

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Abbeville County

Honorable R. Lawton McIntosh, Circuit Court Judge

RECEIVED

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

SHANE ALEXANDER WASHINGTON,

APPELLANT

APPELLATE CASE NO. 2016-000907

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

COURT’S EXHIBIT NO. 1 (DVD of Forensic Interview)
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STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)

CASE NO.: 2011-GS-01-0389

PLAINTIFF,)

-VS-)

SHANE ALEXANDER
WASHINGTON,)

DEFENDANT.)

TRANSCRIPT OF RECORD

APRIL 6-7, 2015
ABBEVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE R. LAWTON McINTOSH, JUDGE, AND A JURY

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

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1 TRIAL DAY 1-04/06/15

2 THE COURT: Mr. Sheek?

3 MR. SHEEK: Your Honor, I believe -- we can do it after
4 the break, if you want. But I believe Ms. Nelson wanted to
5 make a motion for a continuance which certainly would bear
6 upon picking a jury on the case.

7 MS. NELSON: Yes, sir. That's correct. Whenever --
8 whenever --

9 THE COURT: Let's go ahead and do it now. And that's
10 Washington?

11 MS. NELSON: Yes, sir, Your Honor. Yes, sir. Thank
12 you. There's a good bit of background on this case. Mr.
13 Washington -- Mr. Washington's is a case that I inherited
14 from my former boss, Charles Grose, when he left the Public
15 Defender's Office. I got it in August of 2012. I have
16 never actually had an opportunity to meet with Mr.
17 Washington. We had some phone calls when -- well, there
18 were several times that his wife called our office
19 throughout, just kind of checking up on the case. But when
20 Mr. Sheek indicated to me last fall that he was going to
21 call the case for trial I had a few conversations with Mr.
22 Washington then, but then he -- I never -- I didn't see him.
23 He didn't keep his appointments and just kind of dropped
24 off. So I have never laid eyes on him. I've never had a
25 chance to sit down and actually prepare a defense with him.

1 The case was on -- it was originally on the trial docket in
2 October. I didn't have complete discovery, so it was --
3 despite it being the age it was. So it was moved to
4 December. He -- I think there is an argument that he knew
5 that he was supposed to be in court in December. I had kind
6 of given Mr. Sheek and Judge Hocker, who was our judge that
7 term, I tried to give them the heads up back in October that
8 I was having trouble getting Mr. Washington to communicate
9 with me and that I, you know, felt like that was a problem.
10 I talked to Mr. Sheek about whether than trying him in his
11 absence doing a -- just doing bench warrant on Mr.
12 Washington, and talked to Judge Hocker about that as well.
13 And that's what happened in December when he didn't come to
14 court. The bench warrant was issued. He has not yet been
15 picked up on it. I think the Solicitor's Office has
16 enlisted some help from the SLED Fugitive Task Force to look
17 for him, but he has not been found yet. They tracked him
18 down to a tattoo parlor in Columbia and asked the Richland
19 -- and if I'm saying anything wrong, just correct me.

20 MR. SHEEK: Okay.

21 MS. NELSON: Asked the Richland County Sheriff to go
22 pick him up there. But apparently they arrived with cars
23 and uniforms and called out his name and he didn't ever come
24 back to the tattoo shop again after that.

25 He -- I don't -- I don't see how there is any argument

1 at all that he has notice that this case would be called
2 this week. I have not, as I said, had any contact with him
3 since fall, probably -- I believe it was sometime in
4 November would have been the last phone call that I had with
5 him. Mr. Sheek, during our non-jury term a couple -- two
6 weeks ago asked Judge Addy if he could call this case and
7 Judge Addy instructed Mr. Sheek to run something in the
8 legal section of the Anderson paper, because apparently the
9 Solicitor's Office had some information that he may have
10 been -- Mr. Washington may have been staying with somebody
11 in the Anderson area. I haven't found a single case that
12 says that sort of publication would operate as actual notice
13 to someone that their case is being called for trial.

14 THE COURT: Well, let me ask you this. Did he ever
15 give you a change of address status once he became your
16 client?

17 MS. NELSON: Ever?

18 THE COURT: Yeah.

19 MS. NELSON: He may have. Once he became mine instead
20 of Mr. Grose's I don't recall one, Your Honor.

21 THE COURT: Well, I mean, in other words, you had an
22 address where you could communicate with him to let him know
23 that the cases were coming up for trial, correct?

24 MS. NELSON: Yes, sir.

25 THE COURT: And on his bond does it tell him that if he

1 doesn't show up he'll be tried in his absence?

2 MR. SHEEK: It did, Your Honor. There's a rights and
3 instruction sheets that the Magistrate checks off and that's
4 one of the notifications.

5 THE COURT: And I assume that in the dates of November,
6 October last year, including this trial, you've written to
7 his last address to let him know that he's going to come up
8 for trial?

9 MS. NELSON: I did not for this trial, Your Honor,
10 because I didn't want to be in the position of --

11 THE COURT: You didn't?

12 MS. NELSON: -- of that being construed as me giving
13 him notice. I don't think that notice from the attorney is
14 what is called for. And I didn't have anywhere to get him.
15 I mean, he -- he clearly wasn't at the address that I had.
16 None of the phone numbers I have worked for him. The
17 Solicitor's Office made contact with him in December at a
18 phone number that they had gotten from his mother, which I
19 objected to and put on the record that they shouldn't have
20 been calling him. But I wasn't provided that phone number.
21 So I didn't feel like I had any way to give him notice for
22 April 6th, and I don't know of anyway anyone else could have
23 given him notice for April 6th.

24 THE COURT: Well, the problem is he's created his own
25 dilemma by not staying in touch and keeping everybody

1 advised where his address is. He's out on bond?

2 MS. NELSON: No, sir.

3 THE COURT: He was --

4 MS. NELSON: Oh, yes, sir. I'm sorry. Yes, sir. He's
5 been out on bond for some time.

6 THE COURT: What is his address in the bond?

7 MR. SHEEK: Your Honor, I'd have to look at the Clerk's
8 file to see what address is on the bond. What happened was,
9 Judge, he was bench warranted initially, but then it was
10 learned that he was actually incarcerated in Greenwood at
11 the time the bench warrant was issued here. So he contacted
12 his then attorney. That was cleared up. He was re-released
13 on bond. He had an address --

14 MS. NELSON: That was me at that time.

15 MR. SHEEK: I'm sorry. That was --

16 MS. NELSON: I was still -- that was me.

17 MR. SHEEK: Okay. So at that point he was re-released
18 on bond. Gave an address of 110 Dorchester Street in
19 Greenwood, South Carolina.

20 THE COURT: Is that the address you had for him?

21 MS. NELSON: Yes, sir, Your Honor. It is.

22 The other -- in addition to the element of notice and
23 that he has not been informed that the trial would proceed
24 in his absence if he wasn't here, I feel like --

25 THE COURT: The bond states that. The bond says -

1 MS. NELSON: Yes, sir. I'm --

2 THE COURT: So he does have that information.

3 MS. NELSON: But if you don't know when your trial is,
4 I don't know if that notice --

5 THE COURT: Well, if you run and stick your head under
6 a rock and nobody can notify you, find you where you are,
7 then you never -- then you'll just circumvent the whole
8 entire system which I'm not going to let him do. I'll be
9 glad to look at the bond. I'm -- my information is, I'm
10 going to go forward with his trial in his absence. I am
11 going to take it under advisement, too. I'll look at a
12 couple of things, but get ready to go. Okay?

13 MS. NELSON: Yes, sir. Can I tell you just a couple
14 more things?

15 THE COURT: Sure. Yes, ma'am.

16 MS. NELSON: And I know we're -- I'm taking up time.

17 THE COURT: No, no. That's okay. I'm not worried
18 about that. I thought you were done. That's okay.

19 MS. NELSON: I feel like I've created a problem in this
20 case as his representative, too, because I'm the one who
21 gave everybody the heads up that I was having trouble
22 getting in contact with him. Now, I know that would have
23 come out eventually anyway. I just don't know how he would
24 feel about the fact that I've done that. In addition to
25 that, I was put in the position -- when the Solicitor's

1 Office talked to him on the phone he apparently told -- Ms.
2 Chappell is the one who talked to him. He apparently told
3 her at one point that my lawyer is beeping in. And that
4 wasn't true. I wasn't beeping in. I don't even know what
5 number he was being talked to on. So then I was put in the
6 position of on the record having to say -- and I think they
7 believed I was calling him when I wasn't, at least until I
8 said I wasn't. But now I've been put in the position of
9 putting that on the record that he has told them an untruth
10 about contact with me. So I'm not even sure at this point
11 whether he would want me representing him because --

12 THE COURT: Well, I'm not going to speculate to his
13 state of mind. I hear you. But do you have anything else
14 you want to put on this matter?

15 MS. NELSON: One more thing. The only other thing I
16 want to tell you, and I just -- I don't like to put my
17 personal business in front of the Court, but I feel like for
18 his sake I need to tell you that my father went into the
19 hospital last Monday. My 74-year-old father. The only
20 people he has are me and my brother who lives about four
21 hours away from me. So this week has been filled with
22 conversations between my brother and me about what's going
23 to happen with my dad. He was moved into a nursing home on
24 Friday, which I think will be temporary. But I think it's
25 only fair for Mr. Washington's sake that the record reflect

1 that things I would have been doing to continue getting
2 ready for this trial were -- I have this distraction of --
3 and my father is still in the nursing home right now.

4 THE COURT: My mother is assisted living. I can
5 certainly empathize with you. I understand.

6 MS. NELSON: So I feel like in addition to being
7 hampered by not having him here to help me present a defense
8 there's just that issue I have going on in my personal life
9 that I feel like -- I hate to bring that out. And it's not
10 my desire to air that in the public courtroom. But I think
11 for fairness to Mr. Washington that that needs to be on the
12 record, Your Honor.

13 THE COURT: Thank you very much. May I see that bond?
14 We'll be in recess for about 10 minutes.

15 (Whereupon, a recess was held.)

16 THE COURT: Do you have your witness list and any voir
17 dire? Does everybody agree the strikes are 10 and five?

18 MR. SHEEK: Yes, sir.

19 MS. NELSON: Yes, sir, Your Honor.

20 THE COURT: Do you want an alternate?

21 MR. SHEEK: Yes, sir.

22 MS. NELSON: Yes, sir.

23 THE COURT: Okay. Let's do one alternate. Do you
24 think one would be sufficient?

25 MR. SHEEK: I believe so. Yes, sir.

1 MS. NELSON: Yes, sir, Your Honor.

2 THE COURT: Would you bring the jury in, please.

3 (Whereupon, the jury entered the courtroom at 2:58
4 p.m.)

5 THE COURT: Does everyone who requested a pad and pen
6 have that? If you don't, just raise your hand. Sir, you
7 are our foreman, correct?

8 THE FOREMAN: Yes, sir.

9 THE COURT: And you are our alternate; is that right?

10 THE JUROR: Yes.

11 THE COURT: Okay. If you two, each time we come back
12 in the courtroom would use those same seats. It helps us to
13 keep with some things. The rest of you could sit where you
14 like except for those two seats anytime you're coming in the
15 courtroom. Okay?

16 With that being said, Madam Forelady, are you ready to
17 -- Madam Clerk, are you ready to swear the jury?

18 MADAM CLERK: Please stand and raise your right hand.

19 (Whereupon, the jury was duly sworn at 2:58 p.m.)

20 THE COURT: Ladies and gentlemen, as we went over
21 earlier today, this is the case of the *State of South*
22 *Carolina vs. Shane Alexander Washington*. He's been charged
23 with criminal sexual conduct of a minor. I don't know if
24 any of you have ever been involved in a trial before,
25 whether it be civil or like we are in this case the criminal

1 general sessions side of the court. I would suspect,
2 however, that each and every one of you has watched what
3 purports to be a TV show or movie about a trial. Let me
4 quickly dispel you. Trials in real life are totally
5 different than what you see on TV or at the movies. Trials
6 are very slow. They're very methodical. They're very
7 deliberate. They are certainly not entertainment. But they
8 are a fundamental part of our democracy. They are served to
9 see that truth is done for both parties. Now, these
10 attorneys you have in this courtroom, when they're sworn in
11 as attorneys they take an oath that they be advocates for
12 their clients. In fact, their oath requires them to
13 zealously represent their client's perspective interest.
14 However, they are also officers of this Court. What that
15 means is you expect of them to be ethical and courteous and
16 professional with one another, with the Court, with the
17 witness that may appear, and any dealings throughout this
18 trial.

19 Now, each and every one of you just took an oath where
20 you swore or affirmed that you would try to reach a just and
21 fair verdict in this case. What that means is that both
22 sides of this case, including the Court, has the right to
23 expect of you that you will be impartial and that you will
24 be fair and ethical in your dealings in this case. What I'm
25 about to tell you now is not the substantive law that you

1 will apply. I will give that to you at the end of the case.
2 This is essentially a roadmap of what you can expect
3 throughout the trial and let's you know where you will be
4 during the course of the trial.

5 Now, as we pointed out, several of you indicated -- in
6 fact, were given pads and pen to use for taking notes. Let
7 me caution you that one of the factors -- one of the things
8 that you'll do as a jury is determine the facts. You are
9 what they call the sole judges of the facts. And I'll tell
10 you a little bit about that in a second. But in determining
11 what the facts are you determine which testimony you want to
12 believe and which testimony you don't want to believe.
13 You'll have the right to believe all or none of any
14 witness's testimony. It's called the credibility of a
15 witness. If you become so engaged or engrossed in taking
16 notes that you forget to watch somebody's reaction on the
17 stand something may occur that would be indicative to you as
18 to their credibility. So I just warn you, don't get so far
19 into your notes that you're not watching the witness and how
20 they act on the stand.

21 Also, the fact that something may appear in somebody's
22 notes, Mr. Foreman, this will particular apply to you,
23 doesn't mean that their notes trump somebody's memory. If
24 you get back at the end of the day when you're told by the
25 Court to begin your deliberations, if there's a difference,

1 just because something appears in the note or somebody's
2 memory doesn't mean that one trumps the other. That's why
3 they call them deliberations. You'll have to work those
4 out. Okay, sir?

5 Now, again, the Defendant in this case has said I am
6 not guilty. In fact, the fact that he is indicted, again,
7 cannot be used against him. Cannot be used as an inference or
8 presumption of his guilt. Okay? That's just the charging
9 mechanism. What that means is that in this case the burden
10 remains on the State of South Carolina to prove each and
11 every element of the charge against him by proof satisfying
12 you of guilt beyond a reasonable doubt before you can be
13 found -- before he can be found guilty to the charges. Like he
14 says, I'm not guilty. I remind you of that. It will be
15 your burden at the end of this case, or your duty, to
16 determine whether or not the State has met its burden of
17 proof in its case against this Defendant.

18 Now, I'll tell you, you might notice that the Defendant
19 is not here at the present time. Under the laws of this
20 state a Defendant may be tried even if the Defendant does
21 not attend trial. But the fact the Defendant is not present
22 may not be considered by you against the Defendant in any
23 form or fashion whatsoever. Mr. Foreman, at the end of the
24 day when you're dealing with deliberations, if somebody
25 wants to bring that fact up it will be your job to make sure

1 it's not talked about because it's not proper. The burden
2 remains on the State to prove him guilty by proof beyond a
3 reasonable doubt.

4 As I told you, your purposes are to find the facts in
5 this case. You are the sole judges of what the facts are.
6 In other words, which verdict are you going to reach in this
7 matter. If I make a comment at any time during the course
8 of these proceedings which seems to indicate to you which
9 verdict you ought to reach or facts you are supposed to
10 find, I'm going to ask you, but also instruct you, to
11 disregard it. Our Constitution of South Carolina does not
12 allow any trial judge to have an opinion on the facts nor
13 make a comment or gesture about what those facts are. So if
14 I say or do anything during the course of this trial you are
15 to disregard that. I can assure you that I have no feeling
16 about the facts and I kind of judge my role as being
17 somewhat akin to a referee, that each side has a right to a
18 fair and impartial trial and that I instruct you on the law
19 at the end of the case and you will apply the facts as you
20 find them to be in accordance to the law as I give it to you
21 when you reach your verdict.

22 Now, you are to determine what the facts are in this,
23 case from the testimony and evidence you hear in this
24 courtroom and from this witness stand once somebody is sworn
25 in. You may not and you shall not be influenced by anything

1 you see or hear outside of this courtroom or when Court is
2 not in session. I'll tell you that if I make an incorrect
3 statement of the law, or application of the law, there are
4 groups in Columbia that will correct me. Now, on the other
5 hand, ordinarily there's not a way to correct an incorrect
6 finding of fact. So therefore, I'm going to ask you to pay
7 close attention throughout this trial. The attorneys tell
8 me they don't believe it will be extremely lengthy. But it
9 is very important for the State and it's very important for
10 the Defense in this matter. So pay close attention
11 throughout the course of this trial. The law that makes you
12 the sole judges of the facts makes me the sole judge of the
13 law. At the end of this case and during the course of this
14 trial when I give you the instructions you have to apply
15 them as I give it to you. You may not and shall not be
16 concerned with what you would like it to be, what you think
17 it should be. Only with the law as I give it to you. The
18 same law that makes you the sole judges of the facts makes
19 me the sole judge of the law. I can't disagree with you,
20 and you can't disagree with me.

21 Now, again, do not begin your deliberations at any
22 time, even during breaks, until you're given clear word, Mr.
23 Foreman. That is your job to make sure that it's followed.
24 Also, no independent research. I'm not going to go back
25 over that again because we went over it before the trial.

1 In every case there are five phases. In just a minute
2 the State will give you their opening statement. Then
3 they'll go to presentation of the evidence. We'll have
4 closing statements. You'll have my charge on the law and
5 you'll begin your deliberations. I tell you these things so
6 you'll know generally where you are throughout the course of
7 this case. When the Solicitor makes their opening
8 statement, what they tell you is what they contend the case
9 is about, and it's helpful and it's designed to give you
10 somewhat of a roadmap as well as to what they intend to
11 prove. Remember this, they're not sworn in. They're not
12 subject to cross-examination. So it's not evidence. It's
13 just a comment. At the end of the day if what the attorneys
14 in this case tell you differs from your memory, then your
15 memory will control that. In just a moment Defense counsel
16 may, but is not required, to give an opening statement. And
17 the same rules will apply to her if she decides to give an
18 opening statement. It's comment. It's not evidence.
19 Remember, the reason she doesn't have to make an opening
20 statement is that the burden remains on the State to prove
21 guilt beyond a reasonable doubt.

22 In every single case there have been objections that
23 I've been involved with as a trial attorney or as a judge.
24 I suspect that this case will be no different. Sometimes
25 you may feel like cattle being rushed in and out of the

1 courtroom. Suffice it to day, ladies and gentlemen, there
2 will be objections in every case. That's the process. A
3 lawyer has an obligation to object if he or she feels like
4 something is going on in the courtroom that's improper. The
5 fact that a lawyer has objected, and to the extent I allow
6 you to remain in the courtroom while I rule on those
7 objections, shall not be discussed by you at any point.
8 That is simply the procedure. Okay? Mr. Foreman, again, it
9 will be your task if somebody wants to say, well, this
10 person over here objected. They must be trying to hide
11 this. That kind of comment is not appropriate and you will
12 have to stop it. Okay, sir? And if you have any problem,
13 you let me know and I'll make sure it is. Okay?

14 Now, with that being said, just to make sure that I
15 haven't overstated something or understated something, I'm
16 going to have a brief review with these attorneys to see if
17 I need to correct or detract something I said.

18 Mr. Foreman, ladies and gentlemen, this is not an
19 endurance contest. If I call you back before you're ready,
20 just tell me. We'll wait for you. If you need something,
21 let us know. Especially the Bailiff. They'll take care of
22 you. If anybody has any special needs that they need to get
23 up and move around, let me know. If you can't hear
24 something, if you can't see something, raise your hand and
25 let me know. We want you to be fully engaged throughout

1 this trial. Okay?

2 With that being said, I'm going to send you back for a
3 short minute so I can brief with these attorneys and we'll
4 have opening statements in just one second.

5 (Whereupon, the jury exited the courtroom at 3:10 p.m.)

6 THE COURT: Any additions or exceptions from the State?

7 MR. SHEEK: None from the State, Your Honor.

8 THE COURT: From the Defense?

9 MS. NELSON: No, Your Honor.

10 MR. SHEEK: We're ready whenever the Court's ready,
11 Judge.

12 MS. NELSON: I'm ready when you are, Your Honor.

13 THE COURT: Go get them.

14 (Whereupon, the jury entered the courtroom at 3:10
15 p.m.)

16 THE COURT: Is the State ready for opening?

17 MR. SHEEK: The State's ready, Your Honor.

18 THE COURT: You may proceed.

19 MR. SHEEK: May it please the Court, Judge.

20 THE COURT: Yes, sir.

21 OPENING STATEMENT

22 BY MR. SHEEK: Mr. Foreman, ladies and gentlemen of the
23 jury, good afternoon. I know you all have been back and
24 forth and in and out of the courtroom now since about 10:00
25 this morning. And I want to talk to you briefly about what

1 we're going to be doing over the next day or so in this
2 trial, because I don't know if any of you all ever served on
3 a criminal jury before and know what to expect. But as His
4 Honor just told you, it's not like TV. It's not 45 minutes
5 long and somebody jumps up in the back and confesses and we
6 all go home easy and satisfied. It's a harder job than
7 that. But first of all I want to thank you all for being
8 here, because our system of justice is built around the jury
9 system. The jury of our peers. People from our community
10 who come in and do what you all are doing here this week.
11 And I know many of you may be sitting on the next jury. And
12 as I said, once a jury has been qualified like this morning,
13 I see some jurors that seem anxious to serve, some not so
14 anxious. But what I have found in Abbeville County is that
15 I normally have a jury pool of people who are very willing
16 to serve and do their part for their community. And without
17 you then none of this happens today, because the State can
18 bring a change. And it has in this case, a criminal charge.
19 The Defendant enters a plea of not guilty and asks for a
20 jury trial. And until you 12, 13 with the alternate, are
21 seated to listen to the evidence then we're stuck in that
22 position. We don't go forward. So thank you all for being
23 here. And you stand up and you tell us about your job or
24 your spouses or your kids and I know you have other things
25 to do and other things that need to be done. But again,

1 what you're doing here for us and for your community is so
2 very important and vital to do justice, which is what we all
3 really want in Abbeville County is have some sense of
4 justice in our communities. And that's why this is called
5 the criminal justice system. And ultimately at the end of
6 the day all we're going to ask you to do is speak justice
7 for your verdict. Verdict comes from a word that literally
8 means to speak the truth. And that's all any of us want.

9 I'm an attorney that works for your elected Solicitor.
10 Your elected Solicitor's name is David Stumbo. The Eighth
11 Judicial Circuit is his area. It's made up of Abbeville,
12 Greenwood, Laurens and Newberry Counties. The State is
13 divided up into 16 different circuits. You're the Eighth
14 Circuit. He's elected and charged with the duty of
15 prosecuting in criminal cases brought within the
16 jurisdiction of General Sessions Court, where you're sitting
17 today. I work for him as an Assistant Solicitor. Yates
18 works for him as an Assistant Solicitor. And I introduced
19 to you, Windy, who is an investigator. She's a law
20 enforcement officer that works in our office and assists us
21 in these cases.

22 So what have you been chosen for today? You know very
23 little about it, because you're going to hear testimony and
24 evidence and it's going to come from this seat right here.
25 As His Honor just told you, he's the sole judge of the law.

1 If I stand up here right now and say South Carolina law says
2 X, Y, Z and His Honor says it's something different, he's
3 the sole judge of the law. But you're going to listen to
4 people who come from that witness stand because they're the
5 only ones who can give you the facts. They're going to
6 testify to, and at the end of the testimony the His Honor is
7 going to give you the law, as is his job, and he's going to
8 send you back to the room that you've been in and he's going
9 to tell you to deliberate and you're going to decide what
10 the facts are, and then you're going to apply the facts as
11 you find them to the law as he gives it to you and you're
12 going to speak a verdict. You're going to speak the truth.
13 And that's all any of us want from you here today.

14 You've been chosen in the case of the *State of South*
15 *Carolina vs. Shane Alexander Washington*. Mr. Washington is
16 indicted. And His Honor told you, it's the charging
17 instrument. It's an allegation. He's indicted with
18 criminal sexual conduct with a minor in the first degree.
19 What does that mean? I'm going to tell you a little bit
20 about it right now. But again, I'm going to tell you that
21 Judge McIntosh is going to actually read to you the law that
22 you're going to apply to this case at the end of the case.
23 He's going to give you the definitions that you need. He's
24 going to tell you the statute. He's going to tell you a
25 bunch of things that you're going to need to find your

1 facts. But what does it mean up front? It means that Shane
2 Alexander Washington is accused of engaging in sexual
3 battery on a child under the age of 11-years-old. Sexual
4 battery in South Carolina is defined as several different
5 things. In this case the relevant part of it, because the
6 child that's alleged to have been abused is a female child,
7 and it's illegal to perform cunnilingus, what some people
8 call oral sex, or any type of penile or digital, finger,
9 penetration into a vaginal or anal opening of this child.
10 Those are the relevant factors to think about. That's
11 called sexual battery. It is that intrusion, however slight
12 into one of those openings. And the allegations in this
13 case are going to be that this child who was well under the
14 age of 11-years-old lived in a house where Shane Washington
15 was living. The step-father. He was married to this
16 child's mother. That he engaged in sexual battery with her
17 on or about July the 1st of 2010.

18 Now, why do we say on or about? Well, I submit to you
19 that the law in South Carolina says several different
20 things. In addition to the sexual battery definition which
21 I gave you, it also states in cases such as these time is
22 not of the essence. That means that because of the unique
23 nature of an allegation where a child is very young they're
24 trying to remember back, the exact dates and times will be
25 difficult. And therefore, it is not an essential element.

1 So it's going to be on or about. The child is going to tell
2 you what happened. She's going to tell you what she
3 remembers about the timeframe of when it happened. She's
4 going to describe to you what she remembers he did to her.
5 And that's going to come from the witness stand and you're
6 going to have the opportunity to hear from her mouth. I'm
7 not going to go through everything she's going to say. You
8 can hear it from her yourself and decide. But it's going to
9 come from that witness stand. At the end of the case -- as
10 the judge told you, I could stand up here and talk to you
11 for the rest of the day and tell you the State's going to
12 prove this, it's going to prove that. But ultimately it
13 doesn't matter what I say. What matters is the evidence
14 that we bring to you, because that's all you're going to
15 have to base your verdict on.

16 Now, I'm going to tell you a couple other things. When
17 you watch cases like Law and Order, CSI, things like this,
18 they paint a picture of the criminal justice process like
19 the Judge just told you. It's very unrealistic. Criminal
20 sexual conduct of a minor by its very nature is a crime
21 that's committed in secret. Behind closed doors. Generally
22 the two people that are there; victim, the perpetrator.
23 What you don't have, or what you may have if it's an armed
24 robbery of a convenience store or a gas station, you've got
25 security cameras or you've got somebody that happened to be

1 there pumping gas that saw the car pull in and the guys run
2 out. You don't have that in these kind of cases. You have
3 the victim. You're going to have to listen to this victim
4 and you're going to have to listen to any other evidence
5 that's brought to you throughout this trial. And like the
6 Judge told you, the State's got the burden. We have the job
7 to bring you the evidence to substantiate every element of
8 the crime that we've alleged that this man's committed. And
9 we're going to do that. The Defense doesn't have a burden.
10 They can present evidence if they choose, not present
11 evidence. It's not their burden. I don't know what you may
12 hear at the end. But that evidence is what you're going to
13 have to base this verdict on. And you're going to have to
14 use your common sense. And that's one thing that jurors
15 come in equipped with that I can't give you. You get it
16 from a lifetime. If you have children, you deal with the
17 kind of stuff from a child's standpoint all the time. If
18 you work in a job you deal with it. You judge the
19 credibility. That means the believability. The people who
20 testify to you or talk to you. And you use your common
21 sense. What is she saying. What is he saying. What would
22 be the motivation for saying a certain story if it wasn't
23 true or was true. Are they consistent. Are they
24 inconsistent. Any number of things. I'm going to tell you
25 though, you come in this door with a set of common sense to

1 use in this trial developed over a lifetime, and that's what
2 we want to use. And the reason I say that to jurors, it may
3 sound so fundamental, but I actually had a jury trial where
4 after the case was over, talked to several of the jurors
5 after the case was over, and I noticed that in deliberation
6 they said one person made a statement and the other one said
7 no, no, no. That would be using common sense and we're not
8 allowed to do that. Common sense is an important factor
9 that you brought in this courtroom that I want you to use in
10 this trial. I want you to keep an open mind. I could tell
11 you a complete story. As you hear a story you start to
12 believe a certain thing. You start a picture in your mind.
13 You keep an open mind throughout this whole trial. And wait
14 until the end of the case, when all the evidence is in your
15 lap, when you're back there in your jury room and then you
16 begin deliberating, you talk about it and you reach a
17 verdict. Because all we want out of you this week, at any
18 trial, is justice. And the Judge has told you our system
19 and slow and methodical. It is. You're going to see these
20 allegations alleged that happened in July 2010, over five
21 years ago this coming July, Abbeville, being one of the more
22 rural counties and smaller population size in the state we
23 don't have near as much court as a county like Greenville
24 County would have, or Charleston County or Spartanburg
25 County where they may have three or four courtrooms running

1 at any one time for several weeks out of the month. But we
2 have one courtroom running for one week out of maybe six
3 weeks, and we have that limited court time. And when a
4 Defendant of any charge asks for a jury trial he has that
5 right, and he should have that right. We would all want any
6 Defendant would have that right. And so, we get to them as
7 we can. Sometimes that's slow. That's methodical. But
8 it's justice, and that's what we're going to ask from you
9 here today.

