpreted as an opinion that Victim had not been coached because Crawford stated (1) only she and Victim were in the room; (2) Mother was never in the room; (3) Victim was very detailed; and (4) Victim was consistent.

This testimony that Victim had not been coached indirectly vouched for Victim's credibility and believability, violating the parameters set forth in *Kromah*. See 401 S.C. at 358–59, 737 S.E.2d at 500 ("Specifically, it is improper for a witness to testify as to his or her opinion about the credibility of a child victim in a sexual abuse matter.").

Crawford did, however, subtly suggest Gurley had coached Victim. Describing a picture Victim drew of one of the alleged incidents, Crawford noted it showed Gurley and Victim under a sheet and depicted Gurley saying to Victim "don't tell." Shortly thereafter, when the State asked Crawford about coaching, she responded that in her experience, coaching most often occurs when victims "are coached by the offender not to tell."

IV.

Having found error in admission of the video of the forensic interview and Crawford's testimony, we next address whether these errors were harmless. We will not set aside a conviction because of insubstantial errors not affecting the result. *Id.* at 360, 737 S.E.2d at 501. For an error to be harmless, we must determine beyond a reasonable doubt the error did not contribute to the verdict. *See State v. Tapp*, 398 S.C. 376, 389–90, 728 S.E.2d 468, 475 (2012). "The determination whether a bolstering error is harmless depends on whether the case turns on the credibility of the victim." *State v. Chavis*, 412 S.C. 101, 110, 771 S.E.2d 336, 341 (2015).

The State's evidence primarily consisted of Victim's testimony and other hearsay evidence of her account. There was no physical evidence, and Victim's versions of two of the three alleged incidents were contradicted by her own family members and several of Gurley's witnesses. Thus, because the case turned on Victim's credibility, we cannot say the evidentiary errors were harmless.

Accordingly, Gurley's conviction and sentence are reversed. In light of our decision, we decline to address the remaining issues. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (finding an appellate court need not address remaining issues on appeal when its determination of a prior issue is dispositive).

REVERSED.

GEATHERS, MCDONALD, and HILL, JJ., concur.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Florence County
 Hon. William H. Seals, Jr., Circuit Court Judge
 Appellate Case No. 2015-000235

The State,

Appellant,

v.

Bryant Christopher Gurley,

Respondent.

 PETITION FOR REHEARING *EN BANC*

On August 9, 2017, this Court issued an unpublished opinion in which it reversed Appellant Bryant Christopher Gurley's conviction for lewd act on a minor child. State v. Gurley, Op. No. 2017-UP-342 (S.C. Ct. App. filed August 9, 2017). In the opinion, this Court found the trial judge erred in admitting the video recording of Victim's forensic interview and in admitting testimony of an expert, which the Court found constituted impermissible vouching. Pursuant to Rule 221(a), SCACR, the State respectfully submits this Court misapprehended or overlooked significant facts and relevant case law, and petitions this Court for rehearing *en banc*.

ADMISSIBILITY OF FORENSIC VIDEO

In ruling on the admissibility of the forensic video, this Court conflates the concepts of admissibility of the entire video with whether a particular portion of the video should be redacted. Admissibility of the video is governed by section 17-23-175 of the South Carolina Code, which provides:

- (A) In a general sessions court proceeding or a delinquency proceeding in family court, an out-of-court statement of a child is **admissible** if:
- (1) the statement was given in response to questioning conducted during an investigative interview of the child;
 - (2) an audio and visual recording of the statement is preserved on film, videotape, or other electronic means, except as provided in subsection (F);
 - (3) the child testifies at the proceeding and is subject to cross-examination on the elements of the offense and the making of the out-of-court statement; and
 - (4) the court finds, in a hearing conducted outside the presence of the jury, that the totality of the circumstances surrounding the making of the statement provides particularized guarantees of trustworthiness.

S.C. Code Ann. § 17-23-175(A) (2014) (emphasis added). The statute provides factors for the trial court to consider in determining whether sufficient guarantees of trustworthiness are present:

- (B) In determining whether a statement possesses particularized guarantees of trustworthiness, the court may consider, but is not limited to, the following factors:
- (1) whether the statement was elicited by leading questions;
 - (2) whether the interviewer has been trained in conducting investigative interviews of children;
 - (3) whether the statement represents a detailed account of the alleged offense;
 - (4) whether the statement has internal coherence; and
 - (5) sworn testimony of any participant which may be determined as necessary by the court.

