

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Appeal from Greenville County  
Edward W. Miller, Circuit Court Judge

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**RECEIVED**  
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SC SUPREME COURT

MARSHALL DEWITT MCGAHA,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001464

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APPENDIX

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STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

COURT OF GENERAL SESSIONS

2010-GS-23-07403

2010-GS-23-07404

2010-GS-23-07405

2010-GS-23-07406

STATE OF SOUTH CAROLINA, )

vs. )

TRANSCRIPT OF RECORD

MARSHALL DEWITT MCGAHA, )  
DEFENDANT. )

**ORIGINAL**

August 8, 9, and 10, 2011  
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE; and a jury.

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

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Assistant Solicitor

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HOLLIE M. JENKINS  
Circuit Court Reporter

# I N D E X

(SW) - Denotes State's Witness  
 (DW) - Denotes Defense Witness  
 (IC) - Denotes In Camera

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Greenville County.

P R O C E E D I N G S

THE COURT: Ms. Seay, I'll let you call the case.

MS. SEAY: Yes, sir.

This is the State vs. Marshall McGaha. He's charged with two counts of criminal sexual conduct with a minor, and two counts of lewd act on a child.

The State, also, has him charged with unlawful conduct towards a child. We're not going to proceed on that particular indictment at trial.

THE COURT: That's number 7402?

MS. SEAY: I believe that's correct. Let me double-check that.

(Pause.)

Ms. SEAY: Yes, sir.

That's right, 2010-7402.

THE COURT: So you're going forward on the other four indictments?

MS. SEAY: Yes, sir.

THE COURT: All right.

MS. SEAY: And we move to consolidate those four together. I have a motion -- excuse me, a memorandum in support of that prepared for your consideration, Your Honor.

THE COURT: Okay.

MS. SEAY: Both of the victims, in this case, are

1 eight and nine years old. They're sisters. And the  
2 incidents occurred well within almost the same time frame.  
3 And if you'll note on Page 3, I've listed the similarities  
4 between the two cases.

5 In addition, the State feels that, based on the  
6 similarities between the two cases, the testimony of each  
7 victim would be admissible in the trial of the other  
8 victim as 404(b) evidence. So it would make sense from an  
9 economical standpoint to go ahead and try the cases  
10 together as one case. And that is how we placed it on the  
11 docket as one case, and would like to try it as one case.

12 THE COURT: Yes, sir, Mr. Hoskinson.

13 MR. HOSKINSON: Before we get too far ahead -- I'm  
14 not addressing this memorandum just yet because of  
15 something else I need to bring to your attention.  
16 Mr. McGaha has his own motion to make. And once we hear  
17 that, we can deal with everything else.

18 THE COURT: Okay.

19 DEFENDANT MCGAHA: Your Honor, I filed a motion pro  
20 se to relieve my counsel back in -- it was July the -- I  
21 think around the 15th or 18th, which I mailed it to the  
22 Court, State v. Sturkey, 508 S.C.2d 564, South Carolina  
23 1998.

24 I had a little conflict with Mr. Hoskinson here about  
25 the plea bargain deal and all. It's wrote out on this

1 yellow piece of paper. I tried to get him to produce it  
2 on the record, the plea deal. And he just wrote it out,  
3 The State recommends 12 years. And it wasn't what it says  
4 here. And I lost all trust and hope in him. And I'd like  
5 to represent myself. But I need a continuance so I can  
6 put in motions and get some witnesses and all on my  
7 behalf.

8 THE COURT: And when did he write that down?

9 DEFENDANT MCGAHA: Sir?

10 THE COURT: When did he write that down on the piece  
11 of paper, you say?

12 DEFENDANT MCGAHA: It was around July the 15th, I  
13 believe. I sent it to the Clerk of Court. And I give him  
14 a copy about two weeks ago of one part of it. And here's  
15 an affidavit from me where I'm stating it.

16 THE COURT: I'll be glad to look at it, yes, sir.

17 (Pause.)

18 THE COURT: Okay. What is the attachment you had,  
19 the letter from the Solicitor's Office?

20 DEFENDANT MCGAHA: Well, I mailed it to -- I got the  
21 envelope he mailed me -- when I mailed him about relieving  
22 my counsel, he mailed me back another paper. And I had to  
23 put the warrant numbers, and indictment numbers, and all  
24 on it. And I mailed it back to him with the original  
25 letter. And they should have it in the office in criminal

1 records.

2 THE COURT: I don't -- you held up something a minute  
3 ago that appeared --

4 DEFENDANT MCGAHA: Oh, this here is the -- what he  
5 wrote out about the 12-year plea thing.

6 THE COURT: What's the other thing?

7 DEFENDANT MCGAHA: Then right here, the plea  
8 recommended of 12 years.

9 THE COURT: That's what I want to see is the other  
10 one.

11 DEFENDANT MCGAHA: You can see them both.

12 THE COURT: So, Mr. Hoskinson, are you ready to go to  
13 trial?

14 MR. HOSKINSON: I am.

15 THE COURT: All right. The motion is denied.

16 All right. Back to the State's motion to consolidate  
17 the cases for trial.

18 Mr. Hoskinson, I'll be glad to hear from you on that.

19 MR. HOSKINSON: Well, I'm glad the State is not  
20 proceeding on the unlawful conduct charge. I did have a  
21 motion for that, Judge.

22 What I think the State is, also, doing is they're  
23 consolidating the two charges, but they're, also, bringing  
24 into issue testimony behavior -- well, potential testimony  
25 about behavior that occurred before the indictment period.

1 And that is a separate issue. It's a prior bad act issue.  
2 And we have a motion about that.

3 And we, also, have a motion regarding the forensic  
4 video and a couple of other factors. I think -- is Your  
5 Honor asking me to, particularly, address this motion  
6 right now that the State is presenting?

7 THE COURT: Yes, sir.

8 MR. HOSKINSON: Well, Wallace was talking about one  
9 victim -- there's a sister and another sister. And one of  
10 them was saying -- the similarity was that one victim was  
11 going to present evidence that the perpetrator said,  
12 they're not going to believe you anyway. And then the  
13 other said, you know, don't tell, they're not going to  
14 believe you, so don't tell anyone.

15 That would be a particular similarity about how the  
16 act unfolded. And from what I've been looking at with the  
17 police with the forensic interview, I think one of the  
18 children said that the Defendant didn't say anything about  
19 not telling anybody. But the other child said the  
20 Defendant told her not to tell. So I think there's a  
21 distinguishing feature that what we're dealing with today  
22 doesn't have the same kind of stuff that Wallace was  
23 looking at.

24 The State lists about 12 similar factors. I think in  
25 and of themselves, that that is not enough of a similarity

1 in evidence in order to constitute a necessary  
2 consolidation, just because they're sisters, just because  
3 of where it took place. I think they need to present  
4 additional similarities that would take it above and  
5 beyond just a vague general similarity.

6 And, additionally, in a motion to sever, under State  
7 v. Tate, I think it is. State v. Tate was talking  
8 about -- it's a forgery type of case, Judge.

9 THE COURT: Yes, sir.

10 MR. HOSKINSON: A defendant had gone to one store and  
11 done a forgery, gone to another store and done a forgery.  
12 The general similarity was there. They had guys  
13 presenting a bad check. He goes to another place and  
14 presents a bad check. You have two different witnesses  
15 talking about a similar fraudulent perpetration. And what  
16 the Court was concerned with was that the jury would  
17 likely infer criminal disposition based on evidence of one  
18 forgery, and on that basis alone find the Defendant guilty  
19 of the other.

20 That would violate a substantial right. Even though  
21 they arise out of a chain of circumstances that might be  
22 of the same general nature, same evidence, if there's no  
23 real right that would be jeopardized, then it would be  
24 appropriate. But here, there would be a right that's  
25 jeopardized. They're, just like in Tate, two forgeries,



1 similar behavior. But by trying them together, there's a  
2 prejudicial effect on the Defendant that the jury might  
3 infer guilt one from the other.

4 And in State v. Tate, they -- the Court explains that  
5 that would be an issue. And I would urge the Judge to  
6 sever the two victims, and order a separate trial for  
7 each.

8 THE COURT: All right.

9 Yes, ma'am, Ms. Seay.

10 MS. SEAY: Your Honor, I would just reiterate the  
11 idea that under a 404(b) scheme, under a common scheme or  
12 plan approach to this that he committed the same sexual  
13 battery on these children during the almost same time  
14 frame, and always in the same location. Both of the  
15 children describe penile vaginal contact and oral sex by  
16 the Defendant. We believe that they are so interrelated  
17 and so similar that the required connection between them  
18 is shown that's required by the case law that I've noted  
19 in my motion.

20 And under a res gestae theory, a full presentation of  
21 the Defense is, also, necessary. And it would be  
22 difficult to separate the two cases. The children both  
23 disclosed at almost the same time to the same witness.  
24 Many of the same witnesses would be testifying in each  
25 trial, the same forensic interviewer, the same doctor, the

1 same criminal investigators. It makes sense, I think,  
2 that the State has an interest to -- and the victims not  
3 having to testify twice. And we assert that a  
4 consolidation would be an appropriate way of handling  
5 that.

6 THE COURT: Okay. I agree.

7 The similarity of the cases and indictments, and the  
8 facts alleged as set forth by the State are sufficient to  
9 mandate a consolidation. There appears to be some similar  
10 allegations with similar courses of conduct. The  
11 indictments will be proven by the same evidence through  
12 the same witnesses. They're of the same general nature.  
13 And they arise out of a single chain of circumstances,  
14 which are a series of connected transactions that allege  
15 and involve sexual abuse of the victims who had the same  
16 relationship to the Defendant. And the place where the  
17 abuse occurred was the same as to all indictments from  
18 what I've gleaned from listening to the arguments.

19 And I don't find there would be any substantive right  
20 of the Defendant violated by a joint trial. And there  
21 would be no reason to sever the trial of the cases. And,  
22 accordingly, I will allow consolidation and deny the  
23 motion to sever.

24 MS. SEAY: Thank you, Your Honor.

25 THE COURT: Now, Mr. McGaha, you had moved to have

1 Mr. Hoskinson relieved as your counsel, which is a motion  
2 I denied. I thought I heard you say earlier you wanted to  
3 proceed pro se.

4 Is that still what you want to do?

5 DEFENDANT MCGAHA: Well, if I did, I would need time  
6 to go over my case and stuff.

7 THE COURT: Well, I mean, are you making that motion  
8 to proceed without counsel and represent yourself in this  
9 criminal trial with four indictments?

10 And what is the maximum sentence on each of them?  
11 The lewd act would be --

12 MS. SEAY: The lewd act would be up to 15. And the  
13 criminal sexual conduct is 25 years to life.

14 THE COURT: So I'm just going to ask you, do you want  
15 to proceed representing yourself in these cases, sir?

16 DEFENDANT MCGAHA: I guess I'm going to have to go  
17 ahead and go with him. Because I need him to get more  
18 direct and all from the alleged witnesses and stuff, and  
19 from the uncle that lived there during that period of '09  
20 and '10, that lived in that room, James Darren Taylor and  
21 Adam Taylor, if they was there. And they was there for  
22 about a year and a half of the time frame when the alleged  
23 crimes would have took place. They originated from the  
24 aunt -- I think the one that coerced the kids into --  
25 yeah, I'll go ahead and use him.

1 THE COURT: Sir.

2 DEFENDANT MCGAHA: Yes, sir.

3 I'll go ahead and use Mr. Thomas [sic].

4 THE COURT: Let me make sure you understand what I'm  
5 saying, sir. It's your case. All right. It's your name  
6 that's on the other side of this charge.

7 DEFENDANT MCGAHA: Yes, sir.

8 THE COURT: And you made a motion earlier to proceed  
9 pro se, to represent yourself. And I'm just asking you if  
10 that's what you want to do. I'm not trying to pressure  
11 you one way or the other. It's your decision.

12 You indicated some disagreement with Mr. Hoskinson.  
13 And I have declined to terminate him as your lawyer. But  
14 you have the right to request that you represent yourself.  
15 I'm just asking you if you want to go through with that  
16 right, or if you have any questions of me about that  
17 right.

18 DEFENDANT MCGAHA: Well, I guess I'll just go ahead  
19 and use Mr. Thomas [sic]. Because I need him to finish  
20 the motion about getting some expert witnesses and all on  
21 my behalf that I'd like to know the forensics and doctors  
22 and all to come in on my behalf. I mean, I don't know how  
23 long it would take him to do that, to put a motion in on  
24 that and get a background history on all the so-called  
25 witnesses and stuff.

1 THE COURT: Well, I don't know anything about the  
2 trial, sir.

3 But Mr. Hoskinson has represented, as an officer of  
4 the Court, that he's ready to go to trial. So you just  
5 tell me what you want to do. If you wish to proceed pro  
6 se, then you need to let me know that. If you don't, you  
7 need to make that decision, too, if that is your decision.

8 DEFENDANT MCGAHA: I'll go ahead and maintain  
9 Mr. Hoskinson, I guess.

10 THE COURT: Okay. Sir, are you absolutely certain of  
11 that?

12 DEFENDANT MCGAHA: Well, since I -- you didn't  
13 terminate him, I ain't got a whole lot of choice, Your  
14 Honor. I don't know nothing on the law to handle it  
15 myself, not on short notice.

16 THE COURT: Well --

17 DEFENDANT MCGAHA: But I do know all the witnesses  
18 and all pretty good. And maybe I can help him along that  
19 route.

20 THE COURT: I'm sorry?

21 DEFENDANT MCGAHA: Maybe I can help him along as far  
22 as the witnesses and stuff. I know what kind of questions  
23 and all that to ask them, and for him to ask the kids and  
24 granny and great-granny and uncles and aunts and all that.  
25 All of them is a bunch of riffraff.

1 THE COURT: Well, like I said before, sir,  
2 Mr. McGaha, it's your case, and your decision, and your  
3 rights we're talking about. So I just need to make sure  
4 you understand what your options are, and that your choice  
5 is being made voluntarily and of your own free will.

6 So are you satisfied that you want to go forward with  
7 Mr. Hoskinson as your lawyer now, and not represent  
8 yourself?

9 DEFENDANT MCGAHA: Could I get a continuance where I  
10 could work on my case a little bit better for myself, if I  
11 took it myself?

12 THE COURT: Well, on what basis?

13 DEFENDANT MCGAHA: Because I don't know what the --  
14 what kind of evidence they're trying to use on me. I  
15 ain't got to go over this stuff -- all the material and  
16 all yet.

17 THE COURT: How long has he had the material?

18 MR. HOSKINSON: I've given him copies of discovery on  
19 two separate occasions.

20 THE COURT: How long has he had it?

21 MR. HOSKINSON: He's probably had one half for a  
22 couple of months, and then another section for about a  
23 month.

24 DEFENDANT MCGAHA: About three weeks, I guess.

25 MR. HOSKINSON: I mean, there are two -- I gave it to

1 him in different increments.

2 THE COURT: How many pages of material are we talking  
3 about?

4 MR. HOSKINSON: And then there was some new discovery  
5 that came in last week or so that I have not given him.

6 THE COURT: But you've discussed that with him?

7 MR. HOSKINSON: Well, I went to go see him, and I  
8 couldn't talk to him.

9 THE COURT: Okay.

10 MR. HOSKINSON: But this is the totality of the  
11 State's discovery.

12 THE COURT: Well, he's indicating about an inch to an  
13 inch and a quarter of paper, for the record.

14 That's all the discovery you've given him?

15 MR. HOSKINSON: Well, there's probably about 10 or 20  
16 pages like the P&E sheets and RAP sheet of the State  
17 witnesses that I have not given him. And I can give it to  
18 him right now, if he needs it. But I was hindered in my  
19 ability to communicate.

20 THE COURT: All right. But you're confident that  
21 you've got everything you need, and have done everything  
22 you need to be prepared to competently represent him in  
23 the trial; is that right?

24 MR. HOSKINSON: Well, there's been a communication  
25 difficulty that has hindered my ability, Judge.

1 THE COURT: I'm just asking you, "yes" or "no."

2 MR. HOSKINSON: Please rephrase. I'm sorry, Your  
3 Honor.

4 THE COURT: You're confident you've done everything  
5 to prepare his case, engineer whatever defense you intend  
6 to assert on his behalf and, otherwise, be prepared to  
7 offer him competent legal representation as to these  
8 indictments?

9 MR. HOSKINSON: Yes, Your Honor.

10 THE COURT: All right. Well, I just don't see any  
11 basis for a continuance. I don't see a good cause for  
12 delaying the matter. The case has been on the trial  
13 roster now. This is the first I've heard of any type of  
14 motion to proceed pro se.

15 When did the State first learn of this motion?

16 MS. SEAY: Just a few minutes ago.

17 THE COURT: So I don't have any basis to find that it  
18 has been filed for any reason other than to delay. And I  
19 don't know of anything in the record that would warrant  
20 granting a continuance, from what I've heard. I think  
21 that people always tend to need more time when the trial  
22 is about to begin. And, here, the discovery has been out  
23 there, the allegations have been out there. He's been  
24 arrested.

25 Has he been in the detention center the whole time?



1 MS. SEAY: Yes, sir.

2 THE COURT: Since August 15th, 2010. It's one week  
3 shy of a year. And I find there's been ample opportunity  
4 to consult with his lawyer, who indicates he's ready for  
5 trial and is prepared to go forward.

6 And so I would not allow more time, whether you  
7 decided to go pro se or keep Mr. Hoskinson. But, as I  
8 said, you have the right to do whatever you want to do.

9 So you need to tell me what you want to do.

10 DEFENDANT MCGAHA: I'll use Mr. Hoskinson, I guess,  
11 Your Honor.

12 THE COURT: Okay. And this isn't a guessing. I need  
13 to know, "yes" or "no."

14 DEFENDANT MCGAHA: Yes, sir. I'll use Mr. Hoskinson.

15 THE COURT: Okay. Do you have any questions of me  
16 about your right to represent yourself, or anything else  
17 related to that, sir?

18 DEFENDANT MCGAHA: No, sir.

19 THE COURT: Anything else before we bring the jury  
20 up?

21 MR. HOSKINSON: Yes, sir.

22 MS. SEAY: Yes, sir.

23 THE COURT: All right.

24 MR. HOSKINSON: The State is going to -- I anticipate  
25 that the State has made a motion that they're going to

1 move to introduce the forensic interview. I think it is  
2 their motion that they're requesting to introduce it into  
3 evidence, and I oppose it. I'm sorry that I -- I think  
4 it's their motion to be made, but we have an issue with  
5 that, Judge.

6 THE COURT: Okay.

7 MS. SEAY: Your Honor, we do move, under 17-23-175 of  
8 the South Carolina Code of Laws, to introduce these  
9 forensic interviews of the victims in this case. And I  
10 would need to conduct a pre-trial hearing with  
11 Ms. Carlberg, who conducted the interviews, and, also,  
12 provide Your Honor with a copy of the interviews to view  
13 and make certain findings of fact as you know to --

14 THE COURT: Okay.

15 MS. SEAY: Would you like me to go ahead and give you  
16 these?

17 THE COURT: Yes, ma'am.

18 Thank you.

19 How long are they -- oh, it's noted on there.

20 MS. SEAY: I noted the time on each one, Your Honor.  
21 You're looking at probably about an hour of viewing.

22 THE COURT: And these are single interviews, or are  
23 there multiple interviews?

24 MS. SEAY: They're single interviews, one for each  
25 child.

1 THE COURT: And when did you need a ruling on this?

2 MS. SEAY: It would not necessarily be something that  
3 I would need to mention in my opening, I don't guess. So  
4 just you tell me when it would be convenient to break for  
5 you to view those. I do have the forensic interviewer  
6 here. Whenever you want to do the pre-trial hearing,  
7 she's available.

8 THE COURT: Well, we can -- I mean, we can pick the  
9 jury and I can go watch them, or I can watch them after we  
10 break for the evening. You just tell me what would be  
11 better for the chronology of your presentation of your  
12 case.