10 Thank you again for being here. Thank you for giving
11 me your attention. Please give your attention to Ms. Nelson
12 and to the witnesses as they testify.

13 THE COURT: Ms. Nelson, does the Defense wish to have
14 an opening statement?

15 MS. NELSON: I do, Your Honor. May it please the
16 Court.

17 THE COURT: Yes, ma'am.

18 OPENING STATEMENT

19 BY MS. NELSON: I don't know if you all remember a
20 little while back at the Republican National Convention when
21 Clint Eastwood talked to the empty chair on the stage. Do
22 you all remember that? He had a chair on the stage and it
23 was -- he was talking to it like President Obama was in it.
24 And whether you like President Obama, don't like him, didn't
25 vote for him, whatever, that chair was empty. And that's

1 what -- that's what I feel like sitting up here at that
2 table by myself. I've got an empty chair next to me. And
3 the Judge has already told you all that you can't hold that
4 against Mr. Washington the fact that he's not here. But I
5 know you see that empty chair, and I'm not going to stand
6 here and not acknowledge that to you. You're not going to
7 get to hear him take the stand and say he didn't do this
8 thing. You've heard the Judge say that he has entered his
9 plea of not guilty. He has said already in Court I didn't
10 do this. But my chair over there is empty today and you're
11 not going to get to hear that from him. But you're still
12 going to have to give him the benefit of the doubt in this
13 case. The Judge talked to you about the fact that anybody
14 charged with a crime is presumed innocent. And that's not
15 just fancy legal words. That's a principal that has been in
16 place in our country for years and years and years and it's
17 something that we all -- that we all have that we're all
18 entitled to. Even with that chair sitting over there empty,
19 Shane Washington is a human being. He's a husband. He's a
20 father. He works. He's just not in that chair. And what
21 happens -- Mr. Sheek talked to you about how long it takes
22 sometimes for cases to come to Court. And I don't know if
23 the Judge has actually read the indictment to you yet, but
24 -- I don't remember him reading it to you, but he's charged
25 with doing something to this child on July 1st of 2010.

1 2010. And where I work at the Public Defenders Office,
2 which covers the same counties that the Solicitor's Office
3 covers, we represent lots of folks. We basically represent
4 people charged with crimes who can't afford to pay for
5 private counsel. We have lots of people. And unfortunately
6 sometimes when the justice system's wheels grind so slowly I
7 have people who move. I have people who change their phone
8 numbers. And I can't find Shane. And I have no reason to
9 believe that he knows he's supposed to be sitting in that
10 chair today because I can't find him. But the State's
11 decided to go ahead and proceed with this trial anyway
12 without him having an opportunity to sit in front of you in
13 that chair and tell you that he didn't do these things.

14 MR. SHEEK: Judge, may we approach?

15 THE COURT: All right.

16 (Whereupon, a sidebar was held.)

17 BY MS. NELSON: So just like at the convention when
18 Clint Eastwood berated the invisible man sitting in that
19 empty chair on the stage, that's the position that I'm in
20 today representing Mr. Washington. Please don't forget that
21 that empty chair represents a real human being. A man who's
22 charged with one of the most serious crimes on our books.
23 And I ask you, like the Judge told you, not to hold that
24 against him and not to make judgements about that. But I
25 did want to explain it to you because that empty chair is

CHANEL WASHINGTON: DIRECT EXAMINATION

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1 like a big ole elephant in the room. I'm asking, as Mr.
2 Sheek has asked you, if you would listen to what's being
3 said. I'm asking you to scrutinize what's being said and
4 really examine it and decide whether you can believe that it
5 happened the way you're being told that it happened. I'm
6 asking you to consider all the circumstances that you're
7 going to hear. You have to be convinced at the end of the
8 day -- when this trial is over you have to be convinced
9 beyond a reasonable doubt that Mr. Shane Washington
10 committed this act that he's charged of committing. That on
11 July 1st of 2010 he committed sexual battery against this
12 child. You've got to be convinced of that beyond a
13 reasonable doubt. A doubt based on reason. A doubt that in
14 your everyday life might cause you to hesitate to act about
15 something important to you. An example that I've heard
16 given before about reasonable doubt is that if you go to a
17 doctor and you get a really bad diagnosis. He told you that
18 there's something bad that's going on and you need to have
19 some surgery or something -- something you're not sure
20 about. A reasonable doubt is the kind that makes you say,
21 gosh, I don't know if this is -- I'm not sure if this is
22 right. I think I might -- this is so serious and what's
23 going on is so important in my life that I may want to get a
24 second opinion about this. If you find yourself having that
25 kind of reasonable doubt in this case, here or not here,

CHANEL WASHINGTON: DIRECT EXAMINATION

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1 you've got to find Mr. Washington not guilty of this crime.
2 And when I get to come back and talk to you again at the end
3 of this case, that's what I'm going to ask you to do is to
4 find him not guilty. Thank you.

5 THE COURT: Call your first witness, please.

6 MR. SHEEK: Thank you. We call Chanel Boyd to the
7 stand -- I mean, Washington. Chanel Washington.

8 (Whereupon, State's Exhibit No. 1 was marked for
9 identification.)

10 CHANEL WASHINGTON, having first
11 been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. SHEEK:

14 Q Ma'am, if you would, state your first and last name and
15 spell your names for the court reporter.

16 A Chanel Washington, C-h-a-n-e-l, W-a-s-h-I--g-t-o-n.

17 Q And, Ms. Washington, where do you currently live?

18 A In Abbeville, South Carolina.

19 Q And how long have you lived in Abbeville?

20 A About -- a little bit over two years.

21 Q Okay. And do you know a man by the name of Shane
22 Alexander Washington?

23 A Yes, sir.

24 Q And how do you know Mr. Washington?

25 A Because I'm married to him.

CHANEL WASHINGTON: DIRECT EXAMINATION

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1 Q When did you and Mr. Washington get married?

2 A September of 2008.

3 Q I'm going to hand you a photocopy of a photograph. Do
4 you recognize the individual depicted in that photograph?

5 A Yes, sir.

6 Q And who is that?

7 A Shane Washington.

8 Q And that's the man that -- are you still currently
9 married to him?

10 A Yes, sir.

11 MR. SHEEK: Your Honor, I would move to have this
12 marked and entered as State's 1.

13 THE COURT: Any objection?

14 MS. NELSON: No, sir, Your Honor.

15 THE COURT: Admitted without objection.

16 (Whereupon, State's Exhibit No. 1 was admitted into
17 evidence.)

18 Q Do you and Mr. Washington live together?

19 A Yes, sir.

20 Q You do?

21 A Oh, no. Not at the current moment.

22 Q I'm sorry, currently. I should have been clear in my
23 question. Not currently living together. When is the last
24 time that you lived with Mr. Washington?

25 A Right after my mobile home was destroyed.

CHANEL WASHINGTON: DIRECT EXAMINATION

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1 Q Now, the mobile home that you're talking about, where
2 was it located?

3 A In Due West, South Carolina.

4 Q And how long had you lived at that mobile home with Mr.
5 Washington?

6 A Since 2009.

7 Q And do you have any children, ma'am?

8 A Yes, sir.

9 Q How many children do you have?

10 A Total or with Mr. Washington?

11 Q Well, total.

12 A It's nine of them.

13 Q And do you have a -- any of them daughters?

14 A Yes, sir.

15 Q Do you have a child by the name of Minor

16 A Yes, sir.

17 Q Can you tell us Minor birth date.

18 A Minor birthday is 2002.

19 Q of 2002?

20 A Yes.

21 Q Were you living with Mr. Washington in the summer of
22 2010?

23 A Yes, sir. I was.

24 Q And did any of your children live with you and Mr.
25 Washington?

CHANEL WASHINGTON: DIRECT EXAMINATION

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1 A Yes. All of them except for two which -- yes, all of
2 them except for two.

3 Q And was Minor one of the children that lived with you?

4 A Yes, sir.

5 Q Now, describe if you would for the jury the home that
6 you all lived in.

7 A It was a four bedroom, three bathroom mobile home.

8 Q Four bedrooms and three baths?

9 A Yes, sir.

10 Q And where was your bedroom located?

11 A All the way on the far end of the mobile home. The
12 master bedroom was on the far -- the far left end.

13 Q Were there any other bedrooms on the same end of the
14 mobile home as the master bedroom?

15 A No, sir.

16 Q So take me from the master bedroom. What would be the
17 next room I would go into?

18 A That would be the livingroom.

19 Q And proceeding there towards the other bedrooms tell me
20 what rooms you would go through.

21 A That was the livingroom, a small dining area, then the
22 kitchen and a breakfast nook. And then if you was to turn
23 off to the right, that's where the other three bedrooms were
24 which was the girls' room, Minor included, across from
25 Minor was my son's room, and then beside my son's room was

CHANEL WASHINGTON: DIRECT EXAMINATION

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1 a room where they -- everyone considered a tattoo room.

2 Q Okay. Tell me about the tattoo room. Who did tattoos?

3 A Mr. Washington.

4 Q And is that something that he did as a hobby or did he
5 do it for -- to make money?

6 A He did it to make money.

7 Q Did he have actually tattooing equipment located at
8 your home?

9 A Yes, sir.

10 Q So that would have been in this room they're talking
11 about, the tattoo room?

12 A Correct.

13 Q And where was Minor bedroom again in relation to
14 this tattoo room?

15 A Sort of like cater-cornered across from it.

16 Q Now, tell me about Mr. Washington. Did he -- normal
17 routine for you all. Would you all go to bed at the same
18 time, get up at the same time? Did you all keep the same
19 type of hours you and Mr. Washington?

20 A No, sir.

21 Q What would be normal in your home at that time around
22 the summer of 2010?

23 A For me I could go to sleep at any given moment. The
24 kids usually are placed to bed around 9:00, sometimes 8:30.
25 Mr. Washington, he was up all night. Sometimes it might be

CHANEL WASHINGTON: DIRECT EXAMINATION

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1 for tattoos, gaming on a game console, or just up watching
2 movies.

3 Q Would it be unusual for Mr. Washington around that time
4 to be at the other end of the home in the tattoo room from
5 where your master bedroom was?

6 A Yes. He was always there.

7 Q When you were asleep in your master bedroom, if the
8 kids or Mr. Washington were awake, would you normally hear
9 what was going on? Was it easy to hear conversations and
10 things like that from your bedroom?

11 A No, not at all.

12 Q At that point in time was there ever a time when you
13 would be in bed and Mr. Washington may be in the den or in
14 his tattoo room and the kids in their rooms? Was that
15 something that would happen from time to time or --

16 A The kids, as far as sleep-wise, they would always be in
17 their room. They would always be in their room watching
18 cable, cartoons, things that they like to watch, or just
19 playing in their room. But it was always like -- even
20 during the summertime they always go to bed around 9:00.

21 MR. SHEEK: Thank you, Ms. Washington. Please answer
22 anything Ms. Nelson has.

23 MS. NELSON: May it please the Court.

24 THE COURT: Yes, ma'am.

25

CROSS-EXAMINATION

CHANEL WASHINGTON: CROSS EXAMINATION

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1 BY MS. NELSON:

2 Q Hi, Ms. Washington. How many children do you have all
3 together?

4 A It's a total of nine of them all together.

5 Q A total of nine?

6 A That is correct.

7 Q And going to July of 2010 can you tell me who lived in
8 the trailer?

9 A There was me, Mr. Washington, Minor , M.B.

10 M.B. S.B. , S.J. , and S.W.

11 S.W.

12 Q Let me go back a little bit. You said you moved into
13 that trailer in 2009?

14 A That's correct.

15 Q And that was at 97 Carter Street Extension?

16 A Yes.

17 Q In Due West?

18 A Yes.

19 Q And you were still living there in the summer of 2010?

20 A That is correct.

21 Q And I just want to get it right. You had you and Mr.
22 Washington and you had five children total there?

23 A Yes.

24 Q And that was M.B. S.B. Minor S.J. and

25 S.W.

CHANEL WASHINGTON: CROSS EXAMINATION

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- 1 A Correct.
- 2 Q And S.W. is actually your child with Mr.
- 3 Washington?
- 4 A Correct.
- 5 Q What's her birth date?
- 6 A 08.
- 7 Q Is she the -- you have three children with Mr.
- 8 Washington?
- 9 A Correct.
- 10 Q Is she the oldest?
- 11 A Yes, she is.
- 12 Q Now, your -- the other four children that we've talked
- 13 about besides S.W. those are your children with Mr.
- 14 Belcher who's in the courtroom, right?
- 15 A Correct, yes.
- 16 Q And when did you get married to Mr. Shaheed Belcher?
- 17 A I can't remember the exact month. It was like 2001.
- 18 Q And when did you divorce?
- 19 A We divorced around August 2008. August 2008.
- 20 Q 2008?
- 21 A That is correct.
- 22 Q So S.W. was born just before your divorce from Mr.
- 23 Belcher would have been final?
- 24 A Correct.
- 25 Q And if I've got it right there were seven people living

CHANEL WASHINGTON: CROSS EXAMINATION

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1 in the --

2 A Yes.

3 Q -- in the home?

4 A Yes.

5 Q You've mentioned, it sound like to me, the master

6 bedroom on one end of the trailer?

7 A Yes.

8 Q And then the other end of the trailer were where all

9 the kids were?

10 A Yes.

11 Q Is that right? Is it correct that the girls slept in

12 one bedroom and the boys slept in the other?

13 A Yes. Only one son. He slept in a room by himself and

14 the girls slept in a room altogether.

15 Q Did S.W. sleep in there, too?

16 A No. S.W. was sleeping in the room with me most of

17 the time.

18 Q She was still pretty small at that point?

19 A Yes.

20 Q Your other two children that you have with Mr.

21 Washington, when were they born?

22 A My son with Mr. Washington was born , 2010.

23 Then we have a daughter that was born , 2009.

24 Q So actually by the summer of 2010 you -- you had had

25 all three children --

CHANEL WASHINGTON: CROSS EXAMINATION

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1 A Yes, correct.

2 Q -- with Mr. Washington. So by July 27th at least of
3 2010 when S.A. was born there would have been nine of
4 you in the home?

5 A That's correct. I want to restate something. The
6 daughter I have with Mr. Washington that's in between Shane,
7 Jr. and S.W. she's not in my home. She lives with a
8 relative of Mr. Washington's.

9 Q Was she in the home after she was born?

10 A No, she wasn't. She wasn't in the mobile home when I
11 had her. She had to remain in the hospital for four months.

12 Q So she lived with another relative. So there were
13 actually eight of you in the house?

14 A Yes. When she came home from the hospital she was
15 living with a relative of Mr. Washington's.

16 Q Did she ever move in with you all on Carver Street
17 Extension?

18 A No, she didn't.

19 Q So it's eight rather than nine?

20 A Correct.

21 Q And did -- you said S.W. slept in the back -- in
22 the master bedroom with you?

23 A Yes.

24 Q What about S.A. when he was born?

25 A He also slept in the master bedroom.

CHANEL WASHINGTON: CROSS EXAMINATION

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1 Q Was S.W. still there at that point by the time --

2 S.W. would have been, what, about two when S.A.

3 was born?

4 A Correct.

5 Q Did she -- was she still staying in the room with you

6 --

7 A Yes, she was.

8 Q -- when S.A. was born?

9 A Yes.

10 Q I'm trying to get a sense of where the children's

11 bedrooms were on the other end of the trailer. Would that

12 be on the right-hand side if you were facing it? Would

13 their rooms have been over here on this side?

14 A Their rooms -- if the -- if you was facing the trailer,

15 the trailer was here and you were standing in front of it

16 facing it, their rooms would be on the left end of the

17 trailer.

18 Q Over there?

19 A That's correct.

20 Q Okay. So they're over here on this end and your master

21 bedroom is over here on this end?

22 A Yes.

23 Q All right. Do you know what the square footage of the

24 home was?

25 A I honestly --

CHANEL WASHINGTON: CROSS EXAMINATION

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- 1 Q I know that --
- 2 A -- I couldn't tell you.
- 3 Q I understand.
- 4 A But it was fairly -- a fairly large mobile home.
- 5 Q Were the three bedrooms on this end of the trailer all
- 6 -- they were all next to each other?
- 7 A Yes, they were.
- 8 Q And when I say bedroom, I'm counting -- the tattoo room
- 9 was actually a bedroom, right?
- 10 A Yes.
- 11 Q But it wasn't used as a bedroom?
- 12 A Correct.
- 13 Q So the two kids' bedrooms and the tattoo room were all
- 14 adjacent to each other at the end of the hall; is that
- 15 right?
- 16 A Yes.
- 17 Q I'm not -- I'm not trying to belabor it. I'm just
- 18 trying to make sure I understand how many --
- 19 A Yes.
- 20 Q -- was laid out. When did you -- did you find out that
- 21 your daughter, Minor , was making this accusation in
- 22 September of 2010? Is that when you found it out?
- 23 A That's correct.
- 24 Q Can you tell me how you found out?
- 25 A I was getting -- I was actually getting them ready to

CHANEL WASHINGTON: CROSS EXAMINATION

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1 go with their father. They were going -- I think they was
2 having a family reunion. I don't remember exactly. But I
3 think -- I just know it was a weekend that they were to go
4 with their dad. I was getting them ready, running all over
5 the place, getting their belongings together. Calling Mr.
6 Belcher at the same time to see where his location was,
7 because I was -- I'm the mother. I had a bunch of children
8 at home. I was waiting for my break.

9 Q Is he the one who told you that she had made the
10 accusation?

11 A No, ma'am. The authorities did.

12 Q The authorities did?

13 A Yes, ma'am.

14 Q So that was after she had already said something and
15 the authorities came over to you -- to your home; is that
16 right?

17 A Yes. The authorities came to my home, correct.

18 Q And that was when you were getting them ready to go off
19 with their dad?

20 A No. They had just left. Their father had just came
21 and got them.

22 Q Okay.

23 A And Minor spoke and said she needed to talk to me
24 about something, but I never really got to talk to her. And
25 their father pulled up and picked them up. And after he

CHANEL WASHINGTON: CROSS EXAMINATION

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1 left with the kids, shortly afterwards the authorities came
2 to my home.

3 Q Who did?

4 A The authorities.

5 Q And when you say authorities, who -- do you mean Due
6 West police officers?

7 A That's correct.

8 Q How many came?

9 A One at the moment.

10 Q Was that Officer Bronson Smith, if you remember?

11 A I can't remember his name.

12 Q So one officer came to your house?

13 A Yes, ma'am.

14 Q Did any other law enforcement officers ever come to
15 your home on Carter Street Extension?

16 A Yes. The Chief of Police.

17 Q Was that Chief James Smith?

18 A Correct.

19 Q When did he come to your house? How soon -- let me say
20 it this way. How soon after the first officer arrived --
21 did the Chief come while the first officer was still there?

22 A No, not while the first officer was there. I guess I
23 could say a couple of hours after to gather some of my kids'
24 belongings.

25 Q So the same day, just a few hours later?

CHANEL WASHINGTON: CROSS EXAMINATION

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1 A Just a few hours, uh-huh..

2 Q What belongings did they gather?

3 A I got their belongings together. Clothes, shirts,
4 pants, shoes.

5 Q That was things because they were going to go stay with
6 their dad, Mr. Belcher?

7 A Correct, yes.

8 Q So you weren't turning those things over to law
9 enforcement as evidence in this case. You were providing
10 items for them -- clothing and items for them to have
11 because they were going to go stay with their dad?

12 A Correct.

13 Q And when I say they, I mean your four children with Mr.
14 Belcher; is that right?

15 A That's correct.

16 Q So the -- your other children stayed in the home with
17 you; is that correct? S.W. and S.A.

18 A No, they didn't.

19 Q They didn't?

20 A No.

21 Q Where did they go?

22 A With a family member.

23 Q Did they eventually come back to live with you?

24 A Yes.

25 Q And let me clarify that again, because we've got lots

CHANEL WASHINGTON: CROSS EXAMINATION

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1 of kids we're talking about.

2 A Yes.

3 Q So your four children with Mr. Belcher went to live
4 with him and they stayed there --

5 A Yes.

6 Q -- is that right?

7 A Yes.

8 Q Your two children that were living with you, S.W.

9 and S.A. your children with Mr. Washington, went to a
10 family member at first, but then came back to live with you?

11 A That is correct.

12 Q And Mr. Washington was also still living with you?

13 A No, he wasn't in the -- he wasn't in the home. He was
14 out of the home just shortly after all this took place.

15 Q Well, I remember you saying on direct examination that
16 he lived with you until the home -- you mentioned something
17 about the home burning down.

18 A Yes, the home burnt down. But after the whole thing
19 with the law enforcement it wasn't shortly afterwards that
20 he -- when my kids were moved, shortly afterwards. He
21 stayed gone for a while and he came back. He was always in
22 and out of my home.

23 Q So at some point he did come back to live with you
24 though, didn't he?

25 A No, because he was not to be there at the home.

CHANEL WASHINGTON: CROSS EXAMINATION

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1 Q So he never came back and stayed with you again?

2 A Not stayed. He came to see his children.

3 Q You still remained involved with Mr. Washington during
4 that timeframe, didn't you?

5 A Excuse me? What you mean involved?

6 Q In a relationship with him.

7 A I'm not going to say in a relationship. I mean, we
8 still seen each other, and I always let him see his
9 children. I would never take that from him.

10 Q Didn't you still remain involved in kind of helping him
11 take care of his -- take care of day-to-day things?

12 A Sometime if I felt like it, yes.

13 Q There were times when you actually called my office on
14 his behalf, didn't you?

15 A Yes, I called your office.

16 Q Several times, right?

17 A Yes.

18 Q And that was during the time period between when this
19 was reported all the way up through last year; is that
20 right?

21 A I didn't call your office last year. I called your
22 office when I was -- a notification was left on my door that
23 court was going on.

24 Q Well, I'm talking about to check on -- to check on
25 things for Shane.

CHANEL WASHINGTON: CROSS EXAMINATION

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1 A No. I wasn't calling to check on things for him. When
2 I called the office last year -- I called once last year to
3 find out when the trial was taking place because I hadn't
4 been notified and my number had changed a couple of times.
5 And my --

6 Q You actually returned my call, right?

7 A Yes. And then I also called because you left a note on
8 my door and a card.

9 Q Now, when you were -- when you were with Mr. Washington
10 living together as husband and wife. He was not always
11 faithful to you, was he?

12 A No, he wasn't. It was before -- even before I was
13 married he wasn't faithful. No.

14 Q And there were times when you were living together
15 where he -- where he would not stay at home for periods of
16 time; is that right?

17 A Yes. That's when we resided in Abbeville before we
18 moved into the mobile home.

19 Q And he still did some of that going and coming when you
20 lived on Carver Street Extension, didn't he?

21 A More going out for a day, coming back in the wee hours
22 of the morning.

23 Q And you said going out for a what, a day?

24 A Like going out, leaving out early in the morning.

25 Might not see him until later on in that night, early

CHANEL WASHINGTON: CROSS EXAMINATION

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1 morning.

2 Q Isn't it true that there was a point in the summer of
3 2010 that he actually went to Washington, D.C.?

4 A That's false.

5 Q But you -- but you are willing to at least admit that
6 there were times when he would come and go from your home
7 and you didn't know where he was going?

8 A Sometimes I knew, sometimes I didn't. Most of the
9 times he was doing tattoos. But he would come and go.

10 Q And there were times when he was seeing other women?

11 A Yes.

12 Q I'd like to go back again to when the -- when law
13 enforcement came out to your house. That was in early
14 September of 2010?

15 A Yes.

16 Q I know you said that you gave them some clothes for the
17 children. Did they come in and look around the home?

18 A He -- the officer spoke to -- he came into my home and
19 he spoke to Mr. Washington.

20 Q That was the first officer?

21 A Yes.

22 Q He came in your home and spoke to Mr. Washington?

23 A Correct. He asked for him and I told him where he was
24 and he came and spoke to him.

25 Q He didn't arrest him at that point, right?

CHANEL WASHINGTON: CROSS EXAMINATION

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1 A No.

2 Q And did he -- did the officer do anything else other
3 than speak to Mr. Washington?

4 A He asked for did I have any kind of cameras or anything
5 of that nature. I told him yes. I gave him a camera.

6 Q What kind of camera was that that you gave him?

7 A A digital camera.

8 Q Where did you get it from?

9 A I'm not sure. I just know it was in my home. I'm not
10 sure if it was out of my bedroom or over my mantel in my
11 living room or --

12 Q But you have it kind of narrowed down to those two
13 places?

14 A Yes.

15 Q It was either in your bedroom or in the living room?

16 A Yes.

17 Q And you said it was a digital camera?

18 A Correct.

19 Q Did that camera belong to you and Mr. Washington?

20 A Correct.

21 Q How long had you had it?

22 A I'll say about two or three years.

23 Q It's been a while?

24 A Yeah.

25 Q And this was the first officer who came out who you

CHANEL WASHINGTON: CROSS EXAMINATION

113

1 gave the camera to?

2 A Yes.

3 Q And that's -- well, you don't know his name?

4 A No, I don't.

5 Q But it was the first one who came out?

6 A Yes.

7 Q And he was with the Due West Police Department?

8 A Yes, correct.

9 Q Did you ever get that camera back?

10 A Yes. He returned it right after he looked through it.

11 Q Did he do all that at your home?

12 A Yes, he did.

13 Q So he -- when you said he looked through it, do you

14 mean he pulled up the digital pictures on it and --

15 A Yes.

16 Q -- went through each one?

17 A Yes.

18 Q Was it a touch screen kind of thing or did you have to

19 push buttons?

20 A No. Push button.

21 Q And he looked through all of those pictures?

22 A Yes.

23 Q Did he make copies of anything?

24 A No, he didn't.

25 Q And then he just gave the phone right back to you?

CHANEL WASHINGTON: CROSS EXAMINATION

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1 A The camera.

2 Q Excuse me. The camera.

3 A Yes, he returned the camera back.

4 Q Did he ask -- did the officer ask you to look at any --
5 to look at any of the kids' bedding or clothing or any of
6 their personal items?

7 A No.

8 Q Did he do any kind of testing in your home for
9 anything?

10 A No. Just let Mr. Washington know what he was being
11 accused of at that moment.

12 Q To let him know what he was accused of but did not
13 arrest him?

14 A No, he wasn't arrested.

15 Q And he actually wasn't arrested until March of 2011?

16 A I can't remember when it was.

17 Q You're not sure?

18 A I'm not sure. That's correct.

19 Q Do you remember that he wasn't arrested at all in the
20 year 2010?

21 A 2010? I'm trying to decide. When you say arrested,
22 are you talking about just pertaining to this or arrested --

23 Q For this. Yes, ma'am.

24 A I can't recall, to be honest with you, when he was
25 actually arrested.

CHANEL WASHINGTON: CROSS EXAMINATION

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1 Q Okay. It wasn't immediate though, was it?

2 A Not that I know of. I don't -- I can't recall if it
3 was during the time he was in Greenwood or when he was just
4 out free. When he was in Greenwood arrested. I'm not sure
5 when he was actually arrested for this charge.

6 Q And he was in jail for a while and then made bond after
7 he was eventually arrested for this charge?

8 A Yes.

9 Q And he came back to live with you and the kids after he
10 made bond?

11 A No. He was at his mother's for a while.

12 Q You still saw him regularly?

13 A Not regularly, no.

14 Q He saw his -- I know you mentioned earlier that you let
15 him see his children. That you wouldn't refuse him.

16 A Yes, but it wasn't on a regular basis. But he did see
17 the children.

18 Q He came to do that at your house?

19 A A lot of times we would meet out.

20 Q Did he ever come do that at your house?

21 A He's come in my yard, but not in my home.

22 Q But there wasn't ever any time that you kept him from
23 seeing his own biological children?

24 A No.

25 Q When you mentioned that the Chief of Police came out

CHANEL WASHINGTON: CROSS EXAMINATION

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1 later after the first officer came out, did he come into
2 your home on Carter Street Extension?