S.C. Code Ann. § 17-23-175(B) (2014). The trial court here considered the above factors and determined the video was admissible. Importantly, Appellant has not challenged on appeal the trial court's determination that the four factors provided in section 17-23-175(A) have been met. See State v. Black, 400 S.C. 10, 28, 732 S.E.2d 880, 890 (2012) (holding an unchallenged ruling, "right or wrong," becomes the law of the case and will not be considered by the appellate court);

State v. Fripp, 396 S.C. 434, 441, 721 S.E.2d 465, 468 (Ct. App. 2012) (stating the appellant's failure to challenge the trial court's ruling in the appellate brief renders the unchallenged ruling the law of the case). The trial court's unchallenged finding that the video recording met the requirements of section 17-23-175, and therefore was **admissible**, is the law of the case.

Further, Appellant's only objection on appeal to the video recording centers around the inclusion of a single line of commentary by the forensic interviewer. The proper means for addressing Appellant's concerns was not for the trial court to declare the video inadmissible as asked by Appellant, but rather would have been to redact the objectionable commentary from the video and show the remaining video to the jury. At oral argument, all three members of this panel recognized the appropriate remedy was redaction. Every member of the panel indicated the video could have been redacted.

On multiple occasions this Court asked why the State did not redact this portion of the video. It is Appellant's burden to call the error to the trial court and to request an appropriate remedy. See e.g., I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 725 (2000) ("An appellate court may not, of course, *reverse* for any reason appearing in the record. The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments. . . . Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it considered all relevant facts, law, and arguments.")(Italics in original). Appellant never presented the trial court with the proper remedy for addressing his concern—redaction. Instead, he only offered the trial court the option of

admitting the video or suppressing the video as a whole. The admissibility is governed by section 17-23-175 and the trial court properly found the video met its requirements. The commentary objected to by Appellant did not impact any of the four requirements for admissibility. This Court in oral argument specifically recognized this fact. Even after recognizing redaction as the proper remedy, this Court did not find Appellant failed to properly preserve that issue.

The questions, and ultimate opinion by this Court, altered the burden placed on Appellant to raise an issue to the lower court and allow that court to rule on the issue in order to preserve it for review by this Court. Appellant **never** asked the trial court to address the issue of redaction. As a result, he never requested the one remedy which the trial court could have provided him, nor did he ever allow the trial court the opportunity to alleviate his concerns regarding the commentary by the forensic interviewer. See State v. Torrence, 305 S.C. 45, 66, 406 S.E.2d 315, 327 (1991) (eliminating *in favorem vitae* review in death penalty cases and holding: “A contemporaneous objection requirement enables trial judges to make reasoned decisions by appropriately developing issues by way of argument, both for or against any particular legal proposition. This, in turn, allows potential errors to be prevented or cured.”); Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (“ ‘Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review.’ ” (quoting Queen’s Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006))); State v. Morgan, 282 S.C. 409, 412, 319 S.E.2d 335, 337 (1984) (“Inasmuch as the trial judge had no opportunity to pass upon the issue, the question will not be considered on appeal.”). Accordingly, Appellant cannot now complain regarding the admissibility of the video when he failed to

request the complained-of comment be redacted and its inclusion did not impact the trial court's determination under section 17-23-175 that the video was admissible.

Additionally, this Court misapprehended the State's arguments regarding the comments made at the end of the forensic video. The State did not maintain the forensic interviewer was "acting" in the sense of putting on a play or a stage performance. The State explained:

And as far as B.G. broke the rules, I mean I think given the totality of the circumstances and the fact that she was in that room and the interviewer needed to make the child feel safe, needed to make the child feel as if she could say whatever she wanted to and that it would be okay, and she told her the rules are you have to tell the truth, I think that she was **acting**, you know, **as she should and would in any other circumstance, just like this.**

(R. 138, 3–10). A clear reading of the statement indicates the solicitor argued the forensic interviewer was just behaving as she should or treating the child as she should, not auditioning for the theater. This Court correctly cited State v. McKerley, 397 S.C. 461, 465, 725 S.E.2d 139, 142 (Ct. App. 2012), for the proposition: "If 'there is no way to interpret [the witness]'s testimony other than as her opinion that the victim was telling the truth,' the testimony is inadmissible." However, as the State has continuously argued and this Court has overlooked in its decision in this case, there is another way to interpret the testimony. Indeed, it is clear the trial judge did interpret it another way. The State's argument all along has been the comment was made to help the child feel safe and comfortable, and this is established in the State's argument to the trial court and this Court in its Final Brief.¹ The trial court clearly did not believe the forensic interviewer was vouching for the victim and, instead, interpreted the comment as merely a calming or reassuring comment. This Court overlooked this reasonable interpretation and, instead, focused solely on the one interpretation which would lead to the comment being considered impermissible vouching or bolstering.