13 MS. SEAY: Well, ideally, it would be that you'd  
14 watch them prior to us beginning the case, I think.

15 THE COURT: Okay.

16 MS. SEAY: Just from an ideal standpoint, if you're  
17 asking me.

18 Thank you.

19 THE COURT: Yes, sir.

20 MR. HOSKINSON: Judge, in the video, there's some  
21 questions about when did it first happen, when did it last  
22 happen. And the children mention their age as a reply to  
23 the oldest date. And that date is outside the indictment  
24 period.

25 I anticipate that the State might then be introducing

1 evidence about prior bad acts that predate the indictment  
2 period. And that would be one thing in the video, among  
3 other factors, that would need to be removed.

4 And, also, I just, in general, move to -- that the  
5 State not introduce any prior bad act into this and, also,  
6 exclude any evidence regarding an incident that was the  
7 subject of the unlawful conduct, which was a -- not a sex  
8 crime, it was a choking incident that they're alleging  
9 took place with a dog collar or a leash. And there's  
10 reference of that in the video, too.

11 So there's a number of other factors that would go  
12 into play as to the substance of that video, in addition  
13 to its admissibility under Code Section 175.

14 THE COURT: Okay, sir.

15 What's the State's response to that?

16 MS. SEAY: Your Honor, the time frame alleged in the  
17 indictment versus what the children say their ages are, I  
18 would comment that the -- I think the forensic interviewer  
19 is prepared to talk about that children of this age are  
20 commonly and very often confused about how old they are  
21 when things happen, that they don't maintain specific time  
22 frames in their minds developmentally, that they're  
23 incapable of -- some children are incapable of doing that.  
24 That would be my response to that. It is not an attempt  
25 to introduce prior bad act evidence.

1       As far as the -- putting the dog collar on her,  
2       there's very brief mention of that in the video. I don't  
3       think that that would be inappropriate bad act evidence  
4       for her to talk about. Even though we're not proceeding  
5       on that indictment, it did occur during the time frame of  
6       the indictment, and would be appropriate bad act evidence  
7       to introduce against the Defendant, I believe.

8       THE COURT: So the dog collar was in the midst of one  
9       of these alleged sexual crimes, or that was a separate  
10      incident?

11      MS. SEAY: It was a separate incident.

12      THE COURT: All right. Well, I'll review the  
13      interviews in accordance with Section 17-23-175 after we  
14      select a jury.

15      What's the next motion?

16      MR. HOSKINSON: It might be better to argue some of  
17      the context of the video after you've watched it, Judge.

18      THE COURT: Okay.

19      MR. HOSKINSON: I would just, also, mention that  
20      there was hearsay issues in the video and other  
21      evidentiary factors that I would just reserve to discuss  
22      and argue after you've had a chance to look at it. Would  
23      that -- I think that might just be --

24      THE COURT: That sounds fine.

25      MR. HOSKINSON: I'd, also, move to suppress any

1 statements made by the Defendant. The police reports  
2 quote, at least, one sentence from him. I'm not aware of  
3 any other statements they're going to try to introduce  
4 from the Defendant. But, if so, I think we need to have  
5 Your Honor review that, if the State intends to introduce  
6 any.

7 MS. SEAY: Your Honor, the Defendant made one  
8 statement to a civilian witness, which I believe is a  
9 statement against his interest. It is not a statement  
10 made to law enforcement while in custody. It wouldn't be  
11 subject to a Jackson v. Denno review. I think it would,  
12 clearly, be admissible as a statement against his  
13 interest. And it was made to a witness by the name of  
14 Jessica Hufflin, who we would be calling to testify.

15 THE COURT: What did he say to her?

16 MS. SEAY: Well, when the police arrived at the  
17 residence, he said something to the effect of, oh,  
18 expletive, the police are here. I need to get out of  
19 here. And that's the statement, I think, he's referring  
20 to.

21 MR. HOSKINSON: No. But, I mean, it is a statement.

22 But the one I'm talking about is the one the police  
23 are reporting that he said to them upon arrest. It's a  
24 different statement.

25 THE COURT: Okay. What is that?

1 MR. HOSKINSON: And if the State doesn't want to  
2 introduce it, then they don't. But it was a statement of  
3 he said, This is bullshit. I'm going to beat this in  
4 court, things like that, you know. I've known these  
5 people for a while. I just think it's inappropriate.  
6 Pardon the language.

7 MS. SEAY: Well, I view those as self-serving  
8 statements. And I didn't intend to introduce them.

9 THE COURT: So they're not going to introduce them.

10 MR. HOSKINSON: I'm sorry, Judge?

11 THE COURT: They're not going to introduce them.

12 MR. HOSKINSON: I understand, Judge.

13 Also, I believe the State is going to -- they may or  
14 may not, but if they intend to introduce anything subject  
15 to a search warrant, I would move to suppress that  
16 evidence.

17 THE COURT: All right, sir.

18 MS. SEAY: We do intend to introduce a pair of  
19 panties that were located in between the Defendant's  
20 pillow cases pursuant to a search warrant. And the  
21 panties are a children's size six. We think those are  
22 relevant. And I have the officer here who could testify  
23 about the facts of the case, if Your Honor would need to  
24 hear from her as to anything about the search warrant.

25 THE COURT: Yes, sir.

1           MR. HOSKINSON: With respect to the search warrant,  
2 Judge, the affidavit for the search warrant -- I'm going  
3 to kind of paraphrase. But they -- the signatory affiant  
4 is Sergeant Matheny, referring to information that he  
5 received from a different police officer, Hubert, that the  
6 children gave a statement. It, also, refers to, you know,  
7 that there was a criminal sexual conduct that was  
8 committed. The Defendant lives there. And then the  
9 officer says he has a statement from a witness. He does  
10 not name the witness, and that they found something in the  
11 room. And then they had a reference to the juveniles.

12           What's happening is the officer is referring to  
13 information received from a different officer. And he's,  
14 also, referring to information coming from an unnamed  
15 witness. And, in the affidavit to the magistrate, they  
16 don't name the witness by name. And that does not -- and,  
17 also, they're not indicating -- I think Your Honor might  
18 want to have some testimony about that, as to whether or  
19 not that witness who went into the room to look around was  
20 done at the direction of the police. And I --

21           MS. SEAY: Your Honor, I have the search warrant, if  
22 you'd like for me to hand it up.

23           THE COURT: Okay.

24           MS. SEAY: This is the original that I'm handing to  
25 you.



1           Your Honor, the panties are not listed on the return.  
2           The panties were discovered by the forensic officer when  
3           he got back to the forensic division and began going  
4           through the bed linens. And he alerted the officer of the  
5           existence of the panties. And I made Mr. Hoskinson aware  
6           of the existence of the panties by sending him the report  
7           of the forensic officer, as well as the property and  
8           evidence sheet listing them.

9           THE COURT: Mr. Hoskinson, I'm not sure I understood  
10          your argument about the -- there's some individual you  
11          think was there at the direction of the police at what  
12          point?

13          MR. HOSKINSON: Well, the Judge who looks at an  
14          affidavit to decide if there's probable cause has to look  
15          at what the affiant is telling the Judge. And if it's a  
16          confidential informant that is providing the information,  
17          they would want to know whether the confidential informant  
18          has been reliable in the past. If there's no name, then  
19          it's an unnamed witness. And the Judge needs to determine  
20          whether there would be probable cause.

21          Secondary to that is that if the information about --  
22          that led them to want to go into the room is this witness,  
23          that if that witness had gone into the room at the  
24          direction of the police, then that would be action  
25          preceding an appropriate search. And if the State is

1 going to introduce anything other than the panties, then  
2 we've got problem.

3 But, also, the overall validity of the warrant, it's,  
4 also, coming from information from Deputy Hubert, who's  
5 not the one who signed as an -- as the affiant. So the  
6 affiant, it would have to show to the satisfaction of the  
7 Court had actual knowledge as to what they're signing, or  
8 is it just some information from another witness that they  
9 don't have any contact with.

10 THE COURT: All right, sir. Thank you.

11 MS. SEAY: Your Honor, to my knowledge, there's no  
12 confidential informant or anyone like that involved. I  
13 think that there was someone who told them that there  
14 might be pictures in the room. They did see some  
15 pictures. I don't intend to introduce them.

16 The panties are the only thing I intend to introduce.  
17 And I do think that Investigator Hubert could testify to  
18 the search warrant as the investigating officer. She  
19 provided a lot of the information contained herein. And  
20 she was present at the commission of the execution of the  
21 search warrant and would be able to testify thereto. And  
22 it, specifically, lists clothing.

23 THE COURT: What's the next motion?

24 MR. HOSKINSON: There's -- the State is going to have  
25 testimony of Jessica Hufflin. We got her prior criminal

1 history from the State at the end of last week. And  
2 there's prior convictions that go beyond the 10 years that  
3 I might wish to use during impeachment. This might be the  
4 time to address some of that, Judge.

5 MS. SEAY: Your Honor, I told Mr. Hoskinson that I  
6 believe under Rule 609 that the 10-year rule applies,  
7 unless you make a specific finding that the probative  
8 value of the specific facts and circumstances  
9 substantially outweigh the prejudicial effect. And I  
10 think there are plenty of convictions that are going to  
11 come in as to this witness during the last 10 years that  
12 there would be no need to go any further.

13 THE COURT: All right. This is a witness for the  
14 Defense?

15 MR. HOSKINSON: The State, one of the State's  
16 witnesses.

17 THE COURT: Okay.

18 MS. SEAY: This is an aunt to whom the two children  
19 disclosed the sexual abuse to, initially.

20 THE COURT: Okay. So --

21 MS. SEAY: And she does have a record.

22 THE COURT: And you want to go beyond the 10-year  
23 period?

24 MR. HOSKINSON: Yes, Judge.

25 In the year 2000, she has a grand larceny from

1 February, a false information from July. There's a  
2 possession with intent to distribute a schedule four  
3 substance where she got two years suspended on probation  
4 in September of that year. And there's also a 1999 petit  
5 larceny. The other convictions are from '06, '09, and  
6 2010.

7 So I can relay again, the 1999 and 2000 is a petit  
8 larceny, grand larceny, false information, and  
9 distribution with intent to distribute a schedule four  
10 controlled substance. And I think the grand larceny,  
11 false information, and petit larcenies go right on.  
12 They're all about credibility of the witness.

13 MS. SEAY: Your Honor, she has a grand larceny that  
14 she received -- and I don't know if this is the same one  
15 Mr. Hoskinson is referring to where she received a  
16 Youthful Offender Act not to exceed five years violation  
17 of probation.

18 Is that the same one you're referring to?

19 MR. HOSKINSON: Warrant F632189.

20 MS. SEAY: I don't have the warrant number on mine.

21 But I agree with him that the possession with intent  
22 to distribute a schedule four drug would come in because  
23 of two years probation, that that would take that  
24 beyond -- even though it was in 2000, that would take that  
25 within the 10-year limit. But I disagree with his

1       assertion that anything beyond 10 years should be  
2       admitted.

3           THE COURT: All right. I find, in the interest of  
4       justice, the probative value of these convictions from  
5       2000 substantially outweigh their prejudicial effect. I  
6       think she appears, from my limited knowledge of this case,  
7       to be a central witness, and credibility would be pivotal.  
8       And I think those convictions bear on her credibility and  
9       the jury can gauge her credibility. And they would be  
10      handicapped if they couldn't have the full record before  
11      them to take into account. And this is something that  
12      exceeded the 10-year period only minimally.

13           So I find, in the interest of justice, to allow and  
14      require the jury to be aware of that.

15           MS. SEAY: Okay. Can we clarify which ones those are  
16      so I can be sure to ask her about the appropriate ones?

17           MR. HOSKINSON: And, also, 1999, Judge. You said  
18      2000.

19           THE COURT: What was 1999?

20           MR. HOSKINSON: The petit larceny.

21           THE COURT: I don't think they need to know about  
22      that, but I think they need to know about false  
23      information and grand larceny.

24           MR. HOSKINSON: Okay. And then there was a  
25      possession with intent to distribute a schedule four

1 substance. She got two years suspended on probation, so  
2 it carried more than a year.

3 THE COURT: The State agreed that that one came in,  
4 didn't you?

5 MS. SEAY: Uh-huh.

6 MR. HOSKINSON: I just wanted -- I thought it was a  
7 2000 charge.

8 THE COURT: That's coming in, too.

9 MR. HOSKINSON: Okay. In 2006, there was a financial  
10 transaction card theft. 2009, I saw a February purse  
11 snatching, in March, giving false information --

12 THE COURT: Aren't these --

13 MS. SEAY: I agree those are all within the 10-year  
14 limit.

15 MR. HOSKINSON: Okay. And then there's a charge from  
16 2010, use of vehicle without permission.

17 THE COURT: Has that been --

18 MR. HOSKINSON: I consider it a crime of dishonesty,  
19 Judge.

20 THE COURT: Has she been convicted of that?

21 MR. HOSKINSON: I show that it was a conviction. But  
22 I think it's a crime of dishonesty.

23 MS. SEAY: It's a 30-day offense. It doesn't carry  
24 up to a year. I would not call that a crime of  
25 dishonesty.

1 MR. HOSKINSON: And I have a copy of that code  
2 section, Judge, if you'd like to see.

3 THE COURT: Well, I don't -- I mean, do you have any  
4 basis for saying that's a crime of dishonesty or false  
5 statement?

6 MR. HOSKINSON: Well, it's taking somebody else's  
7 stuff without their permission, a lot like stealing.

8 THE COURT: Well, I'll look at it. But I think while  
9 there are many cases that talk about larceny as being  
10 crimes of dishonesty, I don't think they're analytically  
11 sound. Because they -- they're based on the premise that  
12 any violation of the law is a dishonest act. And that's  
13 not what the framers of that Rule 609 had in mind when  
14 they used the phrase dishonesty or false statement.

15 So I would say that comes outside of and is excluded  
16 from being admitted. But I'll look at it. I'm not aware  
17 of any authority that talks about this particular crime as  
18 being one of inherent dishonesty or false statement any  
19 more than armed robbery is a crime of dishonesty or false  
20 statement.

21 Okay. What's the next motion?

22 MR. HOSKINSON: The State, also -- they apprised me  
23 of the RAP sheet of another witness this morning, Rebecca  
24 Chastain, who has convictions outside the 10-year limit,  
25 also.

1 THE COURT: Okay.

2 MR. HOSKINSON: I'm looking at the list now. And  
3 what I see is from 1995 until 1998, a number of fraudulent  
4 check charges, close to around 10. I can count them all,  
5 but I'm giving you a rough figure to give you perspective,  
6 Your Honor.

7 And then there's two arrests from 2003 and 2004. I  
8 have not been able to verify if those arrests are  
9 convictions. And if they are, I'd like to use those, too.  
10 But those are within the 10-year rule. And there's a  
11 fraudulent check as well. But if that's permissible to  
12 use for impeachment purposes, Your Honor.

13 MS. SEAY: The State's position would be that those  
14 are 30-day offenses and would not be admissible. And, in  
15 addition, they're outside the 10-year limit. There is no  
16 disposition listed for the 2003 and 2004 fraudulent checks  
17 that he's referring to, so I don't know that she was  
18 convicted of those.

19 THE COURT: I think those particular offenses have  
20 been deemed to be crimes of dishonesty or false statement,  
21 and, therefore, admissible for impeachment under Rule 609,  
22 regardless of the punishment. And, in addition, I find  
23 that the probative value of those convictions  
24 substantially outweigh the prejudicial effect. And I  
25 would allow you to go back to 1998, in the interest of



1 justice.

2 MR. HOSKINSON: Okay. If I heard you correctly, it's  
3 okay to use it to impeach?

4 Thank you, Your Honor.

5 THE COURT: I don't know about 2003 and 2004. You're  
6 going to have to -- the State is going to have to find out  
7 about those.

8 MR. HOSKINSON: Yes, sir.

9 At this time, Judge, there has been no ruling about  
10 the search warrant and --

11 THE COURT: That's right.

12 MR. HOSKINSON: And then I think we all understand  
13 that once you review the video, we can discuss a ruling on  
14 prior bad acts and other issues.

15 THE COURT: Okay. Is that all the motions you have?

16 MS. SEAY: I have one additional motion.

17 Are you finished, Mr. Hoskinson?

18 MR. HOSKINSON: That's all I have for now, Judge.

19 THE COURT: All right.

20 MS. SEAY: The final motion from the State, Your  
21 Honor, is one which involves the issue of third-party  
22 guilt. I'm anticipating some mention -- and maybe I'm  
23 correct, maybe I'm not correct in anticipating it.

24 But these two little girls live with and are in the  
25 legal custody of their grandmother and their

1 great-grandmother, and have been most of their lives.  
2 Their father was convicted of statutory rape in Georgia in  
3 1998. I would not think that that would be an appropriate  
4 thing to be brought up in this case under any scenario  
5 that I can think of as a proper defense. I think it would  
6 be improper. It would not be an impeachable offense if he  
7 were to come in and testify.

8 In addition, the Holmes factors citing the Gregory  
9 case still apply, that evidence of a third party must be  
10 limited to such facts that are inconsistent with the  
11 Defendant's own guilt and that such facts as -- raised a  
12 reasonable inference or presumption as to his own  
13 innocence. Proof of connection with it, such a chain of  
14 facts or circumstances as tends, clearly, to point out  
15 such other person as the guilty party. And I don't think  
16 that we have that in this case at all. And I think it  
17 would be highly improper for it to be mentioned in this  
18 case, Your Honor. And I just want to go ahead and ask you  
19 to rule on that before we get started.

20 THE COURT: Yes, sir, Mr. Hoskinson.

21 MR. HOSKINSON: I think we should be allowed to cross  
22 on the fact that the man is a registered sex offender. He  
23 is living in the home of the lady to whom the crime was  
24 allegedly first reported to. It's Jessica who was talking  
25 to the children. I think it's, also, relevant, you know,

1 to show sources of information of sexual crimes and  
2 knowledge thereof and reasons why she would ask the  
3 children questions to begin with.

4 So it doesn't have to be presented as evidence of  
5 third-party guilt. It can be admissible for other  
6 relevant reasons.

7 THE COURT: How else would it be relevant?

8 MR. HOSKINSON: To show why she might want to ask  
9 questions about it to the children, because it's something  
10 they are aware of. And, also, to show where children  
11 would get knowledge to begin with, other than the  
12 Defendant.

13 MS. SEAY: I think that's just purely speculative.  
14 And, again, I think it would be highly improper to allow  
15 it, Your Honor. Because I think it would tend to be used  
16 as a way to show reasonable doubt as to this Defendant's  
17 guilt for which it would, clearly, be improper under the  
18 State v. Holmes and State v. Gregory cases.

19 THE COURT: How would it be inconsistent with his --  
20 I mean, how are you going to show the inconsistency that  
21 Gregory talks about that is a requirement for third-party  
22 guilt evidence?

23 I mean, the evidence has to be inconsistent with the  
24 Defendant's guilt. So how is that inconsistent with his  
25 guilt that somebody he lives with --

1 MR. HOSKINSON: Well, Judge, if the State wants to  
2 look at it as a third-party guilt reason, but, for  
3 example, children can become aware of sexual issues  
4 outside of who they allege is the perpetrator. They might  
5 be aware of -- that there's such a thing as a sex crime.

6 THE COURT: Okay.

7 MR. HOSKINSON: And then, therefore, it would be  
8 relevant that they have a family member who has been the  
9 subject of such a crime.

10 THE COURT: Why is the source relevant? It could be  
11 TV, couldn't it?

12 MR. HOSKINSON: Yes, Your Honor.

13 But here is a piece of evidence that is right there  
14 in the -- in a place where they visit on the weekends.  
15 Here's a person present, not a TV program. There's a  
16 factor here that can show and provide a reason why the  
17 children would have some knowledge.

18 Now, third-party guilt would be saying that somebody  
19 else did it. But if the evidence is being proffered for  
20 some other purpose, then I think it could be mentioned.

21 THE COURT: Well, the theory that you're trying to  
22 advance is that the knowledge of the victims is relevant.  
23 And then you go a step further and argue that the source  
24 of the knowledge is relevant, and the only way that that  
25 could be relevant is an attempt to cast blame on the

1 person as a possible suspect; isn't that right?