3 A Yes, he came in my home.

4 Q What did he do when he came in your home?

5 A Talked to me about what was going on and told me that I
6 needed to -- what I needed to do. I was sort of giving up
7 my kids' belongings. He talked to me and told me I needed
8 to. It was best for my children. I was upset.

9 Q So he was the one -- I'm sorry. Go ahead.

10 A I was upset. My kids were removed from the home.

11 Q So he was the one who actually arranged with you to get
12 some things for the kids to take with them --

13 A Yes.

14 Q -- to their das?

15 A Uh-huh.

16 Q Did he come into your home and take anything for
17 evidence?

18 A No.

19 Q They didn't look in the kids' rooms, look at their
20 bedding, look at their clothing, anything like that?

21 A No, he didn't.

22 Q He didn't go in the tattoo room and look for anything
23 or conduct any testing?

24 A No.

25 Q Did he look at the camera, too, or was that just the

CHANEL WASHINGTON: CROSS EXAMINATION

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1 first officer?

2 A No, that was just the first officer.

3 Q And when the officer asked you for cameras you gave
4 them all the cameras in the house, didn't you? The one
5 camera?

6 A It was the only one.

7 Q That was the only one?

8 A That's correct.

9 Q I think I'm just about through, Ms. Washington.

10 A That's fine.

11 Q Did either of the officers ever take any statements
12 from you? Did they ever ask you any questions about whether
13 you knew of anything going on?

14 A No officer never asked me that.

15 Q But they didn't question you about anything related to
16 the accusations?

17 A No, I wasn't questioned.

18 Q Did they get any kind of information from you about
19 when Mr. Washington had kind of come and gone starting in
20 July of 2010?

21 A Not that I recall.

22 Q They did ask about that?

23 A The Chief always -- the Chief -- the Chief did not have
24 to ask me any questions of that nature because he always was
25 driving in the area. He would always see Mr. Washington

CHANEL WASHINGTON: CROSS EXAMINATION

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1 outside. So he wouldn't have to ask me, because he always
2 saw him.

3 Q He wouldn't have known when -- he wasn't always in your
4 yard though, right, the Chief of Police?

5 A No, but he was always riding my street. He lived not
6 far from me. So he always took that route to come home or
7 go on lunch.

8 Q So you think he knew Mr. Washington's scheduling, his
9 comings and goings?

10 A I mean, he saw him every day walking the dog or being
11 outside.

12 Q Except on the days when he was gone?

13 A Except for whenever he was out doing tattoos or
14 whatever.

15 Q I guess what I'm asking is, nobody ever asked you to
16 kind of try to remember the times that Mr. Washington had
17 been home and the times that he was gone?

18 A No.

19 Q There came a time in October when Minor was taken to
20 talk to an interviewer, right?

21 A Correct.

22 Q Were you present when that interview was conducted?

23 A You're talking about an interviewer where at? It
24 depends on what location you're talking about.

25 Q I'm talking about at what's now called Beyond Abuse.

CHANEL WASHINGTON: CROSS EXAMINATION

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1 Back then it would have been --

2 A The sexual trauma --

3 Q Yes, ma'am. Back then that's what

4 A I took -- I took Minor to basically all her
5 appointments.

6 Q So you remember -- did you -- did you watch when the
7 interviewer talked to her for about an hour on March 14th --
8 I mean, excuse me, October 14th of 2010?

9 A No.

10 Q You didn't watch the interview?

11 A No.

12 Q When she had a medical exam not too long after that
13 interview did you take her to that, too?

14 A If I can recall I did. I can't really recall if I took
15 her or not. I know I took her to like all of her
16 interviews. The actual interviews. I don't know if it was
17 her father or another family member that could have took her
18 for an examination.

19 Q When those things happened did anybody ever -- any
20 doctors or interviewers ever ask you whether you knew
21 anything about the allegations that were being made?

22 A Not that I can recall.

23 Q Nobody asked you?

24 MS. NELSON: May I have just a moment, Your Honor?

25 THE COURT: You may.

1 MS. NELSON: Your Honor, without Mr. Washington here, I
2 think I've asked Ms. Washington all the questions I can
3 effectively ask her at this point.

4 THE COURT: Redirect?

5 MR. SHEEK: No redirect, Your Honor.

6 THE COURT: May this witness be excused?

7 MR. SHEEK: The State is finished with this witness,
8 Your Honor.

9 MS. NELSON: Oh, yes, sir, Your Honor.

10 THE COURT: Thank you. You may be excused.

11 (Whereupon, the witness stepped down from the witness
12 stand.)

13 THE COURT: Do you have any other witnesses you can get
14 in today?

15 MR. SHEEK: Your Honor, we may. I have a matter to
16 actually take up with the Court prior to determining.

17 THE COURT: I was about to take a quick break. I know
18 everybody is starting to get a little bit weary. So let's
19 take about a 10 minute break, ladies and gentlemen. I
20 remind you not to speak amongst yourselves during the break.
21 You can come back in just a few minutes.

22 (Whereupon, the jury exited the courtroom at 4:00 p.m.)

23 THE COURT: Let me just say one thing. On the
24 unilateral agreement of the fact that Mr. Washington is not
25 here. I've already instructed them on pretrial. We can't

1 keep going into that. Okay?

2 MS. NELSON: I understand, Your Honor.

3 THE COURT: During closing argument I'll let you go.
4 During this it's just not appropriate.

5 MR. SHEEK: That's the matter, Your Honor. I think
6 that him not being here is obviously something that
7 shouldn't be commented on by the State in any way, shape or
8 form, nor would we have. But far as the Defense to say
9 basically he has no reason to know about this and this is
10 unfair to him, I've got an investigator that's on the
11 witness list that I can certainly put up and talk about --
12 Judge, actually when he didn't show up for the trial, a
13 bench warrant was issued. When it was filed in his hand, my
14 investigator began efforts to locate him. Actually talked
15 to his mother and got a number and called it. Mr.
16 Washington called my investigator back. She told him I
17 don't want to discuss your case with you, but your case has
18 been called to trial. You need to get in touch with your
19 attorney and you need to be at the courthouse.

20 THE COURT: Well, I'm not so sure you didn't open the
21 door. I'm going to let you clear it up in an in-camera and
22 I'll look at it.

23 MR. SHEEK: Yes, sir.

24 THE COURT: I'm certainly not ruling that it's coming
25 in. But you said that he basically did not know of today's

CHANEL WASHINGTON: CROSS-EXAMINATION (IN-CAMERA)

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1 Q And did you tell him that the trial was being
2 scheduled? His trial on these charges?

3 A Yes. I told him that his attorney had left cards and a
4 note on my door to contact her, and he asked me about what
5 and I said pertaining to your trial that's coming up.

6 MR. SHEEK: Thank you. That's all I have from this
7 particular witness on that, Your Honor.

8 THE COURT: Any cross-examination?

9 MS. NELSON: Yes, sir. Your Honor.

10 CROSS-EXAMINATION

11 BY MS. NELSON:

12 Q Ms. Washington, that was back in October of last year,
13 2014 --

14 A Yes, that's right.

15 Q -- that you're talking about? That was six months ago?

16 A Yes.

17 Q And the trial did not happen in October, did it?

18 A No.

19 Q Do you know why it didn't happen in October?

20 A I thought it was a continuance on it. I'm not sure.
21 That's what I think it was. It was a continuance.

22 Q And have you had any -- have you had any other
23 conversations since October with Mr. Washington about any
24 potential trial date for him?

25 A Yes. When he skipped trial for December.

CHANEL WASHINGTON: CROSS-EXAMINATION (IN-CAMERA)

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1 Q So you -- when did you get to talk to him then?

2 A I wasn't verbally talking to him. He was -- he
3 contacted me on Facebook again.

4 Q In December?

5 A Yes. He contacted me again. Was, I guess -- he said
6 he needed me to contact him. From my understanding from
7 what he wrote on Facebook he wanted to see his kids because
8 he was getting ready to skip town.

9 Q That's what the message said, that he was going to skip
10 town?

11 A He said that I'm -- I don't want to say verbatim. I
12 can actually get it out of my Facebook account. But he said
13 something to the point of I wanted to see my kids before I
14 left, and he said deuces to South Carolina. Deuces is a way
15 of saying bye, I'm out.

16 Q Yes, okay. And that was December --

17 A Yes.

18 Q -- of 2014? Was it before the trial was called or
19 during the week the trial was called, if you remember?

20 A He had -- it was around the time he -- the trial was
21 getting ready to start to take place. I knew about it. I
22 was aware about it. I told him to turn himself in. I told
23 him he couldn't run forever, and I wouldn't want to be
24 running and having this held over my head. And he told me
25 he wanted to see the kids before he left. And the -- we

CHANEL WASHINGTON: CROSS-EXAMINATION (IN-CAMERA)

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1 were arguing. And he said -- I guess he was saying you
2 don't trust me. That I would get him caught if I was going
3 to let him see the kids. He was like, it was a bad idea
4 anyway, but I wanted to see my kids.

5 Q So was he messaging you before -- the case was called
6 for trial December 15th. Do you remember that?

7 A Yes.

8 Q Right before Christmas. Was he messaging you before
9 December 15th or after December 15th?

10 A It was, I think, like right -- it might have even been
11 the day that we came to court for the trial when he wasn't
12 here.

13 Q So is that the last time you've heard from him about
14 any kind of potential trial date was December 15th?

15 A Yes. Yes. It was December -- I can't remember the
16 exact date, but it was probably around December is like the
17 last time I talked to him. December or either January.
18 Somewhere in there is the last time.

19 Q He wasn't scheduled for trial in January, was he?

20 A No, he wasn't.

21 Q And he wasn't scheduled for trial in February?

22 A I haven't talked to him then. It was in between
23 December or January. I know I talked to him in December
24 because I came up here for the trial and he wasn't here.
25 And I know I talked -- I spoke to him on Facebook that day.

CHANEL WASHINGTON: CROSS-EXAMINATION (IN-CAMERA)

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1 Q You think it was that same day?

2 A Yes. I think it was that same day. Could have been
3 the next day. I have the actual Facebook messages still in
4 my inbox.

5 Q And is that -- are those messages something that you
6 have ever provided to the Solicitor's Office?

7 A I know I spoke -- I might have spoke on it. But no, I
8 never provided them with it.

9 Q They didn't ever get printed out by anybody?

10 A No, not to my knowledge.

11 Q So if they didn't have them they couldn't have given
12 them to me; is that right?

13 A No. I didn't print them out, no.

14 Q And the last time his case was scheduled for trial was
15 December 15th of 2014; is that right?

16 A Yes, correct.

17 Q You haven't been notified of any trial date since then,
18 right?

19 A No. Not that I know of.

20 Q Well, you would know if you were notified.

21 A Who me? Was I notified?

22 Q Yes, ma'am.

23 A Oh.

24 Q Have you been told to be here for Court since December
25 15th of last year?

CHANEL WASHINGTON: REDIRECT EXAMINATION (IN-CAMERA)

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1 A I spoke with my ex-husband and he was the one --
2 because I didn't have a contact number. I didn't have no
3 way for no one to contact me. Me and him stayed in contact
4 and he was the one that told me that the court date was
5 coming up. He told me that about a week or two ago.

6 Q I guess what I'm trying to get to is between December
7 15th and today, August the 6th, did anybody ever tell you
8 that Mr. Washington's case was coming to trial?

9 A Yeah, I was aware --

10 Q I mean, at any -- at any other time other than today?

11 A Oh, no.

12 Q That's what I'm trying to get at is he wasn't -- he
13 hasn't been scheduled since December?

14 A No.

15 Q That's all I was trying to get to.

16 MS. NELSON: That's all I have. Thank you, ma'am.

17 REDIRECT EXAMINATION

18 BY MR. SHEEK:

19 Q Ms. Washington, do you mind printing out your inbox
20 messages with Mr. Washington and bringing those tomorrow
21 when you come?

22 A No. Well, when I leave here it might be -- when I
23 leave here I have to go to work, and I wouldn't have no way
24 to print them out unless I could actually pull it up when I
25 got to work.

WINDY CHAPPELL: DIRECT EXAMINATION (IN-CAMERA)

133

1 Q If we gave you access to a computer could you log in
2 and print them off here?

3 A Oh, yes. Of course.

4 MR. SHEEK: Thank you.

5 THE COURT: All right. Thank you, ma'am.

6 (Whereupon, the witness stepped down from the witness
7 stand.)

8 MR. SHEEK: I call Windy Chappell to the stand, Your
9 Honor.

10 WINDY CHAPPELL, having first been
11 duly sworn, testified as follows:

12 IN-CAMERA

13 DIRECT EXAMINATION

14 BY MR. SHEEK:

15 Q Ma'am, if you would, give us your name and spell your
16 first and last name for us.

17 A Windy Chappell, W-I--d-y. Chappell, C-h-a-p-p-e-l-l.

18 Q And you're currently employed with the Eighth Circuit
19 Solicitor's Office?

20 A I am.

21 Q And in what capacity are you employed with the
22 Solicitor's Office?

23 A I'm an investigator.

24 Q And do you hold commission through the South Carolina
25 Criminal Justice Academy as a law enforcement officer?

LYLE PRITCHARD, M.D.: DIRECT EXAMINATION

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1 heard or has seen anything about this case while Court was
2 not in session, or has spoken with anyone about this case?
3 If so, would you raise your right hand?

4 (Whereupon, no jury members raised hands.)

5 THE COURT: Let the record reflect that no one
6 responded. Is that State ready?

7 MR. SHEEK: The State's ready, Your Honor.

8 THE COURT: Is the Defense ready, Ms. Nelson?

9 MS. NELSON: Yes, sir, Your Honor.

10 THE COURT: Call your next witness, please.

11 MR. SHEEK: The State calls Dr. Lyle Pritchard to the
12 stand.

13 DR. LYLE PRITCHARD, having first
14 been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SHEEK:

17 Q Good morning, ma'am. If you would, give your full name
18 for the record.

19 A I'm Lyle Lesesne Pritchard.

20 Q And what is your occupation?

21 A I'm a pediatrician.

22 Q Give us a little bit about your education background to
23 be a pediatrician.

24 A Okay. I attended medical school at the Medical
25 University of South Carolina after completing college, and

LYLE PRITCHARD, M.D.: DIRECT EXAMINATION

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1 then I did part of my residency, which means I'm
2 specializing in pediatrics, in Charleston, South Carolina,
3 and part of it in -- at the University of Alabama at
4 Birmingham in Birmingham. And after a few years working in
5 Birmingham I moved to Greenwood, and I've been working here
6 since 1997.

7 Q Have you been working here since '97 as a pediatrician?

8 A I have.

9 Q Do you have any specialized training in the field of
10 child abuse examinations?

11 A Yes. I'm part of a team of physicians in South
12 Carolina who -- it's called the South Carolina Child Abuse
13 Medical Response System. And it's physicians who received
14 extra training in pediatric child abuse, including both
15 physical abuse and sexual abuse. We have regular meetings
16 several times a year. We are -- we are required to do extra
17 training in child abuse and do yearly continuing education
18 in child abuse.

19 Q And have you ever been qualified to testify as an
20 expert in the circuit courts of the state of South Carolina?

21 A I have.

22 Q And in what field were you qualified as an expert?

23 A In child abuse.

24 MR. SHEEK: Your Honor, we would offer Dr. Pritchard as
25 an expert in the field of pediatric child abuse.

LYLE PRITCHARD, M.D.: DIRECT EXAMINATION

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1 THE COURT: Any voir dire?

2 MS. NELSON: No, sir, Your Honor. No objection.

3 THE COURT: Do you stipulate to the expertise in the
4 field?

5 MS. NELSON: I do, Your Honor.

6 THE COURT: Okay. Ladies and gentlemen of the jury,
7 normally witnesses are not allowed to testify to what they
8 see -- they're only allowed to testify to what they see,
9 they hear, they smell. Basically your senses. However most
10 times they're not allowed to give their opinion but in very
11 limited circumstances. If a person, on the other hand, has
12 developed an expertise in an area because of their education
13 or their experience, they're allowed to give their opinion
14 in that area. In this case Dr. Pritchard has been
15 stipulated to be an expert in the field of pediatric child
16 abuse. She'll be allowed to give her opinions in that area.
17 Expert testimony, ladies and gentlemen, is like any other
18 testimony you'll hear in this case. You may accept it, you
19 make reject it, or give it as much weight as you think it
20 deserves based on the testimony in the facts of this case.

21 Okay, sir.

22 Q Dr. Pritchard, in your role doing medical examinations
23 for people who allege child abuse, did you have an
24 opportunity to do a medical examination on Minor ?

25 A I did.

LYLE PRITCHARD, M.D.: DIRECT EXAMINATION

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1 Q And on what date did you do that examination?

2 A November 16th, 2010.

3 Q Tell me how a child would come to you to have an
4 examination done. Does a parent find you in the yellow
5 pages, or how does that work?

6 A So I do examinations of children who have alleged child
7 abuse at the Children's Advocacy Center in Greenwood. And
8 what happens is either law enforcement or the Department of
9 Social Services, DSS, can get a report of alleged child
10 abuse and they would like to have a medical evaluation done.
11 And so, they send them to the Children's Advocacy Center and
12 they're scheduled to see me for a child abuse exam.

13 Q So when you did your examination of Minor what
14 are you looking for? What are you doing?

15 A Well, there's several things. Children frequently
16 don't disclose abuse right away. They're often embarrassed
17 or ashamed that this has happened to them. They're scared.
18 They're not sure that they feel safe telling anyone --

19 MS. NELSON: Your Honor, I'm going to have to object to
20 this line of questioning because -- my understanding is that
21 this was disclosed quickly. So I don't think this is
22 relevant in this case.

23 MR. SHEEK: Your Honor, what I'm asking her for is a
24 generalized background of how children come to her. I think
25 this is just part of her explanation how she gets them and

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1 what the normal procedure is.

2 MS. NELSON: I think she's explained how she gets them.

3 But then he started getting into an issue that's not
4 relevant in this case.

5 THE COURT: I'll let you go a little bit further, but
6 go ahead and move on with the questioning.

7 MR. SHEEK: Yes, sir.

8 Q You can go ahead and complete that answer.

9 A So when they do disclose and DSS and law enforcement
10 become involved they then refer them to a children's
11 advocacy center for a medical evaluation.

12 Q And when you did your medical evaluation of Minor
13 Minor were there any physical findings of trauma?

14 A No, there were not.

15 Q Let's talk a little bit about that. When you are
16 preparing, prior to doing your medical examination, do you
17 have an opportunity to look at any police reports or
18 information of that nature?

19 A I do. I review law enforcement incident report and I
20 review the interview that has been done with the child.

21 Q And you're referring to the interview at what's now
22 called Beyond Abuse, a child advocacy center?

23 A Right. Before I see them they're interviewed by an
24 expert in interviewing children.

25 Q So -

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1 MS. NELSON: Objection to the characterization --

2 THE COURT: Sustained.

3 MS. NELSON: -- as an expert.

4 THE COURT: Sustained. Just strike that expert
5 reference from the record. Go ahead.

6 MR. SHEEK: Yes, sir.

7 Q So you're familiar with the nature of what Minor has
8 said has happened prior to your physical examination?

9 A Yes.

10 Q Now, when I said -- when you said there were no
11 physical findings of trauma, what are some of the normal
12 findings of trauma you may see that you're checking for?

13 A Well, as part of an exam for a child who's been abused
14 we basically do a full exam, head to toe. Ears and eyes and
15 nose and throat, lungs, heart, abdomen, genitalia, lower
16 extremity. And we're certainly looking for any signs of
17 physical abuse or neglect such as bruising, being fed poorly
18 or any evidence of abuse or neglect. For specifically
19 sexual abuse I look at the genitalia and I used something
20 called a colposcope, which makes everything look bigger or
21 brighter. And again, it's looking for any evidence of
22 scarring or old injuries or infection.

23 And if it's okay to clarify, since I didn't see the
24 child the very day it happened or the day right after it
25 happened, in over 95 percent of the cases that we don't see

LYLE PRITCHARD, M.D.: CROSS-EXAMINATION

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1 for weeks or months later there's no evidence there.

2 Q So based on the allegations you are aware of what
3 Minor had stated it happened, is it your medical expert
4 testimony that a non-finding trauma is consistent with what
5 she said?

6 A Correct. Like I said, more than 95 percent of children
7 have a normal examine when there's a delayed time between
8 seeing the child. And so, when we see a normal exam we see
9 -- say that this neither confirms nor rules out sexual abuse
10 because we expect a normal exam some months out.

11 Q Well, if you can explain that to me. On a small child,
12 say seven or eight-years-old, if that child has experienced
13 penile penetration of a grown man, with his penis either in
14 the vaginal or the anal opening, it's your testimony that 95
15 percent of the cases I would not see trauma?

16 A That's correct. When it's been weeks afterwards. And
17 the reason for that is the hymen is the tissue that
18 surrounds the opening into the vagina and it's very soft
19 tissue. I explain to parents when they're trying to
20 understand why I can't see any evidence of injuries that
21 that -- it's made of mucosal tissue, which is like the
22 tissue that lines the inside of your mouth. And it can have
23 cuts on it, it can have scraps on it, and within days it
24 will have healed and nobody would have been able to tell
25 anything every happened. But there's an old impression

1 that's really not true that when something is put into the
2 vagina that the hymen changes. It breaks or it -- it
3 somehow changes, and you can look at a little girl
4 afterwards and tell whether or not something has been put in
5 her vagina, and that's just not true medically. The hymen
6 easily heals and smooths right back over. Just like the
7 inside of your mouth does like with a cut or an ulcer or
8 sore on the inside of your mouth.

9 Q What would be a normal time, if there was a small cut
10 or tear of the hymen, let's say from vaginal penetration,
11 that that would heal up in such a manner that you wouldn't
12 expect to see it?

13 A Usually a normal exam, within a couple of days. Two to
14 three days. If there was ever any injury actually there.

15 MR. SHEEK: Thank you, Dr. Pritchard. Please answer
16 anything Ms. Nelson may have.

17 THE COURT: Cross-examination.

18 MS. NELSON: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. NELSON:

21 Q Hi, Dr. Pritchard.

22 A Hello.

23 Q When you -- when you get these referrals, as you
24 mentioned, they're always from law enforcement or the
25 Department of Social Services, right?

LYLE PRITCHARD, M.D.: CROSS-EXAMINATION

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1 A Right.

2 Q So it's -- in this case it was a law enforcement agency
3 that was involved?

4 A Correct.

5 Q And you -- what your history is based on prior to
6 seeing the child is all from that law enforcement
7 perspective, isn't it?

8 A From law enforcement, from that forensic interview, and
9 then I interview the child.

10 Q And the law enforcement is the incident report that the
11 officer writes, right?

12 A Correct. It's available to me, yes.

13 Q And so, you reviewed that?

14 A Yes.

15 Q Do you have that with you?

16 A I do.

17 Q And it was -- do you have something that is two pages
18 long --

19 A Yes.

20 Q -- from law enforcement?

21 A Yes.

22 Q And you reviewed that, and then you mentioned the
23 forensic interview. That's done at what's now called Beyond
24 Abuse, or hers was done there?

25 A Correct.

LYLE PRITCHARD, M.D.: CROSS-EXAMINATION

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1 Q Right?

2 A Yes.

3 Q And that is also an agency that is somewhat affiliated
4 with law enforcement? They're on a team with law
5 enforcement, aren't they?

6 A So anytime there's an allegation of child abuse or
7 neglect, by law a medical provider has to call DSS and law
8 enforcement. And so, anybody that has that allegation is
9 referred to DSS or law enforcement, and then they refer them
10 to the Children's Advocacy Center.

11 Q Right, because they're a multi-functional team that
12 works together, right?

13 A Exactly.

14 Q And in you doing your medical exam at the Children's
15 Advocacy Center, that's part of that team as well, isn't it?

16 A That's correct, yes.

17 Q And when you do these exams for children who have
18 alleged abuse there's a document that you fill out called
19 the Child Maltreatment Protocol?

20 A Yes.

21 Q And yours in this case is 13 pages long; is that right?

22 A That's correct.

23 Q Is the information in this report in part gleaned from
24 what you learn in reviewing forensic -- the forensic
25 interview and the incident report --

LYLE PRITCHARD, M.D.: CROSS-EXAMINATION

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1 A Correct, yes.

2 Q -- from law enforcement?

3 A Yes.

4 Q One of the things that you noted in the report, one
5 page four, one of the things that Minor reported to
6 you was him taking pictures of her private areas without her
7 clothes on.

8 A That I got from the report. That was not something she
9 told me.

10 Q Was that from the second page of the incident report?

11 A Yes.

12 Q And that's the report that's filled out by law
13 enforcement --

14 A Right?

15 Q -- right?

16 A Right.

17 Q The two page report I asked you about earlier?

18 A Right.

19 Q And you've -- you mentioned doing a thorough check of
20 the child from not just -- not just the child's genitalia
21 but ears, nose, throat? Just a review of systems is what
22 you call it in the medical field?

23 A Correct.

24 Q And you did that with Minor and had all normal
25 findings in that regard; is that right?

1 A Let me look. Yes, that's correct.

2 Q One of the things you talk about is how -- how the
3 child is doing in school?

4 A Yes. That history comes from the mother and the child
5 -- or the parent and the child.

6 Q And the report was that she was doing -- did you mark
7 good --

8 A Yes.

9 Q -- school performance?

10 A Yes.

11 Q There were also some -- a section in your report -- let
12 me find it. In the review of systems on page six where you
13 -- there are a list of kind of a behavioral -- not kind of,
14 but a behavior R-O-S. Is that range of systems?

15 A Review of systems.

16 Q Review of systems.

17 A Yes.

18 Q And you did not find any behavioral changes in Ms.
19 Belcher?

20 A That's correct, according to her parents.

21 Q Is it -- is it correct that some of those changes would
22 have been things like having difficulty sleeping?

23 A That's correct.

24 Q Being clingy or whining; is that right?

25 A That's correct.

LYLE PRITCHARD, M.D.: CROSS-EXAMINATION

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- 1 Q Being fearful of being left alone?
- 2 A Correct.
- 3 Q Being sad or crying easily?
- 4 A Correct.
- 5 Q Is that on the list?
- 6 A Yes.
- 7 Q Quiet or withdrawn is the next thing?
- 8 A Correct.
- 9 Q Hitting or biting her siblings or friends?
- 10 A That's correct.
- 11 Q She didn't have that as part of --
- 12 A Right.
- 13 Q -- what was going on with her? She had not run away
- 14 from home?
- 15 A Right.
- 16 Q And, of course, this was as reported to you the parent?
- 17 A Correct.
- 18 Q Hadn't tried to hurt herself?
- 19 A Correct.
- 20 Q You have no marked there. No difficulty making or
- 21 keeping friends?
- 22 A Correct.
- 23 Q And there's a box marked for other and asking you to
- 24 list any other. There's nothing listed there.
- 25 A Correct.

LYLE PRITCHARD, M.D.: CROSS-EXAMINATION

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1 Q So your ultimate conclusion was, as far as Ms.
2 Belcher's behavior was going, that there were no behavioral
3 changes; is that right?

4 A Correct.

5 Q You also on that same page go through several physical
6 review of symptoms which there's another checklist there
7 with things like bed wetting, changes in appetite, stomach
8 aches, headaches, itching of the genitals or anal area.
9 There were no -- there were no symptoms like that with Ms.
10 Belcher either; is that right?

11 A That's correct.

12 Q And your ultimate conclusion on that section was that
13 it was -- there was negative pertinent physical review of
14 systems?

15 A That's correct.

16 Q And finally -- I know you've explained to us things
17 about -- about the hymen. That's the opening to the vagina?

18 A It's the tissue that surrounds the opening into the
19 vagina.

20 Q And in a -- in a child who is seven-years-old, there --
21 the hymen could present in various ways and be completely
22 normal --

23 A That's correct.

24 Q -- is that right?

25 A That's correct.

LYLE PRITCHARD, M.D.: CROSS-EXAMINATION

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- 1 Q And you're finding of Minor hymen was that it
2 was annular?
- 3 A Uh-huh.
- 4 Q That means --
- 5 A That just means round, yeah.
- 6 Q That just means there's a small round opening in the --
- 7 A It doesn't really say anything about the size of the
8 opening. It just says the shape of the opening is round.
9 Yes.
- 10 Q And that's an absolutely completely normal finding --
- 11 A Yes.
- 12 Q -- in any, I guess, prepubescent child?
- 13 A That's correct.
- 14 Q And there are all kinds of -- even if there have been
15 -- there was no damage you found, but there -- there are
16 ways a hymen can be -- can look other than normal from
17 things that are not related to sexual abuse; is that right?
- 18 A They can be born with a differently shaped hymen. Some
19 children are born with a imperforate hymen, meaning there is
20 no opening in it. So there's a variety of things children
21 can be born with that would be different.
- 22 Q But again, just the bottom line, when you -- when you
23 looked at Minor in November of 2010 everything was
24 completely normal?
- 25 A That's correct.