¹ The State, of course, incorporates by reference all arguments raised in its Final Brief of Respondent.

The State submits this Court improperly found the comment at issue rendered the video inadmissible. Admissibility of the video as a whole is governed by section 17-23-175, and Appellant has not challenged the trial court's findings that the video met the four requirements of that section for admissibility. This Court overlooked the requirement and burden for Appellant to ask for redaction of the specific comment if it is considered improper. Even though during oral argument every member of the panel indicated redaction to be the proper remedy, this Court did not find Appellant should have asked to redact the comment and instead impermissibly placed the burden on the State to redact the comment. The effect of this Court's opinion is the video potentially will not be available at all on remand for a new trial, when the appropriate remedy is to redact only the allegedly improper comment. This Court should rehear Appellant's Issue 1, find the video was correctly determined to be admissible under section 17-23-175, find redaction would have been the proper remedy but Appellant failed to request redaction, and affirm the trial court's decision.²

COACHING

This Court also overlooked or misapprehended the relevant testimony from the Record regarding Appellant's Issue 2 on coaching. This Court also improperly distinguished State v. Hill, 394 S.C. 280, 715 S.E.2d 368 (Ct. App. 2011), in finding Crawford's testimony impermissible. Finally, even though Appellant never objected to the testimony, this Court seems to rely on comments from Crawford regarding the fact coaching is usually performed by the abuser to support its conclusion the testimony complained of on appeal was error.

² Even if this Court believes the case should be reversed as to Issue 2, which will be discussed below, the State asks this Court to remove the discussion of Issue 1 from the opinion, allow the case to be remanded for a new trial in which the proper remedy would be to allow Appellant to ask for redaction of the comments rather than suppression of the video as it stands in this Court's current opinion.

In Hill, as explained by this Court in its opinion, the Court considered a similar argument that improper testimony was admitted regarding coaching. Specifically, this Court explained the argument in Hill:

Hill argues that the State was wrongly permitted to ask the expert about the red flags he looked for to indicate a child was coached in the offered testimony, and that one of the things he looked for in an un-coached, truthful child was detailed account. **He contends, upon the expert answering the question so as to indicate that he did see the details in the interview with Victim, the jury was clearly informed the expert believed the child was uncoached and truthful.** Under these circumstances, Hill asserts the trial judge erred in allowing the State to offer expert testimony that could be construed as indicating the expert's opinion was that the child witness was truthful and had not been coached.

Id. at 294, 715 S.E.2d at 376 (emphasis added). In finding the testimony was properly admitted, this Court explained:

[T]he forensic interviewer never addressed the veracity of Victim. He testified only that **he saw the types of details** in Victim's interview that he would look for to determine whether a child had been coached. He gave no opinion on whether Victim was being truthful, or even that Victim had not, in fact, been coached.

Id. at 295, 715 S.E.2d at 376–77 (footnote omitted and emphasis added). The same type of statement occurred in this case and this Court overlooked the clear holding of Hill in finding error in the admission of Crawford's testimony.

This Court distinguished Hill by finding the State asked for an opinion from Crawford on whether Victim had been coached. This Court overlooked or misapprehended the response from Crawford. Even if the question was not the best one the State could have asked, the answer certainly did not provide for vouching or bolstering of Victim because Crawford offered no opinion. When asked: "Did you see any evidence of coaching with Victim?" Crawford responded:

All I can say is that when I met with Victim and when she drew these pictures, we went back over and only Victim and I were in the room. The mother was not in the room at all. And Victim was very detailed about the location of where it happened, and she was so detailed she even told me what pictures were on the walls, what clothes she wore the time that she was in the car.

....

And she was consistent.