2 MR. HOSKINSON: Well, there could be instances in a  
3 household where there is a registered sex offender and  
4 that the children are aware of this, and they would  
5 understand what that is.

6 THE COURT: Why does it matter how they know -- how  
7 they learned it?

8 MR. HOSKINSON: Because the State is going to play a  
9 video saying this is what the children are saying  
10 happened. And it would be evidence that the children can  
11 know these things outside of coming from the alleged  
12 Defendant.

13 THE COURT: So that goes back to my original  
14 question. What relevance is there of the source of their  
15 knowledge?

16 MR. HOSKINSON: That it's an explanation to show  
17 doubt that their knowledge came from somewhere else, that  
18 it was not the Defendant, that it didn't happen the way  
19 they said.

20 THE COURT: Well, why do you need to identify this  
21 person and his record to do that?

22 MR. HOSKINSON: Well, we could -- it could be said  
23 that they -- the question could go that -- to the lady,  
24 Jessica Hufflin, in your household lives somebody who is a  
25 registered sex offender. We're not saying who that person

1 is. We're not naming them and we're not saying what the  
2 crime was.

3 THE COURT: Well, then that puts you right in the  
4 prohibition that Gregory set up, which is to avoid wild  
5 goose chases under the name of third-party guilt.

6 MR. HOSKINSON: But the -- it would be one thing if  
7 we were saying that somebody else committed the crime on  
8 them. It would be another if, for example -- and this is  
9 just to tie it in a different context, a different kind of  
10 case. There's a boy who's claiming something happened.  
11 And then the evidence comes out that this child lives in a  
12 home where there's a stack of pornography. That child  
13 would have had knowledge outside of who he's claiming was  
14 the perpetrator of the crime.

15 THE COURT: Right.

16 MR. HOSKINSON: And we're not saying that that stack  
17 committed a crime against him. It's just a source of  
18 knowledge.

19 THE COURT: Right.

20 MR. HOSKINSON: And, here, we have a household,  
21 there's somebody there and there is a source of knowledge  
22 of sexual activity or sexual issues, sexual crimes coming  
23 from somewhere other than the Defendant.

24 THE COURT: So it's the knowledge that's important?

25 MR. HOSKINSON: That would be a basis for its

1 relevancy, Judge.

2 THE COURT: Okay. So it doesn't matter what the  
3 source of the knowledge is, does it?

4 MR. HOSKINSON: Well, it does if it's some -- if it  
5 allows contact, it allows a rational understanding of how  
6 they would understand the knowledge. I think the source  
7 does bear some importance. I would not agree that the  
8 source does not matter. I think it does.

9 THE COURT: I mean, if you want to elicit information  
10 about their level of knowledge, I understand that. But  
11 I'm not going to allow identification of this third party  
12 as a convicted sex offender who happens to reside with  
13 their custodial -- is it the grandmother?

14 MR. HOSKINSON: Well, it's -- I think it's an aunt.

15 MS. SEAY: And he doesn't live there and hasn't lived  
16 there in some time. But, apparently, he did live with the  
17 aunt.

18 MR. HOSKINSON: I think he may have lived there at  
19 the time this was happening, but he doesn't live there  
20 now. I think he had that address on the registry.

21 THE COURT: Well, and that's, I think, what Gregory  
22 is trying to prevent is a mini-trial on the whereabouts of  
23 third parties when the evidence of their guilt is really  
24 speculative, which is exactly what you would be trying to  
25 do when you asked them about this individual, and who he

1 was, and what his record was without more. There's no  
2 foundation for it under Gregory. And I would not allow that.

3 So that's my ruling on that.

4 MS. SEAY: Thank you, Your Honor.

5 THE COURT: Okay. What's the next motion?

6 MS. SEAY: I have nothing further, Your Honor.

7 MR. HOSKINSON: That's all I have at this time,  
8 Judge. I know there are plenty -- I just don't want to --  
9 I know there's a couple that you're still -- haven't ruled  
10 on.

11 Did you want to look at the video and then discuss --

12 THE COURT: Yes.

13 I'll look at the video, and I'll look at the search  
14 warrant issue. I think that's the only two things I  
15 haven't ruled on.

16 MR. HOSKINSON: I wasn't sure if I presented the  
17 search warrant issue fully to you, Judge.

18 THE COURT: Yes. I understand what your argument is.

19 MR. HOSKINSON: Okay. Thank you.

20 THE COURT: Okay. Well, are you all ready to bring  
21 the jury panel up?

22 MS. SEAY: Yes, sir.

23 MR. HOSKINSON: I have some voir dire and a witness  
24 list.

25 THE COURT: Okay.



1 MR. HOSKINSON: I haven't gotten the witness list  
2 from the State.

3 MS. SEAY: I'll give you one.

4 MR. HOSKINSON: The voir dire, Judge, I'm requesting  
5 a certain process during the voir dire.

6 MS. SEAY: Here is our witness list, Your Honor.

7 THE COURT: All right. Thank you.

8 We can bring the panel on up then.

9 (Pause.)

10 THE COURT: Anything else?

11 Are they ready? Is the panel ready?

12 THE CLERK: I'm not sure. I believe so.

13 THE BAILIFF: Your Honor, they're ready.

14 Do you want them to come in?

15 THE COURT: Yes, sir.

16 (WHEREUPON, the jury panel entered the courtroom at  
17 approximately 2:29 p.m.)

18 THE COURT: Ladies and gentlemen, good afternoon.

19 I'm sorry for the delay in bringing y'all upstairs.

20 We had a number of matters to take care of before we could  
21 get started. And we've been trying hard to do that so the  
22 case can move along smoothly and efficiently once we do  
23 get started. That took a little bit longer than we  
24 anticipated.

25 We are trying to now select a jury in the case of the

1     State of South Carolina v. Marshall Dewitt McGaha. And my  
2     name is Gary Hill. I'm one of the circuit judges here in  
3     Greenville and Pickens County. And I'm glad to be home in  
4     my home circuit this week serving with you.

5             This is criminal court or Court of General Sessions  
6     as it's called and has been called for well back since  
7     Revolutionary days in our state. And the criminal case  
8     that we're about to begin is one that is governed by  
9     certain principles like all criminal cases. And I want to  
10    talk to you just a little bit about those principles,  
11    which you'll hear me discuss in more detail as the trial  
12    develops.

13            But the first thing I want to say is, in a criminal  
14    case, the Defendant is always presumed innocent. And in  
15    just a minute I'm going to read to you the allegations of  
16    the indictments in this case. And I want you to remember  
17    throughout the trial that these allegations are just that,  
18    they're allegations. They're not evidence. They don't  
19    create any kind of inference or even a suspicion of guilt.  
20    And the indictment simply has one purpose, and that is to  
21    notify a citizen of what he's charged with. And the  
22    indictment does not constitute evidence in any way, shape,  
23    or form.

24            The Defendant in a criminal case is always presumed  
25    innocent. And that presumption of innocence can only be

1 removed if and only if you, the jury, determine that the  
2 State has proven each element of the crime beyond a  
3 reasonable doubt. Mr. McGaha, as the Defendant, doesn't  
4 have to present any evidence or any explanation  
5 whatsoever. And the burden of proof is entirely on the  
6 State.

7 Now, the first indictment is case number  
8 2010-GS-23-7403. And it alleges that Marshall Dewitt  
9 McGaha did in Greenville County between the 14th day of  
10 March, 2009, and the 11th day of August 2010, being over  
11 the age of 14 years, willfully and lewdly commit, or  
12 attempt a lewd and lascivious act upon or with the body or  
13 its parts of HC, a child under the age of 16 years, with  
14 the intent of arousing, appealing to, or gratifying the  
15 lusts, passions, or sexual desires of himself or such  
16 child. This is in violation of Section 16-15-140 of the  
17 South Carolina Code of Laws as amended.

18 The next indictment is 2010-GS-23-7404. It alleges  
19 that Marshall Dewitt McGaha did in Greenville County  
20 between the 14th day of March 2009, and the 11th day of  
21 August 2010, commit a sexual battery on HC, who was less  
22 than 11 years of age. This is in violation of Section  
23 16-3-655(a)(1) of the South Carolina Code of Laws.

24 The next indictment is 2010-GS-23-7405. It alleges  
25 that Marshall Dewitt McGaha did in Greenville County

1 between the 11th day of May, 2009, and the 11th day of  
2 August, 2010, being over the age of 14 years, willfully or  
3 lewdly commit or attempt a lewd or lascivious act upon or  
4 with the body or its parts of MC, a child under the age of  
5 16 years, with the intent of arousing, appealing to, or  
6 gratifying the lusts, passions, or sexual desires of  
7 himself or such child. This is in violation of section  
8 16-15-140 of the South Carolina Code of Laws.

9 And, finally, in case number 2010-GS-23-7406, the  
10 indictment alleges that Marshall Dewitt McGaha did in  
11 Greenville County between the 11th day of May, 2009, and  
12 the 11th day of August, 2010, commit a sexual battery on  
13 MC, who was less than 11 years of age. This is in  
14 violation of Section 16-3-655(a)(1) of the South Carolina  
15 Code of Laws.

16 Now, again, those are the allegations. And, again,  
17 they are just that, allegations. And Mr. McGaha has pled  
18 not guilty. That puts the burden of proof on the State to  
19 prove each element of each crime beyond a reasonable  
20 doubt. And Mr. McGaha is presumed innocent just as any  
21 citizen would be. As I said, we must find a jury that can  
22 be fair and impartial and decide this case without any  
23 kind of bias, or prejudice, or preconceived ideas.

24 JURY QUALIFICATION

25 THE COURT: And the first thing I want to ask you, is

1       there anyone who is related by blood or marriage, or kin  
2       to in any way Mr. Marshall Dewitt McGaha?

3             And, sir, if you'd just stand up and turn around so  
4       the jury can see you.

5             Thank you.

6             Is there anyone who has a social, personal, or  
7       business relationship with Mr. McGaha? If so, please,  
8       stand.

9             (WHEREUPON, there was no response.)

10            THE COURT: I'm going to ask the lawyers who are  
11       involved in this case to represent -- representing the  
12       State and the Defense to introduce themselves and the  
13       people at their table.

14            Yes, ma'am, Ms. Seay.

15            MS. SEAY: I'm Bryna Seay with the Thirteenth Circuit  
16       Solicitor's Office. And this is Andrea Phillips with the  
17       Thirteenth Circuit Solicitor's Office.

18            THE COURT: Okay. Mr. Hoskinson.

19            MR. HOSKINSON: I'm Tom Hoskinson. And with me at  
20       the table is Amanda Wicker. She's my co-counsel.

21            THE COURT: Is anyone related by blood or marriage to  
22       Ms. Seay, Ms. Phillips, Mr. Hoskinson, or Ms. Wicker? If  
23       so, please, stand.

24            (WHEREUPON, there was no response.)

25            THE COURT: Does anyone have any personal, social, or

1 business relationship with any of those people? If so,  
2 please, stand.

3 (WHEREUPON, there was no response.)

4 THE COURT: Have any of you ever been employed by or  
5 had a member of your immediate family be employed by the  
6 Solicitor's Office, that is the Prosecutor for the  
7 Thirteenth Circuit? If so, please, stand.

8 (WHEREUPON, there was no response.)

9 THE COURT: Is there anyone here who is employed by  
10 any law enforcement agency, or have a member of their  
11 immediate family so employed? If so, please, stand.

12 (WHEREUPON, there was no response.)

13 THE COURT: Does anyone know anything about this  
14 case, other than what you've heard -- oh, I'm sorry.

15 JUROR #164, MICHAEL THOMAS: I have a nephew who's  
16 with the Greenville County Police.

17 THE COURT: City?

18 JUROR #164, MICHAEL THOMAS: City.

19 THE COURT: And what's your name?

20 JUROR #164, MICHAEL THOMAS: Michael Thomas.

21 THE COURT: And could you still be fair and impartial  
22 in this case?

23 JUROR #164, MICHAEL THOMAS: Yes, sir.

24 THE COURT: All right. Could you decide this case  
25 solely on the evidence and the law?

1 JUROR #164, MICHAEL THOMAS: Yes, sir.

2 THE COURT: Thank you, Mr. Thomas.

3 The people who may testify in this case include

4 [REDACTED] Minor 2, [REDACTED] Minor 1, Jessica Hufflin,

5 Heather Hubert, Doug Smith, Mary Fran Crosswell, Christine

6 Carlberg, Rebecca Chastain, and Mike Stobbè. Is anyone

7 related by blood or marriage, or kin to any of these

8 potential witnesses? If so, please, stand.

9 (WHEREUPON, there was no response.)

10 THE COURT: Does anyone have any social, personal, or

11 business relationship with any of these potential

12 witnesses? If so, please, stand.

13 (WHEREUPON, there was no response.)

14 THE COURT: The next questions, I'm going to ask for

15 some personal information. So if you need to respond,

16 I'll ask that you to do so in a somewhat more private

17 setting up here with the court reporter and the lawyers.

18 So, if you need to respond, we'll just form a short line

19 there in the middle of the room behind the bar.

20 The questions are as follows: Have any of you ever

21 been contributors to or supporters of any organization

22 whose primary function is the promotion of more aggressive

23 law enforcement or the protection of victims rights, such

24 as the South Carolina Sheriff's Association, Mother's

25 Against Drunk Drivers, or anything of that nature?

1           The second question is: Have you or is any member of  
2 your family ever been the victim of an alleged sexual  
3 assault or sexual crime, or been accused, arrested, or  
4 convicted of a sexual assault or a sexual crime?

5           And those are the questions. So if anyone needs to  
6 respond to those, again, just, please, step forward, and  
7 we'll talk to you one at a time up front.

8           Okay. And I need to add, also, has any member of  
9 your immediate family been the victim of an alleged sexual  
10 assault or sexual crime, if I didn't already state that?  
11 So if you've been the victim of, or you've been accused  
12 of, or arrested for, or convicted of an alleged sexual  
13 assault or sexual crime.

14           (WHEREUPON, a side bar was held with the Court, the  
15 attorneys, and potential jurors.)

16           JUROR #141, PATRICIA RUMSEY: I, myself, have been  
17 the victim of a sexual assault, and so has my husband.

18           THE COURT: You have been a victim and so has your  
19 husband?

20           JUROR #141, PATRICIA RUMSEY: Say what?

21           THE COURT: Can you repeat what you just said --

22           JUROR #141, PATRICIA RUMSEY: I, myself, am a victim  
23 of a sexual assault, and so is my husband.

24           THE COURT: We'll excuse you from this case.

25           JUROR #141, PATRICIA RUMSEY: Okay. Thank you.



1 THE COURT: Okay. Yes, sir.

2 JUROR #102, KEVIN MCLEROY: I know some --

3 THE COURT: Please speak up. She's got to take down  
4 what you say.

5 JUROR #102, KEVIN MCLEROY: I have some --

6 THE COURT: Mr. McLeroy?

7 JUROR #102, KEVIN MCLEROY: Correct.

8 A couple of girlfriends that I hang out with have  
9 told me their father's sexually assaulted them when they  
10 were young. And I'm pretty close friends with them.

11 THE COURT: Would that effect your decision in this  
12 case?

13 JUROR #102, KEVIN MCLEROY: I don't think so.

14 THE COURT: All right. You can decide this case on  
15 the evidence and the law?

16 JUROR #102, KEVIN MCLEROY: I believe so.

17 THE COURT: And you can be fair and impartial to both  
18 sides?

19 JUROR #102, KEVIN MCLEROY: I think so.

20 THE COURT: All right. Thank you, sir.

21 (WHEREUPON, the side bar was concluded.)

22 THE COURT: Does anyone know of any reason why they  
23 could not be fair and impartial in this case, or is anyone  
24 aware of any bias or prejudice they might have about any  
25 issue in the case against or for the State, or against or

1 for Mr. McGaha? If so, please, stand.

2 (WHEREUPON, there was no response.)

3 THE COURT: All right. We're going to proceed with  
4 the jury selection process.

5 And, yes, Ms. Lanfear.

6 JURY SELECTION

7 THE CLERK: If you would, bring your personal  
8 belongings with you when you come up. And, please, come  
9 up to the front, and face the attorneys.

10 Juror #90, Charles Kay.

11 THE COURT: Well, I'll tell you what, you can just  
12 stay where you are when they call your name.

13 THE CLERK: Oh, I'm sorry.

14 THE COURT: That's okay.

15 And if you get chosen, she'll tell you to come up.  
16 But each side has a number of what are called strikes they  
17 can use.

18 You just stay right there for now, sir.

19 (WHEREUPON, Charles Kay, a white male, stood.)

20 THE CLERK: What says the State?

21 MS. SEAY: Please present the juror.

22 THE CLERK: What says the Defendant?

23 MR. HOSKINSON: Please excuse the juror.

24 THE CLERK: Thank you.

25 You may be seated. You're excused from the trial of

1 this case.

2 Juror #151, Rhonda Sissel.

3 (WHEREUPON, Rhonda Sissell, a white female, stood.)

4 THE CLERK: What says the State?

5 MS. SEAY: Please present her.

6 THE CLERK: Thank you.

7 What says the Defendant?

8 MR. HOSKINSON: Please excuse this juror.

9 THE CLERK: Thank you.

10 You may be seated. You're excused from the trial of  
11 this case.

12 Juror #101, Timothy McCrory.

13 (WHEREUPON, Timothy McCrory, a white male, stood.)

14 THE CLERK: What says the State?

15 MS. SEAY: Please excuse him from this case.

16 THE CLERK: Thank you.

17 You may be seated. You're excused from the trial of  
18 this case.

19 Juror #134, Robert Richards.

20 (WHEREUPON, Robert Richards, a white male, stood.)

21 THE CLERK: What says the State?

22 MS. SEAY: Please present the juror.

23 THE CLERK: What says the Defendant?

24 MR. HOSKINSON: Please seat the juror.

25 THE CLERK: Thank you.

1 You may be seated in the jury box.

2 Juror #167, Michael Till.

3 (WHEREUPON, Michael Till, a white male, stood.)

4 THE CLERK: What says the State?

5 MS. SEAY: Please present him.

6 THE CLERK: Thank you.

7 What says the Defendant?

8 MR. HOSKINSON: Please excuse this juror.

9 THE CLERK: Thank you.

10 You may be seated. You are excused from the trial of  
11 this case.

12 Juror #63, James Garrison.

13 (WHEREUPON, James Garrison, a white male, stood.)

14 THE CLERK: What says the State?

15 MS. SEAY: Please present him.

16 THE CLERK: Thank you.

17 What says the Defendant?

18 MR. HOSKINSON: Please seat this juror.

19 THE CLERK: Thank you.

20 You may be seated in the jury box.

21 Juror #37, Susan Cobb.

22 (WHEREUPON, Susan Cobb, a white female, stood.)

23 THE COURT: What says the State?

24 MS. SEAY: Please excuse her from this case.

25 THE CLERK: Thank you.

1           You may be seated. You're excused from the trial of  
2 this case.

3           Juror #119, Elizabeth Oveson.

4           (WHEREUPON, Elizabeth Oveson, a white female, stood.)

5           THE CLERK: What says the State?

6           MS. SEAY: Please present her.

7           THE CLERK: Thank you.

8           What says the Defendant?

9           MR. HOSKINSON: Please seat this juror.

10          THE CLERK: Thank you.

11          You may be seated in the jury box.

12          Juror #131, Carnell Ray.

13          (WHEREUPON, Carnell Ray, a black male, stood.)

14          THE CLERK: What says the State?

15          MS. SEAY: Please present him.

16          THE CLERK: Thank you.

17          What says the Defendant?

18          MR. HOSKINSON: Please seat this juror.

19          THE CLERK: Thank you.

20          You may be seated in the jury box.

21          Juror #130, Rachana Raval.

22          (WHEREUPON, Rachana Raval, a white female, stood.)

23          THE CLERK: What says the State?

24          MS. SEAY: Please present her.

25          THE CLERK: Thank you.

1 What says the Defendant?

2 MR. HOSKINSON: Please seat the juror.

3 THE CLERK: Thank you.

4 You may be seated in the jury box.

5 Juror #47, Ashok Desai.

6 (WHEREUPON, Ashok Desai, a white male, stood.)