LYLE PRITCHARD, M.D.: REDIRECT EXAMINATION

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1 MS. NELSON: Thank you, Dr. Pritchard.

2 REDIRECT EXAMINATION

3 BY MR. SHEEK:

4 Q Dr. Pritchard, Ms. Nelson just asked you in page four
5 about your review of information in this case. You gathered
6 some of the allegations by Minor from the incident report;
7 is that correct?

8 A That's correct.

9 Q And did you also talk to Minor yourself?

10 A Yes, I did.

11 Q Was she consistent and cohesive in her statements to
12 you as what she had made to the police and to Beyond Abuse?

13 MS. NELSON: Objection, bolstering.

14 THE COURT: Overruled. Just one second. Let me see the
15 attorneys over here.

16 (Whereupon, a sidebar was held.)

17 MS. NELSON: Your Honor, was that -- was your ruling
18 the same?

19 THE COURT: That is my ruling. I'm going to sustain
20 the objection and ask you to move on.

21 MS. NELSON: Thank you, Your Honor.

22 Q Turning to the review of systems. In dealing with
23 children that have been subjected to sexual abuse, do they
24 always react the same way?

25 A No. We see a range of responses.

LYLE PRITCHARD, M.D.: REDIRECT EXAMINATION

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1 Q Ms. Nelson asked you about several of the responses,
2 such as bed wetting or outbursts of anger or trouble
3 sleeping at night. Things of that nature. You expect to
4 see the same reactions in a child that has been
5 indoctrinated at a young age to sexual abuse as opposed to
6 one that is traumatized later?

7 MS. NELSON: Objection. That's calling for a
8 conclusion that I don't think there's a scientific basis
9 for, Your Honor.

10 THE COURT: Lay some foundation, please.

11 Q In your training and education have you dealt
12 specifically with any of that, training and education in
13 response to -- let me get this question out correctly. The
14 review of systems that you just testified about. Different
15 responses some -- a child may have to sexual abuse.

16 A Yes. That children may have a wide range of responses
17 to sexual abuse.

18 Q And is that something you as a physician take into
19 account when you're doing medical examinations?

20 A Yes.

21 Q And is that part of the overall history that you take
22 of a child?

23 A Yes.

24 Q And have you had any training specifically in the
25 different reactions that you would look for in children that

1 have been subjected to physical and sexual abuse?

2 A You know, that's kind of an area of interest in study
3 is why different children react different ways. A lot of it
4 often has to do with the living situation they're in. And I
5 don't want to speculate too much about this living
6 situation. But depending on where they're living and
7 whether or not they feel safe where they are at the time I
8 see them and interview them that's often part of their --
9 how they're behaving at the time I'm seeing them.

10 Q How many children do you think you have done medical
11 examinations of this type on that have alleged sexual abuse?

12 A Probably 800 or so.

13 Q Would it be fair to say that in your experience you
14 have had children exhibiting a wide range of responses to
15 sexual abuse?

16 A Yes.

17 MR. SHEEK: Thank you. That's all the questions I
18 have.

19 MS. NELSON: Just a couple more, Your Honor.

20 RECROSS-EXAMINATION

21 BY MS. NELSON:

22 Q Again, this list of review of symptoms, the things that
23 -- the things that are listed that are on that page six of
24 your report, those things are in that report because
25 sometimes you do see those kinds of responses with children

LYLE PRICHARD, M.D.: RECROSS EXAMINATION

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1 who have been abused; is that right?

2 A That's correct. And I guess if I could add. As part
3 of assessing a child who's been abused, or could potentially
4 have been abused, as we said, it's multi-disciplinary. And
5 I'm not just looking at their genitalia. I'm looking at
6 other ways that it might be affecting their life that might
7 be a problem that I could perhaps provide some medical or
8 psychiatric support for.

9 Q So if a child were experiencing some of those things in
10 a list you might have something to recommend for them?

11 A Yes.

12 Q And so, that list is there to find out if any of those
13 issues exists and then try to help them if they do --

14 A Correct.

15 Q -- right?

16 A Correct.

17 Q And again, that list is there because sometimes with
18 this wide range of responses you get sometimes kids exhibit
19 these kinds of problems?

20 A That's correct.

21 Q And finally again, in Minor case, you did not find
22 any of those kinds of problems, either behaviorally or
23 physically?

24 A That's correct.

25 MS. NELSON: Thank you, ma'am.

CHARLOTTE EHNEY: DIRECT EXAMINATION

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1 THE COURT: May this witness be excused?

2 MR. SHEEK: No objection from the State, Your Honor.

3 MS. NELSON: Yes, Your Honor.

4 THE COURT: Is your next witness here?

5 MR. SHEEK: Yes, Your Honor.

6 THE COURT: Dr. Pritchard, thank you very much for
7 coming.

8 THE WITNESS: Thank you.

9 (Whereupon, the witness stepped down from the witness
10 stand.)

11 MR. SHEEK: Your Honor, the State calls Charlotte Ehney
12 to the stand.

13 CHARLOTTE EHNEY, having first been
14 duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SHEEK:

17 Q Thank you, ma'am. If you would, please state your name
18 for the record.

19 A I'm Charlotte Ehney.

20 Q And, Ms. Ehney, where are you currently employed?

21 A Beyond Abuse.

22 Q And how long have you been employed at Beyond Abuse?

23 A For 11 years.

24 Q And in what position are you at Beyond Abuse?

25 A I am the children's advocacy program director.

CHARLOTTE EHNEY: DIRECT EXAMINATION

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1 Q And as part of your duties at Beyond Abuse do you
2 conduct interviews of children that have alleged physical
3 and/or sexual abuse?

4 A I do.

5 Q And did you have an opportunity in your position at
6 Beyond Abuse to do an interview with Minor ?

7 A I did.

8 Q And do you have the date that that interview was
9 completed?

10 A October 14th, 2010.

11 MR. SHEEK: Beg the Court's indulgence for one moment.

12 THE COURT: Yes, sir.

13 MR. SHEEK: Judge, may we approach one second?

14 THE COURT: Yes. Mr. Foreman, would you take your jury
15 to the jury room just for a minute, please, sir.

16 (Whereupon, the jury exited the courtroom at 10:43
17 a.m.)

18 THE COURT: My understanding of the issue was because
19 of the time discrepancy on the State's DVD version versus
20 the Defense DVD version we're using the Defense's DVD
21 because it's consistent with the timeframes of your
22 objection so we don't have something come in inadvertently.
23 But you're concerned about it being identified by this
24 witness; is that correct?

25 MR. SHEEK: That is correct. And I think Ms. Nelson

CHARLOTTE EHNEY: DIRECT EXAMINATION

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1 may have a suggestion that works.

2 MS. NELSON: I mean, I don't want to make this more
3 difficult than it needs to be.

4 THE COURT: Stipulate that it's admissible or not
5 admissible and go from there.

6 MS. NELSON: Well, I'm not going to stipulate it's
7 admissible. But I'm willing to stipulate that we're using
8 --

9 THE COURT: Based on my prior ruling and subject to
10 your objection, this version of that interview will be
11 admissible. Is that a sufficient stipulation?

12 MS. NELSON: I'm willing to stipulate that this version
13 of the video is -- is the same as the original version of
14 the video. That it's an accurate copy.

15 THE COURT: It's authentic.

16 MS. NELSON: Does that work? And it --

17 THE COURT: Let me just clarify for the record. And
18 you -- you're saying it's been -- you're stipulated to its
19 authentication. You're not stipulating to its
20 admissibility. However, subject to my pretrial rulings,
21 without waiving your right to object to those rulings, you
22 are saying they will come in as authenticated; is that
23 correct?

24 MS. NELSON: That's right, Your Honor. I'm not trying
25 to say it's not an accurate video. But I don't want to say

CHARLOTTE EHNEY: DIRECT EXAMINATION

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1 anything that messes me up on reserving the objection.

2 THE COURT: That's fine. You're correct in that. Is
3 that sufficient for the State?

4 MR. SHEEK: It is, Your Honor. And then what I would
5 do is -- the only other questions I'll ask Ms. Ehney, was
6 the interview recorded, video and audio recorded, and has
7 she provided a copy of that to me. Then we will move to
8 actually play it for the jury. I would ask for comfort that
9 if she could just sit back here. It's an hour and eight
10 minutes long.

11 THE COURT: Any problem with that? If you want to
12 cross-examine her prior to that. I guess you don't need to.
13 You can cross-examine her after.

14 MS. NELSON: I can cross her after. And, Your Honor,
15 can I just say for the record the reason I'm doing this is
16 because we -- the State was using a different player
17 basically to put it up on the screen.

18 THE COURT: I've already said that.

19 MS. NELSON: Oh, I'm sorry. I just --

20 THE COURT: I'm just saying that your version had a
21 different timeframe and you used your objections subject to
22 your prior objections as to certain aspects which the State
23 agreed to excise from it based again on my prior rulings so
24 that it would be consistent with your timeframe and keep
25 inadvertent information from coming in.

CHARLOTTE EHNEY: DIRECT EXAMINATION

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1 MS. NELSON: Yes, sir. Because there was not a way for
2 the State to -- they didn't have a way to redact those
3 portions from the video. So I'm not trying to make things
4 dragged out or difficult by --

5 THE COURT: No, that's fine.

6 MS. NELSON: -- doing this.

7 THE COURT: All right. You all ready?

8 MR. SHEEK: We are, Your Honor. I will, when it's
9 playing, actually approach up here and stop it moving past
10 the time.

11 THE COURT: This is going to be about an hour long?

12 MR. SHEEK: It's going to be about an hour long, and I
13 will be moving. I will try to stay out of their way as much
14 as possible.

15 THE COURT: Let's do this. Let's go ahead and take a
16 morning break now if this is going to be about an hour..
17 Let's go ahead and do that. Let's take about a 10 minute
18 break.

19 Ms. Ehney; is that right?

20 THE WITNESS: Ehney.

21 THE COURT: You are welcome to get down, but you may
22 not speak with anybody about your testimony. Okay?

23 THE WITNESS: Yes, sir.

24 MS. NELSON: And, Your Honor, I'd ask that I can be
25 within eyeshot of what's going on.

CHARLOTTE EHNEY: DIRECT EXAMINATION

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1 THE COURT: Absolutely. Can I see you guys up here
2 right quick?

3 MR. SHEEK: Yes, sir.

4 (Whereupon, a recess was held until 11:00 a.m.)

5 THE COURT: Would you bring the jury in, please.

6 (Whereupon, the jury entered the courtroom at 11:00
7 a.m.)

8 THE COURT: All right, sir.

9 MR. SHEEK: Thank you.

10 Q Ms. Ehney, I believe you had testified that you
11 conducted an interview with Minor on October 14th
12 of 2010.

13 A Yes.

14 Q And was that interview video and audio recorded?

15 A It was.

16 Q You have a system there at your facility that records
17 them as you talk to children?

18 A We do.

19 Q And was that entire interview process preserved on the
20 videotape?

21 A It was.

22 Q And then subsequently did you provide a copy of that
23 videotape to law enforcement and to the Solicitor's Office?

24 A Yes.

25 MR. SHEEK: Your Honor, subject then to our previous

CHARLOTTE EHNEY: DIRECT EXAMINATION

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1 discussions I would like to publish that videotape to the
2 jury with the redactions that we have talked about.

3 THE COURT: Granted.

4 MS. NELSON: And, Your Honor, that's subject to our
5 previous objection.

6 THE COURT: Obviously. Yes, ma'am.

7 MR. SHEEK: If the witness would like to sit down back
8 here during the playing of the tape.

9 (Whereupon, the witness stepped down from the witness
10 stand.)

11 (Whereupon, the DVD interview was published to the
12 jury.)

13 MS. NELSON: Your Honor, I have a matter of law at this
14 time before we continue.

15 THE COURT: Mr. Foreman, would you take your jury to
16 the jury room, please.

17 (Whereupon, the jury exited the courtroom at 11:48
18 p.m.)

19 THE COURT: All right, ma'am.

20 MS. NELSON: Thank you, Your Honor. I would ask that
21 the remainder of the video be excluded at this point. And
22 the basis for that is that Mr. Washington is charged with
23 committing a sexual battery on her on July 1st of 2010. She
24 has just described the first time that something happened.
25 And you haven't heard any testimony from law enforcement,

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1 but the incident report indicates that this was reported on
2 September 3rd.

3 THE COURT: Report. Are you talking about the video?

4 MS. NELSON: No, sir. The incident was reported on
5 September 3rd by Minor father, Shaheed Belcher, that
6 she had told him about it on that day. And then when police
7 questioned her what they documented was that it had been
8 happening for a couple of months. And so, the warrant
9 covered the time period from July 1st until September 2nd.
10 I'm sorry. She said it had been happening for a couple of
11 months, and that the last time it had happened had been the
12 day before, which would have been September 2nd.

13 The warrant alleges a timeframe. However, the
14 indictment, the Grand Jury elected to indict Mr. Washington
15 for activity strictly on July 1st. On or about July 1st of
16 2010. So I have to presume that that would be when things
17 started happening because that's the first date listed in
18 the warrant. I didn't have any idea what Minor was
19 going to say happened on July 1st. But she, in the rest of
20 the course of this interview, talks about two other
21 incidents, and immediately -- she has now talked about
22 everything related to the first incident. She's asked by
23 the interviewer tell me -- tell me what happened the first
24 time. And we've been through that. And I would submit to
25 you, Judge, that that's what he is indicated for because

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1 July 1st is supposedly when this started if you take the
2 incident report and warrant to be -- to have their dates
3 correct. He's indicated for July 1st. She has described
4 the first event. The rest of the interview goes on to ask,
5 were there any other times that it happened. Tell me about
6 the last time that it happened. And throughout the rest of
7 the timeMinor describes the last time that something
8 happened which she said was what sounds like anal
9 penetration in her mother's bathroom. I assume that's the
10 bathroom off of the master bedroom, while her mother was
11 asleep in the tattoo room is what she says. If that's the
12 last time something happened that must have been -- if you
13 take what she reported is true, that would have been the day
14 before the report was made, September 2nd, which is not what
15 he's indicted for. She describes some other incident of
16 fellatio in her brother's bedroom.

17 So, Your Honor, that's my position is that everything
18 else on this video is irrelevant and overly prejudicial
19 under Rules 401 and 403 and do not relate to the offense
20 that Mr. Washington is charged with in this case.

21 THE COURT: Wish to respond?

22 MR. SHEEK: My response, Your Honor, is first of all,
23 of course, statutorily time is not of the essence. It is on
24 or about. It's basically the summertime months. A couple
25 months prior to the report in September. First of all, I

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1 mean, once it's in evidence I'm not sure how we unintroduce
2 it. We've played part of it. That being as it may, I think
3 --

4 THE COURT: She didn't waive her right to object to any
5 other aspect of the tape. In fact, she specifically
6 reserved the right to object to other aspects of the tape.

7 MR. SHEEK: I understand that, Your Honor. I think
8 under the cases they clearly discuss the res gestae, and
9 specifically in these type of cases where it talks about an
10 ongoing abuse where the State is allowed to present an
11 entire story. Because I've run into this before where you
12 if indicate a particular time -- because cases have kind of
13 gone two different ways lately. There was a recent case
14 that came down that said a large timeframe is too vague.
15 And so, we've tried to be more specific in these. But it's
16 still an on or about. There is no way these cases can get
17 totally specific. But even when you do that, under the res
18 gestae you're allowed to present the evidence that completes
19 the entire story, instead of presenting a very disjointed
20 story of, well, this is the one time it happened and --

21 THE COURT: Do you have any references so we can look
22 that up that we can research that?

23 MR. SHEEK: I can give it to you, Your Honor I'd have
24 to look back at it. And I actually argued it last term here
25 in a different trial. I'll be happy to give you those

1 cites.

2 THE COURT: How about grab those for me. How long
3 would it take you to get those?

4 MR. SHEEK: Your Honor, if I could have just 10
5 minutes.

6 MS. NELSON: Could I just add that it's -- I think the
7 case law is pretty clear that when they -- when they want to
8 indicate for a timeframe they can. And I can't think of the
9 recent case either that talked about six years being too
10 long, but --

11 THE COURT: It's time for you all to let me know the
12 cases. We're at trial. There was a recent case, too, that
13 spoke about whether or not elements involve timeframe.
14 Timeframes do not involve the elements. I can't cite it for
15 you either. It may be the one you're talking about the six
16 years being too broad. Anyway -

17 MS. NELSON: It just came out.

18 THE COURT: Get those cases. Give them to my clerk.
19 I'll go over them right quick.

20 MS. NELSON: And my other comment is that when cases
21 say time is not of the essence, that's the time. Not the
22 date. The time of -- like 3:00 in the afternoon, 6:00 at
23 night. But they've alleged a date on or about, and on or
24 about means on July 1st or very close to it. You know, I
25 know that sometimes on or about is put in in case something

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1 happened at 11:59 p.m. --

2 THE COURT: Get me a cite. I've got your argument,
3 but get me a cite.

4 MS. NELSON: Yes, sir.

5 (Whereupon, a recess was held from 11:50 a.m. to 12:00
6 p.m.)

7 THE COURT: All right. Looking up this issue of the
8 res gestae, clearly we have in this case other bad acts.
9 Alleged bad acts, you can say that, that were not indicated
10 in this case. But looking at the case of *State vs. King*,
11 which is 334 S.C. 504, and *State vs. Sweat*, 362 S.C. 172.
12 Doing that in reverse order. *State vs. Sweat* is a case
13 where the defendant was -- well, guilty -- charged and found
14 guilty of first degree burglar, assault and battery with
15 intent to kill and assault and battery of a high and
16 aggravated nature. The Court of Appeals said evidence of --
17 or episode of domestic violence was admissible to show
18 motive and intent. *State vs. King*, 334 S.C. 504. It says
19 the res gestae recognizes evidence of other bad acts which
20 may be an integral part of the crime that the defendant is
21 charged or may be needed to aid the finder of fact in
22 understanding the context in which the crime occurred as
23 evidence of other crimes is admissible when such evidence
24 furnishes part of the context of the crime or is necessary
25 to a full presentation of the case, or intimately connected

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1 with and explanatory of the crime charged against the
2 Defendant and is so much a part of the setting of the case
3 and it's environment that it's proof is appropriate in order
4 to complete the story of the crime on trial by previous
5 context or the res gestae, or the uncharged offense is so
6 linked together and point of time and circumstances with the
7 crime charged that one cannot be fully shown without proving
8 the other, and is thus part of the res gestae defined charge
9 where evidence is admissible to full presentation of case
10 there's no reason to fragmentize the event under inquiry by
11 suppressing parts of the res gestae.

12 Now, clearly the State has indicted on or about July
13 the 1st, 2010. The testimony in the tape appears to be
14 related to that event. The State clearly does not need to
15 prove these other events -- unindicted events in order to
16 prove its case against the Defendant. At the same time,
17 under the *Sweat* case it could seem to me the res gestae
18 could go to show motive and intent on the part of your
19 client, Ms. Nelson, or be so close to the point in time in
20 events as to give immediate context to the entire
21 presentation of the facts of this case, or as otherwise
22 stated on the record in the *King* case.

23 Tell me why Mr. -- I'm drawing a blank.

24 MR. SHEEK: Sheek.

25 THE COURT: I'm drawing a blank. I was in the middle

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1 of something else.

2 MR SHEEK: You have a block.

3 THE COURT: Tell me why, without generically saying res
4 gestae, this falls under the case? And I'm going to hear
5 you in just a second.

6 MS. NELSON: Yes, sir.

7 MR. SHEEK: Your Honor, really it goes more -- to put it
8 into context what I have found from doing these cases,
9 because this is primarily all I do, is that if you present
10 the picture to a jury that you've got these kids living
11 there. It happens on one day and it's never happened any
12 other time, it leaves the jury wondering what precipitated
13 that one event where it's showing the pattern of conduct
14 puts it in the context that they can understand. It
15 certainly makes it more logical. And it certainly would go
16 to prove that this child is not misinterpreting something
17 that happened. It wasn't a bathing or helping change
18 clothes and a touch that the child misinterpreted. But this
19 was a pattern of conduct.

20 THE COURT: All right. Ms. Nelson?

21 MS. NELSON: My problem with it, Your Honor, in this
22 sort of continuing course of things my understanding is
23 that's to explain that somebody -- I have to explain to you
24 that somebody stole this car because this is the same car he
25 used an hour later in this armed robbery or this bank

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1 robbery. That's not what we've got here. We've got three
2 incidents that are -- that are very different. Other -- the
3 only way they're the same is that they involve the same two
4 people allegedly. There are supposed --

5 THE COURT: Or following the definition of sexual
6 battery, and that's where they would be similar.

7 MS. NELSON: Well, actually --

8 THE COURT: It's a very different issue, but it's still
9 whether it be fellatio, cunnilingus, or whatever without
10 going through all those things. It would still -- if
11 accepted as true, it would be -- it would constitute a
12 sexual battery.

13 MS. NELSON: But different -- she hasn't actually
14 described one yet, but she will describe, if the tape
15 continues, oral sex, fellatio --

16 THE COURT: Right.

17 MS. NELSON: -- and anal sex. So completely different
18 types of sexual battery.

19 THE COURT: Well, she had it fairly close a minute ago.
20 Not in any way --

21 MS. NELSON: I understand that --

22 THE COURT: It's totally clear to me based on what I've
23 heard. I thought I heard her describe sufficiently -- there
24 would be -- with that I would say there's some evidence in
25 the record to show that there was a sexual battery that

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1 occurred.

2 MS. NELSON: I heard it differently. That doesn't
3 surprise me.

4 THE COURT: Sure. The concern I have is that these are
5 not evidence of the charge that -- which -- these are
6 unindicted crimes.

7 MS. NELSON: They are, Your Honor, and --

8 THE COURT: And if he were to come up here and plead
9 guilty to unindicted crimes there would be a question of
10 whether I had subject matter of jurisdiction since this is
11 not a lesser included based on other cases. However, in my
12 view under the Sweat case, it goes to show motive and
13 intent, not mistake, not -- it would also go to show a full
14 presentation of the evidence of the context and environment
15 in which this setting took place was all -- from what I
16 understand you're saying all this took place in momma's
17 house or in that surrounding; is that correct?

18 MS. NELSON: Yes, sir. Under *Gentry* the indictment is
19 supposed to give notice to the Defendant of what he's
20 charged with.

21 THE COURT: Right. Now, that's -- and my next
22 statement was going to be this. I don't mean to cut you
23 off, but my next statement was going to be this. If the
24 State wishes to proceed with that other aspects of these
25 unindicted bad acts I would give the jury the charge that

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1 they cannot consider his guilt or innocence of other bad
2 acts just in and of themselves but it's admitted for the
3 sole purpose of their motive or intent to have full
4 presentation of evidence. But he's only indicted on an act
5 that occurred on or about July 1st, 2010. Something to that
6 effect.

7 MS. NELSON: Well, Your Honor, I --

8 THE COURT: Unless you object to me giving a curative
9 charge on that event.

10 MS. NELSON: I'm probably going to have to say that I
11 don't think there's any charge that's going to cure it. I
12 don't think I can object to your --

13 THE COURT: Yeah, you can. I won't give it if you
14 don't want me to.

15 MS. NELSON: Well, it's such a mess though when you get
16 into -- for preserving record purposes when you get into
17 objecting. Your Honor, there's the *Clasby* case in 2009.
18 The Court allowed -- the Court allowed some evidence of
19 similar acts, continued elicit intercourse that would happen
20 prior to the indicted offense. And the theory in that case
21 was that it was kind of a grooming theory, that we were
22 showing what happened and the lead up to --

23 THE COURT: What case is that?

24 MS. NELSON: That's State vs. *Clasby*.

25 THE COURT: And they said that was admissible?

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1 MS. NELSON: Prior. Prior acts. Not subsequent acts,
2 Your Honor.

3 THE COURT: Right.

4 MS. NELSON: 385 S.C. 148. That's a 2009 Supreme Court
5 --

6 THE COURT: Here's what I'm going to do. I'm going to
7 find that it is admissible. I will give a curative charge
8 if requested. Otherwise, under *State vs. King* and *State vs.*
9 *Sweat* I think it falls under the *res gestae*. And I note
10 your objection to it. The question for you to answer right
11 now though. Do you want me to try to formulate a charge on
12 the limited basis of the admissibility of this evidence?

13 MS. NELSON: I think I'm going to have to agree to
14 something. If we can agree to it, I think I'm going to have
15 to.

16 THE COURT: Well, you keep -- you won't answer my
17 question and I'm asking you a very direct question. Do you
18 want me to try to formulate a curative charge. Yes or no?

19 MS. NELSON: Yes, sir.

20 THE COURT: Okay. That's what I need to know. And I
21 know I'm forcing your hand over here. I know you object to
22 my ruling. Okay? So you should be protected on that.

23 MS. NELSON: Your Honor, can I just add for the record
24 that I think this goes to propensity under 404(b) and *Lyle*
25 and *Wallace* and that the acts that she's talking about are

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1 not sufficiently similar to come in. That this was just --
2 instead of -- the Grand Jury chose this time and --

3 THE COURT: You need to -- I'm glad to let you make
4 your record, but you go a little rambling. I think you've
5 got it. But go ahead and be more precise and concise for
6 me, please. Okay? Go ahead, if you would.

7 MS. NELSON: And that it is propensity and not res
8 gestae. That on the tape she has already explained the
9 complete act for which Mr. Washington is indicted and it is
10 unfairly prejudicial to allow any other act that he is not
11 on notice for, Your Honor.

12 THE COURT: Thank you. Let me work on this for one
13 second and I'll try to get that formulated.

14 (Whereupon, there was a brief pause in the
15 proceedings.)

16 THE COURT: Here would be my proposed instructions to
17 the jury. Ladies and gentlemen, there may be reflected on
18 the video evidence of other acts allegedly committed by the
19 Defendant on the witness. The indictment in this matter
20 only charges the Defendant with conduct that occurred on or
21 around July 1st, 2010. To the extent that any other
22 evidence is presented other than the alleged acts on or
23 around July 1st, 2010 you shall not consider the Defendant's
24 innocence or guilt in committing these acts because he has
25 not been indicted for these. This evidence, if any, may be

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1 considered by you for the sole purpose of considering the
2 Defendant's motive, intent, absence and mistaken and/or to
3 present a setting of this case and its environment. It is
4 up to you to evaluate and weigh the evidence and give that
5 evidence the weight you think it deserves.

6 Any objection other than as stated on the record, Ms.
7 Nelson?

8 MS. NELSON: No, sir, Your Honor.

9 THE COURT: Any objection to the proposed charge, Mr.
10 Sheek?

11 MR. SHEEK: No, sir.

12 THE COURT: All right. Bring the jury in. Come here
13 for a second.

14 (Whereupon, a sidebar was held.)

15 (Whereupon, the jury entered the courtroom at 12:09
16 a.m.)

17 THE COURT: Mr. Foreman, ladies and gentlemen of the
18 jury, let me remind you that, as I told you at the beginning
19 of the case, trials are very slow. They're very methodical
20 and they're very deliberate and this trial is no different.
21 However, I'm going to give you some further instructions
22 before we get into the remainder of this tape.

23 Ladies and gentlemen, there may be reflected on the
24 video evidence of other acts allegedly committed by the
25 Defendant on the witness. The indictment in this matter

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1 only charges the Defendant with conduct that occurred on or
2 around July 1st, 2010. To the extent that any evidence is
3 presented other than the alleged acts on or around July 1st,
4 2010 you shall not consider the Defendant's innocence or
5 guilt in committing these acts because he has not been
6 indicted for these acts. This evidence, if any, may be
7 considered by you for the sole purpose of considering the
8 Defendant's motive, intent, absence of mistake, and/or to
9 present a setting of the case and its environment. Ladies
10 and gentlemen, it's up to you to evaluate the weight of the
11 evidence and give it such weight that you think it deserves.