(R.113) (emphasis added). Crawford's response makes it clear she could not give an opinion regarding whether Victim was coached. Instead, all she provided were personal observations and factual information, which was not in the form of an opinion. She indicated who was in the room and who was not in the room—personal observations and statements of a fact. She indicated the child was detailed about the location and could describe pictures on the wall and clothes that she wore—again not an opinion about the veracity of the child but merely personal observations and statements of what Crawford was told by Victim. Crawford, just as in Hill, “gave no opinion on whether Victim was being truthful, or even that Victim had not, in fact, been coached.” Crawford merely related to the jury what she observed and what she was told as “[a]ll I can say,” and then properly allowed the jury to reach the conclusion on whether the child was coached.

Further, this Court overlooked prior, un-objected to testimony by Crawford which rendered any error harmless. This Court found four main comments by Crawford forced its conclusion that her answer can only be interpreted as an opinion that the Victim had not been coached. Two of the four, the fact she and Victim were alone in the room and the fact the mother was not in the room, were previously discussed without objection while Crawford discussed the pictures drawn by Victim. Crawford was specifically asked whether the mother was in the room with her and Victim when the pictures were drawn and Crawford responded:

“Oh, no. No, ma’am” without objection. (R.110-111). Additionally, Crawford indicated only she and Victim were in the room discussing the abuse for all but the first session when the mother was present to make the child comfortable. (R.111). In addition, Crawford began discussing the incidents relayed to her by Victim and specifically indicated Victim “was very detailed about the room that it occurred in.” (R.113). Appellant did not raise any objection to this testimony. This comment is remarkably similar to the third comment relied upon by this Court to find error in Crawford’s testimony, and is again admitted without objection. Finally, the fourth statement this Court found error in was the fact Victim was consistent. However, this exact statement came in without objection from Appellant during Crawford’s testimony. Crawford testified: “she was very consistent with that.” (R.113). As a result, even if the statements could be interpreted as an opinion regarding Victim not being coached, all four of the statements were admitted without objection by Appellant. See State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993) (any error in admission of evidence cumulative to other un-objected to evidence is harmless); State v. Blackburn, 271 S.C. 324, 247 S.E.2d 443 (1978) (stating that admission of improper evidence is harmless when it is cumulative to other, unobjected-to testimony). Any error would be entirely harmless as the jury would have the exact same information to consider even if the trial court had prohibited the response to the question on coaching. See State v. Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) (Error is considered harmless where it could not reasonably have affected the outcome of the trial.); State v. Pagan, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006) (“Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result. Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained.”); State v. Watts, 321 S.C. 158, 467 S.E.2d 272 (Ct. App.

1996) (stating that error is harmless beyond a reasonable doubt if it does not contribute to the verdict).

Finally, this Court seems to take issue with Crawford's testimony that children are usually coached by the offender not to tell. Appellant never objected during Crawford's discussion of the contents of the pictures drawn by Victim. After Crawford was asked whether she had worked with a child who has been coached, she responded: "The times that I believe that I have worked with children that have been coached is usually when they are coached by the offender not to tell." Appellant never objected to the question or the answer. This Court overlooked the fact Appellant found no error in these statements and should not have relied on them to support its conclusion Crawford's testimony was in error.

Accordingly, this Court overlooked or misapprehended the relevant testimony from Crawford, as well as misapplied this Court's prior holding in Hill. Crawford, just as the expert in Hill, never offered an opinion. Instead, she offered observations and statements given to her by the Victim and allowed the jury to reach its own conclusions regarding whether the child was coached. Further, all four of the statements this Court relied on to find her testimony inadmissible were admitted without objection during other portions of Crawford's testimony so any error is entirely harmless. Finally, this Court incorrectly relied on Crawford's testimony regarding most victims being coached by the offender to find error when Appellant never found error in the statement and never objected. Therefore, this Court should grant rehearing of Appellant's Issue 2, find the testimony was not impermissible vouching, find the testimony consistent with the testimony in Hill, and affirm the trial court's decision to admit the testimony.

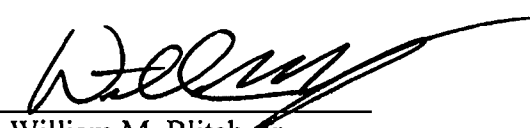
CONCLUSION

For all of the foregoing reasons, the State requests the Court either grant the petition for rehearing *en banc* or the panel grant the petition for rehearing. Further the State requests this Court affirm the trial court's determination the video of the forensic interviewer was properly admitted. Additionally, the State requests the trial court's determination regarding admitting Crawford's testimony be affirmed. In the alternative, if it is found Crawford's testimony was admitted in error, the State requests the final opinion remove discussion regarding the admissibility of the video or address the fact the proper remedy on retrial would be redaction of the offending comment and not exclusion of the video as a whole. Finally, the State requests Appellant's conviction and sentence be affirmed.³

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

August 29, 2017

³ As noted above, the State incorporates by reference all arguments made in the State's Final Brief of Respondent to the extent they are necessary to address these two or the other issues raised by Appellant.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Florence County
Hon. William H. Seals, Jr., Circuit Court Judge
Appellate Case No. 2015-000235

The State,

Appellant,

v.