7 THE CLERK: What says the State?

8 MS. SEAY: Please present him.

9 THE CLERK: Thank you.

10 What says the Defendant?

11 MR. HOSKINSON: Please excuse this juror.

12 THE CLERK: Thank you.

13 You may be seated. You're excused from the trial of  
14 this case.

15 Juror #68, Olga Gregory.

16 (WHEREUPON, Olga Gregory a white female, stood.)

17 THE CLERK: What says the State?

18 MS. SEAY: Please present her.

19 THE CLERK: Thank you.

20 What says the Defendant?

21 MR. HOSKINSON: Please excuse this juror.

22 THE CLERK: Thank you.

23 You may be seated. You're excused from the trial of  
24 this case.

25 Juror #122, Sharon Parent.

1 (WHEREUPON, Sharon Parent, a white female, stood.)

2 THE CLERK: What says the State?

3 MS. SEAY: Please present her.

4 THE CLERK: Thank you.

5 What says the Defendant?

6 MR. HOSKINSON: Please seat the juror.

7 THE CLERK: Thank you.

8 You may be seated in the jury box.

9 Juror #164, Michael Thomas.

10 (WHEREUPON, Michael Thomas, a white male, stood.)

11 THE CLERK: What says the State?

12 MS. SEAY: Please present him.

13 THE CLERK: Thank you.

14 What says the Defendant?

15 MR. HOSKINSON: Please excuse this juror.

16 THE CLERK: Thank you.

17 You may be seated. You're excused from the trial of  
18 this case.

19 Juror #98, Robert Marks.

20 (WHEREUPON, Robert Marks, a white male, stood.)

21 THE CLERK: What says the State?

22 MS. SEAY: Please present him.

23 THE CLERK: Thank you.

24 What says the Defendant?

25 MR. HOSKINSON: Please excuse this juror.

1 THE CLERK: Thank you.

2 You may be seated. You're excused from the trial of  
3 this case.

4 Juror #42, Allison Daniel.

5 (WHEREUPON, Allison Daniel, a white female, stood.)

6 THE CLERK: What says the State?

7 MS. SEAY: Please present her.

8 THE CLERK: Thank you.

9 What says the Defendant?

10 MR. HOSKINSON: Please seat this juror.

11 THE CLERK: Thank you.

12 You may be seated in the jury box.

13 Juror #121, Furman Owens.

14 (WHEREUPON, Furman Owens, a white male, stood.)

15 THE CLERK: What says the State?

16 MS. SEAY: Please present him.

17 THE CLERK: Thank you.

18 What says the Defendant?

19 MR. HOSKINSON: Please seat this juror.

20 THE CLERK: Thank you.

21 You may be seated in the jury box.

22 Juror #181, Jasmine Wilson.

23 (WHEREUPON, Jasmine Wilson, a black female, stood.)

24 THE CLERK: What says the State?

25 MS. SEAY: Please present her.



1 THE CLERK: Thank you.

2 What says the Defendant?

3 MR. HOSKINSON: Please seat this juror.

4 THE CLERK: Thank you.

5 You may be seated in the jury box.

6 Juror #111, Tracy Neely.

7 (WHEREUPON, Tracy Neely, a black male, stood.)

8 THE CLERK: What says the State?

9 MS. SEAY: Please present him.

10 THE CLERK: Thank you.

11 What says the Defendant?

12 MR. HOSKINSON: Please seat this juror.

13 THE CLERK: Thank you.

14 You may be seated in the jury box.

15 Juror #81, Kendra Hewins.

16 (WHEREUPON, Kendra Hewins, a black female, stood.)

17 THE CLERK: What says the State?

18 MS. SEAY: Please present her.

19 THE CLERK: Thank you.

20 What says the Defendant?

21 MR. HOSKINSON: Please excuse this juror.

22 THE CLERK: Thank you.

23 You may be seated. You're excused from the trial of  
24 this case.

25 Juror #118, Jamie Osborn.

1 (WHEREUPON, Jamie Osborn, a white female, stood.)

2 THE CLERK: What says the State?

3 MS. SEAY: Please excuse her from this case.

4 THE CLERK: Thank you.

5 You may be seated. You're excused from the trial of  
6 this case.

7 Juror #82, Harry Hightower.

8 (WHEREUPON, Harry Hightower, a white male, stood.)

9 THE CLERK: What says the State?

10 MS. SEAY: Please present him.

11 THE CLERK: Thank you.

12 What says the Defendant?

13 MR. HOSKINSON: Please seat this juror.

14 THE CLERK: Thank you.

15 You may be seated in the jury box.

16 Juror #87, Angela Hollister.

17 (WHEREUPON, Angela Hollister, a white female, stood.)

18 THE CLERK: What says the State?

19 MS. SEAY: Please present her.

20 THE CLERK: Thank you.

21 What says the Defendant?

22 MR. HOSKINSON: Please seat this juror.

23 THE CLERK: Thank you.

24 You may be seated in the jury box.

25 THE CLERK: Did you want an alternate?

1 THE COURT: Yes.

2 We'll have two alternates. The strikes are one and  
3 two.

4 THE CLERK: Yes, sir.

5 Juror #163, Kevin Terry.

6 (WHEREUPON, Kevin Terry, a white male, stood.)

7 THE CLERK: What says the State?

8 MS. SEAY: Please present him.

9 THE CLERK: Thank you.

10 What says the Defendant?

11 MR. HOSKINSON: Please seat this juror.

12 THE CLERK: Thank you.

13 You may be seated in the jury box.

14 Juror #31, Christopher Chenette.

15 (WHEREUPON, Christopher Chenette, a white male,  
16 stood.)

17 THE CLERK: What says the State?

18 MS. SEAY: Please present him.

19 THE CLERK: Thank you.

20 What says the Defendant?

21 MR. HOSKINSON: Please excuse this juror.

22 THE CLERK: Thank you.

23 You may be seated. You're excused from the trial of  
24 this case.

25 Juror #65, Stephen Genta.

1 (WHEREUPON, Stephen Genta, a white male, stood.)

2 THE CLERK: What says the State?

3 MS. SEAY: Please present him.

4 THE CLERK: Thank you.

5 What says the Defendant?

6 MR. HOSKINSON: Please excuse this juror.

7 THE CLERK: Thank you.

8 You may be seated. You're excused from the trial of  
9 this case.

10 Juror #46, Latweeta Dendy.

11 (WHEREUPON, Latweeta Dendy, a black female, stood.)

12 THE CLERK: What says the State?

13 MS. SEAY: Please present her.

14 THE CLERK: Thank you.

15 What says the Defendant?

16 MR. HOSKINSON: Please seat this juror.

17 THE CLERK: Thank you.

18 You may be seated in the jury box.

19 THE COURT: All right. Ladies and gentlemen, you've  
20 been chosen to be the jurors in the case of the State v.  
21 Marshall Dewitt McGaha. And Mr. Lynch is going to take  
22 you across the hall and show you where the jury room is.  
23 And we'll be back with you momentarily.

24 Don't talk about the case. You haven't heard any  
25 evidence yet. And we'll see you back in a few minutes.

1 Thank you.

2 (WHEREUPON, the jury was excused from open court at  
3 approximately 3:02 p.m.)

4 THE COURT: All right. And for those of you who  
5 weren't chosen, I've been informed that you need to call  
6 back after 6:00 tonight.

7 And thank you for your cooperation and your patience.  
8 So you're excused for the rest of the day.

9 (WHEREUPON, the remaining jury panel members exited  
10 the courtroom.)

11 THE COURT: So if I go review the CDs, it's going to,  
12 you know, be 4:15, probably 4:30 by the time we get the  
13 jury back out here. I'm wondering -- and I know what the  
14 State said the ideal order would be. But I'm wondering if  
15 we couldn't go ahead and do the opening statements and get  
16 that out of the way, and just tell them to come back  
17 tomorrow. And then I'll take a break after we do the  
18 openings and let you know my ruling on these today. But  
19 we won't have the jury held up.

20 Is that possible?

21 MR. HOSKINSON: Well, Judge, I'm, also, concerned  
22 about the mention of other bad acts, like the dog leash  
23 incident.

24 THE COURT: Well, I don't know. I mean, she can tell  
25 us if -- I thought I heard Ms. Seay say earlier she didn't

1 absolutely have to have this evidence ruling before she  
2 did the opening statement. But I don't want to hamper her  
3 in any way, nor do I want to hamper you. But I'm just  
4 looking for input from y'all as to what your wishes are.

5 MS. SEAY: I can go ahead with my opening statement.  
6 And I don't have any intention of mentioning the dog leash  
7 incident.

8 MR. HOSKINSON: I mean -- and other prior bad acts  
9 and issues like that. I'm just concerned that something  
10 would come out during the opening that's going to be  
11 prejudicial towards the Defendant, if you were to later  
12 rule that it's inadmissible.

13 MS. SEAY: I'm not sure what he's talking about.

14 THE COURT: Are you talking about what's on these  
15 DVD's?

16 MR. HOSKINSON: Well, there's stuff on the DVD's  
17 that -- I know she's not going to mention the dog collar,  
18 but there's stuff on the DVD's about the victims  
19 mentioning something happened when they were five, you  
20 know. The State is going to be making an opening  
21 statement and may not get into that. But if it did come  
22 up, I think it would be prejudicial against the Defendant.

23 I mean, I can't control what the State says, but I  
24 just don't want anything to be brought up in the opening  
25 that even if it's not in evidence the jury would have

1 heard that.

2 THE COURT: Is there anything in your opening that  
3 would fall into that category?

4 MS. SEAY: I don't think so. I think -- if he's  
5 talking about other bad acts, I intend to stick to what  
6 he's charged with in terms of what I talk about in my  
7 opening, and what the State intends to present in this  
8 case. Although, I won't mention the forensic interviews.

9 THE COURT: Okay. As to the search warrant, I find  
10 that based on the State v. Dunbar, Section 17-13-140 that  
11 there were sufficient particular facts and circumstances  
12 alleged by the affiant, Sergeant Scott Martin -- at least,  
13 I believe that's the last name. I can't read the  
14 signature.

15 Is that who it was?

16 MS. SEAY: It was Sergeant Matheny.

17 THE COURT: Matheny, okay. Based on information he  
18 says was, in part, contained from statements taken from  
19 the victims. So I find there's sufficient particularized  
20 facts and circumstances that would rise to the level of  
21 probable cause that there is a fair probability that  
22 evidence of a crime would be found in the premises to be  
23 searched if complied with the Fourth Amendment and all  
24 other Constitutional statutory safeguards. And,  
25 therefore, I would hold that the panties and any other

1 evidence that was recovered pursuant to the search would  
2 be admissible.

3 Are you all ready --

4 MS. SEAY: Thank you, Your Honor.

5 THE COURT: -- with opening statements?

6 MS. SEAY: Yes, sir.

7 May I have that original back?

8 THE COURT: Yes.

9 Okay. Y'all can bring the jury back on in, Ms. Cook.

10 (WHEREUPON, the jury came into open court at  
11 approximately 3:11 p.m.)

12 INTRODUCTORY REMARKS

13 THE COURT: Good afternoon, ladies and gentlemen.

14 We're going to begin the case of the State v.  
15 Marshall Dewitt McGaha. At this time, I just want to give  
16 you some preliminary instructions before we get started.

17 And the first thing I want to do is thank you for  
18 your service this week. I know you didn't come down here  
19 voluntarily this morning. And when you got that summons  
20 in the mail, you probably groaned knowing you had to come  
21 up here for jury service. But I know you're here in part  
22 because you understand and respect the fact that the jury  
23 system and the guarantee of the right to a jury trial was  
24 something that was so important to the founders of our  
25 country that they put it not only in the Constitution



1       itself, but in three of the first 10 Amendments. In fact,  
2       John Adams, one of the founders of our country, as we all  
3       know, and the second president, said that the right to  
4       vote and the right to a jury trial were the heart and  
5       lungs of a democracy.

6               So I want to thank you for making it possible for the  
7       State and for the Defense to exercise their  
8       Constitutionally guaranteed right to a jury trial. And,  
9       of course, that guarantee would be an empty promise if we  
10      didn't have good citizens like you who are willing to come  
11      in and devote their time and skills to resolving difficult  
12      disputes.

13             Now, you have met the lawyers in the case, because  
14      they just introduced themselves to you. And I introduced  
15      myself to you earlier. My name, again, is Gary Hill. I'm  
16      one of the circuit judges here in Greenville. And there  
17      are other people who are essential to the process that you  
18      haven't met. And I want to introduce them to you and let  
19      you know what their role is and what their job is. And  
20      then I'm going to tell you what your role is and what your  
21      job is.

22             The first person I want to introduce is Hollie  
23      Jenkins, who is the court reporter, who's standing -- or  
24      sitting right next to me. And Circuit Court is a court of  
25      record. And every word that is said is taken down. She

1 does an outstanding job. And I'm glad to be working with  
2 her this week. And next to Hollie is Joelle Lanfear, who,  
3 as you saw, helps with the jury selection process. She's  
4 one of the clerks of court here in Greenville County. And  
5 she will help things run officially and smoothly during  
6 this trial.

7 The other person I want to introduce to you is Robert  
8 Mebane, who is my law clerk. He sits up there on the  
9 bench. And, from time to time, you'll see him coming in  
10 and out. He helps me with legal research on issues that  
11 arise during cases, and helps me keep up with  
12 correspondence, and other matters that are essential to my  
13 job. And then, finally, the bailiffs in this case are  
14 Ms. Cook, back here at the back of the courtroom, and  
15 Mr. Lynch, who you've already met. They're here for your  
16 assistance and convenience while you're serving on the  
17 jury.

18 Now, everyone I just introduced to you and the  
19 lawyers have done this as well and I, certainly, have done  
20 it, we have all taken an oath to do our job. And you're  
21 going to take an oath to do your job.

22 So, at this time, I'm going to ask Ms. Lanfear to  
23 administer the oath. And listen to the words very  
24 carefully, because they've been around a long time. And  
25 they will give you some insight into what task you're

1 about to embark upon.

2 So, yes, ma'am.

3 THE CLERK: If you will, please, stand and raise your  
4 right hand. The response to the oath is, "I will."

5 (WHEREUPON, the jury was sworn at approximately  
6 3:15 p.m.)

7 THE CLERK: Thank you.

8 THE COURT: All right. Thank you.

9 Let me tell you about my role and the process first,  
10 and then I'll tell you about yours, because ours are  
11 similar, but yet very different. Any time we have a case  
12 tried in this courtroom with a jury, there are always two  
13 judges.

14 The first type of judge you have is the judge of the  
15 law. And that's the Judge that I fulfill. And as the  
16 judge of the law, I have very distinct duties. And,  
17 primarily, there are two things that I am required to do.  
18 The first thing I have to do, as the judge of the law, is  
19 rule on the admissibility of evidence.

20 If, during the course of this trial, a party objects  
21 to evidence -- and, please, don't hold it against a lawyer  
22 for objecting. They have an ethical duty and obligation  
23 to do so if they think evidence is improper. But if  
24 someone objects, I will have to rule upon it and determine  
25 whether the evidence is admissible. Usually, I can do

1 that right on the spot. Sometimes, it takes a while if  
2 the issues get complicated and I have to either talk to  
3 the lawyers up here at the bench, or we have to take a  
4 break so we can discuss it a little bit more efficiently  
5 outside of your presence.

6 But, if I sustain the objection, that means the  
7 evidence is improper and you cannot consider it. If I  
8 overrule the objection, that means the evidence is proper  
9 and you can consider it. The second job I have, as the  
10 judge of the law, is that, at the end of the case, I'm  
11 going to give you the law that you must apply to the facts  
12 of this case.

13 Now, your job is much different, but you are, also, a  
14 judge. And you are the second judge in this process. You  
15 are the judge of the facts. You're the sole and exclusive  
16 judge of the facts. So that means that I'm not going to  
17 make any comment about the facts of this case or indicate  
18 to you in any way what I think the facts are, or what your  
19 verdict should be. Because our Constitution gives you  
20 that sole and exclusive role to be the judge of the facts.

21 Now, how do you determine what the facts are? You do  
22 that by weighing and evaluating the evidence you're going  
23 to hear during this trial. And that's the only thing you  
24 can use in determining what the facts are, the evidence.  
25 And the evidence consists of two things, sworn witness

1 testimony and exhibits. An exhibit is simply a physical  
2 tangible object. It might be a piece of paper, a map.  
3 But you'll know it's an exhibit and you'll know it's  
4 something you can use in determining what the facts are in  
5 this case, because it will be back in the jury room with  
6 you when you go back to deliberate.

7 Now, this is a criminal case. And, as I've already  
8 mentioned to you, there's certain crucial things about a  
9 criminal trial that you must know. The first thing is the  
10 Defendant is always presumed innocent, and does not have  
11 to prove anything or offer any evidence or explanation  
12 whatsoever.

13 The second thing is that the State bears the burden  
14 of proof. The Defense has no burden of proof. The State  
15 bears the burden of proof and the Defendant can only be  
16 convicted if you find unanimously that the State has  
17 proven each and every element of the crime beyond a  
18 reasonable doubt.

19 Now, we have a number of charges in this case. And  
20 you must consider each indictment separately and the proof  
21 as to each indictment separately, and determine whether  
22 the State has met its burden of proof. So that's your job  
23 as the finder of the facts.

24 Now, as the finder of the facts, you will have to  
25 necessarily determine the credibility of the witnesses.

1 So for every witness who testifies and every exhibit  
2 that's introduced, you'll have to determine if it's worthy  
3 of belief. When it comes to the case of a witness who  
4 testifies, you can consider many things in determining if  
5 they're believable. You can consider their interest that  
6 they may have in the outcome of this case. You may  
7 consider their demeanor. You may consider how their  
8 evidence stacks up against the other evidence in the case.  
9 And you may consider anything you use in your day-to-day  
10 lives to determine whether someone is worthy of belief.  
11 Because your common sense did not suddenly evaporate when  
12 you walked into the Greenville County Courthouse.

13 Now, how many of you have sat on a criminal trial  
14 before as a juror? If you would, just raise your hand.

15 (WHEREUPON, one juror raised his hand.)

16 THE COURT: Okay. So we have one veteran. But some  
17 of you probably know from your own experience a little bit  
18 about the structure of a criminal trial. But if you  
19 don't, I want to demystify the proceedings a little  
20 further for you, and let you know what you can expect.

21 In just a moment, you're going to hear the opening  
22 statement or statements by the lawyers. The first opening  
23 statement you're going to hear is from the Prosecutor or,  
24 as we call them in South Carolina, the Solicitor. And  
25 Ms. Seay will give you her opening statement, which is

1 simply a road map or a synopsis of what she thinks the  
2 evidence is going to show and what the issues are going to  
3 be.

4 Then Mr. Hoskinson or Ms. Wicker, on behalf of the  
5 Defendant, will have the opportunity, but not the  
6 obligation, to give an opening statement because,  
7 remember, they don't have to prove anything or -- and  
8 Mr. McGaha, certainly, doesn't have to offer any evidence  
9 or say anything throughout this trial.

10 Once you've heard the opening statement or  
11 statements, we will then go into the presentation of  
12 evidence. And the State, again, because they bear the  
13 burden of proof, will go first, and the Defense will have  
14 the opportunity to confront that evidence. And then the  
15 Defendant can offer any evidence he wishes to, which the  
16 State can confront. And then we'll have the opening --  
17 excuse me, the closing arguments by the lawyers when they  
18 attempt to show you and tell you what they think the  
19 evidence showed and what your verdict should be. And then  
20 I'll give you the instructions on the law. And then the  
21 case will be in your hands for a decision and for a  
22 verdict.

23 Now, it's very important that until we reach that  
24 point that you don't discuss this case with anyone, that  
25 you not do any kind of outside research, or get on the

1 Internet and pursue things you become curious about  
2 related to this case. Because, under your oath, you've  
3 sworn to decide this case according to the evidence. And,  
4 as I've told you, the evidence is only two things, sworn  
5 witness testimony and exhibits.