12 With that being said, is the State ready to proceed?

13 MR. SHEEK: The State's ready, Your Honor.

14 THE COURT: Is the Defense ready to proceed?

15 MS. NELSON: Yes, sir. Your Honor.

16 THE COURT: Very good.

17 (Whereupon, the interview DVD published for the jury
18 was resumed.)

19 MR. SHEEK: Your Honor, the State as no further
20 questions for this witness.

21 THE COURT: Very good. Cross-examination.

22 MS. NELSON: Thank you very much, Your Honor. May it
23 please the Court.

24 CROSS-EXAMINATION

25 BY MS. NELSON:

CHARLOTTE EHNEY: CROSS EXAMINATION

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1 Q Ms. Ehney, just going back over, this interview took
2 place October 14th of 2010, right?

3 A Yes.

4 Q And that was a referral made to you by law enforcement?

5 A Law enforcement did that.

6 Q Was law enforcement actually present at the interview?

7 A May I refer back to my notes?

8 Q Yes, ma'am. Do you want to look at your -- well, let
9 me ask it this way. When you do one of these interviews you
10 actually prepare a report of that interview; is that right?

11 A Yes, I do.

12 Q Is that what you're going to look at or --

13 A Yes, ma'am.

14 THE COURT: Can you hear the witness okay? I'm having
15 a little difficulty. Would you mind speaking up just a
16 little bit?

17 THE WITNESS: Sure.

18 THE COURT: Thank you.

19 Q That report on the first page indicates that the Due
20 West Police Department was the agency?

21 A Yes.

22 Q And that the investigator was Dave Maxwell?

23 A Yes.

24 Q Can you tell if they were -- if anyone with Due West
25 was present at the interview?

CHARLOTTE EHNEY: CROSS EXAMINATION

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1 A Yes. On page four of that report it has individuals
2 viewing the interview. There was Crystal Glassborne of
3 Abbeville DSS, David Maxwell of Due West Police Department
4 and Allison Harris who was an employee of Sexual Trauma and
5 Counseling Center and the Child's Place, which was our name
6 before we changed to Beyond Abuse.

7 Q Are those folks able to actually -- they're not --
8 they're not in the room with you when you're interviewing
9 the child, right?

10 A No, they're not in the interview room.

11 Q They're able to watch it from another location in the
12 building?

13 A They watch in another room. It's a TV where the
14 interview is being shown as it happens. They observe it
15 over the TV.

16 Q So it kind of comes in through a feed from the camera
17 that's in the room?

18 A Yes.

19 Q And there was a point in the interview where you left
20 and Minor was drawing some pictures. That's the point in
21 the interview where you go and speak to law enforcement or
22 individuals watching to ask about whether there's anything
23 else they want to know?

24 A Yes.

25 Q Is that what happened during that time period?

CHARLOTTE EHNEY: CROSS EXAMINATION

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1 A Yes.

2 Q And then you came back and asked some more questions,
3 right?

4 A Yes.

5 Q In completing your report one of the things you do is
6 ask some questions about the family that the child is living
7 with --

8 A Yes.

9 Q -- is that right? You get just a kind of demographic
10 information about the family?

11 A Yes. And that's also part of rapport building. Just
12 interacting with the child to have the child become
13 comfortable with you.

14 Q Well, when you filled out the family constellation
15 section of the report is that something that you got during
16 the interview or is that something that you got prior to the
17 interview from one of the parents?

18 A That was done prior to the interview from the parent.

19 Q And the information they provided to you was that she
20 was living with her mother Chanel --

21 MR. SHEEK: Objection to the hearsay, Your Honor.

22 THE COURT: Overruled.

23 Q That she was living with her mother Chanel who was 36
24 at the time? I'm looking at the --

25 A Right.

CHARLOTTE EHNEY: CROSS EXAMINATION

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1 Q -- family constellation.

2 A It was reported that prior to September 3rd, 2010 that
3 she was living with her mother, Chanel Washington.

4 Q Right. And the reason September 3rd is referenced is
5 because that's the day that the incident was reported?

6 A This is the information we were giving that prior to
7 that day she was living in one household and after that day
8 she was living in another household.

9 Q Is it your understanding that the reason she was moved
10 was because this incident got reported on September 3rd?

11 A That was my understanding.

12 Q So before September 3rd she was living in the home with
13 her mother, Chanel, who was 36 at the time?

14 A Yes.

15 Q And with Shane Washington, her step-father, who was 25
16 at the time?

17 A Yes.

18 Q A baby brother, S.A. a month old?

19 A Yes.

20 Q T.W. , who was a year-old sister?

21 A Yes.

22 Q S.W. , two-years-old, her sister?

23 A Yes.

24 Q Her sister S.B. who was five?

25 A Yes.

CHARLOTTE EHNEY: CROSS EXAMINATION

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1 Q Her brother S.J. who was six?

2 A Yes.

3 Q Is that the brother on the video that she refers to as
4 La?

5 A That is my understanding.

6 Q And then she also had an eight-year-old sister named
7 M.B. that was living in the home?

8 A Yes.

9 Q You also in preparing for the interview take a child
10 behavior history, and that's on -- starting on page two of
11 your form?

12 A Yes.

13 Q And that history is obtained prior to the interview
14 with the child as well, isn't it?

15 A That is correct.

16 Q And you asked that information of the mother and
17 father?

18 A That is correct.

19 Q And that's Shaheed Belcher and Chanel Washington?

20 A That is correct.

21 Q There are -- there are a list of various behaviors on
22 that form, including aggressive or angry behavior?

23 A Yes.

24 Q And they reported that she was not having those
25 behaviors?

CHARLOTTE EHNEY: CROSS EXAMINATION

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1 A At the time of the report they did not indicate she was
2 having the behavior.

3 Q And, in fact, out of this -- out of this whole list in
4 the behavior history there were no behavioral problems
5 reported by the parents?

6 A That's correct. Neither the mother or the father
7 indicated there were any behavioral problems.

8 Q And that's without me going through this long list of,
9 I don't know, over 10 items. Now, one of the things that
10 the mother also reported to you at the time was that she did
11 not feel the allegations were true; is that correct? On
12 page three of your form?

13 THE COURT: Just one second. Mr. Foreman, would you
14 take the jury back to the jury room, please.

15 (Whereupon, the jury exited the courtroom at 12:55
16 p.m.)

17 THE COURT: You know that's not admissible. You can't
18 even have any argument that it could be.

19 MS. NELSON: Your Honor, I thought it went to the
20 mother's state of mind.

21 THE COURT: The mother's state of mind? Please. I'm
22 going to strike it. I'm going to tell the jury to strike it
23 and I'm going to forewarn you now that you're not going to
24 do that in the backdoor, or you open the door for the State
25 to come in and go through a bunch of vouching because you

CHARLOTTE EHNEY: CROSS EXAMINATION

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1 can't anti-vouch and they can't vouch. So absolutely not.

2 No, sir. Okay?

3 MS. NELSON: Yes, sir.

4 THE COURT: Five minutes and let's get started.

5 (Whereupon, the court took a recess from 12:55 p.m. to
6 1:04 p.m.)

7 THE COURT: Ms. Nelson, are you ready to proceed?

8 MS. NELSON: Yes, sir, Your Honor.

9 MR. SHEEK: Yes, sir.

10 THE COURT: Please bring the jury in.

11 (Whereupon, the jury entered the courtroom at 1:04
12 p.m.)

13 THE COURT: Before we get started, ladies and
14 gentlemen, any reference to the witness' mother is stricken
15 from the record and you are instructed that you shall not
16 consider that and you shall just ignore that.

17 You may proceed.

18 MS. NELSON: Thank you, Your Honor.

19 Q Ms. Ehney, did you have an opportunity to review the
20 law enforcement incident report prior to interviewing Ms.
21 Belcher?

22 A I did.

23 Q And was it your understanding from that incident report
24 that the claim was that the activity had been occurring for
25 about two months?

CHARLOTTE EHNEY: CROSS EXAMINATION

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1 A I do not recall at this point.

2 Q If I show you the report would that refresh your
3 memory?

4 A That would refresh my memory.

5 MS. NELSON: May I approach, Your Honor?

6 THE COURT: Yes, ma'am.

7 Q Ms. Ehney, if you would just take a look at the second
8 page which is the supplemental incident report. There is a
9 sentence, I believe it's the third sentence from the bottom,
10 "Minor told me that this is --"

11 MR. SHEEK: Objection to hearsay.

12 THE COURT: Sustained. Give her a chance to --

13 MS. NELSON: I'm sorry.

14 Q Does that help refresh your recollection about your
15 understanding of how long the behavior had allegedly been
16 occurring?

17 A Yes.

18 Q And that was for about a couple of months?

19 A A couple of months.

20 Q And the report was made on September 3rd of 2010?

21 A Yes.

22 Q Thank you, ma'am. So if that's correct and it had been
23 going on for a couple of months, it would have started at
24 the beginning of July 2010? July, August, September?

25 A I do not know when it started. I asked her in the

CHARLOTTE EHNEY: CROSS EXAMINATION

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1 interview how old she was and she referenced seven years old
2 when it started.

3 Q And if her -- according to her birth date she would
4 have been seven years old on July 1st of 2010?

5 A I do not have her birth date listed. Oh, I'm sorry.
6 Yes, she would have been seven years old at that point.

7 Q And in your -- one of the things you do in your report
8 is you write a really detailed narrative of what -- of what
9 happened in the interview?

10 A It's a summary report. So it's not verbatim. It is a
11 summary of what went on during this interview.

12 Q And you have a summary of what Minor told you about
13 the first time that something had happened?

14 A Yes.

15 Q One of the things you -- it's no uncommon in an
16 interview for you to try to ask a child about the first time
17 something they allege happened?

18 A That's correct.

19 Q And then you often ask them about the last time?

20 A That's correct.

21 Q Do you recall when the last time was supposed to have
22 occurred?

23 A I don't think she gave me a timeframe for when the last
24 time was.

25 Q Do you remember anything that would have told you that

CHARLOTTE EHNEY: CROSS EXAMINATION

209

1 from the incident report that I just took away from you?

2 A The incident report says that it was September the 2nd.

3 That's when she made her outcry of abuse.

4 Q That was actually when -- can I give you the report

5 back to -- if you would look at page two and let me know if

6 that refreshes your memory about when was alleged to have

7 been the last time.

8 A Yes, it reports Thursday, September the 2nd.

9 Q And then she made the disclosure the next day, or at

10 least her father reported it the next day?

11 A Yes. It was reported on September the 3rd.

12 Q Thank you. And I know we've all just had an

13 opportunity to watch the video, but you -- again, you did

14 record at least a summary of what she told you about the

15 first time she claim something happened?

16 A Yeah.

17 Q And that first time involved touching her butt and her

18 private, to use her words?

19 A Yes.

20 Q And you specifically asked her about when he was

21 accused of touching those places whether it was inside,

22 outside or something else?

23 A Yes.

24 Q And her response was outside?

25 A Yes.

CHARLOTTE EHNEY: CROSS EXAMINATION

210

1 Q And I am looking at page six when she told you about
2 the first time. She said it was during the day?

3 A Yes.

4 MS. NELSON: Thank you. Thank you, Ms. Ehney, that's
5 all I have.

6 THE COURT: Redirect?

7 MR. SHEEK: No redirect, Your Honor.

8 THE COURT: May this witness be excused?

9 MR. SHEEK: Yes, sir.

10 MS. NELSON: Yes, sir.

11 THE COURT: All right. Thank you, ma'am.

12 (Whereupon, the witness stepped down from the witness
13 stand.)

14 THE COURT: Mr. Foreman, I kept you a little bit over.
15 Let's go ahead and take a lunch break now. If you'll be
16 back in your jury room about 10 after 2:00 and we'll resume
17 testimony shortly thereafter. I remind you not to speak
18 amongst yourselves or anyone about this case.

19 (Whereupon, the jury was released for lunch break at
20 1:12 p.m.)

21 THE COURT: Anything further from the State before we
22 break for lunch?

23 MR. SHEEK: No, sir.

24 THE COURT: From the Defense?

25 MS. NELSON: No, sir.

25 A My granddaddy.

Minor : DIRECT EXAMINATION

2131

- 1 Q You live with your granddaddy. What's his name?
- 2 A Ronnie Lewis.
- 3 Q Does he live here in Abbeville County?
- 4 A Yes, sir.
- 5 Q And you go to school?
- 6 A Yes. Calhoun Falls Charter School.
- 7 Q A Charter School. What grade are you in?
- 8 A Sixth.
- 9 Q Sixth grade. Do you like it there at the Charter
- 10 School?
- 11 A Yes, sir.
- 12 Q Now, is this your first year there at the Charter
- 13 School?
- 14 A Yes, sir.
- 15 Q So what's your favorite subject?
- 16 A Social studies.
- 17 Q Social studies. You like that best of all?
- 18 A Yes, sir.
- 19 Q Have you thought about what you might want to do when
- 20 you grow up?
- 21 A No, sir.
- 22 Q A little bit early to decide that?
- 23 A Yes, sir.
- 24 Q Minor prior to living with your granddaddy was there
- 25 a time when you lived with your momma?

Minor

: DIRECT EXAMINATION

214

1 A Yes, sir.

2 Q And her name is, I believe, Chanel?

3 A Yes, sir.

4 Q Where did you live with your momma last? The last time
5 you lived with your mom?

6 A I lived with her --

7 Q Do you remember the address?

8 A Carver Street.

9 Q And what town was that in?

10 A Due West.

11 Q Is that here in Abbeville County?

12 A Yes, sir.

13 Q And who else lived there at the house with you and your
14 momma?

15 A Shane and my sisters and brothers.

16 Q How many sisters and brothers do you have?

17 A I have five sisters and three brothers.

18 Q You have a big family.

19 A Uh-huh. Yes, sir.

20 Q Now, you said that Shane lived there. I'm going to
21 hand you what's been marked as State's Exhibit No. 1. A
22 photograph. Is that who you're referring to when you said
23 Shane lived there?

24 A Yes, sir.

25 Q Do you know what his whole name was?

Minor

: DIRECT EXAMINATION

215

- 1 A Shane Washington.
- 2 Q Was he a friend of your momma's?
- 3 A Yes, sir.
- 4 Q Were they boyfriend and girlfriend or just friends?
- 5 A Boyfriend and girlfriend.
- 6 Q So did he live there in the home with you, your momma
- 7 and your brothers and sisters?
- 8 A Yes, sir.
- 9 Q Okay. Well, let's talk about this home you lived in on
- 10 Carver Street. Do you remember how many bedrooms it had?
- 11 A Four.
- 12 Q Was your momma's bedroom -- did Shane stay in the room
- 13 with your momma? Did they share a bedroom?
- 14 A Yes, sir.
- 15 Q Was it on the same end of the house as your bedroom?
- 16 A No, sir.
- 17 Q So it was on the other end of the house?
- 18 A Yes, sir.
- 19 Q Now, your bedroom or the other bedrooms -- you said
- 20 there were four in all. Were the other three bedrooms on
- 21 the same end? The other two bedrooms from yours, on the
- 22 same end of the house as yours or on the other end?
- 23 A Yes, sir.
- 24 Q Which? Was it on the other or the same end as yours?
- 25 A The other two rooms was on the same room as mine.

Minor

: DIRECT EXAMINATION

216

1 Q And who stayed in those rooms?

2 A My -- well, one room was me and my sister had stayed,
3 and the other room was my brother, and the other room Shane
4 had went in sometimes to do tattoos.

5 Q Okay. So if people talk about the tattoo room is that
6 what we're talking about, the other bedroom that Shane used?

7 A Yes, sir.

8 Q When you say he did tattoos, he did these for other
9 people? They come by and he would put tattoos on them?

10 A Yes, sir.

11 Q What kind of stuff did he have there in that tattoo
12 room?

13 A He had the stuff that you do tattoos with. He had a TV
14 and a couch and a head scarf. Like a head scarf to go on
15 your head. And he had other like materials so he could do
16 tattoos.

17 Q Now, when you were living there with your mother,
18 Chanel, your brothers and sisters and Shane there on Carver
19 Street, would you also see your father? The gentleman
20 sitting right here behind me?

21 A Uh-huh. Yes, sir.

22 Q How often would you get to see your dad? Did you have
23 regular visits with him?

24 A On the weekends I would go to my -- our daddy would
25 come pick us up and we'd go to his house on the weekends.

Minor

: DIRECT EXAMINATION

217

1 Q So you would get to go stay with your dad on weekends
2 because -- does he work?

3 A Yes, sir.

4 Q Is he usually working out of town?

5 A Yes, sir.

6 Q So on weekends he came and spent it with his kids, when
7 you and --

8 A Yes, sir.

9 Q Do you remember a time late of 2010, around September
10 of 2010, telling your dad about something that was going on
11 that you didn't like --

12 A Yes, sir.

13 Q -- at your home? Do you remember that?

14 A Yes, sir.

15 Q What did you tell them was going on?

16 A That Shane was touching me in the wrong place.

17 Q All right. And that's something you told your dad was
18 happening?

19 A Yes, sir.

20 Q About how long had that been going on when you told
21 your dad?

22 A It was going on every once in a while.

23 Q Okay. Every once in a while. Had it been going on for
24 just a matter of a few days, a few weeks, a few months? Do
25 you remember?

Minor

: DIRECT EXAMINATION

218

1 A A few days and weeks.

2 Q Okay. And we're talking about in 2010, so going on
3 five years ago?

4 A Yes, sir.

5 Q So you would have turned eight years old on the
6 2010?

7 A Yes, sir.

8 Q So you were seven when you told your daddy this?

9 A Yes, sir.

10 Q Do you remember how old you were when Shane started
11 touching you in a wrong place, as you said?

12 A I was seven.

13 Q Do you remember, Minor going to a place in Greenwood
14 called A Child's Place?

15 A Yes, sir.

16 Q And talking to someone there about what happened?

17 A Yes, sir.

18 Q And did you sit down in a room and tell them what Shane
19 had been doing?

20 A Yes, sir.

21 Q I'm going to show you a couple drawings. Do you
22 remember the lady there putting that drawing up on a board?

23 A Yes, sir.

24 Q And there's names written down on the different body
25 parts. Did she asked you what names you used for those

Minor

: DIRECT EXAMINATION

219

1 different body parts?

2 A Yes, sir.

3 Q And are those the correct names that you gave her that
4 day?

5 A Yes, sir.

6 Q And then did she also show you this drawing of the boy?

7 A Yes, sir.

8 Q And did she do the same thing with you on that one?

9 A Yes, sir.

10 Q And is that a copy of where you labeled the different
11 body parts on that one?

12 A Yes, sir.

13 MR. SHEEK: Your Honor, I would move these into
14 evidence as State's 2 and 3.

15 THE COURT: Subject to the prior ruling, any
16 objections?

17 MS. NELSON: No other objections, Your Honor.

18 THE COURT: Subject to prior rulings.

19 (Whereupon, State's Exhibit Nos. 2 and 3 were admitted
20 into evidence.)

21 Q Minor the reason I asked you about that, when we're
22 talking about different body parts, so that these people
23 over here can understand what you're saying I want to make
24 sure we're using the right names. So if say something wrong
25 will you promise to correct me?

Minor

: DIRECT EXAMINATION

220

1 A Yes, sir.

2 Q Okay. Now, when you told that Shane was touching you
3 in a wrong spot, what spot are you talking about?

4 A My rear end.

5 Q I'm going to show you on what's been marked as State's
6 Exhibit No. 2 where it's circled right there and it's
7 labeled butt. Is that what we're talking about?

8 A Yes, sir.

9 Q Okay. Would he touch you anywhere else that you felt
10 like he shouldn't be touching you?

11 A My private.

12 Q And you've also labeled that on this drawing, State's
13 Exhibit No. 2; is that correct?

14 A Yes, sir.

15 Q And do you refer to that same place now when you say
16 private?

17 A Yes, sir.

18 Q When he would touch you on those spots, Minor was it
19 on top of your clothing, under your clothing or something
20 else?

21 A Under my clothing.

22 Q Would he -- was his skin touching your skin or was it
23 touching something else?

24 A His skin was touching my skin.

25 Q What would he touch you with? Would it be a hand or

Minor

: DIRECT EXAMINATION

221

1 elbow or foot or something else?

2 A His hand and his private.

3 Q Okay. Now we're going to look at what we've marked as
4 State's Exhibit No. 3, and you've circled an area there and
5 marked it private. Is that what you're talking about with
6 Shane?

7 A Yes, sir.

8 Q Now, you said this had been happening for a while?

9 THE COURT: You need to kind of step back from leading
10 and just do direct questions, if you don't mind, please,
11 sir.

12 MR. SHEEK: Yes, sir.

13 Q Do you remember roughly what time of the year this
14 touching started?

15 A Around summertime in July.

16 Q And around that time in July, when he touched you,
17 would he touch you on both those spots you talked about or
18 something else?

19 A Both of my spots.

20 Q When he touched you on those spots would he touch you
21 on the outside, inside or something else?

22 A The outside.

23 Q Would -- at any time did he ever put any part of his
24 body inside of part of your body?

25 A Yes, sir.

Minor

: DIRECT EXAMINATION

222

1 Q Tell the jury about that. What happened.

2 A He would put his private inside my rear end.

3 Q Did that happen at around the same timeframe, or a
4 different timeframe, or something else?

5 A It happened around the same time.

6 Q Did that happen one time or more than one time?

7 A More than one.

8 Q Where would this happen, Minor

9 A It happened in the tattoo room and in my momma's
10 bathroom.

11 Q And the events that you're talking about, are you --
12 excuse me, Minor When he would touch you on the outside
13 of the -- the outside and inside of your private part tell
14 me again what timeframe, when this occurred?

15 MS. NELSON: Your Honor, I do have an objection. If
16 the question was touching inside and outside of her private
17 parts and I don't think there's been testimony that there
18 was touching inside private parts.

19 THE COURT: Rephrase your question.

20 MS. NELSON: I just needed to think for a second.

21 MR. SHEEK: I'll rephrase the question.

22 Q When you -- if I'm correct, you said he put his private
23 part inside your butt?

24 A Uh-huh. Yes, sir.

25 Q When did that occur?

Minor

: CROSS EXAMINATION

223

1 A It occurred during July -- around July in the
2 summertime.

3 Q Do you remember if you were in school or out of school
4 when it happened?

5 A Out of school.

6 MR. SHEEK: Beg the Court's indulgence one moment, Your
7 Honor.

8 THE COURT: Yes, sir.

9 MR. SHEEK: Thank you very much, Minor Please answer
10 anything this lady may want to ask you. Okay?

11 THE WITNESS: Okay.

12 THE COURT: Cross-examination.

13 CROSS-EXAMINATION

14 BY MS. NELSON:

15 Q Hi, Minor . My name is Ms. Nelson, and if you
16 need to -- if you need to stop anytime will you please just
17 let me know?

18 A Okay.

19 Q Okay. Back when -- back when you told your dad about
20 what you -- what you said Shane was doing, touching you,
21 your dad is the one who called the police; is that right?

22 A Yes, sir -- yes, ma'am.

23 Q That's okay. And when he called the police that same
24 day a police officer talked to you, didn't he?

25 A Yes, ma'am.

Minor

: CROSS EXAMINATION

224

1 Q And that was on September 3rd of 2010? Is that right,
2 if you remember?

3 A I don't know.

4 Q Were you in school or out of school when you talked to
5 the policeman?

6 A I was out of school.

7 Q Does that mean you had been to school earlier that day
8 and were home or had you not been to school at all that day?

9 A I didn't go to school because it was -- I think it was
10 a weekend.

11 Q You think it happened on a weekend? When you talked to
12 the police officer you didn't tell him anything at all about
13 Shane putting his private inside your butt, did you?

14 A Yes. I told him everything that Shane did to me.

15 Q So if the police officer wrote a report about that,
16 that ought to be in there, shouldn't it?

17 A Yes, ma'am.

18 Q So if it isn't -- if something about putting his
19 private in your butt is not in the report, that would have
20 been something important that the office left out, huh?

21 A Yes, ma'am.

22 Q You told the officer about Shane taking pictures of you
23 sometimes?

24 A Yes, ma'am.

25 Q And that was with a camera that was in a drawer with

Minor

: CROSS EXAMINATION

225

1 the ink pens?

2 A Yes, ma'am.

3 Q Do you remember -- and I don't know if you'll remember
4 this day. I know this has been a long time ago. Back after
5 the policeman talked to you do you remember going to a place
6 in Greenwood where a lady named Charlotte talked to you for
7 a long time about what happened?

8 A Yes, ma'am.

9 Q And she asked you lots of questions about what had been
10 going on, didn't she?

11 A Yes, ma'am.

12 Q And you all -- you all talked for a while, like about
13 an hour?

14 A Yes, ma'am.

15 Q And that would have been just a few weeks after you
16 told your dad what happened, right?

17 A Yes, ma'am.

18 Q So that was pretty -- pretty close to then?

19 A Yes, ma'am.

20 Q Now we're a long time away. But when you talked to Ms.
21 Charlotte that was pretty close to when you told your dad?

22 A Yes, ma'am.

23 Q Ms. Charlotte asked you about the first time something
24 happened, didn't she?

25 A Yes, ma'am.

Minor

: CROSS EXAMINATION

226

1 Q And you told her that Shane had touched your butt and
2 your private with his hand?

3 A Yes, ma'am.

4 Q And you told her he touched you on the outside of your
5 --

6 A Yes, ma'am.

7 Q And you told her that it was daytime when that
8 happened?

9 A No, ma'am.

10 Q You don't think you said that? Have you had a chance
11 while -- well, have you talked to the folks at this table
12 about -- about coming to Court and talking to the jury?

13 A Yes, ma'am.

14 Q How many times -- well, have you talked to Mr. Sheek
15 right here before?

16 A Yes, ma'am.

17 Q How many times have you talked to him?

18 A A couple of times.

19 Q Did you talk to him today any about what you'd be
20 talking about?

21 A Yes, ma'am.

22 Q Did you talk to him while we were on our lunch break?

23 A No, ma'am.

24 Q Like in -- what time did you talk to him about what
25 you'd be saying today?

Minor

: CROSS EXAMINATION

227

- 1 A Not during our lunch break, but -- not -- before we had
2 went to lunch break.
- 3 Q Right before you went to lunch?
- 4 A Uh-huh.
- 5 Q Okay. And what did you all talk about with -- did
6 anything change from what you all had talked about before
7 when you had a conversation right before lunch?
- 8 A No, ma'am.
- 9 Q Everything was still the same?
- 10 A Yes, ma'am.
- 11 Q He didn't talk to you about timeframes or anything like
12 that?
- 13 A Huh-uh.
- 14 Q Like whether things happened in July or what part --
- 15 A Yes, ma'am.
- 16 Q He did talk to you about that. When you talked to Ms.
17 Charlotte, again going back to her asking you about the
18 first time something happened, that happened in the tattoo
19 room is what you told her, right?
- 20 A Yes, ma'am.
- 21 Q And that was when you were touched on the butt and the
22 private?
- 23 A Yes, ma'am.
- 24 Q And when you -- she asked you about the last time
25 something had happened, didn't she?

Minor

: CROSS EXAMINATION

228

1 A Repeat your question.

2 Q Ms. Charlotte, when she was talking to you, one of the
3 things she asked you about was the first time something
4 happened, and then later on she asked you about the last
5 time something happened?

6 A Yes, ma'am.

7 Q And that -- the last time something happened was
8 different from the first time something happened, wasn't it?

9 A The last -- the last time and the first time was the
10 same.

11 Q So the last time it was touching and the first time it
12 was touching?

13 A Yes, ma'am.

14 Q And when you talked to Ms. Charlotte about the time in
15 the bathroom, that was a different time than the first time,
16 wasn't it?

17 A Can you say that one more time?

18 Q Sure. What we've talked about already was the first
19 time Ms. Charlotte talked to you, you told her that
20 something happened in the tattoo room, right?

21 A Uh-huh.

22 Q And that would have been, you've told Mr. Sheek, around
23 the beginning of July?

24 A Yes, ma'am.

25 Q And you were out of school at that time?

Minor

: CROSS EXAMINATION

229

1 A Yes.

2 Q I mean, it was summer, so you didn't have school,
3 right?

4 A Yes, ma'am.

5 Q And then you talked to Ms. Charlotte about a time that
6 happened in your mother's bathroom. Do you remember that?

7 A Yes, ma'am.

8 Q And that was the time that you said that Shane put his
9 private in your butt?

10 A Yes, ma'am.

11 Q And that was a different time than the time in the
12 tattoo room, wasn't it?

13 A Yes, ma'am.

14 Q Because it happened in two different places?

15 A Yes, ma'am.

16 Q Does that help you remember the difference?

17 A Yes, ma'am.

18 Q So the -- just to make sure I have it straight. The
19 first time in the tattoo room there was touching on your
20 behind and your private?