Bryant Christopher Gurley,

Respondent.

PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Petition for Rehearing by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Jack B. Swerling, Esquire
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Columbia, South Carolina 29201

Katherine Carruth Goode, Esquire
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I further certify that all parties required by Rule to be served have been served.
This 29th day of August, 2017.



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
General Sessions Court
William H. Seals, Jr., Circuit Court Judge

Case No. 2013-GS-21-01353
Appellate Case No. 2015-000235

The State,

Respondent,

v.

Bryant Christopher Gurley,

Appellant.

RETURN TO PETITION FOR REHEARING *EN BANC*

Appellant, Bryant Christopher Gurley, respectfully submits this return to the petition of Respondent, the State of South Carolina, for rehearing, *en banc*, of the unpublished decision of a panel of the Court of Appeals filed August 9, 2017, Opinion No. 2017-UP-342. The Court of Appeals granted appellant leave to serve and file a return to the state's petition for rehearing *en banc* by October 9, 2017. The state's petition should be denied in all respects.

Appellant appealed his conviction for committing a lewd act on a child. He raised multiple issues on appeal. The Court of Appeals reversed the conviction, finding error in the admission of a video recording of a forensic interview of the complaining witness

(Issue 1), and finding error with respect to one aspect of the argument that the state erred in admitting the testimony of the child's counselor (Issue 2). The state seeks rehearing of the issues decided by the panel, and it further seeks to have the Court of Appeals rehear this matter *en banc*.

I. Rehearing *en banc* is not appropriate in this case.

This case was decided by a unanimous panel of the Court of Appeals, Judges Geathers, McDonald, and Hill. It was decided in an unpublished opinion, which has no precedential value both pursuant to the South Carolina Appellate Court Rules and by its own terms. *See* Rule 268(d)(2), SCACR; Opinion, p. 1. The extraordinary and disfavored remedy of rehearing *en banc* is not appropriate in this case.

The South Carolina Appellate Court Rules provide:

A hearing or rehearing *en banc* is not favored and ordinarily will not be ordered except (1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance.

See Rule 219(a), SCACR. In this case, neither of these criteria is met. First, the unpublished decision has no precedential weight, therefore there is no necessity for the full Court of Appeals to address the issues decided unanimously by the panel. An unpublished decision does not impact the uniformity of the Court's decisions, since it has no precedential value and may not be cited in any future case. *See* Rule 268(d)(2), SCACR. Moreover, contrary to the state's contentions, the grounds the state asserts for rehearing are consistent with and not contrary to any of the Court of Appeals' or the Supreme Court's precedents, as more fully discussed with respect to the substantive issues, below. Second, the proceedings do not involve a question of exceptional importance. To the contrary, as discussed below, the state seeks to stretch the rules of

error preservation and shift its own burden to the defendant, a position that has no support in the law and is contrary to principles of due process. Because the state's arguments do not fit within the narrowly drawn criteria for rehearing *en banc*, that aspect of the state's petition for rehearing should be denied.

II. Rehearing should be denied as to the video (Issue I).

Appellant contended and the Court held the video of an interview with the complaining witness was inadmissible because of a comment by the interviewer that was improper bolstering of the child's credibility. The state contends appellant's claim of error as to the admission of the video is unpreserved because appellant failed also to raise on appeal a claim of error as to the rulings on other objections the defense raised at trial with respect to the video, including objections that the requirements of S.C. Code Ann. § 17-23-175 were not satisfied. To the contrary, the objection that formed the basis for the appellate challenge to admission of the video was raised in the court below as an additional ground for exclusion of the video, apart from the court's evaluation of the statutory criteria, and it was argued separately by counsel. Both attorneys argued their positions on the admissibility or inadmissibility of the video under the statute. *See* R. p. 135, line 24 – p. 136, line 19 (defense's argument); R. p. 137, line 6 – p. 138, line 1 (state's argument). The defense also raised the *separate* and *distinct* objection that the video contained inadmissible bolstering testimony in the comment by the interviewer that "B.G. broke the rules." *See* R. p. 136, line 20 – p. 137, line 1. The court asked for argument by the state as to that objection. *See* R. p. 138, line 2. The state made its argument as to this aspect of the defense's objection. *See* R. p. 138, lines 3-23. The court agreed with the state's position as to this objection, stating, "I think so too." R. p.