6 What the lawyers say is not evidence because they are  
7 not witnesses. So keep that in mind. But, also, pay keen  
8 attention to what the lawyers say. Because they're trying  
9 to help you understand the evidence. And they are,  
10 certainly, entitled to and worthy of your attention in a  
11 very positive and detailed manner.

12 Now, I know it's hard to sit here for long periods of  
13 time and listen to a case. Believe me, I understand that.  
14 But it's usually when we start letting our minds wander  
15 that something important happens. So, please, try to pay  
16 close attention to all the witnesses and all the  
17 proceedings. And keep an open mind. We went to a lot of  
18 trouble this morning -- or this afternoon, actually, and  
19 this morning, to an extent, when you were qualified to try  
20 to find a jury that can be fair and impartial and decide  
21 this case without any preconceived ideas. In other words,  
22 a group of people who wouldn't prejudge this case. So we  
23 want to keep you that way. So don't start talking about  
24 the case. Don't have any discussions with anyone and,  
25 please, pay close attention.



1           Now, as I mentioned, the attorneys in this case are  
2 advocates for their clients. And they're going to do the  
3 best they can to represent their clients zealously. You  
4 and I, ladies and gentlemen, we are not advocates. We  
5 don't have any interest in the outcome of this case. Your  
6 job is to determine the facts of the case and determine  
7 whether the State has met its burden of proof, and to do  
8 so in a fair and impartial manner to both sides.

9           So thank you for your attention to me. And, at this  
10 time, we'll have the opening statements and -- oh, let me  
11 mention one other thing. How long is the case going to  
12 take? I know that's what you want to know. And I don't  
13 know the answer to that. I think it's probably going to  
14 take, at least, several days. But no matter how long or  
15 short it is, remember, this is the day in court for both  
16 sides. So it's an important case for both sides. And  
17 it's important for them to have your fair and impartial  
18 adjudication of it.

19           Now, we will take breaks about every hour and a half  
20 to keep everyone fresh. But if somebody needs a break  
21 before that, just let me know. And I will, certainly,  
22 accommodate you and accommodate the lawyers, if they need  
23 to do that. All we're going to do today is have the  
24 opening statements. Because there's another matter I have  
25 to take up that's a legal matter and it wouldn't be

1 efficient to keep you here while I do that. So we're just  
2 going to have the opening statements. And then we're  
3 going to release y'all for the day and come back in the  
4 morning.

5 So with that, Ms. Seay.

6 OPENING STATEMENTS

7 MS. SEAY: Thank you, Your Honor.

8 Good afternoon, ladies and gentlemen.

9 All children come into the world with the right to be  
10 love, and nurtured, and protected. And children come into  
11 the world innocent. They don't come into the world to be  
12 abused, or to be used by older men.

13 In this case, you're going to hear about two little  
14 girls, who are eight and nine years old now, **Minor 1**  
15 **Minor 1** and **Minor 2**. You're going to hear about  
16 these two little girls who had someone living in their  
17 home, Mr. McGaha, who took advantage of them sexually.  
18 They're going to come in and they're going to take the  
19 witness stand. And they're going to talk to you about  
20 what Mr. McGaha did to them.

21 And I want to tell you that you are probably going to  
22 hear some things from these little girls that is  
23 disturbing and unpleasant to listen to. And I want you to  
24 remember that you did take an oath to listen to the  
25 evidence in this case, and to render a verdict that speaks

1 the truth. So listen to what they have to say very  
2 carefully.

3 You're, also, going to hear from some other witnesses  
4 who have some information in this case. And the State has  
5 the burden of proof in this case. And we gladly accept  
6 that burden. It's my honor and my privilege to represent  
7 the people of Greenville County here today. And I want to  
8 tell you a little bit about the crimes that we have talked  
9 about that Mr. McGaha is charged with.

10 He's charged with criminal sexual conduct and lewd  
11 act on a minor. He's charged with one count of each of  
12 those for each child. So that's four indictments.  
13 Criminal sexual conduct requires what we call, under South  
14 Carolina law, a sexual battery. And the Judge, at the  
15 conclusion of the case, will give you what the law is that  
16 you are to apply to the facts of this case. So I want you  
17 to listen to what the Judge says at the end of the case.  
18 I'm just giving you a little preview right now. But a  
19 sexual battery has to occur.

20 A sexual battery is any intrusion, however slight,  
21 into the opening of another person's body. And that does  
22 include oral sex, which I do believe the girls will  
23 testify to. The child must be under the age of 11. And  
24 these children are seven and eight years old. And there  
25 will be testimony to that effect.

1           The other crime that Mr. McGaha is charged with is  
2       lewd act on a child. A lewd act is lewd and lascivious  
3       behavior for your own sexual gratification, or that of the  
4       child. And that is more of a touching offense, a  
5       fondling, a molestation-type offense. That does not  
6       require the sexual battery that criminal sexual conduct  
7       requires. So I hope that helps you understand the charges  
8       a little bit better.

9           There is one thing that the State does not have to  
10      prove that I always like to tell juries, because I think  
11      it's very important for you to know. The State doesn't  
12      have to prove a motive in this case. The State does not  
13      have to prove why a grown man would use little girls for  
14      sexual gratification. That's something that we don't have  
15      to do. We can't do it. And we won't be doing it.

16          But, at the conclusion of this case, after you have  
17      heard all the evidence, including the testimony of these  
18      girls, I think that you will find that the State has met  
19      its burden of proof. And I will be able to speak to you  
20      again in closing arguments. And I'll ask you to speak --  
21      to render a verdict that speaks the truth at the  
22      conclusion of this case. And I submit to you that we will  
23      have met our burden of proof. And I'll be asking you to  
24      find Mr. McGaha guilty.

25          Thank you.

1 THE COURT: Thank you, Ms. Seay.

2 Mr. Hoskinson, or, Ms. Wicker.

3 MR. HOSKINSON: Good afternoon, ladies and gentlemen.

4 I'm Tom Hoskinson. And I represent Mr. Marshall  
5 McGaha.

6 As noted earlier by the Judge, a Defendant in every  
7 trial has the presumption of innocence. And, in every  
8 trial, the State has the burden of proof. And, in every  
9 trial, a jury is charged with their duty to evaluate that  
10 evidence.

11 I make this point, even though you've already heard  
12 it, and it can be something of a dry point, for a  
13 particular important reason. And that is the obvious fact  
14 that we're dealing with a case where somebody has been  
15 charged with criminal sexual conduct. And we need to  
16 acknowledge that hearing something like that causes people  
17 to make assumptions and immediate reactions. We hear  
18 something like that and we have an impulse, we have a  
19 thought.

20 But when we're dealing with a trial like this, and as  
21 the Judge has instructed you, we need to pause for a  
22 second and not give into that immediate impulse and that  
23 immediate thought. We're here for a reason. The State  
24 has the burden of proof. And if they can't prove their  
25 case, then you must find the person not guilty. And, to

1 that end, we have to acknowledge that, also, this  
2 environment in this courtroom is a lot different from the  
3 normal situations we see when we listen to things on the  
4 news, or watch a television show, or watch a game on TV.  
5 We watch those things and listen to those things in a  
6 different fashion. We often make assumptions and  
7 conclusions. And we have the luxury when we're watching  
8 TV shows or talking to somebody down the street that we  
9 can just have those thoughts and those assumptions and do  
10 with them as we will.

11 But, in this case, it's quite different. You're  
12 going to be listening to a witness. And we're going to  
13 ask you not to make a decision about the case just because  
14 you've heard one witness. That's a little different from  
15 what we're normally comfortable with doing. You're being  
16 asked to do a very difficult task. You're being asked to  
17 hear another witness and still not make a decision.  
18 You're, also, going to be asked, at the end of the trial,  
19 when the Judge gives you instructions about the law and  
20 what you need to do to then go into a room with each other  
21 and talk about it, and, at that point, start evaluating  
22 your decision about the case.

23 And I want you to bear this in mind as you listen to  
24 the evidence, not to make some kind of early decision  
25 about anything. And, as you talk about this case, you

1 might never figure out why this claim is being made, or  
2 maybe you do. As you evaluate this case, you'll come to  
3 realize that we're here for a reason. And we're thankful  
4 for having your help. And, at the end of the trial, I'll  
5 come back to you and talk to you again about why the State  
6 has not proven its case beyond a reasonable doubt.

7 THE COURT: Thank you, Mr. Hoskinson.

8 Ladies and gentlemen, we're going to break for the  
9 day, as I mentioned. And just be back in the jury room at  
10 9:00 tomorrow morning. And we will start the presentation  
11 of evidence at that time. Remember, don't talk about the  
12 case. Don't do any kind of outside investigation. And  
13 continue to keep an open mind. And I hope you have a  
14 restful evening.

15 (WHEREUPON, the jury was excused from open court at  
16 approximately 3:23 p.m.)

17 THE COURT: Okay. Anything else before we break?

18 MS. SEAY: Nothing further from the State.

19 THE COURT: Do you want me to e-mail you my ruling on  
20 this? I'll put it on the record, of course. But if you  
21 want to know tonight --

22 MS. SEAY: That would be fine.

23 THE COURT: Just give me your e-mail address, and  
24 I'll be glad to do that.

25 And I didn't ask, but there was no Batson motion

1 made. And so I just want to clarify that there was no  
2 intent on anyone's part to make one, was there?

3 MR. HOSKINSON: Oh, for the jury selection process?

4 THE COURT: Yes.

5 MR. HOSKINSON: No, Judge.

6 THE COURT: From the State?

7 MS. SEAY: Nothing from the State as to the selection  
8 of the jury.

9 THE COURT: I find the process complied with all  
10 state and federal Constitutional law mandates.

11 MS. SEAY: Your Honor, will you want to hear from the  
12 forensic interviewer first thing in the morning, or do you  
13 need to hear from her?

14 THE COURT: I'll have to look at the videos and see  
15 if there's anything. But I don't believe the statute  
16 calls for anything that wouldn't already be on the DVD,  
17 does it?

18 MS. SEAY: Just right offhand, I don't think so. I  
19 just -- I know, traditionally, we've done some type of  
20 pre-trial hearing, but I don't know that it's necessarily  
21 required. I just want to make sure that if you do want to  
22 hear from her that I have her available.

23 THE COURT: Right.

24 I don't think that will be necessary.

25 MS. SEAY: Okay. Thank you.



1 And I'll hand up my e-mail address, if that's okay.

2 THE COURT: Okay. Great.

3 MR. HOSKINSON: Your Honor, when you're considering  
4 this tape and your ruling, I do have some comments made in  
5 the video that I think should be extracted.

6 THE COURT: Okay.

7 MR. HOSKINSON: Like the State should delete them.  
8 There's hearsay, like one child will say the other one  
9 told me about it, what happened to them. [Minor 1] might  
10 say, [Minor 2], told me this, [Minor 2] told me he did this to  
11 her. There's that. And there's, also, the other child  
12 talking about what the other child told her. So that's  
13 going on in both tapes.

14 There's, also, [Minor 2]'s video around the 19:34 mark,  
15 and she talks about he used to live there until he went to  
16 prison. I think she's meaning when he got arrested, he  
17 went to jail. I think that needs to be extracted --  
18 what's the word I'm trying to find, deleted -- redacted is  
19 the word I'm thinking of. And, also, there's mention of  
20 their ages that would precede the indictment period as  
21 evidence of bad acts preceding the indictment.

22 Here's my e-mail, Judge.

23 THE COURT: Thank you.

24 MR. HOSKINSON: And recently, Judge, the appellate  
25 court talked about these videos. And I'd like to put

1 something on the record as to another argument to exclude  
2 them.

3 THE COURT: Okay.

4 MR. HOSKINSON: I can do that now or tomorrow.

5 THE COURT: Go ahead and do it now.

6 MR. HOSKINSON: Okay. The way these tapes are  
7 operating is that it has all the context of a direct  
8 examination. It's not like an out-of-court statement that  
9 would be some kind of written statement that they would  
10 take from a witness like they did in State v. Stokes.  
11 Instead, it has the characteristics of someone providing  
12 testimony, but absent being under oath, and absent being  
13 in the courtroom. And when the tape ends, they are not  
14 then cross-examined in the same atmosphere that they were  
15 examined in the first place.

16 In the cases where we often see this take place, the  
17 child will testify early in the trial, and then the tape  
18 will be played at the end. And if they're going to be  
19 confronted and cross-examined, the child would have to be  
20 cross-examined at the earlier part of the trial discussing  
21 a video that they hadn't seen yet, but not with the same  
22 type of cross-examination that would have occurred in the  
23 examination room with the forensic interviewer.

24 So the context of the cross-examination is not what  
25 the Supreme Court envisioned when they were talking about

1 a different type of case in Maryland v. Craig. It was a  
2 U.S. Supreme Court case where they're talking about  
3 cross-examination through a closed circuit television.  
4 It's different than what we're talking about today. But  
5 the point is still the same, that the U.S. Supreme Court  
6 praised the cross-examination opportunity in that because  
7 the full context was available. It's happening at the  
8 same time that the questioning is taking place. The jury  
9 can see the person answer the cross-examination questions  
10 in the same environment upon which they were asked direct  
11 examination questions.

12 So what we're seeing with these forensic interviews  
13 is kind of shift from the U. S. Supreme Court and the  
14 confrontation clause, which when originally developed did  
15 not -- they probably didn't even contemplate that there  
16 would be some kind of videotape, by all similarities,  
17 direct. It's like direct examination being videotaped for  
18 the jury to see.

19 So when our appellate court was looking at this, they  
20 were looking at Crawford, and they were looking at Stokes.  
21 Stokes is -- it was a written statement. They didn't talk  
22 about -- the appellate court didn't talk about Maryland v.  
23 Craig.

24 And I'd, also, point out that there's a certain  
25 prejudice versus probative value in these forensic

1 interview situations. They're done in a room with a  
2 purple carpet, polka dot chairs. The children are given  
3 dolls to look at. The walls have maybe a lime green and  
4 blue. The jury is watching a child in a context different  
5 from how they are here. They're seeing what -- it's very  
6 similar to a direct examination without a then followed by  
7 an immediate cross-examination. The children will be --  
8 they're behaving in a different fashion.

9 And I would, also, note that with State v. Hill, the  
10 trial judge did not make a ruling on the  
11 Constitutionality. And the appellate court noted in  
12 footnote two, Thus such arguments would not be preserved  
13 for appeal. The court went ahead and discussed it anyway.

14 So I want to, just for the record, preserve a  
15 Constitutional argument to the extent that it would still  
16 be available for review notwithstanding anything that we  
17 already have about this issue.

18 THE COURT: What part of the Constitution is this?

19 MR. HOSKINSON: The confrontation clause, Judge --  
20 well, you know the right to a fair trial, the Sixth  
21 Amendment right to a fair trial, Your Honor.

22 THE COURT: Because do you concede that the Sixth  
23 Amendment would not apply?

24 Because in order for the tape to be admissible, the  
25 statute requires that the child be in court and available

1 for cross-examination. So even pursuant to Crawford, the  
2 Sixth Amendment confrontation clause would be complied  
3 with.

4 MR. HOSKINSON: And I understand that, Judge. And  
5 I -- but I, also, noted that to have a fair trial, also, I  
6 think the courts need to be made aware of the fact that  
7 what the video was doing is displaying a direct, but not  
8 in the context of in a courtroom under oath. But it's a  
9 long drawn out video of a question and answer scenario  
10 versus an out-of-court statement where we, typically,  
11 would see them as a written statement, like in Stokes.

12 So there's some distinguishing feature there that  
13 might, you know, bring a concern of a confrontation clause  
14 issue, or other Constitutional issues that would fall  
15 under the Sixth Amendment right to a fair trial.

16 THE COURT: Well, okay. I understand the argument,  
17 but I don't find it persuasive. I think the rules of  
18 evidence contemplate and, specifically, allow out-of-court  
19 statements to come in routinely, as long as they meet  
20 certain criteria. And here, by statute, they are  
21 admissible if the criteria are met.

22 And I think statute Section 17-1-75 goes into  
23 painstaking detail about what those criteria are to ensure  
24 that there are particularized guarantees of  
25 trustworthiness. In fact, that phrase is used in the

1 statute. And factors are listed that would require a  
2 court to use in determining whether a statement possessed  
3 particularized guarantees of trustworthiness.

4 As far as it being a direct examination out of court,  
5 of course, the forensic interviewer is not a lawyer. And,  
6 certainly, when a witness testifies in court, previous  
7 statements they've made are admissible, even if they  
8 aren't preserved on film or electronically.

9 So I understand your motion, and I respectfully deny  
10 it.

11 Okay. Let me go view the tape. And I'll let you  
12 know my preliminary decision.

13 MR. HOSKINSON: Judge, just -- I'm not asking you to  
14 reconsider the ruling.

15 THE COURT: Okay.

16 MR. HOSKINSON: Just in light of State v. Hill, where  
17 there was no actual ruling on the Constitutionality, I  
18 just wanted to be clear, for the record, if you've made a  
19 ruling on whether this is Constitutional?

20 THE COURT: You asked me about the Sixth Amendment  
21 fair trial clause. Is that what you're basing it on?

22 MR. HOSKINSON: The Constitution Sixth Amendment and  
23 the confrontation clause.

24 THE COURT: I find that based on Crawford v.  
25 Washington that the Sixth Amendment would not be

1       implicated in terms of the confrontation clause. Because  
2       there is a right of confrontation that is full and  
3       unrestricted. And it's completely available to the  
4       Defense in this case, or the videos are not admissible in  
5       the first place. So there is a full confrontation  
6       available to the widest extent possible under the law.

7           And, as to the fair trial clause, again, it's not  
8       uncommon and, in fact, routine in criminal cases where a  
9       witness's prior statements are used to -- as substantive  
10      evidence or impeachment evidence. And, here, I think the  
11      legislature has gone one step further by incorporating  
12      into the statute detailed foundation on requirements of  
13      admissibility of this type of evidence before the jury can  
14      even know about them. And I think that promotes the  
15      interest of justice and, certainly, is reasonably related  
16      to the criminal justice process and ensuring that trials  
17      will be fair and impartial.

18           So any Constitutional attack based on those two  
19      clauses and the Sixth Amendment would not have any  
20      authority to back it or support it.

21           Thank you.

22           (WHEREUPON, the proceedings were concluded at  
23           approximately 3:48 p.m., to be reconvened on  
24           Tuesday, August 9, 2011.)  
25

1                                    TUESDAY AUGUST 9, 2011

2            THE COURT:    Okay.    Good morning.

3            I sent out by e-mail last night the indication that I  
4            was going to allow the admission of the two interviews of  
5            the victims.    And I don't --

6            The one to you, Mr. Hoskinson, came back to me.    I  
7            don't know what --

8            MR. HOSKINSON:    I don't know either, Judge.    But the  
9            Solicitor was kind enough to show me her e-mail, so I did  
10           get to see it.

11           THE COURT:    All right.    And I find that it  
12           complies -- each of the DVD's complied with Section  
13           17-23-175.

14           I find that the statement was given in response to  
15           questions conducted during an investigative interview of  
16           the child that was preserved on visual and audio  
17           recording.    The child is going to testify and be subject  
18           to cross-examination on the elements of the offense and  
19           the making of the out-of-court statement.    And, based on  
20           all the circumstances surrounding the making of the  
21           statement, there are particularized guarantees of  
22           trustworthiness.    The questions were not leading.    The  
23           statement represented a detailed account of the alleged  
24           offenses.    The statements were internally coherent.    And  
25           while it's not in the record as to whether an interviewer



1 has been trained in conducting investigative interviews,  
2 I -- it appeared to me that she had been.

3 I'm sure that the interviewer is going to testify in  
4 the trial; isn't that correct?

5 MS. SEAY: That's correct.

6 THE COURT: And that will be brought out during the  
7 trial.

8 Does she have training in interviewing techniques?

9 MS. SEAY: She does. She has extensive training and  
10 has conducted over 1,000 forensic interviews.

11 THE COURT: Okay. So I find it is admissible. I did  
12 find that there were two portions that should be redacted,  
13 because their relevance was vastly outweighed by the  
14 potential prejudice -- unfair prejudice to Mr. McGaha.