21 A Yes, ma'am.

22 Q And this is what I'm -- this is what I'm asking you if
23 you told Ms. Charlotte back -- closer to when all this
24 happened. And then another different time in the bathroom
25 was when you say Shane put his private in your butt?

Minor

: CROSS EXAMINATION

230

1 A Yes, ma'am.

2 MS. NELSON: May I have just a moment, Your Honor.

3 Q And just to confirm one more time, Minor and I'm
4 almost done. When you said that he touched you in the
5 tattoo room you said that was outside your butt, right? Mr.
6 Sheek asked you if it was outside or inside or something
7 else, and did you say outside? You want me to start over?
8 You talked about, both here today and to Ms. Charlotte, that
9 Shane had touched your butt with his hand in the tattoo
10 room; is that right?

11 A Yes, ma'am.

12 Q And Mr. Sheek asked you if that was inside or outside
13 or something else, and you said outside --

14 A Yes, ma'am.

15 Q -- is that right?

16 A Yes, ma'am.

17 Q I just don't want to get it wrong. And then he asked
18 you the same thing about when Shane touched your private,
19 whether that was inside or outside, and that was also
20 outside, right?

21 A He had touched my private.

22 Q Did you say it was on the outside? It's okay if you
23 don't remember. That's all right.

24 MS. NELSON: That's all I have, Your Honor.

25 THE COURT: Any redirect?

1 same objections.

2 THE COURT: Same objections. Okay. Will you bring the
3 jury -- are you ready to proceed, Mr. Cheek? Mr. Sheek? I
4 am so sorry.

5 MR. SHEEK: We are, Your Honor.

6 THE COURT: Ms. Nelson, are you ready?

7 MS. NELSON: Yes, sir, Your Honor.

8 (Whereupon, the jury entered the courtroom at 2:51
9 p.m.)

10 THE COURT: Mr. Sheek.

11 MR. SHEEK: Thank you, Your Honor. With that witness
12 the State rests, Judge.

13 THE COURT: Okay, sir. Anything further from the State
14 at this juncture?

15 MR. SHEEK: Nothing from the State, Your Honor.

16 THE COURT: Nothing from the State. Mr. Foreman,
17 ladies and gentlemen of the jury, the State says it's
18 rested. In other words, it's presented its side of the case
19 in chief. I have a couple matters I need to take up in the
20 administration of this case, and then we'll bring you back
21 out for further proceedings. Again, I apologize to you for
22 bringing you in and out. Just be aware that's my fault.
23 It's not the lawyers' fault or anyone associated with this
24 case's fault other than myself. Okay. So if you want to
25 take it out on anybody, take it out on me. With that being

1 said, would you go back to your jury room.

2 (Whereupon, the jury exited the courtroom at 2:52 p.m.)

3 THE COURT: Any motions?

4 MS. NELSON: Yes, sir, Your Honor. I would move for a
5 directed verdict of acquittal. As we talked about at
6 length, Mr. Washington is charged with a sexual battery on
7 July 1st of 2010. I think it's clear from the testimony
8 that that would have been the first day that something
9 started with Minor. She's testified that it started
10 in the summer. The folks who reviewed the incident report
11 talked about the report being made that it had started about
12 two months ago, which would have been the beginning of July,
13 if we take everything as true. And in the forensic
14 interview, you saw the video. You heard the testimony of
15 Ms. Ehney that the first reported incident occurred in the
16 tattoo room which strictly involved touching of the butt,
17 the private and feeling something wet on her butt. She was
18 specifically asked if she was touched inside, outside or
19 something else and she said outside. She said outside on
20 direct exam. For part of cross-exam she could agree with
21 outside and then couldn't seem to remember, which certainly
22 was not testimony that there was any penetration of the
23 vagina. Your Honor, if we take that as true, that's CSC
24 with a minor third degree, there is no sexual battery that
25 was alleged the first time that something occurred. It was

1 clear on cross that the first time it's alleged to have
2 occurred in the tattoo room, while the allegation of anal
3 penetration occurred at a different time in the mother's
4 bathroom. I believe she agreed that that happened sometime
5 around July, but he is charged with an incident on July 1st,
6 and I think it is -- from all the testimony that the State's
7 presented that it's clear of what the first -- what the
8 allegations of the first incident are. And July 1 is the
9 first day of July. So if things started in July, it has to
10 be that first incident. And, Your Honor, for those --
11 despite the other things that have been alleged, he's not
12 charged with those. You've explained to the jury that they
13 can't consider those as evidence of guilt or innocence and
14 we would ask for a directed verdict of acquittal.

15 THE COURT: Mr. Sheek.

16 MR. SHEEK: Thank you, Your Honor. Judge, I had a
17 little more time to look at this over the lunch break. And
18 specifically the case I've been looking for and I couldn't
19 remember the cite was *State vs. Thompson*. It's 305 S.C.
20 496. And that case it was the same charge, criminal sexual
21 conduct with a minor in the first degree, an indictment that
22 said on or about this case. It was December 9th. But on or
23 about that one day. And the Defense challenged it because
24 they said, you know, you got to prove this one specific
25 time. What the Court said in that case is that they -- they

1 went through the discussion about the indictment being a
2 charging instrument merely being sufficient to put the
3 Defendant on notice of that to which he is to defend. In
4 turning to the issue of their argument on the date and time,
5 the Court said that the specific date and time -- I think
6 Ms. Nelson earlier alluded that time meaning 3:00 or 6:00 is
7 not of the essence. But the Court said specifically the
8 date and time is not an element of the offense of criminal
9 sexual conduct. And therefore, the indictment that said on
10 or about December 9th was sufficient to put him on notice of
11 that which he was to defend.

12 THE COURT: Well, let me ask you this. When the case
13 -- that's what I was looking at earlier, too. But you had
14 situations where the sufficiency of the indictment was being
15 challenged?

16 MR. SHEEK: Correct.

17 THE COURT: Which is not the situation we have here.

18 MR. SHEEK: No. But in this case, Your Honor, the
19 language is the same. It says on or about. And I think
20 that puts him on notice that in that timeframe. It doesn't
21 say on. We've had indictments that say on this date, and
22 this one doesn't. It says on or about, and it says it for a
23 specific reason as the Court's have noted children have
24 trouble recalling specific dates. Even when it's merely a
25 couple months later they're going to get messed up. We

1 tried a case where she thought it was October 30th and there
2 was an argument of whether it was the 31st because of a
3 football game. The dates were messed up. And I think
4 that's the reason the on or about language is used. I think
5 it sufficiently puts him on notice. It's not an element of
6 the crime, and therefore the jury can convict if they find it
7 happened on or about that timeframe, which is what the child
8 testified to.

9 THE COURT: All right. And let me say this.
10 Regardless if you view the evidence in the light most
11 favorable to the State, which is my burden to do and my job
12 to do, I'm not looking for anything but existence of
13 evidence or nonexistence of evidence, and I think that
14 viewing that standard there is evidence upon which the jury
15 could find that that event with penetration, however slight
16 as provided by the statute, took place on or around that
17 July timeframe. I don't necessarily think it's a
18 requirement, but I think that they could, regardless of the
19 subsequent acts. For that reason I'm going to deny your
20 motion. And for the reason stated by Mr. Sheek on the
21 record as well.

22 Anything further?

23 MS. NELSON: Just take the opportunity to renew all our
24 prior motions as well, Your Honor, for the record.

25 THE COURT: I think you have been very adamant about

1 protecting your record. You've done a good job at it. And,
2 of course, when I say that, you'll probably say I'm stupid.
3 But I think you really have tried. I can note that for the
4 record. Do you intend to call anybody?

5 MS. NELSON: I don't, Your Honor.

6 THE COURT: Are you all ready to go to jury?

7 MR. SHEEK: Yes, sir.

8 THE COURT: Do you need a minute before you go to jury?
9 I have a very -- you know, have you ever tried a case with
10 Judge Hill in Greenville?

11 MS. NELSON: My first one.

12 THE COURT: Well, I essentially shamelessly plagiarized
13 the basic structure of his charge, which just to quote
14 basically as follows. Number one, I tell them that now
15 they've heard the evidence that's going to be submitted.
16 We're moving to the closing arguments by the attorneys.
17 Unless you all want me to charge first. But I'd assume go
18 ahead and let you know what I'll charge and then you all can
19 make a call.

20 MR. SHEEK: Yes, sir.

21 THE COURT: My instructions are in three parts. The
22 first part of the general rules of defining their duties as
23 jurors. The second aspect would be the substantive law of
24 criminal sexual conduct of a minor. We will give them --
25 you have copies of that?

1 or both? And I suppose it's a silly question, since I'm
2 going to hear it in a minute rather than hearing it at the
3 end.

4 THE COURT: It's both.

5 MS. NELSON: Okay. Thank you, Your Honor. Appreciate
6 it.

7 THE COURT: Bring the jury in, please.

8 (Whereupon, the jury entered the courtroom at 3:38
9 p.m.)

10 THE COURT: Ladies and gentlemen of the jury, if you
11 recall at the beginning of this case I told you there are
12 five phases in every case. You had the opening statements,
13 presentation of the evidence, closing statements by the
14 attorneys, charge on the law, your deliberations. We have
15 concluded the first two stages. The opening statements, the
16 presentation and the evidence. Both sides have rested. We
17 have swapped around the traditional, because I give the
18 attorneys a chance to do that lineup. I'm going to charge
19 you on the law first. I'll have a brief break to see that
20 I've correctly stated the law. We'll bring you back before
21 you probably can sit down in the jury room. There will be
22 closing statements by the attorneys, then the evidence will
23 be gathered and the verdict form and will be sent back to
24 you to begin your deliberations. Remember, until that time
25 you do not. Okay?

1 CHARGE OF THE JURY

2 THE COURT: Ladies and gentlemen, now that you've heard
3 the presentation of evidence of this case it is my duty to
4 instruct you on the law that you must apply. I will give
5 this charge to you as many times as you like. It is
6 normally my practice not -- not to send it back with the
7 jury because you invade my function as being the instructor
8 on the law and I want you to be engaged in your job as being
9 finders of the fact. But my instructions are going to have
10 three parts. Number one, the first of my instructions will
11 be to outline the general duties that define and control
12 your jobs as jurors. The second part of it will be the
13 substantive law of the charge of criminal conduct --
14 criminal sexual conduct with a minor. The third, I'll give
15 you some considerations about your deliberations. Then, Mr.
16 Foreman, I'll go over the verdict form with you to make sure
17 you understand how to fill it out. Okay? If I neglect to
18 tell you, if at any time the jury needs to hear the law
19 again, send word back by using the note method. Write it
20 down. Communicate with us that way. Sign it, knock on the
21 door. If you need to see any evidence such as the video
22 that was presented, it will not be sent back because parts
23 of it had to be run through because I excluded some of them
24 from your sight. If you want to watch them again, you'll
25 have to come back out in the courtroom. We'll let you watch

1 it as many times as you want. I'll charge you the law as
2 many times as you need. Okay?

3 Now, first, the general rules that define and control
4 your duties as jurors. Now, as you remember at the
5 beginning of this case I told you that it's your duty to --
6 as judges of the facts to find the facts in this case. And
7 you will determine what those facts are from the testimony
8 in evidence that you heard in this courtroom from this stand
9 and from no other place. To those facts as you find them to
10 be, you must apply the law as I give it to you now. Again,
11 you must not concern yourselves with what you think the law
12 should be or what you wish it to be, only what it is. You
13 must apply the law as I give it to you at this point. Also,
14 during the course of this trial, or at the course of your
15 deliberations, you must not and shall not be influenced by
16 any personal likes or dislikes, sympathy, opinion, prejudice
17 towards one party or the other. You have no friends to
18 reward, no enemies to punish. In other words, you will
19 decide this case solely based on the testimony and the
20 evidence presented here in this courtroom and according to
21 the law as I give it to you now. And if you recall at the
22 beginning of this case you took an oath where you swore or
23 affirmed that you would do just that. And following these
24 instructions at this point you can't pick out some of the
25 things I tell you now and say okay, I like that, and apply

1 those and disregard others. Everything I tell you in my
2 charge to you is equally important. And again, if I said
3 anything or done anything throughout the course of this
4 trial that seems to indicate to you the verdict you are to
5 reach I'm going to ask you, and also I'm going to instruct
6 you, to disregard that. I have no opinion. Our
7 Constitution does not allow me to have an opinion. You and
8 you alone are the judges of the facts. You and you alone
9 are the ones who will determine what your verdict will be.
10 And you'll decide what those facts are by evaluating and
11 weighing the evidence that you heard during this trial.

12 Now, that is not a little concept. I can't give you a
13 set of scales for you to weigh the evidence. But it's a
14 mental process and you are to evaluate and weigh the
15 evidence using your good common sense and your sense of
16 sound judgment when you come up to determine what the facts
17 are in this case.

18 Now, the evidence that you may consider as evidence is
19 to follow, number one, is the sworn testimony from witnesses
20 from this witness stand after they took an oath, whether it
21 be on direct examination or cross-examination. Any exhibits
22 that you've heard or seen get admitted into evidence that
23 will go back with you, is evidence in that case. And that's
24 the only evidence that you may consider as evidence. What
25 you may not consider as evidence is the following. Number

1 one, arguments and statements by the attorneys is not
2 evidence. I told you at the beginning of the case what the
3 attorneys tell you is designed to help you and send you a
4 roadmap as to what they intend to prove and what the case is
5 about. But the attorneys have not been sworn in. They have
6 not been put on the stand and subjected to direct examination
7 or cross-examination. So at the end of the day if your
8 memory as to what the facts are differs from what either or
9 both these attorneys tell you, then your memory will
10 control.

11 And to follow up on that. Remember at the beginning of
12 this trial I gave you an admonition about your notes. Just
13 because something appears in someone's notes does not mean
14 it trumps somebody's memories. Mr. Foreman, that's why they
15 call them deliberations. If there's a difference as to what
16 the facts are about a particular issue based on a note and
17 memory, or collected memories or collective notes, you will
18 just have to hash that out. But it will be up to you to
19 make sure nobody tries to trump somebody's memory based on
20 what their note said about that fact along. Okay, sir?

21 Also, as I told you, any trial that's ever been tried
22 will have objections that I've been involved with as a judge
23 or lawyer, this case was no different. The fact that
24 there's objections made shall not and may not be considered
25 by you in your deliberations. And suffice it to say that

1 that is the obligation of any lawyer to object when he or
2 she believes that the process is not being followed. It
3 will be inappropriate, Mr. Foreman, for somebody to raise
4 the fact that there is an objection, or to the extent I let
5 you stay in here and listen to my ruling on that objection,
6 my ruling on that objection. That is just not proper fodder
7 for the jury and that will be up to you.

8 Also, any testimony that's been excluded or stricken
9 from evidence in this case shall not be considered by you in
10 this case. And finally, anything that you saw or heard when
11 the trial was not going, during a break or otherwise, is not
12 evidence. So bottom line is, what you saw from this witness
13 stand from testimony or exhibits, cross-examination or
14 direct examination.

15 Now, in South Carolina we recognize two types of
16 evidence. The first is called direct evidence. This is
17 what direct evidence is. It's evidence that directly proves
18 the existence of a fact and does not require deduction or
19 inference. Okay? We also have circumstantial evidence.
20 Circumstantial evidence is proof of a chain of facts and
21 circumstances indicating the existence of a fact. In other
22 words, it's by inference. Crimes may be proven by
23 circumstantial evidence and the law in South Carolina makes
24 no difference between the weight or the value that you, the
25 jury, decide you want to give to either direct or

1 circumstantial evidence. However, to the extent that the
2 State relies on circumstantial evidence, all the
3 circumstances must be consistent with each other, and when
4 taken together point conclusively to the guilt of the
5 accused beyond a reasonable doubt. If the circumstances
6 merely portray the Defendant's behavior as suspicious, then
7 that proof has failed. Now, the State has the burden of
8 proving the Defendant guilty beyond a reasonable doubt and
9 this burden rests with the State regardless of whether the
10 State relies on direct evidence, or circumstantial evidence,
11 or a combination of the two. So let me give you examples.
12 Direct evidence would be this. If the issue in a matter was
13 whether someone ran a stop sign. If I testified that I saw
14 my law clerk run the stop sign, that would immediate
15 establish that issue. That's direct evidence. It requires
16 no inference or deduction. On the other hand, if each of
17 you were to go to bed at night and you had a fresh sheet of
18 snow in your front yard, if you were to wake up in the
19 morning and to see tracks going through your front yard, you
20 may reasonable infer or deduce that someone or something
21 walked through your yard, although you did not actually see
22 that person or thing do so. The only prohibition is that
23 the inference or deduction you make may not be surmise or
24 conjecture. Okay? That being said, in deciding what the
25 facts of this case are, you have to decide which testimony

1 that you want to believe and which testimony you wish not to
2 believe. You have a right to believe all of any witness'
3 testimony. You have a right to disbelieve any or all of any
4 witness' testimony. Now, we call it in the eyes of the law
5 determining the credibility of the witnesses. Now, in
6 making this determination of the credibility of the
7 witnesses or the believability of the testimony, you may,
8 but you're not required, to take into account the following
9 facts. Number one, was the witness able to see or hear or
10 know the things about which that witness testified. How
11 well was the witness able to recall and describe the things
12 about which they testify. What was the witness' manner
13 while they testified. In other words, what was their
14 demeanor right here on this witness stand. You can ask
15 yourself is there some reason that a witness would want to
16 give testimony that would help or hurt one side or the
17 other, or did they have an interest in the outcome of the
18 case or any bias or prejudice towards any person or issue
19 involved in this case. You can consider how reasonable the
20 witness' testimony was in light of all the evidence
21 presented in this case and whether that witness' testimony
22 had been contradicted by what that witness had said or done
23 at another time by the testimony of any other witnesses or
24 any other evidence presented in this case.

25 Now, Mr. Foreman, ladies and gentlemen of the jury,

1 those are some but not all the factors that you may consider
2 when you determine the credibility of the witnesses or the
3 believability of the evidence. And, of course, when you're
4 sworn in as jurors you do not check your common sense at the
5 door and you shouldn't do so here. You should use those
6 things in your day-to-day lives that you find indicative of
7 truthfulness and indicative of lack of truthfulness when you
8 make this determination of the credibility of the witnesses
9 or the believability of the evidence. One thing you may not
10 do however is add up the number of witnesses who may have
11 appeared for one side or the other in making this
12 determination of credibility, because it doesn't matter to
13 you from whether the truth comes from one witness or the
14 other, or whether it's coming from direct examination or
15 cross-examination. But your sole interest is to try to find
16 the truth based on the testimony presented in this Court
17 today and during this trial.

18 Ladies and gentlemen, you've also heard testimony from
19 persons described as experts. As I've told you, normally a
20 person is limited to testifying to what they've heard, they
21 saw, they smelt, they felt. Their basic senses. However,
22 because of their education or experience, if they have
23 obtained expertise in that area they're allowed to give an
24 opinion in the area of their expertise. Expert testimony is
25 just like any other testimony you'll hear in this case. You

1 may accept it, you may reject it and you may give it as much
2 weight as you think it deserves based on the witness'
3 education, their experiences, their reasons for their
4 opinions, as well as the other testimony and evidence in
5 this case.

6 Now, I'll remind you, ladies and gentlemen, that the
7 fact that Shawn Washington -- Shane Alexander Washington was
8 indicted and charged is not evidence of his guilt. It does
9 not raise an inference or conclusion of his guilt. This is
10 simply the mechanism by which we have a trial and a
11 determination by you, the jury, of guilt or innocence.

12 In this case the Defendant has pled not guilty to the
13 indictment and that plea of not guilty puts the burden on
14 the State of South Carolina to prove his guilt beyond --
15 with proof beyond a reasonable doubt. I'll charge you that
16 a person charged with committing a criminal offense in South
17 Carolina is never required to prove himself or herself
18 innocent. And I'll charge you that it is an important rule
19 of law that in a criminal trial, no matter how serious the
20 charge may be, that the person will always be presumed to be
21 innocent for the crime for which they have been indicted and
22 charged unless you, the jury, determine that they have been
23 proven guilty by proof that satisfies you of guilt beyond a
24 reasonable doubt.

25 Now, this presumption of innocence does not end when

1 you begin your deliberations but it accompanies the
2 Defendant throughout the trial until a verdict is reached by
3 a finding of guilt by proof beyond a reasonable doubt. In
4 the vernacular of the law the presumption of innocence is
5 like a robe of righteousness that hangs around the
6 Defendant's shoulders where it remains until it has been
7 stripped by evidence satisfying you of guilt beyond a
8 reasonable doubt. And it's not a mere legal theory and it's
9 not just a legal phrase, but it is a substantial right which
10 every defendant is entitled unless you, the jury, is
11 satisfied of guilt by evidence beyond a reasonable doubt.
12 So that leaves me to a definition of what reasonable doubt
13 is, and this is that.

14 Reasonable doubt is the kind of doubt that would cause
15 a reasonable, sincere, honest and conscientious person to
16 hesitate to act in an important matter in their own affairs.
17 Proof beyond a reasonable doubt is proof that leaves you
18 firmly convinced of the Defendant's guilt. There are very
19 few things in this world that we know with absolute
20 certainty, and in criminal cases the law does not require
21 proof that overcomes every possible doubt. If, based on
22 your consideration of the evidence you are firmly convinced
23 that the Defendant is guilty of the crime charged, you must
24 find the Defendant guilty. If on the other hand you think
25 there is a real possibility that the Defendant is not

1 guilty, then you must find him not guilty. A reasonable
2 doubt may arise from the evidence or from lack of evidence.
3 And I'll further instruct you that a defendant is entitled
4 to every reasonable doubt that may arise in a case. And,
5 ladies and gentlemen, what that simply means, it says that
6 if upon any issue of fact essential to a conviction and a
7 verdict of guilty of the offense charged, if you have any
8 reasonable doubt as to how that issue should be resolved it
9 is your duty to resolve that doubt in favor of the
10 Defendant.

11 Now, ladies and gentlemen, in order to establish
12 criminal liability, criminal intent is required to be
13 proven. For example, mental state required to be proven by
14 the State for a particular crime might be purpose, intent,
15 knowledge, recklessness or criminal negligence. Criminal
16 intent must be proven by the State beyond a reasonable
17 doubt. Criminal intent is always a matter that must be
18 determined by the jury from the circumstances surrounding
19 the situation. There is no way to prove intent to a
20 mathematical certainty. There's no way medical science can
21 dissect a person's brain and determine what they had in
22 mind. So the law says that criminal intent may be inferred
23 from the circumstances shown to have existed. Now, ladies
24 and gentlemen, that is how you make a determination of
25 whether or not the element of requiring intent is present.

1 It is not necessary to establish intent by direct and
2 positive evidence, but intent may be established by
3 inference in the same way as any other fact by taking into
4 consideration the acts of the parties and all the facts and
5 circumstances of the case. Criminal intent is a mental
6 state, a conscious wrongdoing, and it is up to you to
7 determine what the intended -- the Defendant intended to do
8 based on the circumstances shown to have existed. Criminal
9 intent can arise from action or a failure to act. It may
10 arise from negligence, recklessness or indifference to duty,
11 or to the consequences that are considered by law to be the
12 equivalent of criminal intent.

13 Ladies and gentlemen, again, as I told you at the
14 beginning of this case, under the laws of this state a
15 defendant may be tried even if the defendant does not attend
16 trial. But the fact that the defendant is not present may
17 not be considered by you in deciding whether or not he's
18 guilty or innocent in this case. And, Mr. Foreman, if
19 anybody tries to discuss the fact that he did not attend
20 trial, it will be up to you to stop that. And then further
21 beyond that, I instruct you and also emphasize the fact that
22 the Defendant did not testify shall not be considered by
23 you. Each person under the Fifth Amendment of the United
24 States has a right not to testify against themselves. The
25 State is required to prove everyone's guilt by proof beyond

1 a reasonable doubt in every criminal case. Okay?

2 Now, those are the general rules that define and
3 control your duties as jurors. I can see that I'm putting
4 some of you to sleep over here. So if you want to take a
5 minute and stand up, why don't you do so. I'll charge you
6 on the substantive law of first degree criminal sexual
7 conduct of a minor. Then we'll go into some considerations.
8 It'll be fair short after that. But why don't you all take
9 a minute and stand up for a second.

10 (Whereupon, the jury stands.)

11 THE COURT: You all ready? Does anybody need to take a
12 quick break or are you all ready to proceed? You all are
13 ready?

14 This is the law of first degree sexual conduct of a
15 minor. The State is -- the Defendant is charged with first
16 degree criminal sexual conduct with a minor. The State must
17 prove beyond a reasonable doubt that the Defendant engaged
18 in a sexual battery with the victim. A sexual battery is
19 sexual intercourse, cunnilingus, fellatio, anal intercourse,
20 or any intrusion however slight of any part of a person's
21 body or any object into the genital or anal opening of
22 another person's body, except when the intrusion is
23 accomplished for medically recognized treatment or
24 diagnostic purposes. The State must then prove beyond a
25 reasonable doubt that the victim was less than 11 years old

1 at the time of sexual battery. Consent, willingness,
2 indifference or ignorance on the part of the minor, if any,
3 as to what was taking place does not in any way affect the
4 charge of criminal sexual conduct with a minor because an
5 unmarried woman under the age of 14 cannot legally consent
6 to sexual intercourse. That is the law of criminal sexual
7 conduct with a minor.

8 Again, I will charge all or any part of this charge as
9 many times as the jury may need. That leaves me, too,
10 ladies and gentlemen, the last part of my charge to you and
11 that is some considerations for your deliberations.

12 Now, ladies and gentlemen, when you were picked by the
13 State, when you were picked by the Defense in this case, you
14 were picked because you represented you could be fair and
15 impartial to both sides and make your decision based on the
16 testimony and the evidence in according to the law
17 presented. What that basically means is you don't show up
18 as jurors to be partisans or advocates for one side or the
19 other. You were chosen by both because you were impartial
20 and fair, and said you could be. That means that when you
21 begin your deliberations you should use your experiences in
22 life you bring with you here as jurors, your good
23 commonsense, your sense of logic and sound judgment in
24 discussing what the testimony and the evidence is in
25 reaching hopefully what will be a unanimous verdict.

1 Now, deliberation is defined as this. It is defined as
2 a careful consideration weighing up with a view to a
3 decision. Now, regardless what any of you may think about a
4 jury system, I would submit to you that the genius of this
5 system is that it allows 12 men and women such as yourselves
6 who come from different walks of life, who have different
7 experiences, who have different perspectives to listen to
8 the testimony, to listen to the evidence, to listen to the
9 charge on the law, and to go back when instructed to do so
10 to discuss thoroughly and courteously the evidence and
11 ultimately reach a unanimous verdict. And we call that
12 deliberations for a reason. If you're doing something
13 deliberately you should not be in a big hurry. Today is the
14 only day that the State will have here for this case, and
15 it's the only day that Defense will have in this case.
16 Neither one of them will have a second bite of the apple.
17 Now, when you go back and start to discuss this case, after
18 counsel gives you their closing arguments, I'm going to ask
19 you but I'm also going to instruct you to listen to
20 everyone's points and their points of view. Going through
21 and talk through all the evidence. And remember, in order
22 for your verdict to be valid it has to be unanimous. All 12
23 must agree. But with that being said, each of you have to
24 decide this case on your own. But you only should do so
25 after you have impartially considered all the evidence.

1 You listened to all your fellow jurors' points and points of
2 view, and listen to and discuss all the evidence. Do not be
3 afraid to change your opinion as to the weight or the value
4 of the evidence if the conversation convinces you that's the
5 right thing to do. On the other hand, do not change honest
6 belief as to what the weight of the evidence is solely to
7 appease your fellow jurors. In other words, solely to reach
8 a verdict in this case. Now, Mr. Foreman, at any time
9 throughout the course of your deliberations, if the jury
10 needs something such as refreshments or whatever, knock on
11 the door, right it down. Let the bailiff know. They'll
12 take care of you. If you need anything from the Court by
13 way of instruction or a review of any of the evidence that
14 you don't have with you, such as the video, write that down,
15 knock on the door and we will accommodate you. Okay, sir?

16 With that being said, I'm going to have about a five
17 minute break. I'm going to bring you back and let the
18 lawyers give you their closing arguments, then I'll go over
19 the verdict form with you. Okay, sir?

20 If you'll go back to your jury room at this point,
21 please.

22 (Whereupon, the jury exited the courtroom at 4:06 p.m.)