138, line 24. This ruling was clearly preserved for appellate review, and the issue was squarely raised on appeal. The appellant's decision not to challenge the trial court's rulings on the other grounds of the defense objections at trial did not waive the objection to the offending, bolstering comment by the interviewer. That claim of error was properly preserved, and the unanimous panel of the Court correctly decided the issue on its merits.

The state next argues that, when the court overruled the defense's objection to the video based on the offending, bolstering comment by the interviewer, the burden rested on the defense to ask the court to redact that comment and allow the remainder of the video to be admitted, and by failing to do so, the defense somehow forfeited the right to appellate review of the trial court's ruling on its objection. This argument is baseless, for multiple reasons.

First, the burden of proof in a criminal prosecution rests on the state, not on the defense. U.S. Const. amend. XIV; *see Sandstrom v. Montana*, 442 U.S. 510, 520 (1979), *quoting In Re Winship*, 397 U.S. 358, 364 (1970); *State v. Belcher*, 385 S.C. 597, 608, 685 S.E.2d 802, 807-08 (2009). The state is required to present evidence to establish each and every element of the crime. *State v. Attardo*, 263 S.C. 546, 550, 211 S.E.2d 868, 870 (1975). Subject to exceptions not applicable here, the burden rests on the prosecution and never shifts. *Id.*, 263 S.C. at 551, 211 S.E.2d at 870. If the state offers a piece of evidence that is inadmissible, the proper remedy for the defense is to object to its admission and obtain a ruling by the trial judge, and nothing more is required to preserve the claim of error. *See State v. Oxner*, 391 S.C. 132, 134, 705 S.E.2d 51, 52 (2011); *State v. Brannon*, 388 S.C. 498, 502, 697 S.E.2d 593, 595-96 (2010); *Hubbard v. Rowe*, 192

S.C. 12, 19, 5 S.E.2d 187, 189 (1939); *State v. Taylor*, 338 S.C. 624, 626 n.1, 527 S.E.2d 395, 396 n.1 (Ct. App. 2000). It is *not* the defendant's responsibility to suggest to the court how to make the evidence admissible and thereby assist the state in meeting its burden of proof. No authorities of this state have ever so held, and this Court should reject the state's burden-shifting argument out of hand.

Second, in all trial proceedings, the burden rests on the proponent of evidence to establish the admissibility of the evidence it offers. *See, e.g., State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (party offering fungible items into evidence has burden of establishing complete chain of custody as far as practicable); *State v. Davis*, 371 S.C. 170, 178-79, 638 S.E.2d 57, 62 (2006) (burden of establishing facts which qualify a statement as an excited utterance rests with the proponent of the evidence); *Clark v. Cantrell*, 339 S.C. 369, 384-87, 529 S.E.2d 528, 536-38 (2000) (announcing four-part test proponent must meet before court will admit computer-generated animation as demonstrative evidence); *State v. Kinloch*, 338 S.C. 385, 388-89, 526 S.E.2d 705, 706-07 (2000) (party offering statement against penal interest by unavailable declarant to exculpate the accused must meet corroboration requirement and demonstrate statement was actually made for statement to be admissible); *Deep Keel, LLC v. Atlantic Private Equity Group, LLC*, 413 S.C. 58, 64-65, 773 S.E.2d 607, 610 (Ct.App. 2015) (proponent of evidence has burden to offer satisfactory foundation to authenticate the evidence). Neither this Court nor the South Carolina Supreme Court has adopted a rule that requires a defendant to seek redaction of inadmissible information contained in an exhibit offered by the state against him in his criminal prosecution.

Here, the state offered the video. If the admissibility of a portion of that video was in question, the burden rested upon the state, as its proponent, to suggest to the court that a redacted version of the video should be admitted rather than the full video, in order for the court to evaluate the admissibility of the redacted version and the merits of any defense objection to the redacted version. The rule of procedure the state now asks the Court to adopt is simply not part of this state's criminal and appellate procedure jurisprudence. Under the clear principles governing the burdens of proof and production of evidence, this Court should not adopt the rule the state now seeks.