15 The first area that should be redacted is the  
16 discussion of the dog leash incident. And the second  
17 would be the statements by the child being interviewed  
18 about alleged abuse to her sister to the extent that those  
19 statements were not based on personal knowledge. In other  
20 words, if the child didn't see or, otherwise, have  
21 personal knowledge about the alleged abuse of her sister,  
22 she could not testify about it in the form of the recorded  
23 interview. So that's the ruling on that.

24 Anything else before we bring the jury in?

25 MR. HOSKINSON: One thing, Judge.

1 I was talking to Ms. Wicker last night and, again,  
2 this morning. The State's witnesses, I think, are going  
3 to talk about how they've known Mr. McGaha several years.  
4 And part of that time frame -- I just don't want them to  
5 mention anything about how he's been arrested or gone to  
6 jail before. And I talked to Ms. Wicker about that. I  
7 don't think the State would illicit that testimony  
8 intentionally. But with the child witnesses, we want to  
9 be cautious about that. And I may cause one of them to  
10 stop answering a question that I'm asking if they start to  
11 go beyond what I was asking.

12 And I just wanted to make the Court aware of that  
13 concern that Ms. Wicker and I have. We don't want to hear  
14 anything about him picking up charges and going to jail  
15 before. And that, also, ties in a little bit -- I think  
16 one of the interviews, one of the children mentioned that  
17 he went to prison.

18 THE COURT: Okay.

19 MR. HOSKINSON: And I think that would be prejudicial  
20 and should be redacted.

21 MS. SEAY: Your Honor, if you'll give me just a  
22 minute, I will go and re-enforce -- I've already talked to  
23 them about it, but I'll go and re-enforce with the  
24 children that they're not to talk about him going to jail,  
25 or prison, or anything. And all the witnesses, I'll

1 re-enforce that information with them, if you'll give me  
2 just a minute to do that.

3 Your Honor, I have redacted these interviews. Prior  
4 to -- well, during my trial preparation and prior to  
5 yesterday, but before I knew whether there would be a  
6 consolidation or not. I anticipated that there may be  
7 some issue with the statements made by each child saying,  
8 you know, well, my sister told me this --

9 THE COURT: Right.

10 MS. SEAY: -- or my sister told me that. So I had  
11 those portions redacted already. I had not redacted the  
12 dog leash portion. So I've been over with forensics this  
13 morning and had that redacted. So we should be okay to  
14 go.

15 Now, the problem is, all they did is they took out  
16 the audio of these portions. So there is -- it is obvious  
17 that the parties are still talking, but the audio is not  
18 there. So I would ask the Court to give some kind of  
19 instruction to the jury that you ruled that certain  
20 portions are inappropriate, or inadmissible, or that  
21 they -- I don't know exactly how you would want to word  
22 it.

23 But it's going to be very obvious that we have taken  
24 out certain portions of these interviews, particularly,  
25 the dog leash portion. It is approximately two minutes in

1 length. And you can still see the parties talking, but  
2 you can't hear them. And we -- that part of the  
3 interview, we took up to the part where **Minor 2** said --  
4 where the interviewer says, Did he do anything to your  
5 neck?

6 And **Minor 2** replies, No.

7 And then it cuts off at that point. So I hope that  
8 will be satisfactory. And then there's the two-minute  
9 delay there. But all of the other references have been  
10 removed. And I would just ask you to give the jury some  
11 kind of instruction about that. I don't know how you want  
12 to handle that.

13 THE COURT: What's the Defendant's position on that?

14 MR. HOSKINSON: I think it just draws attention to  
15 the jury that there was something in there that they  
16 shouldn't hear. I think just play it, let it bleep out  
17 and not make any additional comment about it would be  
18 best, Judge. Just by commenting on it, I think it just  
19 amplifies the fact that there's something there that they  
20 shouldn't have heard and that was prejudice, and they'd  
21 jump to some conclusion about that.

22 THE COURT: Is there no way to fast-forward it when  
23 you get to that point?

24 MS. SEAY: It would be extremely difficult for us to  
25 manipulate as many portions as there are. I don't trust

1 my computer skills enough to do it that way, Your Honor.  
2 I'll be honest with you. I'm afraid that that wouldn't  
3 work.

4 THE COURT: Okay. Well, I think I agree with the  
5 Defense to just let it play and not say anything about it.  
6 If they ask about it later, I'll tell them.

7 MS. SEAY: Okay.

8 THE COURT: All right. Anything else before we bring  
9 in the jury?

10 MS. SEAY: I just need a moment to speak with the  
11 witnesses.

12 THE COURT: What about the part where he -- the  
13 witnesses mention something about prison?

14 MS. SEAY: I'm not familiar with that part. If  
15 you'll give me just a moment, I'll refer to my notes and  
16 see if I can see what he's referring to.

17 Is it **Minor 2** s or **Minor 1** 's?

18 MR. HOSKINSON: I believe **Minor 2** around the 19:35  
19 minute mark.

20 MS. SEAY: Do you want us to try to get to that part  
21 to see if we can listen to it, Your Honor? I'm not really  
22 familiar with what she says at that point.

23 MR. HOSKINSON: I think we could easily put it into a  
24 computer and play it right now. It would take about a  
25 minute.

1 THE COURT: Okay.

2 MS. SEAY: One of the issues, Your Honor, I see is if  
3 we end up having to stop and start for this particular  
4 portion -- I'm not going to be able to enter these  
5 redacted copies into evidence for the jury to have in the  
6 jury room. So we would just ask to publish them. And  
7 then if they wanted to hear them again, they would have to  
8 come out here, I guess.

9 (WHEREUPON, a portion of State's Exhibit No. 7 was  
10 played in open court.)

11 THE COURT: Is that it?

12 MR. HOSKINSON: Yes, sir.

13 MS. SEAY: Okay. So if we could get to the exact  
14 point it is, we could try to stop it at that point, I  
15 guess, and skip over that portion.

16 Is that volume going to be sufficient, Your Honor?  
17 Because we have some speakers, I think, that we can find,  
18 if we need to.

19 THE COURT: Can you hear it? Y'all can hear it back  
20 there?

21 MR. HOSKINSON: (Mr. Hoskinson nodded.)

22 THE COURT: Yes. I think it's fine.

23 (Pause.)

24 MS. SEAY: Okay. So we would stop it at a little bit  
25 before that point, and then it would end at 19:45.

1           How is that?

2           MR. HOSKINSON: Yeah.

3           MS. SEAY: Do you want to hear it again?

4           MR. HOSKINSON: That's fine.

5           MS. SEAY: If I may have just a minute with the  
6 witnesses, and then I'll be ready to go, Your Honor.

7           THE COURT: Yes. Sure.

8           (WHEREUPON, a break was taken.)

9           THE COURT: Okay. Are we ready for the jury?

10          MS. SEAY: Yes, sir.

11          THE COURT: You can bring them on in.

12          Thank you.

13          (WHEREUPON, the jury came into open court at  
14 approximately 9:30 a.m.)

15          THE COURT: Good morning, ladies and gentlemen.

16          We are going to start the presentation of evidence  
17 now. And the bailiff indicated that some of you wish to  
18 take notes. And that's, certainly, acceptable. I just  
19 want to caution you on a couple things about taking notes.

20          First of all, remember that one of your key duties is  
21 to gauge the credibility of the evidence. And so, please,  
22 don't become so engrossed in taking the notes that you  
23 don't pay attention to the witnesses on the stand, or  
24 other evidence that's being presented to you.

25          And, second, remember that the notes are for your own

1 personal use. And they, certainly, don't trump anyone who  
2 didn't take notes memory of the testimony. And bear in  
3 mind that, as we all know from our school days, notes can  
4 be wrong.

5 So, as I said, don't place too much emphasis on them.  
6 But they, certainly, are a useful aid. I take notes and  
7 there's no reason why you shouldn't take them as well.  
8 But they're for your own personal use.

9 So with that, Ms. Seay, you may call your first  
10 witness.

11 MS. SEAY: Thank you, Your Honor.

12 May it please the Court.

13 Your Honor, I neglected to mention earlier that  
14 Ms. Phillips, who was with me yesterday, is ill today.  
15 And Ms. Lindsay Kicklighter is here with me from the  
16 Solicitor's Office.

17 THE COURT: All right, ma'am.

18 MS. SEAY: The State calls [REDACTED] Minor 1 .

19 THE CLERK: [REDACTED] Minor 1 , I'm going to ask you to place  
20 your left hand on the Bible.

21 Thank you.

22 And raise your right hand.

23 WHEREUPON,

24 [REDACTED] Minor 1 ,

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



1 THE CLERK: Thank you, honey.

2 You can come and sit down.

3 DIRECT EXAMINATION

4 BY MS. SEAY:

5 Q Minor 1, will you state your name right here so we  
6 can see that everybody can hear you?

7 A (There was no response.)

8 Q Will you say your name?

9 A Minor 1.

10 Q Let's scoot you up a little bit so you can sit back.  
11 All right. Now, say your name one more time.

12 A Minor 1.

13 (Pause.)

14 MS. SEAY: I lost that last step.

15 THE COURT: Are you okay?

16 MS. SEAY: Yes. I'm fine.

17 THE BAILIFF: Can I lift that thing up right now?

18 MS. SEAY: Yes.

19 I don't think we will need it for a while.

20 MS. SEAY: That was a good beginning to the trial.

21 THE COURT: I've almost done it myself many times.

22 BY MS. SEAY:

23 Q Minor 1, are you ready to get started?

24 A (Witness nodded.)

25 Q I'm going to stand over here. And I want you to look

1 over here towards the jury and answer the questions that I  
2 ask you. Can you do that?

3 A (Witness nodded.)

4 Q Remember, you have to answer "yes" or "no," and not  
5 nod your head. Can you answer that?

6 A Yes, ma'am.

7 MS. SEAY: Can everybody back here hear Minor 1?

8 (WHEREUPON, the jury members indicated in the  
9 affirmative.)

10 BY MS. SEAY:

11 Q Minor 1, how old are you?

12 A Eight.

13 Q When is your birthday?

14 A [REDACTED].

15 Q Okay. Do you know what year you were born?

16 A (There was no response.)

17 Q If you don't understand or don't know, it's okay to  
18 say, I don't know or I don't understand.

19 A (There was no response.)

20 Q Do you know the date -- do you know the year you were  
21 born?

22 A No, ma'am.

23 Q Okay. What grade will you be in this year?

24 A Second.

25 Q And where do you go to school?

1 A Thomas E. Kerns.

2 Q Thomas E. Kerns?

3 A (Witness nodded.)

4 Q Who do you live with?

5 A Mimi.

6 Q Okay. Who's Mimi?

7 A (There was no response.)

8 Q Is she your grandmother?

9 A Yes, ma'am.

10 Q Okay. Who else do you live with?

11 A Granny.

12 Q All right. And is granny your great-grandmother?

13 A Yes, ma'am.

14 Q Okay. Who else do you live with?

15 A My sisters.

16 Q All right. Will you tell us your sisters names?

17 A S.C. and Minor 2.

18 Q How old is S.C.?

19 A 11.

20 Q And how old is Minor 2?

21 A Nine.

22 Q Okay. So are you the youngest?

23 A No, ma'am.

24 Q Who's the youngest?

25 A Minor 2.

- 1 Q I thought Minor 2 was nine?
- 2 A I mean, S.C.
- 3 Q S.C. is the oldest; right?
- 4 A (Witness nodded.)
- 5 Q She's 11?
- 6 A Yes, ma'am.
- 7 Q Okay. Do you have any pets?
- 8 A Yes, ma'am.
- 9 Q Tell us about your pets.
- 10 A I have three dogs, one cat. I have Colby, Gracie,
- 11 Daisy, and Sophie.
- 12 Q Okay. Those are your pets names. Do you help take
- 13 care of your pets?
- 14 A Yes, ma'am.
- 15 Q Okay. I understand you went to camp this summer.
- 16 Did you go to camp last week?
- 17 A Yes, ma'am.
- 18 Q What's the name of the camp you went to?
- 19 A Camp Twin Lake.
- 20 Q Camp Twin Lake?
- 21 A (Witness nodded.)
- 22 Q What did you do at Camp Twin Lake?
- 23 A We rode horses.
- 24 Q You rode horses?
- 25 A (Witness nodded.)

1 Q What else?

2 A And we rode bikes. And we went swimming.

3 Q That sounds like a lot of fun. Did you enjoy  
4 yourself?

5 A Yes, ma'am.

6 Q Did your sisters go with you?

7 A Yes, ma'am.

8 Q Let me ask you some questions about telling the  
9 truth. Okay. Do you understand what it means to tell the  
10 truth?

11 A Yes, ma'am.

12 Q What does it mean to tell the truth?

13 A That means don't lie to your parents.

14 Q Okay. Does it mean not to lie in court?

15 A Yes, ma'am.

16 Q All right. Is it good to tell a lie?

17 A No, ma'am.

18 Q What happens if you tell a lie?

19 A If you tell a lie, then you might get in trouble.

20 Q Okay. If I told you that I have on a green dress  
21 today, would that be the truth or a lie?

22 A A lie.

23 Q Okay. Because I don't have on a green dress, do I?

24 A (Witness shook head.)

25 Q All right. Do you understand that you have to tell

1 the truth about everything that you talk about in court  
2 today?

3 A Yes, ma'am.

4 Q Okay. And do you promise to do that?

5 A Yes, ma'am.

6 Q Do you remember when you put your hand on the Bible  
7 and you held your other hand up and you promised to tell  
8 the truth and the whole truth?

9 A Yes, ma'am.

10 Q And is that what you promised to do?

11 A Yes, ma'am.

12 Q Okay. Thank you.

13 Did a man named Marshall used to live with you?

14 A Yes, ma'am.

15 Q Okay. Did he live in your house?

16 A Yes, ma'am.

17 Q All right. Where did you sleep in your house?

18 A I slept with granny.

19 Q Okay. And where did Marshall sleep?

20 A In the play room.

21 Q Okay. So you have a play room, and it was, also,  
22 Marshall's bedroom?

23 A Yes, ma'am.

24 Q Was there a bed in there?

25 A No, ma'am.

1 Q Okay. Was there a sofa or somewhere where Marshall  
2 slept?

3 A There was a bed.

4 Q There was a bed in there?

5 A Yes, ma'am.

6 Q Okay. In the play room?

7 A Yes, ma'am.

8 Q Okay. Did Marshall ever do anything to you that you  
9 didn't like?

10 A Yes, ma'am.

11 Q Okay. I know that it might be hard to talk about  
12 some of this. But I want you to talk to the jury and tell  
13 them some of the things that you have told me about what  
14 Marshall did do you.

15 Did Marshall ever touch you with any part of his  
16 body?

17 A Yes, ma'am.

18 Q Okay. What part of his body did he touch you with?

19 A His hands.

20 Q Okay. What part of your body did he touch with his  
21 hands?

22 A My pocketbook.

23 Q And when you say your "pocketbook" --

24 MS. SEAY: Your Honor, I'm requesting permission to  
25 show her a diagram of a prepubescent girl and allow her to

1 point out on this diagram, rather than herself, if that  
2 would be acceptable with the Defense.

3 MR. HOSKINSON: It's okay, Judge.

4 THE COURT: All right.

5 BY MS. SEAY:

6 Q Let me show you this diagram of a little girl. When  
7 you say he touched your pocketbook, can you point to me  
8 what your pocketbook is on this diagram?

9 A (Witness indicated.)

10 Q Okay. I'm going to circle what you pointed. And I'm  
11 going to write down "Pocketbook." And then, at the top of  
12 this, I'm going to write your name. Okay.

13 You said Marshall touched your pocketbook with his  
14 hand. Did it hurt you when he touched you with his hand?

15 A Yes, ma'am.

16 Q Did he touch you on top of your clothes or under your  
17 clothes?

18 A Under.

19 Q Okay. Did you have on panties?

20 A Yes, ma'am.

21 Q Did he touch you on top of your panties or under your  
22 panties?

23 A Under.

24 Q Okay. What part of his body did he touch your  
25 pocketbook with?



1 A His hands.

2 Q Did his hand go inside or outside your pocketbook?

3 A Outside.

4 Q Okay. Did this happen one time or more than one  
5 time?

6 A More than one time.

7 Q Okay. Where did this happen?

8 A In the play room.

9 Q All right. Would it be daytime or nighttime?

10 A Nighttime.

11 Q Okay. How did you get in the play room at nighttime?

12 A (There was no response.)

13 Q How would you get to the play room at nighttime when  
14 this happened?

15 A Sometimes, he would like pick me up.

16 Q Okay. Did he carry you in there?

17 A Yes, ma'am.

18 Q All right. Where would he pick you up from?

19 A My sides.

20 Q Your sides. Okay. Where would you be when he would  
21 pick you up? Where would you be sleeping?

22 A With granny.

23 Q And he would pick you up and take you in the play  
24 room?

25 A Yes, ma'am.

1 Q What would granny be doing?

2 A Granny would be asleep.

3 Q Okay. And when he took you in the play room and did  
4 these things, did anything else happen in the play room?

5 A (There was no response.)

6 Q Let me rephrase this question. Did he touch any  
7 other part of your body with any other part of his body?

8 A No, ma'am.

9 Q Okay. Did he ever ask you to touch any part of his  
10 body?

11 A (There was no response.)

12 Q I know this is hard to talk about, but I need for you  
13 to tell the truth.

14 A Yes, ma'am.

15 Q Okay. What part of his body did he make you touch?

16 A He made me touch his front part.

17 Q His front part?

18 MS. SEAY: Your Honor, I'm going to request  
19 permission to show her a diagram of an adult male to  
20 indicate what she's referring to.

21 Is that acceptable?

22 MR. HOSKINSON: Yes.

23 BY MS. SEAY:

24 Q This is a diagram of a man. Show me what part you're  
25 referring to when you say he touched you with his front

1 part.

2 A (Witness indicated.)

3 Q Is that right?

4 A (Witness nodded.)

5 Q Okay. I'm going to write, "Front Part." And then  
6 I'm going to put your name here on the top.

7 Let's talk about what Marshall did with his front  
8 part. Tell me what part of your body Marshall touched you  
9 with his front part.

10 A He touched me with -- he touched me.

11 Q What part of your body did he touch you with his  
12 front part?

13 A With his -- with my hands.

14 Q Okay. He made you touch his front part with your  
15 hands?

16 A Yes, ma'am.

17 Q Okay. What did he make you do?

18 A He made me hold it.

19 Q Okay. What would happen when he made you hold it?

20 A (There was no response.)

21 Q Minor 1, just tell the truth about what would happen  
22 when he made you hold it.

23 A He --

24 Q Do you understand the question?

25 A (There was no response.)

1 Q Minor 1, do you understand the question?

2 A No, ma'am.

3 Q Okay. I'm going to rephrase it. When he made you  
4 touch his front part with your hand, did anything happen  
5 with his front part?

6 A (There was no response.)

7 Q It's okay to tell the truth in here.

8 A (There was no response.)

9 Q Will you answer the question, please?

10 A (There was no response.)

11 Q Okay. Well, let's move on.

12 Did Marshall ever touch your mouth with any part of  
13 his body?

14 A Yes, ma'am.

15 Q What part of his body did he touch your mouth with?

16 A His front part.

17 Q Okay. Tell me about that.

18 A He touched me with his front part in my mouth.

19 Q All right. What did he make you do?

20 A (There was no response.)

21 Q What did he make you do with his front part in your  
22 mouth?

23 A He made me suck it.

24 Q And when he made you suck it, what would happen?

25 A (There was no response.)

1 Q Just tell the truth. What would happen when he made  
2 you suck it?

3 A (There was no response.)

4 Q What would happen?

5 A (There was no response.)

6 Q Did anything come out of his front part?

7 MR. HOSKINSON: Leading, Judge.

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Sustained.