23 THE COURT: Any additions or exceptions from the State?

24 MR. SHEEK: None from the State, Your Honor.

25 THE COURT: From the Defense?

1 MS. NELSON: No, sir, Your Honor.

2 THE COURT: Very good. How long will you need to get
3 before you're all ready to go?

4 MR. SHEEK: Be ready whenever the Court's ready, Judge.

5 THE COURT: You all are going to do your closings. Go
6 take a personal break and come back. Is five minutes
7 enough?

8 MS. NELSON: Yes, sir.

9 THE COURT: Very good. We'll resume in five minutes.

10 (Whereupon, a recess was held from 4:06 p.m. to 4:15
11 p.m.)

12 THE COURT: You didn't present any evidence, did you?

13 MS. NELSON: No, sir, Your Honor.

14 THE COURT: So you get last argument?

15 MS. NELSON: Yes, sir.

16 THE COURT: Any disagreement with that?

17 MR. SHEEK: Unfortunately I can't disagree with that.

18 THE COURT: Okay. If you did, it wouldn't do you much
19 good. All right.

20 MS. NELSON: And I think I'm resting and renewing all
21 my previous motions, for the record.

22 THE COURT: Okay. And I'm sorry. I do that. I
23 apologize. You're protected on the record. Renewed your
24 motions already.

25 MS. NELSON: Thank you, sir.

1 THE COURT: Very good. Bring the jury in.

2 (Whereupon, the jury entered the courtroom at 4:15
3 p.m.)

4 THE COURT: Is the State ready for closing?

5 MR. SHEEK: The State's ready, Your Honor.

6 THE COURT: Is the Defense ready?

7 MS. NELSON: Yes, sir, Your Honor.

8 THE COURT: Mr. Sheek.

9 MR. SHEEK: Thank you, Your Honor. May it please the
10 Court.

11 THE COURT: Yes, sir.

12 CLOSING ARGUMENT

13 BY MR. SHEEK: Mr. Foremen, ladies and gentlemen of the
14 jury, as the Judge told you a few minutes ago you've heard
15 all the testimony and evidence that's going to be presented
16 in this case, and now is the time that I have to talk to you
17 a little bit about what's gone on. Ms. Nelson will be given
18 the same opportunity. Then you're going to go back to that
19 room that you've been going back and forth to for the last
20 day and you'll reach the final stage of this process.
21 You're going to reach a verdict.

22 And I told you yesterday when I first talked to you
23 that the thing that you brought into this courtroom that I
24 most wanted you to use, of course, was your common sense.
25 And I think you'll probably see why that's important in this

1 case, because now you see what we've talked about. It's not
2 like TV. But this is the way justice is done in our State.
3 Somebody is indicted. It starts with a crime. As the Judge
4 told you, that's not evidence. It's a charging instrument.
5 It's a document. Puts them on notice of the charge to which
6 the State alleges they have committed. They have a right to
7 plea not guilty and they have a right to ask for a jury
8 trial. The Defendant's done that in this case and that's
9 why we're here this week. So you have listened to the
10 testimony in evidence. Not a whole lot of testimony in
11 evidence considering the way that the charge, when you watch
12 on TV in cases in California that go on for a year and go on
13 for months and months, we don't do that here. It's more to
14 the point. Put up the evidence.

15 When you think about the testimony in evidence, I told
16 you at the beginning of this case, everything you have to
17 rest your verdict on comes from this chair right here. And
18 the Judge told you that also. I could talk to you for the
19 next three hours. I won't. But if I talked to you in the
20 next three hours I couldn't give you a piece of evidence,
21 Ms. Nelson can't give you a piece of evidence. The
22 questions that I chose to ask a witness or the way I ask
23 them, they're not evidence. I can insinuate or claim any
24 number of things and that's not evidence. Testimony from
25 that chair is the evidence.

1 When you go back to that jury room in a few minutes one
2 thing that I think is human nature that I did when I first
3 started doing this job years ago, more years ago than I want
4 to remember, is you seek to make sense of it. Make sense of
5 it. I understand. Now, I want to go ahead and tell you,
6 folks, it's not going to happen. To understand why a man
7 would do the kind of things that this child testified about.
8 It doesn't make sense. There's no logic in it. It's never
9 going to make sense. Pedophiles and child molesters, I've
10 learned, come from all walks of society. They look like us.
11 They act like us. They talk like us. They do it
12 intentionally. They don't wear a tee shirt that says I'm a
13 pedophile. And they don't advertise. They do it in secret.
14 They do it in ways they think they won't get caught. They
15 tell people to keep quiet and they threaten them with things
16 if they were to tell. They come from all walks of life;
17 rich, young, old, poor, all ethnicities, all religious
18 backgrounds. I could sit in my office, look across from my
19 desk. I have two filing cabinets sitting there next to the
20 wall, because this is what Windy and I do around this
21 circuit, and not a single one of those files in that filing
22 cabinet are able to make sense of things. So I gave up on
23 that a long time ago. But the question we've got now is did
24 Shane Alexander Washington commit a sexual battery upon
25 Minor . And that answer, really when it boils down

1 to it, to this. When she sat on that stand and testified in
2 that chair, did she tell you the truth. Because if she did,
3 Shane Alexander Washington is guilty of criminal sexual
4 conduct in the first degree. And the Judge told you that a
5 Defendant comes into the courtroom with a robe of righteous,
6 and that's a term we learn in law school, and it's an
7 important term. It's not just something we say. It's
8 something we mean. And I can't even remove that robe of
9 righteousness. His Honor doesn't remove that robe of
10 righteousness. But you, the jury, can. You're not bound to
11 look through that robe, but rather you can lift it and look
12 at what he is and what he's done. And it's what has he done
13 based on this evidence. And this child sat up here and told
14 you about some things that no child wants to tell somebody
15 about. She didn't want to come tell me about it, a man she
16 doesn't know. She don't want to come in and tell these
17 people about it. And she didn't want to sit in the
18 courtroom and tell everybody about it. It's not fun. If
19 she were to lie, which is necessary for the Defendant to be
20 not guilty, if she were to lie, why would she be lying?
21 That's where common sense comes in. That's why I told you
22 it was going to be important. Because, as I said, it's not
23 like TV. We would love to have the fibers and the DNA and
24 the things that people talk about, and any skilled Defense
25 attorney is going to find everything to say should have done

1 differently, and every piece of evidence that they hope
2 convinced you should have been there. But recently I was
3 asked to speak at a training seminar for law enforcement on
4 the issue of investigation of child sexual cases, and the
5 topic I was asked to speak about was the CSI effect. What
6 is that? Well, we all have probably heard of the CSI
7 television show, and the effect is a well documented effect
8 where the average person on the street has viewed those type
9 of shows, Law And Order, CSI, and believe that's the way
10 things work. When, in fact, 60 percent of the things they
11 show you on those shows doesn't even exist. Completely
12 fiction. And the other 40 percent is applied in a way that
13 simply doesn't work in the real world. But people expect
14 that's the way it is. I saw it last night in a show where a
15 man is accused of murder and two days after the murder has
16 happened he's in the police station and they're going that
17 was your DNA and those are your fingerprints, and they come
18 back from the lab. In the real word that doesn't happen.
19 In the real world it's like this expert doctor told you
20 about. The child comes in. If it's more than a couple days
21 after the assault we're not going to find evidence even if
22 there were trauma at the time of the assault. It heals that
23 quickly and that completely. And then in most cases we're
24 not going to find trauma anyway. And that's only if the
25 trauma has healed up. In 95 percent of the cases was her

1 testimony we're not going to find any trauma. So why would
2 we bring the doctor? Well, because that is one step in the
3 process. And we have learned put it out there and let the
4 juries know. We would have loved to have had the camera
5 that the child talked about. Loved to have had it. Don't.
6 We would have loved to have had other pieces of physical
7 evidence to come in and tie it up in a nice little package
8 like you see on TV but we really don't. What are we going
9 to have? Are we going to go swab the room for her DNA or
10 his DNA? Both of them live in the house. Of course their
11 DNA is there. What we would expect to find. Do we expect
12 to find in the change of the hymenal opening? The child
13 says that he stuck his private part in her butt. Anal
14 opening. And then he stuck it in her mouth. Now, did the
15 Defendant do that because he thought, as 11 people think,
16 that any type of vaginal penetration a doctor's going to be
17 able to identify? I don't know. I don't know if he did it
18 because he thought sticking it in an anal opening wouldn't
19 leave the evidence, or if that's just his particular
20 perversion. I don't know. But the child comes in and tells
21 you that story, if the child is lying, why? In a case, if I
22 have a child that comes in and the parents are in a nasty
23 custody fight, and after this custody fight has started I've
24 got the 14-year-old girl saying this has happened. You
25 might go, well, wait a second. There's a reason there.

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1 Maybe somebody put it in her mind to win a custody fight.
2 If I've got a teenaged child that step-fathers come in and
3 lay down the law and took her phone away and took her car
4 away because, you know, she wasn't doing what she's supposed
5 to do and then she accuses him of physically abusing her,
6 maybe she's mad. Maybe not, but maybe she is. Those are
7 the red flags you look for. Where are they in this case?
8 What benefit did that child get for making up a story and
9 coming in here five years later and telling the story? And,
10 folks, I wish it wasn't five years later. I wish we had a
11 system that could work much more quickly. That's not an
12 ideal way to work, but it's the way it works, and we're
13 working hard to try to get that backlog of cases moved.
14 We're working hard with judges like Judge McIntosh to try
15 these cases. But there's only such much court time and
16 there's so many cases. Don't hold that against Minor and
17 certainly don't hold it against society. Because really
18 when we come into this courtroom your Solicitor's Office is
19 charged with a duty. Who is our client? Our client is the
20 community. Our client is the people. It's the people of
21 State of South Carolina versus Shane Alexander Washington.
22 Minor not the client. Her parents aren't my clients. My
23 duty is to seek justice. That's actually an ethical duty
24 that I have to take an oath of as a prosecutor. Ms. Nelson
25 operates under a little bit of a different concept. She's

1 the Public Defender and she has one client, and one client
2 only in this case. She has one duty and one duty only, and
3 that is to Shane Alexander Washington, to seek the best
4 beneficial verdict that she can for him within the bounds of
5 the law and ethics. I submit to you she's a fine attorney.
6 She's a well experienced attorney. She knows what she's
7 doing. She's smart. And she's going to come up here and
8 she's going to find every supposed flaw in the case. She's
9 going to tell you everything she thinks the State should
10 have done, every bit of the investigation that should have
11 been different. She's going to tell you all the things
12 Minor should have said differently, or any contradiction
13 Minor ever had in her testimony. And she's going to hope
14 that you found reasonable doubt. She's going to pin the
15 hopes of her client on that, because that is her ethical
16 duty to that one client, and no one else. But when you sit
17 on the jury you sit here as members of the community to seek
18 justice. And that's what we're going to ask you to do.

19 When you look at things like Minor testimony I want
20 you to consider some things. Can Minor clearly remember
21 every detail from five years ago? No. Is she going to be
22 extremely consistent in every little detail? I would hope
23 not. Where I get concern as an attorney is if the child
24 were to come in five years later, seven years old when it
25 happened, 12 years old when she's testifying, and every

1 single detail is the same and I'm going to worry she's been
2 practiced, rehearsed way too much. She was seven years old
3 when this happened. Think about that. For her to be lying,
4 for Shane Alexander to be not guilty, she didn't make that
5 story up. Seven years old and she made up that he stuck his
6 privates in her bottom and rubbed, rubbed her genitals,
7 rubbed her vagina with his hand. She never alleged he stuck
8 anything in it. Stuck it in her rear end. She made that
9 up. Why? And then she says, and Shane told me if I told I
10 would be taken by DSS and go to where DSS takes children
11 when they take them from their houses. Seven years old do
12 you know to even make something like that up? Do you even
13 know who DSS is, or the removal process from a house.

14 If I were to think back -- what's today? April 7th.
15 Think back to October 7th, 2014. It's exactly six months
16 ago from today. I couldn't tell you where I was. I
17 couldn't tell you what I did. No idea what I did that day.
18 That was just six months. September the 11th of 2001, 14
19 years ago, I can tell you exactly where I was that morning.
20 A little after 8:00 that morning when somebody came into my
21 office. My office in Greenwood. Dale Kittles who was a
22 deputy in Greenwood. He's a friend of mine, and said, "I
23 just heard a plane flew in one of the towers in New York."
24 He and I walked back to the conference room, flipped on the
25 TV and were sitting there watching it when the second plane

1 hits and we're clearly seeing it hit. Had a trial that
2 morning in front of Judge Bill Tunstall. He's passed away
3 now. I was with Judge Tunstall that morning. And we would
4 take breaks. Judge Tunstall had a TV brought up to his
5 chambers and we'd go back and we'd flip it on and we'd see
6 what was happening. I remember that because that incident,
7 the World Trade Center, made that big of an impression on
8 me. And it's not near as traumatic to me as what happened
9 to this young lady. But if you were to say, well, you
10 remember all that. Where did you go to dinner that night?
11 I have no idea. What suit were you wearing that day? I
12 don't know. What trial you had to go, what was the client's
13 name? I cannot remember. I know my client was man. I
14 cannot remember his name. That doesn't mean any of it
15 didn't happen. And I remember the important details that
16 really stuck with me. And so does Minor

17 Now, when we talk about this indictment that the Judge
18 read to you, and it's a charging instrument -- again, it's
19 just a charging instrument, and it says on or about July the
20 1st -- I'm sorry -- yeah, 1st day of July, 2010. On or
21 about. The State does not have to prove to you, and it is
22 not essential to this crime, that something happened exactly
23 on July the 1st. That it happened on that day, after
24 midnight, before midnight the next day. That's not what the
25 allegations are and that is not an essential element of the

1 crime. Case law in South Carolina says time is not an
2 essential element of criminal sexual conduct first degree,
3 and it's not. Recognizing the unique nature of these
4 allegations and that a child, a seven-year-old child is
5 trying to remember back to what happened, it is perfectly
6 permissible to say on or about, and it means on or about.
7 That's exactly what it means. That's what it says and
8 that's what it means. It doesn't mean on July 1st. It
9 doesn't mean it has to be within a certain number of hours
10 of July 1st. It's on or about that day, because that's what
11 Minor remembers. It was after school got out. It was
12 around the 1st of July. This is what was going on. This is
13 what he did. That's what she's testified to. And that is
14 exactly what the evidence is. And what other evidence do
15 you have to consider? Other evidence. You've got Minor
16 mother that testified. You've got Lyle Pritchard that
17 testified. And then you've got something else. The law in
18 South Carolina also says that, again, because of the unique
19 nature of this crime, because of the youth of the victim,
20 because a child under the age of 12 was involved, that you
21 can do one of these interviews. You videotape it and audio
22 tape it, so long as certain elements are met in the way it's
23 made, then that evidence can be played to a jury. Because,
24 see, we have -- we have rules about hearsay. You know, you
25 don't come into court and say someone else has told me this.

1 Someone else said this. Someone else said this. You bring
2 in the person that said it, did it or saw it. That's what
3 the Judge told you about direct evidence. I could bring in
4 an officer to say I was told this and I wrote this down.
5 That's not proper evidence. What you do is you bring in the
6 child that talked to the officer and have them testify.
7 Don't be fooled by any skilled advocate for a client that
8 says, well, why didn't they bring in this person to say what
9 this person said. Because that's not what the rules of
10 evidence are and it's not how trials go. But you heard from
11 the child herself. You heard from the child herself when
12 she had just turned eight years old. October 14th of 2010.
13 She turned eight in less than a week before that. On
14 the of 2014 she turned eight years old. And you
15 heard her tell exactly what had been going on. Now, the
16 argument will be made, because I'm not dumb and I've done
17 this for a long time, what evidence did they have that it
18 happened on July 1st. She said it had been going on for a
19 couple of months and that the first incident was touching,
20 and then later it was sticking something inside her. Folks,
21 that's the reason the indictment says what it says. On or
22 about July 1st. On or about, he engaged in sexual battery
23 on Minor . If you find as a jury that he stuck his
24 penis in her bottom, he stuck his penis in her mouth like
25 she testified, if you find that she told the truth, then you

1 find the Defendant guilty.

2 Judge told you about reasonable doubt, because the
3 State has to prove beyond a reasonable doubt and that's
4 something that we welcome. South Carolina law, recognizing
5 that, says in the statute that testimony of a rape victim
6 doesn't have to be corroborated because it recognizes these
7 crimes are done in secret.

8 Guys like this pick out who they think are weak and
9 defenseless who can't stand up to them. If they do stand up
10 to them it's your word against mine and who's going to
11 believe you and there's always reasonable doubt. All I got
12 to do is say you're lying. You can count on that. So if
13 you think she's lying, look at the circumstances. Look at
14 what she said when she was seven. Look at what she's saying
15 now. Think about why she would be making up a story. What
16 benefit is it to her, to her momma, to her daddy, to anyone
17 else for her to put herself through this for five years. To
18 wait for this to come to court to be taken care of. When
19 really all Minor wants to do is get it done and move on
20 with her life. This isn't something she wants to revisit.
21 These kids don't want to think about it, relive it. They
22 don't want to talk about it or describe it.

23 You think about his definition of reasonable doubt
24 leaves you firmly convinced. Because you go back and you
25 carefully consider the evidence, it's not indication of

1 hesitation. Ms. Nelson used the example of a medical
2 procedure. If you want a second opinion, you've got
3 reasonable doubt. No. No. If you carefully consider the
4 information given to you and you're firmly convinced, you
5 don't have reasonable doubt. It's a standard the State
6 meets every time somebody is convicted in this State and
7 it's met time and time again on the testimony of children.
8 Because just like any other predator in the wild, a child
9 molester picks the young, picks somebody they think they can
10 discredit, threaten them with circumstances like DSS, and
11 then they do what they do. Why they do, I don't know.

12 Folks, I wish we had other things. I wish we had a
13 videotape of what was going on, like we would, I told you,
14 in a burglary or something like that. What we do have is
15 that child that was molested, her descriptions now, her
16 descriptions seven years ago -- I'm sorry, five years ago
17 when she was seven years old, and that is the testimony that
18 has come to you. And that's what I'm going to ask you to
19 consider. And use that common sense. You won't find any
20 reason in what this man has done. But I have learned that
21 monsters are real. I always told my kids growing up they
22 weren't. They are. Find him guilty, because he doesn't
23 deserve to be walking among us. Thank you.

24 THE COURT: Ms. Nelson.

25 MS. NELSON: Thank you, Your Honor.

1 CLOSING ARGUMENT

2 BY MS. NELSON: Some things are all about timing.
3 Getting the timing right. Some great opportunity comes up
4 because you're in the right place at the right time. You
5 meet your soul mate. And you're verdict in this case has
6 got to be based on timing, because what the State is asking
7 you to convict this man of is extraordinarily serious. If
8 this -- if this thing happened to this young lady, that's
9 horrible. That's terrible. If it didn't happen and this
10 man is being accused of doing that to her, that's equally
11 terrible. This is an awful thing to be accused of. And the
12 State has got to get it right. And yes, I'm going to talk
13 to you about everything I'm can think of to say about why
14 they don't have it right, because this is a big deal. And
15 the reason I say it's about timing is because Mr. Washington
16 is charged with doing something to her on or about July the
17 1st. He's charged with committing a sexual battery on or
18 about July the 1st, 2010. That's the -- that's the date
19 that the Abbeville County Grand Jury put in that indictment.
20 Mr. Sheek is telling you that's not an essential part of the
21 crime. We'll know things don't have to happen on a
22 particular date to be criminal. They just happen on dates.
23 But that's -- that is the date that the Grand Jury
24 determined is the correct date to put in that charging
25 document, July the 1st, 2010. And that's what you have to

1 consider. Was it on -- was there a sexual battery on or
2 around that date. The Judge has read out to you the
3 different types of sexual battery. What they are. And Mr.
4 Sheek told you the only way -- the only way he could be not
5 guilty is if Minor is lying, and that actually isn't
6 correct. She could be telling the truth on that video. She
7 could have been telling the truth on the stand here. And
8 there's still not a sexual battery.

9 Now, is it wrong -- is it wrong to touch a child on the
10 butt and the privates? Of course it is. It's just not a
11 criminal sexual conduct with a minor in the first degree,
12 which is what Mr. Washington is charged with. That's the
13 charge before you that you have to consider. So even if we
14 go all the way of taking everything -- everything that Ms.
15 Belcher said is true, it's still not guilty in this case,
16 because what did you hear twice now? You've heard on the
17 video, which was just a few weeks after this whole thing was
18 reported, she talked about he's touching me. And then she
19 was asked to describe the first time, and she describes
20 being touched on her butt, on her private, in the tattoo
21 room. She doesn't describe any penetration of any kind.
22 She just talks about being touched. There's got to be a
23 sexual battery for there to be CSC with a minor first
24 degree. And that whole first time she describes, that
25 batteries not there. So even if you want to say -- even if

1 you want to say okay, I'm convinced beyond a reasonable
2 doubt that all of that is correct, everything -- everything
3 that she said he did is true, he's charged with the first
4 day of July 2010 committing some sort of penetration or oral
5 sex on this child and that's not what she's described to
6 you, either on the video you watched or here on the stand
7 today. You remember we watched the video for a little while
8 and she described that first time. And then Judge McIntosh
9 told you that you were going to hear about other things that
10 had happened that you couldn't consider as to Mr.
11 Washington's guilt or innocence, and then you heard about
12 these other things on the video. You can consider those for
13 things like motive, for things like absence of mistake. But
14 you can't consider it as to whether he's guilty of a
15 criminal sexual conduct in the first degree on or about July
16 the 1st, 2010 which is when all this is supposed to have
17 started.

18 Mr. Sheek has also talked a lot about the stuff that's
19 missing and how I'm going to point that out. And, shoot, I
20 don't -- I can't imagine that I have to even point out some
21 of this to you. Who did you -- who did you not see talking
22 to you today? Who comes and arrests people? Who comes out
23 when 911 gets called? The police. There wasn't a single
24 police officer who came in and talked to you, because they
25 didn't do anything. They didn't do anything. They went to

1 the house and say, hey, Shane, these are -- this is what's
2 being said. They didn't arrest him and they looked through
3 a camera. And Mr. Sheek says I wish we had the camera.
4 Well, it wouldn't matter if they had the camera. The
5 officer looked at it. There wasn't anything on it and he
6 handed it back. Don't you know if there had pictures of
7 that child on that camera that the officer would have surely
8 -- I mean, surely they would have at least done that and
9 taken that camera with them. The one camera that was in the
10 house that Ms. Washington told you about that was always
11 either in her bedroom or on the shelf in the livingroom that
12 she went and got, the officer looked through it and gave it
13 back to her. On the video Minor and on the stand,
14 said the camera she was talking about was in a drawer with
15 the ink pens. Don't you think if there was a camera in the
16 drawer with the ink pens surely you would hope that somebody
17 was going to look for it? But Ms. Washington told you about
18 the one camera in the house and the officer got to look at
19 that. Is that a reason to doubt some of the other things
20 that you heard on that video in front of the stand? It is.
21 That's a reason to doubt. What about the description of Mr.
22 Washington having anal sex with her in the momma's bathroom.
23 A grown man, a grown 25-year-old man having anal sex with a
24 seven-year-old child on the floor in the bathroom. Of his
25 wife's bathroom. And the interviewer, Ms. Ehney, asked Ms.

1 Belcher that happened once or more than once. That happened
2 more than once. What did it feel like. What did it feel
3 like when that happened. One time she said it felt hard.
4 What did it feel like when it happened that other time? It
5 felt soft. Now, what is the one word you would expect to
6 hear if a grown man forced himself on a seven-year-old girl
7 when some asked how that felt? Would you expect -- wouldn't
8 you expect somebody to say that hurt. How it felt, it hurt
9 and I cried and I begged him to stop. Isn't that what you
10 expect the word to be, how did that feel? That isn't the
11 word. Those weren't the words that were used. Is that
12 reason for you to doubt?

13 Minor -- and, of course, you've got to rely on
14 your own memory for this, but Minor talked about an
15 incident during the interview about fellatio in her
16 brother's bedroom. Mr. Sheek told you these guys -- these
17 guys do this stuff in secret. And she tells you on the
18 video that -- tells the interviewer that's supposed to have
19 happened in her brother's bedroom with her sister M.B. and
20 her sister S.B. right there in the room. Right there
21 lying in the bed. There's been a lot of talk to you about
22 common sense. Using common sense from Mr. Sheek, from Judge
23 McIntosh. That you've got to come to this with your common
24 sense and I'm asking you to scrutinize the accusations. The
25 detail that was given. The comments that were made.

1 Because common sense should tell you that there's not enough
2 there for you to be convinced beyond a reasonable doubt that
3 those things happened.

4 Reasonable doubt is a very high standard. It's not
5 beyond all, every possible doubt. But folks, if you go back
6 there and say, well, I think he probably did it. I think he
7 probably did something. Probably ain't good enough.
8 Probably is not beyond a reasonable doubt. It's possible
9 something happened. Possibly he did something wrong.
10 Possibly and probably aren't enough. You've got to be
11 firmly convinced beyond a reasonable doubt that on or about
12 July 1st, 2010 that a sexual battery happened to this child
13 that was perpetrated by Mr. Washington.

14 What are some of the other things you don't have? This
15 isn't CSI. It's not CSI. We know when you don't take any
16 evidence from anybody how are you going to send anything to
17 CSI and get some results? Mr. Sheek talked about, why
18 wouldn't they get DNA. He lives there. Why do we need his
19 DNA. Well, folks, if this man was doing these kinds of
20 things to that child could some semen on her clothes have
21 been some sort of corroboration? And it's -- they can test
22 that stuff. They could have taken her pajamas if that's --
23 whatever one she said she was wearing. Now, I'll agree Due
24 West Police Department probably doesn't have its own crime
25 lab. But there is one -- SLED's got one, or the State's got

1 one that they test things for the presence of blood, for the
2 presence of semen, and then once they find something there,
3 if they can get DNA from it they can match it to somebody.
4 That would have been something that could have helped you
5 decide is this real. But there wasn't anything taken to be
6 tested. So how can you -- how can you have CSI when you
7 don't even test any evidence? What's that tell you about
8 what the investigator's thought about this case? And for --
9 the lab testing. Testing for DNA or semen. There's not
10 even any pictures -- there's not even any pictures of this
11 tattoo room or this bathroom floor. Something as simple as
12 taking a photograph with the camera. Those pictures are
13 missing, too. So there are a lot of things you don't have
14 and the State is asking you to take away somebody's freedoms
15 with nothing but the word of someone else. There were a lot
16 of things you heard about why would -- why would she lie.
17 Why would she make it up. And I can't give you those
18 answers, and I don't -- I'm not required to, because I don't
19 have to stand up here and prove to you that Mr. Washington
20 is innocent of anything. The only way I, in this case, have
21 to do that is offer contrary testimony. No, I didn't do it.
22 So I can't answer that why for you. Kids -- kids make up
23 things sometimes for all kinds of different reasons, and I
24 don't know why she would have made it up. The only thing I
25 can suggest to you is that -- is that Ms. Chanel Washington,

1 while she was still married to Mr. Belcher, Minor father,
2 had taken up with a younger man, the 25-year-old Shane
3 Washington, who the ladies like, who isn't the most faithful
4 husband. She had taken up with him and had a child with him
5 before her divorce from Mr. Belcher was even final. She was
6 about to have her third child with him when this was
7 supposed to have all happened. And once this got reported,
8 those four children of Mr. Belcher's were gone and away and
9 living with their grandparents, where they still are. So
10 did it get suggested to her so that she would come and live
11 with her grandparents and be away from Shane Washington for
12 whatever reason? I don't know. I can't answer the why.
13 But that is something for you to think about.

14 I'm almost done. I know you've been listening to a lot
15 of stuff for the past two days, but this is my last chance
16 to get to talk to you and this is important.

17 The other thing I'd ask you to remember, yes, there
18 were some things that Minor couldn't remember today
19 almost five years later. But what she tells -- what she
20 tells the interviewer on that video was closer in time. It
21 was only a few weeks later. And what she tells her, like I
22 said, if you believe it, is that the first thing that would
23 have happened was touching. That's not guilty. If you have
24 reasonable doubt that any of these things happened, not just
25 he probably did it, maybe he did it, why would she lie, so

1 he probably did it, that's a not guilty. That's reasonable
2 doubt. You've got a completely normal medical exam. I know
3 that's explained away why -- you know, why she didn't -- she
4 didn't say that he put anything in her vagina. So her hymen
5 is going to be normal. But she's supposed to have reported
6 this the day after the last time something happened.
7 Something was supposed to have happened just the previous
8 day. And Dr. Pritchard told you there's like a three day
9 window they can find something. Why didn't somebody take
10 her? Why didn't law enforcement immediately say, hey, they
11 can only catch stuff real quick. We've got to get her to a
12 doctor. So yes, she had a normal medical exam consistent
13 with a finding of no abuse. And the other things you had
14 that I want you to pay attention to on that exam are all of
15 those things that I went through with Dr. Pritchard. These
16 things are all listed on your form, because these are things
17 you sometimes see in children who are abused. None of those
18 things -- none of those things were present. No problems
19 sleeping. No problem not being scared being left alone. Not
20 sad or crying easily. Not getting in fights with her
21 siblings. Haven't tried to hurt herself. Doesn't have any
22 problems with her friends. And no physical problems. No
23 bed wetting. No frequent stomach aches. No itching of the
24 genitals or anus. Those things are what's important on this
25 medical exam. Those things all point to no trauma. To no

1 abuse. So that's something that you do have. A good doctor
2 qualified as an expert who came in and told you that none of
3 those findings were reported by either of her parents.