On the merits of the issue, the state contends the Court misunderstood its explanation as to the interviewer's purpose in commenting that "B.G. broke the rules." Contrary to the state's argument, the Court did not interpret the interviewer as "acting" in the sense of performing for the child. Rather, the Court correctly found that the state's explanation as to the reason for her action – to ease the child's fears – did not alter the outcome of the ruling on the admissibility of the video containing the offending comment. Regardless of the interviewer's purpose or motivation, the expression of her belief that the child was telling the truth amounted to improper vouching for the child's credibility and rendered the video inadmissible. The Court correctly held there was no way to interpret the comment other than as the interviewer's opinion that the child was being truthful, in keeping with the controlling precedents. *See State v. Chavis*, 412 S.C. 101, 109, 771 S.E.2d 336, 340 (2015); *State v. Kromah*, 401 S.C. 340, 358-360, 737 S.E.2d 490, 499-501 (2013); *State v. Jennings*, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011); *State v. McKerley*, 397 S.C. 461, 464-65, 725 S.E.2d 139, 141-42 (Ct. App.

2012). The Court correctly reversed as to the admission of this improper bolstering evidence.

III. Rehearing should be denied as to the testimony about coaching (Issue II).

Appellant challenged the admission of testimony of a counselor as to whether there was evidence the complaining witness had been coached. The Court of Appeals correctly held the counselor's answer to the question was impermissible bolstering of the child's credibility, in violation of the parameters of *Kromah*. See *Kromah*, 401 S.C. at 358-59, 737 S.E.2d at 500; cf. *McKerley*, 397 S.C. at 463, 725 S.E.2d at 141.

The state claims the Court improperly distinguished *State v. Hill*, 394 S.C. 280, 715 S.E.2d 368 (Ct.App. 2011), *overruled on other grounds*, *State v. Stukes*, 416 S.C. 493, 787 S.E.2d 480 (2016). In *Hill*, the witness gave no opinion as to a child's having been coached. The Court correctly distinguished *Hill*, based on the state's specific question posed to the counselor as to whether the counselor saw evidence of coaching and the counselor's response pointing out the factual bases for her opinion that the child had not been coached. This distinction is important, and the Court correctly found the testimony elicited by this question was improper.

The state claims the answer to the question about coaching was cumulative to other passages of the witness's testimony as to the same factual details. To the contrary, the other testimony was not in the context of the counselor's giving an answer to having seen evidence of coaching. In the context of the prosecutor's question about coaching, the only way to view the witness's answer as to the factual observations she described was that, based on those observations, she believed the child had not been coached. The context of the question posed by the state about coaching sets the answer apart from the

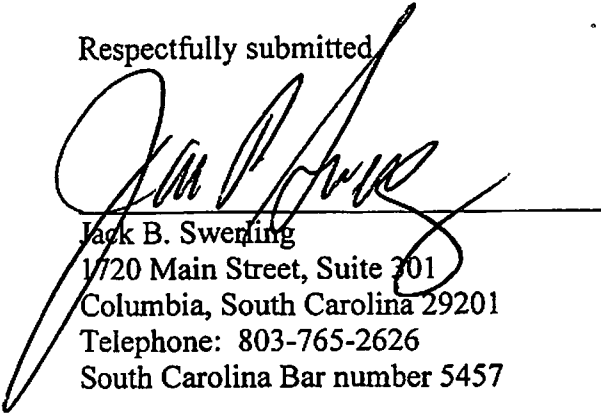
counselor's other testimony, and that testimony is not cumulative to the impermissible bolstering that resulted from the counselor's answer to the question about coaching.

The state further complains of the Court's reference to other testimony by the counselor to which the state claims there was not an objection. To the contrary, this testimony was elicited over multiple objections to the counselor's testimony. R. pp. 95-113. Moreover, the Court's reference to this testimony merely showed that other testimony supported the Court's conclusion the counselor suggested appellant had coached the child. This reference does not undermine the validity of the Court's analysis of the offending answer to the question about coaching, and the Court correctly reversed on the basis of the resulting impermissible bolstering of the child's credibility.