10 BY MS. SEAY:

11 Q Can you tell me what would happen when you had to  
12 suck his front part?

13 A He...

14 Q Do you remember you promised to tell the truth?

15 A And then he peed in my mouth.

16 Q Okay. What would happen with the pee?

17 A (There was no response.)

18 Q When he peed in your mouth, what would happen with  
19 the pee?

20 A It would taste nasty.

21 Q Okay. Did you do anything with it?

22 A I spit it out.

23 Q Okay. Did he do anything with the pee?

24 A He put it in my mouth.

25 Q Okay. And I think I may have asked you this, but did

1 this happen in the play room, also?

2 A Yes, ma'am.

3 Q Did that happen one time or more than one time, what  
4 you just talked about?

5 A More than one time.

6 Q Where would the other people in the house be when  
7 Marshall did these things?

8 A In the bed.

9 Q Did Marshall say anything to you?

10 A He told me, Don't tell nobody.

11 Q Okay. Did you, finally, tell somebody?

12 A Yes, ma'am.

13 Q Who did you tell?

14 A I told my grandma.

15 Q Okay. What did she do?

16 A (There was no response.)

17 Q Did she say anything?

18 MR. HOSKINSON: Judge, I'm going to object to any  
19 hearsay.

20 THE WITNESS: No, ma'am.

21 THE COURT: Sustained.

22 BY MS. SEAY:

23 Q Okay. Don't answer that question.

24 You told your grandma. After you told your grandma,  
25 did he keep doing these things?

1 A Yes, ma'am.

2 Q Did you tell your aunt about what happened?

3 A Yes, ma'am.

4 Q Where were you when you told your aunt about what  
5 happened?

6 A Down at her house.

7 Q Do you know where her house is?

8 A In Anderson.

9 Q Okay. Do you spend a lot of time at your aunt's  
10 house?

11 A Yes, ma'am.

12 Q Okay. What do you call your aunt?

13 A Sassy.

14 Q Aunt Sassy. Okay. What made you tell your aunt?

15 A (There was no response.)

16 Q Why did you decide to tell your aunt?

17 A So she can know.

18 Q So she could know?

19 A (Witness nodded.)

20 Q Okay. How did you get along with Marshall? When  
21 Marshall wasn't doing bad things, how did you and Marshall  
22 get along?

23 A Good.

24 Q Did he ever do any fun things with you?

25 A Yes, ma'am.

1 Q Like what? Tell me what kind of fun things he did  
2 with you.

3 A He like took me to the park.

4 Q He took you to the park. Anything else?

5 A No, ma'am.

6 Q Do you remember when the police came to your house  
7 after you told your Aunt Sassy?

8 A (There was no response.)

9 Q Do you remember that?

10 A Yes, ma'am.

11 Q Did you tell them the truth about what Marshall had  
12 been doing?

13 A Yes, ma'am.

14 Q Have you had to talk to some other people about what  
15 Marshall had been doing?

16 A Yes, ma'am.

17 Q Did you tell everybody the truth when you talked to  
18 them about what Marshall had been doing?

19 A Yes, ma'am.

20 Q Has anybody else ever done anything like those things  
21 to you before?

22 A No, ma'am.

23 Q Is everything you talked about today the truth,

24 Minor 1 ?

25 A Yes, ma'am.



1 Q Okay. Now, I want to ask you to do something for me.  
2 I want you to look around in the courtroom. And, if you  
3 see Marshall in the courtroom, I want you to point him  
4 out, the person that did those things to you. Would you  
5 do that for me?

6 A (Witness indicated.)

7 MS. SEAY: For the record, she is pointing at the  
8 Defendant.

9 Minor 1, please, answer any questions and tell the  
10 truth to Mr. Hoskinson about whatever he asks you. Okay.  
11 Sit up in your chair and answer any questions that he may  
12 ask you.

13 CROSS-EXAMINATION

14 BY MS. HOSKINSON:

15 Q Good morning.

16 My name is Tom. I am the lawyer for Marshall.

17 I need to ask you a few questions. And if you don't  
18 understand a question, just ask me to repeat it. Okay.

19 A Yes.

20 Q Now, when the police came to your house, at that  
21 time, you were sharing the room with one of your  
22 grandmothers?

23 A Yes, ma'am -- yes, sir.

24 Q And Minor 2 was sharing a room with one of the  
25 grandmothers?

- 1 A Yes, sir.
- 2 Q And your other sister, S.C., had her own room?
- 3 A Yes, sir.
- 4 Q Your grandmothers rooms had doors to them?
- 5 A Yes, sir.
- 6 Q The play room, did it have doors to that room?
- 7 A No, sir.
- 8 Q When you went to go see Aunt -- I don't know, you
- 9 call her Aunt Sassy, or Aunt Jessica, or do you just call
- 10 her Sassy?
- 11 A Sassy.
- 12 Q When you went to go see Sassy in Anderson, was this
- 13 on the weekends?
- 14 A Yes, sir.
- 15 Q And who would take you to Sassy?
- 16 A She would come and get us.
- 17 Q Is she younger than your grandmothers?
- 18 A No, ma'am -- I meant, no, sir.
- 19 Q Do you have cousins?
- 20 A Yes, sir.
- 21 Q And do they stay with Sassy?
- 22 A Yes, sir.
- 23 Q And when you visit Sassy on the weekends, what kind
- 24 of stuff do you do?
- 25 A I play with my cousins.

1 Q And your other sisters come with you, too?

2 A Yes, sir.

3 Q Did you go to her house on the weekends more than one  
4 time?

5 A (There was no response.)

6 Q Let me rephrase it a little differently. That was  
7 not the only time you were at Aunt Sassy's house for the  
8 weekend; right?

9 A I was there more than one time.

10 Q And when you were talking to Sassy, your other  
11 sisters were there with you, also?

12 A Yes, sir.

13 Q And the reason you were talking to her is because she  
14 asked you a question?

15 A Yes, sir.

16 Q And you remember when the police came, it was  
17 summertime?

18 A Yes, sir.

19 Q And your birthday is just a couple months before  
20 that?

21 A No, sir.

22 MS. SEAY: I'm sorry. I didn't understand her  
23 answer. Did she say "yes" or "no"?

24 BY MR. HOSKINSON:

25 Q Is your birthday in May?

1 A Yes, sir.

2 Q When you talked with Sassy, you then talked to a  
3 police officer when they came to the house?

4 A Yes, sir.

5 Q Did you, also, talk to a lady named Miss Christine?

6 A Yes, sir.

7 Q Did you, also, talk to Miss Bryna?

8 A Yes, sir.

9 Q Did Miss Bryna take you into the courtroom before  
10 today to show you around?

11 A Yes, sir.

12 Q When you went to talk to Miss Christine, did you go  
13 with your sisters?

14 A No, sir.

15 Q Did your sisters talk to Miss Christine on the same  
16 day that you talked to her?

17 A Yes, sir.

18 Q And when you talked to Miss Christine, did you see  
19 some dolls and puppets?

20 A Yes, sir.

21 Q And when you went -- when you saw those puppets, you  
22 knew they were going to be there, because **Minor 1** told  
23 you; right?

24 A Yes, sir.

25 Q Do you remember what you got for your birthday, the

1 birthday right before the police came to the house?

2 A No, sir.

3 Q Have other people besides Marshall lived at that  
4 address with you? Did Uncle Darren live there  
5 before?

6 A Yes, sir.

7 Q Did Uncle Adam used to live there, too?

8 A (There was no response.)

9 Q Do you remember when you took the -- put your hand on  
10 the Bible today --

11 A Yes, sir.

12 Q -- and you talked about things? When you talked to  
13 Sassy, you were not putting your hand on the Bible at that  
14 time, were you?

15 A No, sir.

16 Q And you weren't when you talked to the police?

17 A No, sir.

18 Q And you didn't do that when you talked to Miss  
19 Christine either; right?

20 A No, sir.

21 MR. HOSKINSON: No other questions, Your Honor.

22 MS. SEAY: I'd ask that she be excused, Your Honor.

23 MR. HOSKINSON: Nothing further, Judge.

24 THE COURT: Okay.

25 MS. SEAY: Your Honor, I would move these into

1 evidence. I'm sorry I didn't get them marked for  
2 identification, but I would move them into evidence at  
3 this time.

4 THE COURT: Any objection?

5 MR. HOSKINSON: No objection, Judge.

6 THE COURT: They're in evidence.

7 (WHEREUPON, State's Exhibit Nos. 1 and 2 were marked  
8 for identification and admitted into evidence.)

9 MS. SEAY: Your Honor, the State calls Minor 2  
10 Minor 2.

11 THE CLERK: Please put your hand on the Bible and  
12 raise the other one.

13 Do you promise to tell the truth, the whole truth,  
14 and nothing but the truth?

15 MISS Minor 2 : Minor 2 nodded.)

16 MS. SEAY: You have to answer out loud.

17 THE WITNESS: I promise to tell the truth --

18 THE CLERK: You don't have to repeat it. Just say  
19 "yes" or "no."

20 THE WITNESS: Yes.

21 WHEREUPON,

22 Minor 2

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

24 THE CLERK: Thank you, honey.

25 You can come up here and sit down.

DIRECT EXAMINATION

BY MS. SEAY:

Q Sit up a little bit and say your name.

A Minor 2.

Q Okay. I want to make sure everybody can hear you.

Minor 2, I'm going to stand over here. And I want you to tell these jurors about the things that I ask you. And do you promise to tell the truth?

A Yes.

Q Okay. What is your name?

A Minor 2.

Q What's your last name?

A Minor 2.

Q How old are you?

A Nine.

Q When is your birthday?

A [REDACTED].

Q [REDACTED]. What grade will you be in this year?

A Fourth.

Q Where do you go to school?

A Thomas E. Kerns Elementary.

Q Thomas E. Kerns Elementary. Who do you live with?

A My grandmas.

Q And who are your grandmas? What do you call them?

A Mimi and Granny.

- 1 Q All right. And is Mimi your grandmother?
- 2 A Yes, ma'am.
- 3 Q And is granny your great-grandmother?
- 4 A Yes, ma'am.
- 5 Q Okay. Who else lives in your house?
- 6 A My dogs and my uncle.
- 7 Q Okay. What's your uncle's name?
- 8 A Darren.
- 9 Q Okay. Do you have any brothers and sisters?
- 10 A I have two sisters, and a lot of brothers.
- 11 Q Okay. Tell me about your sisters.
- 12 A My sisters are S.C and Minor 1.
- 13 Q All right. How old is S.C ?
- 14 A 11.
- 15 Q And how old is Minor 1 ?
- 16 A Eight.
- 17 Q Okay. And tell me -- you were telling me just now
- 18 about your -- you have some pets, what are their names?
- 19 A Colby, Gracie, and Daisy.
- 20 Q Okay. Do you help take care of the pets?
- 21 A Uh-huh.
- 22 Q Okay. Did you go to camp last week with your
- 23 sisters?
- 24 A Yes, ma'am.
- 25 Q What did you do at camp?



1       A     We rode horses, and we went swimming. And we done  
2       bows and arrows, biking, and went canoeing, and power  
3       boating.

4       Q     That sounds like a lot of fun. Did you enjoy  
5       yourself?

6       A     Uh-huh.

7       Q     We talked a little bit about this when you first sat  
8       down, and I asked you if you promised to tell the truth.  
9       But I want to talk to you a little bit more about that.  
10      Is it good to tell the truth?

11      A     Yes, ma'am.

12      Q     What does it mean to tell the truth?

13      A     It means to tell the truth about God.

14      Q     Okay. Does it mean to tell what really happened?

15      A     Yes, ma'am.

16      Q     Does it mean to not tell a lie?

17      A     Yes, ma'am.

18      Q     Is it good to tell a lie?

19      A     No, ma'am.

20      Q     All right. If I said that I had a hat on my head,  
21      would that be the truth or a lie?

22      A     A lie.

23      Q     Okay. Why?

24      A     Because you don't have one.

25      Q     Okay. What happens if you tell a lie?

- 1 A Then you'll probably get in trouble.
- 2 Q Okay. Do you promise that everything you say in  
3 court today will be the truth?
- 4 A Yes, ma'am.
- 5 Q Okay. Did a man named Marshall used to live with you  
6 at your house?
- 7 A Yes, ma'am.
- 8 Q Where did Marshall sleep at your house?
- 9 A In my play room.
- 10 Q Okay. Was there a bed in the play room?
- 11 A Yes, ma'am.
- 12 Q Where did you sleep?
- 13 A I slept with my grandma.
- 14 Q Okay. Did Marshall ever do anything to you that you  
15 didn't like?
- 16 A Yes, ma'am.
- 17 Q Can you tell me about that?
- 18 A Yes, ma'am.
- 19 Q Okay. Tell me what he did that you didn't like.
- 20 A He put his weiner in my mouth and started peeing.
- 21 Q Okay. And what would happen with the pee when he  
22 started peeing in your mouth?
- 23 A He would get a sock and wipe it off.
- 24 Q A sock?
- 25 A (Witness nodded.)

1 Q Okay. What would he do with the sock?

2 A He would put it by his bed.

3 Q Okay. Where did this happen?

4 A In the play room.

5 Q Okay. Was it daytime or nighttime?

6 A It was nighttime.

7 Q How would you get in the play room?

8 A Well, I was going down to make sure the TV was off  
9 and if it ain't, I would cut it off. And then he would  
10 wake up and cut it back on and come and get me.

11 Q He would come and get you? Where would he come and  
12 get you from?

13 A My grandma's bed.

14 Q What would your grandma be doing?

15 A She would be asleep.

16 Q Okay. So he would get you from your grandma's bed  
17 and take you to the play room. Did this happen on the  
18 play room bed?

19 A Yes, ma'am.

20 Q Did this happen one time, or more than one time?

21 A More than one time.

22 Q Okay. Did Marshall ever touch any other part of your  
23 body?

24 A Yes, ma'am.

25 Q Okay. What other part of your body did he touch?

1 A He touched where I used the bathroom at.

2 MS. SEAY: Your Honor, with the Defense's permission,  
3 I'd like to show her a diagram as well.

4 MR. HOSKINSON: It's okay, Judge.

5 THE COURT: All right.

6 BY MS. SEAY:

7 Q I'm going to show you a picture of a little girl.  
8 And I want you to show me what part of your body he  
9 touched?

10 A (Witness indicated.)

11 Q I'm going to circle that. And what do you call that  
12 place where you go to the bathroom?

13 A Private.

14 Q Private?

15 A (Witness nodded.)

16 Q Okay. And I'm going to put your name right up here  
17 at the top, "Minor 2"

18 All right. What part of his body did he touch your  
19 private with?

20 A With his weiner.

21 MS. SEAY: I request permission to show her a picture  
22 of an adult male.

23 MR. HOSKINSON: It's okay.

24 BY MS. SEAY:

25 Q This is a picture -- let me get the right one. This

1 is a picture of a man -- a diagram of a man. Show me what  
2 part of his body he touched you with.

3 A (Witness indicated.)

4 Q Okay. And what do you call that?

5 A Weiner.

6 Q Weiner. And I'm going to put your name up here at  
7 the top. All right. He touched you with his weiner.

8 Tell me what part of his body he touched his weiner  
9 to.

10 A My front.

11 Q Okay. Was it over your clothes or under your  
12 clothes?

13 A Under.

14 Q Were you wearing panties?

15 A Yes, ma'am.

16 Q Would it be over your panties or under your panties?

17 A Under.

18 Q Okay. What would happen when he would touch his  
19 weiner to your front private?

20 A Then I would get up and go to my bed.

21 Q Okay. Did anything happen with his weiner when he  
22 touched it to your front private?

23 A No, ma'am.

24 Q Did it hurt you when he touched you with his front  
25 private?

1 A Yes, ma'am.

2 Q Okay. Did he ever touch your front private with any  
3 other part of his body?

4 A No, ma'am.

5 Q Did this happen one time or more than one time?

6 A More than one time.

7 Q Did Marshall ever make you touch any part of his  
8 body?

9 A Yes, ma'am.

10 Q What part of his body did he make you touch?

11 A His weiner.

12 Q Okay. Tell me about that.

13 A He would get my hand and make me touch it.

14 Q Okay. What would happen when he would make you touch  
15 it?

16 A And then I would get up and run to my bed and wash my  
17 hands.

18 Q Okay. Did this happen one time or more than one  
19 time?

20 A More than one time.

21 Q Did Marshall ever say anything to you when these  
22 things were going on?

23 A Yes, ma'am.

24 Q What did he say?

25 A He said, Don't tell nobody.

1 Q Okay. Did you, finally, tell somebody?

2 A Yes, ma'am.

3 Q Who did you tell?

4 A I told my aunt, my daddy, and Tammy, and my grandma.

5 Q Okay. So you told several people?

6 A Yes, ma'am.

7 Q Do you remember when you told your aunt where you  
8 were?

9 A I told her -- I was down in Anderson and I told her.

10 Q Down in Anderson. Was that at her house?

11 A Yes, ma'am.

12 Q Why did you decide to tell her?

13 A Because she knew something about it.

14 Q Okay. Did she ask you if anybody had been touching  
15 you?

16 A Yes, ma'am.

17 Q Okay. And you told her the truth?

18 A Yes, ma'am.

19 Q Do you remember when the police came to your house?

20 A No, ma'am.

21 Q You don't remember that?

22 A (Witness shook head.)

23 Q Okay. Do you remember having to talk to some other  
24 people about what Marshall has done to you?

25 A Yes, ma'am.

1 Q Have you always told them the truth about that?

2 A Yes, ma'am.

3 Q Has anybody else ever done anything like this to you?

4 A No, ma'am.

5 Q Has everything you've talked about today been the  
6 truth?

7 A Yes, ma'am.

8 Q Okay. I'm going to ask you to point out Marshall, if  
9 you see him in the courtroom.

10 A (Witness indicated.)

11 MS. SEAY: Let the record reflect that she's pointing  
12 to the Defendant.

13 All right. Please answer any questions that  
14 Mr. Hoskinson asks you, and tell him the truth.

15 CROSS-EXAMINATION

16 BY MS. HOSKINSON:

17 Q Now, when you go to visit -- I'm sorry. My name is  
18 Tom. I represent Marshall. And I'm going to ask you a  
19 couple of questions.

20 A Yes.

21 Q And if you don't understand what I'm asking, please,  
22 just ask me to repeat the question. Okay.

23 You mentioned Tammy?

24 A Yes, sir.

25 Q And she's -- is this Tammy Tollison?



1 A Yes, sir.

2 Q And she comes to your house to take care of your  
3 grandmothers?

4 A Yes, sir.

5 Q Is she a nurse?

6 A Kind of like that.

7 Q And does she, also, take you to Georgia to see your  
8 doctor?

9 A No, sir.

10 Q Has she ever taken you to Georgia to see your doctor?

11 A No, sir.

12 Q And she comes once a week, maybe?

13 A She comes every day, except Sunday and Saturday.

14 Q Okay. And she's been doing this for a long time?

15 A Yes, sir.

16 Q And Aunt Sassy lives in Anderson?

17 A Yes, sir.

18 Q And you go to Anderson with your sisters to visit  
19 Aunt Sassy?

20 A Yes, sir.

21 Q Do you go on the weekends?

22 A Sometimes.

23 Q Okay. Do you go almost every weekend?

24 A Sometimes.

25 Q Sometimes, you don't?

1 A Sometimes, I do.

2 Q Sometimes, you do. And what do you do when you go  
3 there?

4 A I ride a four-wheeler, dirt bike. I go swimming. I  
5 play with my cousins. And we play in the house.

6 Q Okay. And how many cousins do you have?

7 A I have two.

8 Q And they stay with Aunt Sassy; right?

9 A Uh-huh.

10 Q And you were staying with your grandmothers, along  
11 with your other two sisters?

12 A Yes, sir.

13 Q Minor 1 and S.C. ?

14 A Yes, sir.

15 Q And you told Aunty Sassy because she was asking you  
16 questions?

17 A Yes, sir.

18 Q And you, also, told the police?

19 A Yes, sir.

20 Q You told Miss Christine?

21 A Yes, sir.

22 Q And you, also, talked to your uncle about it?

23 A No, sir.

24 Q Okay. You talked to Miss Bryna Seay about it as  
25 well?

1 A Yes, sir.

2 Q And the pee was yellow?

3 A Yes, sir.

4 Q And your birthday is in March?

5 A Yes, sir.

6 Q And you stayed in your grandmother's bed?

7 A Yes, sir.

8 Q Do you still stay in your grandmother's bed?

9 A Yes, sir.

10 Q And you still visit Aunty Sassy?

11 A Yes, sir.

12 Q Do you have a lot of fun there?

13 A Uh-huh.

14 Q Do you, also, talk -- did you come to this courtroom  
15 before to take a look around?

16 A Yes, sir.

17 Q And when you were talking to Aunt Sassy, and the  
18 police, and Miss Christine, they didn't have you put your  
19 hand on a Bible to swear and tell the truth at that time,  
20 did they?