4 Folks, you've got to -- you've got to bring your
5 collective wisdom to this. Each of you, as Judge McIntosh
6 told you, have to decide this case on your own. Every
7 single one of you is entitled to your opinion on what the
8 outcome of this case ought to be. For you to reach a
9 verdict you've all got to agree. But that doesn't mean that
10 you don't have a right to stick to your opinion on what you
11 think is the correct verdict in this case. I'm asking you
12 folks -- I know that it would be hard to look at this young
13 lady and say we can't find him guilty. I'm sure that would
14 be hard. But you've got to follow the law, and you've got
15 to go with what the State has charged this man with on or
16 about July 1st, committing a sexual battery. That's not the
17 evidence you've been given, if you believe every piece of
18 it. Everything that -- everything that Minor said.
19 That didn't happen on or about July the 1st.

20 Folks, thank you for your time and effort. Please
21 don't forget to look at the timing of this case. Please
22 don't forget to consider what makes sense about what been
23 said. Is it commonsense to have a child perform oral sex on
24 you with her two sleeping siblings in the room? Is it
25 common sense to not say it hurt when a grown man forced anal

1 sex on a seven-year-old girl. Is it common sense that all
2 those folks in the house, all those kids in the house,
3 nobody sees or hears a thing. Folks, I'm asking you to find
4 Mr. Washington not guilty. Thank you.

5 THE COURT: Mr. Foreman, ladies and gentlemen of the
6 jury, this is the verdict form. Once we give you this form
7 and the exhibits in this case and you're told to begin your
8 deliberations you may. Just an aside. Five minutes to
9 5:00. We'll go as long as you want. We'll break until
10 tomorrow and let you resume your deliberations or start your
11 deliberations tomorrow. Check with your jury and let us
12 know what you want to do. Again, any communications, write
13 it down, sign it, knock on the door and we'll get it back
14 here. Okay? Remember all the evidence that you're going to
15 hear has been presented at this stage. Your verdict form is
16 this. As -- number one, first degree of criminal sexual
17 conduct with a minor, as to the charge of first degree
18 sexual conduct with a minor, indictment number 2011-GS-01-
19 389, we, the jury, unanimously find the Defendant not
20 guilty. That's Section A. Section B is as to the charge of
21 first degree criminal sexual conduct with a minor,
22 indictment 2011-GS-01-389, we, the jury, unanimously find
23 the Defendant guilty.

24 Now, first the order that these appear is of no
25 consequence. I have to put it in some order. So disregard

1 that. If the jury finds the Defendant not guilty, then you
2 would stop, sign your name as the Foreperson. Okay, sir.
3 On the other hand, if you find the Defendant is guilty
4 unanimously, then your next step would go to the next part
5 of the verdict form. And these different options are
6 required by statute. That's why they're put on the form.
7 Okay, sir. But the next, if you find the Defendant's
8 guilty, you can only do so unless you find one or more of
9 the following events or occurrences took place. And that
10 is, we, the jury, unanimously find the Defendant committed
11 the following acts upon Minor , and then it's in all
12 bold. Check all of the following that apply. Option,
13 sexual intercourse; two, cunnilingus; three, fellatio; four,
14 anal intercourse; five, any intrusion however slight into
15 any part of her genital or anal openings, or any object
16 being inserted into her genital or anal openings. Once
17 those are checked, again, you sign your sign your name on
18 the verdict form. Either way, you'll fold it over, crease
19 it, knock on the door, let the bailiff know we have a
20 verdict. We'll receive it back here in the courtroom and go
21 over it at that point in time. Okay, sir?

22 While we're gathering up exhibits, if you'll go over
23 with your jury whether or not they want to continue to
24 deliberate now, come back in the morning. Whatever is your
25 preference is fine with me. Okay? Madam Alternate, I'm

1 going to ask that you go back to the jury room. Get your
2 personal belongings and come on back in the courtroom.
3 Okay? If you don't mind.

4 With that being said, would you take your jury to the
5 jury room, please, sir.

6 (Whereupon, the jury exited the courtroom for
7 deliberations at 5:02 p.m.)

8 THE COURT: Any additions or exceptions from the State?

9 MR. SHEEK: Not from the State, Your Honor.

10 THE COURT: From the Defense?

11 MS. NELSON: No, sir, Your Honor.

12 THE COURT: I want to congratulate both attorneys. You
13 all made fine closing arguments. Both of you did a great
14 job. Make sure the alternate comes out, please, sir.

15 Would you all look over the exhibits and make sure you
16 have it. Do you all have your exhibits?

17 MR. SHEEK: Yes, sir. It's just the three that were
18 actually put in. The videotape obviously won't go back.

19 THE COURT: Right.

20 THE SHEEK: I'm showing my age, tape.

21 THE COURT: Mr. Bailiff, would tell them that they
22 begin their deliberations if that's what they want to do.
23 But to send us word back one way or the other, if you don't
24 mind, please, sir.

25 (Whereupon, there was a brief pause in the

1 proceedings.)

2 THE BAILIFF: Sir, they want to start in the morning.

3 THE COURT: They want to start in the morning?

4 THE BAILIFF: Yes, sir.

5 THE COURT: Very good. Just one second. Ask them to
6 stay there and we'll bring them out.

7 (Whereupon, there was a brief pause in the
8 proceedings.)

9 THE COURT: Would you bring the jury out, please, sir.

10 (Whereupon, the jury entered the courtroom.)

11 THE COURT: Ladies and gentlemen of the jury, my
12 understanding is that you would like to come back in the
13 morning to begin your deliberations; is that correct?

14 THE FOREMAN: Yes, sir.

15 THE COURT: That's fine. What I'm going to ask you to
16 do -- actually I'm going to instruct you to do right now.
17 You may not deliberate amongst yourselves. You may not
18 speak with anybody. The same prohibitions I gave you at the
19 beginning of the case, continue forward until tomorrow
20 morning. Because we are starting another trial at 9:00,
21 I'll need to get you here at 9:00 in the morning to begin
22 your deliberations. Is there any reason you cannot be here
23 at 9:00?

24 THE FOREMAN: Half of us are on the other jury.

25 THE COURT: We've got some other things we'll do. Don't

1 you worry. Be here at 9:00. I swear sometimes being up
2 here is like herding cats. But I know you -- I saw that
3 look on your face. My mother tells me since I was a young
4 kid I don't do a whole lot of thinking over here. But
5 please be here at 9:00. Begin your deliberations. Once you
6 have completed then we'll resume other things. Okay?

7 Good night have a nice evening. Okay?

8 (Whereupon, the jury was released for the day at 5:05
9 p.m.)

10 (END OF REQUESTED TRANSCRIPT OF RECORD.)

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State of South Carolina

In the Court of General Sessions

County of Anderson

State of South Carolina,

Plaintiff,

-vs-

Shane Alexander Washington,

Defendant.

2011-GS-01- 0389

April 8, 2015

Transcript of Record

B E F O R E:

The Honorable R. Lawton McIntosh, Judge

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

Lance Sheek, Esquire
Assistant Solicitor for Eighth Judicial Circuit
Attorney for the State

Janna Nelson, Esquire
Attorney for the Defendant

Renee H. Tollison, CVR
Circuit Court Reporter

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EXHIBITS

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C-3	Jury Note	11	

1 begin your deliberations. Okay, sir? Remember, any
2 questions or anything you need, write it down, knock on the
3 door, and we will respond accordingly. Okay, sir?

4 MR. FOREMAN: Yes, sir.

5 THE COURT: All right. If you'll go back and
6 begin your deliberations.

7 (WHEREUPON, the jury exited the open courtroom at
8 approximately 9:09 a.m.)

9 THE COURT: Y'all be seated just one second.
10 Do you have your notes with the video, which sections
11 of the video were being excluded?

12 MR. SHEEK: I do, Your Honor. It's back here in
13 my briefcase. Do you need that?

14 THE COURT: Yeah, why don't you grab those. I
15 think it'd be a good idea to go ahead and let's list on the
16 record the sections of the video which were excluded so
17 that, if it's good for you, you will know which was played
18 and which was not played.

19 MR. SHEEK: Yes, sir.

20 Ready, Your Honor?

21 THE COURT: Okay, sir.

22 MR. SHEEK: The videotape was played before the
23 jury using the counter on that particular videotape. The
24 excluded portions were as follows: from the timing of
25 sixteen thirty-one through sixteen forty-three was not

1 played, nineteen fifteen through nineteen twenty-five --
2 that would be nineteen minutes and fifteen seconds to
3 nineteen twenty-five seconds -- was not played, twenty-three
4 minutes and twenty seconds to twenty-five minutes forty-four
5 seconds was not played, twenty-eight minutes nine seconds to
6 twenty-eight minutes and twenty-eight seconds was not
7 played, thirty-five minutes thirteen seconds to thirty-five
8 minutes thirty-nine seconds was not played, forty minutes
9 eighteen seconds to forty minutes forty-nine seconds was not
10 played, and then one hour two minutes and twenty-eight
11 seconds to one hour two minutes and fifty-five seconds was
12 not played.

13 THE COURT: Okay.

14 MR. SHEEK: The remaining portions were played.

15 MS. NELSON: I think it actually got cut off even
16 -- I think we ended up deciding ---

17 MR. SHEEK: That's correct. After the one hour
18 two minutes fifty-five seconds, we actually stopped it at
19 that point.

20 THE COURT: Okay.

21 MR. SHEEK: And nothing further was played after
22 that.

23 THE COURT: Okay.

24 MS. NELSON: I believe that's correct, Your Honor.

25 THE COURT: Okay. Very good.

1 MS. NELSON: There wasn't much left after that
2 last break.

3 THE COURT: All right. And since the timing
4 didn't mesh up on the State's copy versus the Defense copy,
5 for the record, we used Defense copy for playing in this
6 case. So let's make that either a Court Exhibit or an
7 exhibit -- let's make it a Court Exhibit -- so if it has to
8 go up, they have -- the timing that we just put on the record
9 will mesh up with what they're looking at.

10 MS. NELSON: Yes, sir, Your Honor. And just also
11 for clarity that at the time it was played with a VLC media
12 player.

13 THE COURT: What type?

14 MS. NELSON: VLC.

15 THE COURT: Okay.

16 MR. SHEEK: Apparently, the different video
17 players set up with different times as opposed to the
18 different tapes. Again, I don't understand the technology
19 of what that is.

20 THE COURT: I certainly don't either, but at least
21 anybody who may review this, hopefully, they have enough
22 information they'll be in-sync with us.

23 MS. NELSON: Thank you, Your Honor.

24 THE COURT: Okay. With that being done -- said,
25 anything further from the State?

1 MR. SHEEK: Nothing further from the State, Your
2 Honor.

3 THE COURT: From the Defense?

4 MS. NELSON: No, sir, Your Honor.

5 THE COURT: All right. Guys, if y'all would just

6 ---

7 MR. SHEEK: Your Honor, perhaps out of an
8 abundance of caution, we'll simply make our sheet we used
9 for the timing also ---

10 THE COURT: Make it a Court Exhibit.

11 MS. NELSON: It's not very pretty, but ...

12 (WHEREUPON, Court's Exhibits Number 1 and 2 were marked
13 for identification only.)

14 THE COURT: All right. If y'all will just hang
15 loose. And if you start to go somewhere, if you'd give my
16 clerk your cell phones. That way we can chase you down if
17 necessary.

18 MR. SHEEK: Yes, sir.

19 (WHEREUPON, court stood at recess awaiting the verdict
20 of the jury at approximately 9:14 a.m.)

21 THE COURT: We have a question in the Shane
22 Washington case from the jury. The question is, "Can we get
23 definitions on cunnilingus and fellatio?" What would be the
24 thought from the State?

25 MR. SHEEK: Just the definition?

1 THE COURT: Sir?

2 MR. SHEEK: Just the definitions?

3 THE COURT: No, no, I'm not asking that
4 necessarily. I'm asking -- thank you -- for the way in
5 which we should respond to the question being asked.

6 MR. SHEEK: Judge, I have no objection if you want
7 to have your law clerk print out the short definition and go
8 ahead and send it back, or we can bring them out.

9 THE COURT: I'm not going to send it back.

10 MR. SHEEK: Okay. Then bring them out and just
11 giving them a brief definition is fine with me.

12 THE COURT: Ms. Nelson?

13 MS. NELSON: No objection to a definition. And I
14 would also just prefer that -- your procedure.

15 THE COURT: Do you think -- let me tell you what
16 my thoughts were. And I'll -- listen, this is your case.
17 So if y'all agree, that's what we'll do. But we quickly
18 looked up the statute, and there was not a statutory
19 definition of these different acts. And so Webster's would
20 be the next place you go under statutory construction
21 principles.

22 MR. SHEEK: Yes, sir.

23 THE COURT: But to charge them also on the
24 definition of what a sexual battery is under the CSC with a
25 minor statute first-degree. What would be your thoughts on

1 that, Mr. Sheek?

2 MR. SHEEK: To define them on both sexual battery
3 and ---

4 THE COURT: I would ---

5 MR. SHEEK: I'm sorry.

6 THE COURT: My thought ---

7 MR. SHEEK: Yes, sir.

8 THE COURT: I mean, it's a one-page charge. I can
9 give the entire charge again. I don't necessarily think
10 that's in order. But in responding to the question, I would
11 propose telling the jury I'm going to define to you -- I'm
12 going to read to you again the definition of what a sexual
13 battery is. And then I'm going to provide to you ...

14 Run those out. Print them out.

15 ... what the definition of fellatio and cunnilingus as
16 requested by the jury.

17 MR. SHEEK: Yes, sir. I understand what you're
18 saying now. I believe that would probably be the best way
19 to do it.

20 MS. NELSON: I'm fine with that, Your Honor.

21 THE COURT: Okay. Now, we don't necessarily need
22 to put all this stuff -- well, I guess we do. It's on my
23 law clerk's -- it's on my computer, so y'all step around
24 here and look.

25 MS. NELSON: I'm sure it's pretty cut and dried.

1 THE COURT: I would have thought that would be the
2 case.

3 MR. SHEEK: I think that's probably better than I
4 could have come up with.

5 MS. NELSON: I think that's fine.

6 THE COURT: Okay. I've not looked at them, so I
7 don't know. I mean ...

8 Okay.

9 MR. SHEEK: Thank you, sir.

10 THE COURT: All right. So we're agreed on the
11 record ...

12 No, go back to the charge.

13 THE LAW CLERK: I've got to pull up and print it
14 on here.

15 THE COURT: I'm not going to print it. Just keep
16 that where it is.

17 THE LAW CLERK: Got you.

18 THE COURT: So for the record, everyone's in
19 agreement that I will define sexual battery under the charge
20 of first-degree criminal sexual conduct with a minor and
21 then go forward and define cunnilingus and fellatio as y'all
22 just looked at on my computer; is that correct?

23 MR. SHEEK: That is the State's understanding.

24 MS. NELSON: Yes, Your Honor.

25 THE COURT: Okay.

1 Would you bring the jury in, please, Mr. Bailiff.

2 Would you give that to Renee.

3 (WHEREUPON, Court's Exhibit Number 3 was marked for
4 identification only after which the jury entered the
5 open court at approximately 10:24 a.m.)

6 THE COURT: All right. The jury has asked a
7 question for the definition of cunnilingus and fellatio; is
8 that correct?

9 MR. FOREMAN: Yes, sir.

10 THE COURT: All right. Through agreement with
11 both the State and Defense, what I'm going to do is read to
12 you the definition of sexual battery as it applies to first-
13 degree criminal sexual conduct with a minor. Then I'll give
14 you the definition of the terms that you've asked me to give
15 you. Okay, sir?

16 All right. This is the definition of sexual battery.
17 A sexual battery is sexual intercourse, cunnilingus,
18 fellatio, anal intercourse or any intrusion, however slight,
19 of any part of a person's body or of any object into the
20 genital or anal openings of another person's body except
21 when the intrusion is accomplished for medically recognized
22 treatment or diagnostic purposes. That is the general
23 definition of sexual battery.

24 Cunnilingus is defined as the act of stimulating a
25 woman's sexual organs with the mouth for sexual pleasure.

1 Fellatio is defined as the act of stimulating a man's penis
2 with the mouth for sexual pleasure.

3 Mr. Foreman, ladies and gentlemen, does that answer
4 your questions that the jury has?

5 MR. FOREMAN: Yes, sir.

6 THE COURT: Okay, sir. If you'd go back to your
7 jury room. I'm going to have a brief meeting with the
8 attorneys, so suspend your deliberations until we send word
9 back to you to resume. Okay, sir?

10 MR. FOREMAN: Yes, sir.

11 THE COURT: Thank you very much.

12 (WHEREUPON, the jury exited the open court at
13 approximately 10:26 a.m.)

14 THE COURT: All right. Any additions or
15 exceptions from the State?

16 MR. SHEEK: None from the State, Your Honor.

17 THE COURT: From the Defense?

18 MS. NELSON: No, Your Honor.

19 THE COURT: Very good.

20 Would you tell the jury to resume their deliberations,
21 please, Mr. Bailiff?

22 (WHEREUPON, court stood in recess awaiting the verdict
23 of the jury.)

24 THE COURT: All right, sir. Would you bring the
25 jury out?

1 (WHEREUPON, the jury entered the open court at
2 approximately 10:44 a.m.)

3 THE COURT: All right. Mr. Foreman, my
4 understanding is that the jury has reached a verdict. Is
5 that correct?

6 MR. FOREMAN: Yes, sir.

7 THE COURT: Is it unanimous?

8 MR. FOREMAN: Yes, sir.

9 THE COURT: Would you pass the verdict form to the
10 bailiff?

11 (WHEREUPON, the verdict form was handed up to the
12 Court.)

13 THE COURT: Madam Forelady? I mean, Madam Clerk.
14 Excuse me.

15 THE CLERK: State of South Carolina versus Shane
16 Alexander Washington, indictment number 2011-GS-01-389. As
17 to the charge of first-degree criminal sexual conduct with a
18 minor, indictment number 2011-GS-01-389, we, the jury,
19 unanimously find the defendant guilty. We, the jury
20 unanimously do find the defendant committed the acts upon
21 Minor , fellatio, any intrusion however slight into
22 any part of her genital or anal openings or any object being
23 inserted into her genital or anal openings. Baylor Lindell,
24 juror number 89, foreman, April 8th, 2015.

25 Mr. Foreman, ladies and gentlemen of the jury, is this

1 your verdict, so say you all? Please signify by raising
2 your right hand.

3 (WHEREUPON, all jurors' right hand was raised.)

4 MR. SHEEK: Before you release the jury, may we
5 approach one second?

6 THE COURT: Sure. Y'all can look at the verdict
7 form before you ask ...

8 MR. SHEEK: Yeah, that's what I was doing.

9 (WHEREUPON, a bench conference was held off the
10 record.)

11 THE COURT: All right. Anything further from the
12 State?

13 MR. SHEEK: Nothing from the State, Your Honor.

14 THE COURT: Anything further from the Defense?

15 MS. NELSON: No, sir, Your Honor.

16 THE COURT: All right. Ladies and gentlemen of
17 the jury, the Court is never interested in what your verdict
18 is, but is always concerned that you stay engaged throughout
19 the course of the trial. And I've watched you respectively
20 throughout this case, and I thought you were engaged through
21 the testimony, through the statements of the attorneys and
22 through my charge. Even though that's hard to go through,
23 y'all stayed with me. And so regardless of what your
24 verdict is, you performed your civic duty. It is never easy
25 to sit in judgment of your fellowman or woman. But without

State of South Carolina) In the Court of General Sessions
) Eighth Judicial Circuit
County of Abbeville) 2011-GS-01-0389

State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 Shane Alexander Washington,)
)
 Defendant.)
)
)

April 20, 2016
Greenwood, South Carolina

B E F O R E:

The Honorable Donald B. Hocker, Judge

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

C. Lance Sheek, Assistant Solicitor
Attorney for Plaintiff

Janna A. Nelson, Esquire
Attorney for Defendant

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
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No exhibits marked during proceeding.

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 2:25 p.m.)

THE COURT: Okay. We are on the record in the Shane Alexander Washington case. It's a 2011 General Sessions case -- Abbeville case, File No. 389.

Evidently, on April 8th of 2015, Mr. Washington was convicted of criminal sexual conduct with a minor in the first degree. Evidently, he was tried in his absence. And Judge McIntosh was the presiding judge, and he entered sentence in the case. And in accordance with statute, the sentence has been sealed. And now I have been requested by state to unseal the sentence and pronounce sentencing based upon the sentence imposed by Judge McIntosh.

Do we need to put anything on the record before I do that ---

MR. SHEEK: Not from ---

THE COURT: --- from the state?

MR. SHEEK: --- the state, Your Honor.

THE COURT: From the defense?

MS. NELSON: Nothing beforehand, Your Honor.

THE COURT: Okay. All right. Let the record reflect that the defendant is represented by Janna Nelson of the public defender's office and Lance Sheek is present on behalf of the state.

Okay. Mr. Washington, based upon Judge McIntosh

1 sentence, you'll be committed to the State Department of
2 Corrections for a period of 30 years. Good luck to you,
3 sir.

4 Anything on the record, Ms. Nelson?

5 MS. NELSON: Yes, sir, Your Honor. We would ask that
6 you -- that you consider a modification of that sentence to
7 -- to the mandatory minimum of 25 years in this case.
8 Shane is only 30 years old. I'm not aware of any
9 significant prior history at all, other than some traffic
10 tickets. That's all you have?

11 THE DEFENDANT: Yes, ma'am.

12 MS. NELSON: He is a -- a tattoo artist, Your Honor.
13 He was working in Columbia and Greenville during this past
14 year since the -- since the trial took place, is what he
15 tells me, doing work as a tattoo artist. He was actually
16 picked up on the bench warrant right here in Greenwood.

17 And I -- I think that's sort of telling as to the
18 issue that -- that by the time this case was tried, he --
19 he didn't fully understand that it was going to go forward
20 without him there. Your Honor, he -- when -- when he did
21 not appear, I think that was more of a bad judgment, kind
22 of hoping that because the case was as old as it was by the
23 time it was called to trial, that -- that maybe this wasn't
24 really happening.

25 He professes his innocence, which, of course, I know

1 the jury has spoken on. But I think he was just sort of in
2 a -- you know, kind of burying his head in the sand about
3 what was actually happening and, frankly, just extremely
4 frightened of what the result could be.

5 And, of course, it would've been a better decision in
6 hindsight, he knows today, to have communicated with me and
7 been there to assist in his defense. But I really think it
8 was more a product of fear and -- and kind of just a
9 difficulty accepting that this -- this really was
10 happening, that this really was going to go forward.

11 So I -- he does have five children. His mother is
12 here in Greenwood. His father's in Columbia. He has a
13 fiancée also here in Greenwood. I believe if they'd known
14 about this, they would've been here today. I didn't know
15 of them, so I didn't know to call them.

16 THE COURT: Sure.

17 MS. NELSON: But I think -- I think at least his
18 mother and fiancée would've been here with him to show
19 support for Shane. And, Your Honor, I'm -- I'm just asking
20 that you -- that you consider modifying the sentence down
21 to the mandatory minimum.

22 THE COURT: Okay. Thank you very much. Position of
23 the state?

24 MR. SHEEK: Your Honor, we have chased Mr. Washington
25 around for quite some time. He has been vigorously and

1 actively avoiding apprehension. The State Law Enforcement
2 Division Fugitive Apprehension Unit has been pursuing him.

3 He -- he knew before the trial that it would go
4 forward with his absence. There was contact made with the
5 bonding person and with his mother. And, in fact, Mr.
6 Washington ended up calling back to our office and was
7 advised by our office that the trial was going forward and
8 he needed to immediately speak with Ms. Nelson.

9 MS. NELSON: Their office actually called him.

10 MR. SHEEK: And -- well ---

11 MS. NELSON: It ---

12 MR. SHEEK: --- no. We -- we called a cell phone
13 provided to us by the bonding agent, identified as his
14 mother.

15 THE COURT: All right.

16 MS. NELSON: His -- my understanding was that his
17 mother ---

18 THE COURT: Yeah.

19 MS. NELSON: --- gave a phone number that Ms. Chappell
20 then called, knowing it was supposed ---

21 THE COURT: All right.

22 MS. NELSON: --- to be my client's number.

23 THE COURT: And -- and ---

24 MS. NELSON: But that's all been ---

25 THE COURT: Right. That's all water ---

1 MS. NELSON: That's all ---

2 THE COURT: --- under the ---

3 MS. NELSON: --- on the ---

4 THE COURT: --- bridge.

5 MS. NELSON: --- record.

6 THE COURT: I do have ---

7 MS. NELSON: Yes, sir.

8 THE COURT: Because I heard those matters of the
9 request for a continuance and then the -- the -- the
10 dispute that you folks had concerning contact with him and
11 that -- that sort of thing.

12 MS. NELSON: Yes, sir.

13 THE COURT: You know, I have the -- the highest
14 respect for Judge McIntosh and his -- and his exercise of
15 his discretion. And he imposed a sentence that he felt
16 like was the appropriate sentence under the case that he --
17 that he heard. And so I'm going to defer to -- to Judge
18 McIntosh and deny your motion for modification of the
19 sentence.

20 MS. NELSON: I understand ---

21 THE COURT: Good -- okay.

22 MS. NELSON: Your Honor. Thank you ---

23 THE COURT: Thank you.

24 MS. NELSON: --- for hearing ---

25 THE COURT: Thank you.

1 MS. NELSON: --- from me.

2 THE COURT: Certainly.

3 MS. NELSON: And just -- I don't know that I need to
4 say this for the record, but we'll be -- we'll be filing a
5 timely written motion for new trial within ten days of
6 today's date ---

7 THE COURT: Sure.

8 MS. NELSON: --- as required.

9 THE COURT: Sure.

10 MS. NELSON: Thank you, Your Honor.

11 THE COURT: Okay. Thank you.

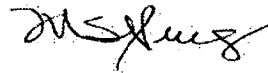
12 (Whereupon, the proceeding was concluded at 2:32 p.m.)

13 --- END OF TRANSCRIPT OF RECORD ---
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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR ABBEVILLE COUNTY, SOUTH CAROLINA, ON THE
20TH DAY OF APRIL, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

AUGUST 5, 2016

WITNESSES

James Smith
Due West Police Department

WARRANT NUMBER

E586398

Alvin C. Brown
Foreman of the Grand Jury
Date: **SEP 30 2011**

TRUE BILL

VERDICT

See It. BAZ
X Bazel steps further in
Foreman *7-7-15*

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

September Term, 2011

Indictment # 11GS01-*389*

THE STATE

VS.

Shane Alexander Washington

Blw 12-3-2012

Blw 12-15-2014

INDICTMENT FOR

**CRIMINAL SEXUAL CONDUCT
WITH A MINOR
16-03-0655(A)**

THE STATE OF SOUTH CAROLINA

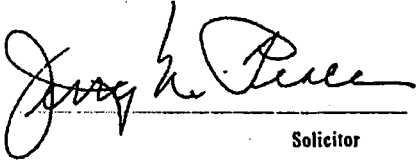
COUNTY OF ABBEVILLE

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT
WITH A MINOR
16-03-0655(A)

At a Court of General Sessions, convened on the 9th day of September, 2011 the Grand Jurors of Abbeville County present upon their oath:

That Shane Alexander Washington, did in Abbeville County, state aforesaid, on or about the 1st day of July, 2010 being older than the victim, willfully and unlawfully commit criminal sexual conduct with a minor in the first degree, to wit: that the said defendant did engage in sexual battery upon a person under the age of eleven (11) years, to wit: one Minor, date of birth: 2002, in violation of Section 16-3-655(A) (1) of the South Carolina Code of Laws, 1976, as amended.

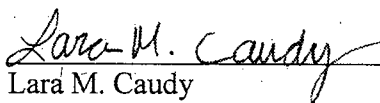
Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,


Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 3rd day of January, 2018.

RECEIVED
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SC Court of Appeals