CONCLUSION

For all the reasons set forth above, and based on all the arguments and authorities cited in the final brief and reply brief of appellant, this Court correctly addressed the two issues it decided and correctly found reversible error as to each. No basis exists for the Court of Appeals to rehear this case, and no basis exists for rehearing *en banc*. The petition for rehearing filed by the state should be denied in every particular.

Respectfully submitted



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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
General Sessions Court
William H. Seals, Jr., Circuit Court Judge

Case No. 2013-GS-21-01353
Appellate Case No. 2015-000235

The State,

Respondent,

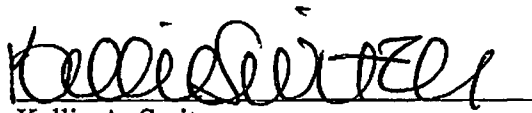
v.

Bryant Christopher Gurley,

Appellant.

PROOF OF SERVICE

I certify that I have served the Return to Petition for Rehearing *En Banc*, by mailing a copy, postage prepaid, to counsel for Respondent, Assistant Attorney General William M. Blich, Jr., Office of the Attorney General, P.O. Box 11549, Columbia, South Carolina 29211-1549, on October 9, 2017.



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
General Sessions Court
William H. Seals, Jr., Circuit Court Judge

Case No. 2013-GS-21-01353
Appellate Case No. 2015-000235

The State,

Respondent,

v.

Bryant Christopher Gurley,

Appellant.

PETITION FOR REHEARING

Pursuant to Rule 221 of the South Carolina Appellate Court Rules, appellant respectfully files this petition for rehearing of the decision of the Court of Appeals filed August 9, 2017, Opinion No. 2017-UP-342, and in support of this petition says as follows:

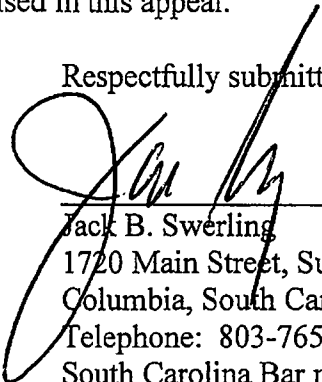
Appellant appealed his conviction for committing a lewd act on a child. He raised multiple issues on appeal, one of which (Issue 2) had multiple sub-parts. The Court of Appeals reversed the conviction, finding error in the admission of a video recording of a forensic interview of the complaining witness (Issue 1), and finding error with respect to one aspect of the argument that the state erred in qualifying the child's counselor as an

expert and in admitting the testimony of the counselor (Issue 2). The Court, however, did not reach all of appellant's claims of error contained in Issues 2, 3, 4, and 5.

It is expected that the state will seek rehearing in this Court and *certiorari* review in the South Carolina Supreme Court of the issues decided in appellant's favor in this appeal. In the event this Court or the Supreme Court should address those issues and reach a different conclusion than that reached in the Court's decision, appellant seeks to obtain a full review and determination of the remaining issues and supporting arguments asserted in his briefs in the Court of Appeals. To that end, appellant respectfully asks this Court to rehear its decision, address the remaining issues and arguments contained in the Final Brief of Appellant and Final Reply Brief of Appellant (both incorporated herein by reference), and reverse on those additional grounds.

For all the reasons set forth in the argument of Issues 2, 3, 4, and 5 of appellant's briefs, appellant respectfully asks this Court to rehear its decision, decide the remaining issues, and reverse on all the grounds raised in this appeal.

Respectfully submitted,



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Attorneys for Appellant

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
General Sessions Court
William H. Seals, Jr., Circuit Court Judge

Case No. 2013-GS-21-01353
Appellate Case No. 2015-000235

The State,

Respondent,

v.

Bryant Christopher Gurley,

Appellant.

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing, by mail, postage prepaid, to
Assistant Attorney General Jennifer Ellis Roberts, Office of the Attorney General, P.O.
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The South Carolina Court of Appeals

The State, Respondent,

v.

Bryant Christopher Gurley, Appellant.

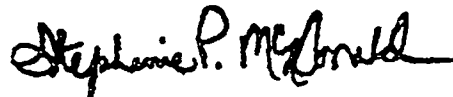
Appellate Case No. 2015-000235

ORDER

After careful consideration of the petitions for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petitions for rehearing are denied.



J.



J.



J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
Jack B. Swerling, Esquire
Katherine Carruth Goode, Esquire
Edgar Lewis Clements, III, Esquire

FILED

November 22, 2017

William M. Blitch, Jr., Esquire
The Honorable William H. Seals, Jr.