21 A No, sir.

22 Q Do you still stay with your grandmothers?

23 A Yes, sir.

24 MR. HOSKINSON: Thank you, Judge.

25 MS. SEAY: Your Honor, I would ask that she be

1 excused.

2 And I would offer these two pictures into evidence at  
3 this time.

4 THE COURT: All right. Any objection?

5 MR. HOSKINSON: No, Judge.

6 THE COURT: Okay. They're in evidence.

7 (WHEREUPON, State's Exhibit Nos. 3 and 4 were marked  
8 for identification and admitted into evidence.)

9 Ms. SEAY: You can come down now.

10 Your Honor, the State calls Jessica Hufflin.

11 THE CLERK: Ms. Hufflin, please, come forward to be  
12 sworn in.

13 Please place your left hand on the Bible and raise  
14 your right hand.

15 WHEREUPON,

16 JESSICA HUFFLIN,

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

18 THE CLERK: Thank you.

19 You may be seated.

20 Please state your full name for the record.

21 THE WITNESS: Jessica Hufflin.

22 THE CLERK: Thank you.

23 DIRECT EXAMINATION

24 BY MS. SEAY:

25 Q Ms. Hufflin, will you state your name one more time

1 so I can make sure we hear you back here?

2 A Jessica Hufflin.

3 Q How old are you?

4 A I'm 30 years old.

5 Q Where do you live?

6 A Anderson, South Carolina.

7 Q Do you know the victims in this case, **Minor 2** and  
8 **Minor 1** ?

9 A I do.

10 Q How do you know them?

11 A They're my nieces.

12 Q And do you know how old they are?

13 A Eight and nine.

14 Q Describe your relationship with them. What do they  
15 call you? And how do y'all get along?

16 A They call me "Sassy." And we get along excellent.

17 Q Do you help care for them?

18 A I do.

19 Q Where do they, currently, live?

20 A They live with Ruby Kaluff [phonetic] and Rebecca  
21 Chastain.

22 Q And that is their?

23 A Grandmother and great-grandmother.

24 Q And do you know the ages of their grandmothers?

25 A Grandmother is 58, and great-grandmother is 84.

1 Q All right. And do you have any knowledge of whether  
2 they have legal custody of the girls?

3 A They have full custody.

4 Q Okay. I want to direct your attention to  
5 approximately one year ago when the girls were visiting  
6 with you. Can you tell me about that weekend?

7 A Yes, ma'am. I had went and picked them up on a  
8 Friday. I get them every chance that I can. And I was  
9 giving each of them an individual bath, having a  
10 woman-to-woman talk with them, because I feel like that's  
11 part of my responsibility.

12 And, as I was bathing and caring for them and giving  
13 them a heart-to-heart talk, I just threw in this  
14 statement, Y'all are little girls. And if anybody ever  
15 does anything to you, whether it be a girl or a boy, you  
16 need to tell somebody. They may tell you not to say  
17 nothing, but you need to tell somebody.

18 Q Okay. What other kind of things did you talk with  
19 them about?

20 A I just talked with them about their personal hygiene  
21 as being little girls, how to care for theirselves [sic].  
22 And I was talking to them about responsibility, and that  
23 type of stuff.

24 Q Okay. And then after you had this conversation, at  
25 some point, did **Minor 2** tell you that she had been sexually

1 assaulted?

2 A The very next morning, the two of them came to me.

3 Q Okay. Did she tell you where -- did **Minor 2** tell you  
4 where it had happened?

5 A She did.

6 Q Where did she say it had happened?

7 A At my grandmother's house.

8 Q Okay. Let me see if there's a tissue available.

9 A Thank you.

10 Q All right. Are you okay?

11 A I am.

12 Q Okay. Do you find this upsetting?

13 A Very upsetting.

14 Q Okay. Did **Minor 1**, also, tell you that she had been  
15 sexually assaulted?

16 A She did.

17 Q Did she tell you where it had happened?

18 A She did.

19 Q Where did she say it had happened?

20 A She, also, said at my great-grandmother's house.

21 Q Did she give you any specific location at their  
22 grandmother's house where it happened?

23 A After we got to talking, yes.

24 Q Where did they say it had happened?

25 A It had happened in Marshall's room.

1 Q Where were y'all when they disclosed this information  
2 to you?

3 A On my front porch.

4 Q All right. As a result of what they told you, what  
5 did you do?

6 A I immediately packed them up. Me and my husband come  
7 to Greenville. And I called the law.

8 Q Okay. And did the police come to their house?

9 A They did.

10 Q And did they talk with you and the girls there at  
11 this house?

12 A They did.

13 Q Was Marshall in the home at the time?

14 A He was.

15 Q What was he doing?

16 A He was asleep.

17 Q Did he know the police were there?

18 A He didn't.

19 Q Okay. At some point, did he wake up?

20 A About two hours later.

21 Q What did he do?

22 A He tried to go out the back door.

23 Q Did he say anything?

24 A I've got to get out of here. He said, Oh, shoot.  
25 The police is here. I've got to get out of here.



1 Q Did you overhear him say that?

2 A We did.

3 Q Do you know Mr. McGaha?

4 A I do.

5 Q And how long have you known him?

6 A For about five years.

7 Q Has he lived in the home with the girls?

8 A For about five years.

9 Q And do you know -- do you have any idea why he was  
10 living there?

11 A He was just -- he had nowhere else to go.

12 Q Who allowed him to live there?

13 A My grandmother.

14 Q Did you have any idea about what was going on with  
15 the girls?

16 A I didn't.

17 Q You are very familiar with the girls, are you not?

18 A I am.

19 Q Do you care for them most weekends?

20 A Every chance I get, the majority, yes.

21 Q Okay. And do you go to some of their doctor  
22 appointments with them?

23 A I go every six weeks to Augusta, Georgia, with them.

24 Q Okay. What is their special need that causes them to  
25 have to go to Augusta, Georgia?

1 A They go every six weeks to see the rheumatologist  
2 doctor. They are very, very sick kids.

3 Q What is wrong with them?

4 A They have Weber-Christian disease. And they are very  
5 slow mentally.

6 Q Okay. Weber-Christian disease?

7 A Yes, ma'am.

8 Q Do you know what that is?

9 A It's a very, rare, rare disease. It's almost  
10 like adolescent lupus. They're on a lot of medications  
11 daily.

12 Q So they go every six weeks to Augusta, and they take  
13 daily medication?

14 A Yes, ma'am.

15 Q Do they, also, have to go and get injections?

16 A Twice a week.

17 Q Do you go with them to do that?

18 A I don't.

19 Q Who takes them for that?

20 A Miss Tammy takes them to get their injections.

21 Q And when you're referring to "Tammy," is she the home  
22 healthcare person that helps your grandmother?

23 A She is.

24 MS. SEAY: Your Honor, I'm going to ask that this  
25 item be marked for identification purposes.

1 THE COURT: It's marked as State's Exhibit No. 3?

2 MS. SEAY: State's Exhibit No. 5, Your Honor.

3 THE COURT: Okay.

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

6 BY MS. SEAY:

7 Q Let's see if we can get into this. I want to show  
8 you State's Exhibit No. 5, and ask you if you recognize  
9 this, if we can get into it.

10 Okay. We don't have to take these out, but do you  
11 recognize what's in this pouch?

12 A I do.

13 Q What are those?

14 A A pair of **Minor 1**'s panties.

15 Q Okay. Ms. Hufflin, let me ask you about something  
16 else that we need to talk about. You've been convicted of  
17 some crimes; is that correct?

18 A I have.

19 Q Okay. And, specifically, let me ask you. Were you  
20 convicted of grand larceny?

21 A I was.

22 Q Okay. And were you convicted of false information?

23 A I was.

24 Q And were you convicted of manufacturing and  
25 possession with intent to distribute a schedule four

1 drug?

2 A I was.

3 Q And grand larceny?

4 A Yes, ma'am.

5 Q And financial transaction card theft?

6 A Yes, ma'am.

7 Q And false information?

8 A Yes, ma'am.

9 Q And purse snatching?

10 A Yes, ma'am.

11 Q Okay. Can you tell me, did you have something going  
12 on there?

13 A I did. Thank God, I'm a recovering addict of three  
14 years. My criminal record is -- stimulates from my drug  
15 addiction. Most of those charges, I pled guilty to just  
16 to get out of jail and go get high.

17 Q Okay. How long have you been clean?

18 A I've been clean for three years.

19 Q Did you go through a treatment program?

20 A I did.

21 Q And, at the time that the girls disclosed to you what  
22 happened, were you clean at that time?

23 A I was.

24 MS. SEAY: Okay. Please answer any questions

25 Mr. Hoskinson has for you.

CROSS-EXAMINATION

BY MS. HOSKINSON:

Q Good morning, Jessica.

A Good morning.

Q Have you known Marshall for five years?

A Yes, sir.

Q And you know the children's mother?

A I do.

Q How is she related to you?

A She's my cousin.

Q Okay. And you've been seeing these children every chance you get?

A I do.

Q And is that to mean every weekend?

A The majority of the time, yes.

Q Okay. And do you take the trip to drive up to get them in Greenville yourself?

A I do.

Q Okay. And you spoke with them, it was August of last year?

A That's correct.

Q At that time, you had been coming and seeing them every weekend?

A Just about.

Q And would you say the children enjoyed their time

1 with you on those weekends?

2 A Oh, yes.

3 Q Had you been doing that for months, and months, and  
4 months, and months?

5 A Yes, sir.

6 Q Also, during this time, you're aware that their  
7 mother was not taking care of them?

8 A That's correct.

9 Q She had problems of her own and was not taking care  
10 of them?

11 A That's correct.

12 Q And you're, also, aware that because of the mother  
13 situation that people from the Department of Social  
14 Services were visiting with the children?

15 A Yes.

16 Q And they were visiting with them in December?

17 A I don't know about that.

18 Q Okay. But you're aware that DSS was involved the  
19 year before the children talked to you?

20 A Yes.

21 Q And that DSS would periodically see them every few  
22 weeks, or every couple of months, depending on the need?

23 A I don't know about that.

24 Q All right. Are you aware that in March that Family  
25 Court determined that --

1 MS. SEAY: I'm going to object to Family Court  
2 actions. I don't think that we're trying any Family Court  
3 actions.

4 MR. HOSKINSON: I can rephrase it differently, Judge.

5 MS. SEAY: I don't understand the relevance either.

6 THE COURT: Okay. Why don't y'all come up here and  
7 discuss it.

8 (WHEREUPON, a bench conference was held.)

9 BY MR. HOSKINSON:

10 Q I'm trying to remember where I left off. I'm sorry.

11 During that year before, they would come and see you,  
12 and you would take them to your place about every weekend;  
13 is that correct?

14 A Yes.

15 Q During that time, the mother was absent from the  
16 home?

17 A Yes.

18 Q And you wanted to care for them and help them as much  
19 as you could?

20 A As much as I could.

21 Q And you would drive them to Georgia about every  
22 month?

23 A I do go with them every six weeks to Georgia.

24 Q And you were doing that during that time as well?

25 A Some. When Marshall wasn't, I was.

1 Q Okay. And do you take them to the doctor for the  
2 injections?

3 A No.

4 Q And when they came to see you on the weekend, you  
5 wanted to have a woman-to-woman talk with them?

6 A Yes.

7 Q And where was -- where were you having this  
8 woman-to-woman talk, in your home?

9 A In my home.

10 Q And this is something that you would do every time  
11 you had them on the weekend?

12 A Not every time. But I tried to keep their memory  
13 fresh, simply because they do have mental health issues.

14 Q Okay. You would have woman-to-woman talks with them  
15 not just that time, but other times before that?

16 A That's correct.

17 Q And you would tell them that if anyone does anything  
18 to you, you want them to tell you?

19 A Yes. That one time, I told them that.

20 Q And that is something that you would mention when you  
21 had the woman-to-woman talks with them; is that not true?

22 A Just that one time I told them that.

23 Q And when you had the woman-to-woman talks, what stuff  
24 were you talking about?

25 A Just how they needed to care for themselves, as far



1 as being little girls, responsibility, their personal  
2 hygiene, things of that nature.

3 Q Have you thought about having them come stay with  
4 you?

5 A No.

6 Q And when you talked to them about the heart-to-heart  
7 conversation, it was at nighttime?

8 A It was.

9 Q And then you had them meet with you the next morning?

10 A I did not have them to meet with me.

11 Q You talked to them the next morning?

12 A They came to me the next morning.

13 Q And they told you again?

14 A That was the first time they told me.

15 Q And you listened to them each separately?

16 A Separately, I did.

17 Q And you asked them to repeat it to you?

18 A I didn't.

19 Q You asked them to repeat it to the police later on?

20 A I didn't. The police talked to them.

21 Q Okay. And you still have them visit with you on the  
22 weekends?

23 A They do.

24 MR. HOSKINSON: Thank you, Ms. Hufflin.

25 THE WITNESS: Thank you.

1 MS. SEAY: May she be excused, Your Honor?

2 THE COURT: Any objection?

3 MR. HOSKINSON: No objection, Judge.

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

5 THE WITNESS: Thank you.

6 MS. SEAY: May we approach for scheduling purposes  
7 just briefly, Your Honor?

8 THE COURT: Sure.

9 (WHEREUPON, a bench conference was held.)

10 THE COURT: You may call your next witness.

11 MS. SEAY: Your Honor, the State calls Rebecca  
12 Chastain.

13 Your Honor, for the Court's information, Ms. Chastain  
14 has limited vision. She's going to have Ms. Tollison help  
15 her to the stand.

16 THE COURT: Okay.

17 THE CLERK: Ms. Chastain, would you, please, place  
18 your left hand on the Bible and raise your right.

19 WHEREUPON,

20 REBECCA CHASTAIN,  
21 after first having been duly sworn, testified as follows:

22 THE CLERK: Thank you.

23 You may be seated. I'm going to put the microphone  
24 right there. If you could just try to speak into it as  
25 much as possible.

1           Would you tell us your name, please.

2           THE WITNESS: Rebecca Chastain.

3           THE CLERK: Thank you.

4                           DIRECT EXAMINATION

5           BY MS. SEAY:

6           Q     Ms. Chastain, state your name one more time so I can  
7           make sure everybody back here can hear you.

8           A     Rebecca Chastain.

9           Q     Okay. And, Ms. Chastain, I apologize for asking, but  
10          how old are you?

11          A     58.

12          Q     Okay. And you do have some vision problems. Can you  
13          tell us a little bit about the nature of your vision  
14          problems?

15          A     I have no sight in the left eye, and only shadows in  
16          the right.

17          Q     Okay. Are you the grandmother to [REDACTED] Minor 1  
18          and [REDACTED] Minor 2 ?

19          A     I am.

20          Q     And what do the girls call you?

21          A     They call me Mimi.

22          Q     Do you have legal custody of them through the Family  
23          Court?

24          A     I do.

25          Q     How long have you had the girls?

1 A About five years.

2 Q Do you know Marshall McGaha?

3 A I do.

4 Q How long have you known him?

5 A Between five and six years.

6 Q Did you allow him to live in your home?

7 A I did.

8 Q Can you explain why you allowed him to live in your

9 home?

10 A He was a friend of my daughter, Shannon. And he did

11 not have anywhere else to stay.

12 Q Did he ask to stay with you?

13 A Yes, he did.

14 Q And did you provide him with a bed?

15 A I did.

16 Q Where was his bed located?

17 A In the play room.

18 Q Okay. Did you have any kind of a romantic

19 relationship, or any kind of relationship with him at all?

20 A No, I did not.

21 Q Okay. How did he get along with S.C., Minor 2,

22 and Minor 1?

23 A At first, wonderful.

24 Q Okay. When you say "at first," what do you mean?

25 A He took them places. He done things with them. He

1       helped around the house.

2       Q     Okay. And there were some problems?

3       A     At the end, he wanted to stay out all night, come in  
4       drinking. He wouldn't work half the time.

5           MR. HOSKINSON: Judge, I'm going to object to that  
6       kind of testimony.

7           THE COURT: All right. I sustain the objection.

8           MR. HOSKINSON: 404(a)(1).

9           THE COURT: I sustain the objection.

10          MS. SEAY: Okay. Thank you, Your Honor.

11       BY MS. SEAY:

12       Q     Ms. Chastain, without saying anything else about  
13       that, did Mr. McGaha work while he lived with you?

14       A     Part-time.

15       Q     Okay. And did he help you around the house?

16       A     Some.

17       Q     What did he do?

18       A     Laundry, sweep, mop.

19       Q     So he was a pretty big help around the house?

20       A     Yes, ma'am.

21       Q     Okay. Did you have any idea that he was sexually  
22       abusing the two girls?

23       A     No, ma'am.

24       Q     Did either one of the girls ever tell you that he was  
25       abusing them?

1 A No, ma'am.

2 Q Who is Darren? We've heard mention of him living in  
3 your home. Who is he?

4 A My nephew.

5 Q Does he live there full-time?

6 A No, ma'am.

7 Q Tell me his living arrangements.

8 A He's in and out. He stays with some of his  
9 girlfriends.

10 Q Okay. How old is he?

11 A 35.

12 Q Okay. And, Ms. Chastain, I want to ask you about  
13 some convictions that you have. You have some convictions  
14 for some fraudulent checks; is that correct?

15 A Yes, ma'am.

16 Q Okay. And you were -- did you plead guilty to those?

17 A Yes, ma'am.

18 MS. SEAY: Okay. Thank you very much.

19 Please answer any questions Mr. Hoskinson may have.

20 CROSS-EXAMINATION

21 BY MS. HOSKINSON:

22 Q Rebecca, do you like to go by "Becky," or something  
23 else?

24 A Becky will be fine.

25 Q Becky, you were home when the police came that day?

1 A I was.

2 Q And when the -- also, there -- who else was there  
3 when the police came?

4 A My mom, the preacher from the church was there, and  
5 then Jessica, and all her family come in.

6 Q Okay. And who were all they?

7 A Jessica, her husband, the three kids, Tabby --  
8 Could I ask you a question?

9 Q Hold on.

10 Now, were all these people going in and out?

11 A No. Most of them sat in the living room, except when  
12 the law called one of the kids outside to talk to them.

13 Q And that -- it was just family inside at that point?

14 A Right.

15 Q And, at some point, they took Marshall out of the  
16 house; isn't that true?

17 A Yes, they did.

18 Q And when they took him outside, at that point, all  
19 the family is still inside the house?

20 A Yes, they were.

21 Q And now --

22 A I can't see you. I need to follow your voice.

23 Q That's okay. All right. I mean, I'm trying to stay  
24 in one location so it sounds consistent for you.

25 Does that help?

1 A Okay.

2 Q Now, during this, you know, year before the police  
3 came, the children were living with you?

4 A Yes, sir, they were.

5 Q And there were, also, time and again, people from  
6 Social Services would come by to check up on the children,  
7 because the mother wasn't doing well?

8 A They come every now and then. They do not come  
9 regularly.

10 Q And they would, also, come in and visit the children  
11 at school?

12 A Yes, sir, from what I hear.

13 Q And how is your other eye? You have one eye blind  
14 and the other is what?

15 A Shadows.

16 Q Isn't it true that you told the police that you had  
17 broken up with Marshall, and you were planning to get  
18 him evicted, and the plan was to have him evicted on  
19 the Monday immediately following the day the police  
20 came?

21 A I had not broken up with Marshall, because there was  
22 no relationship. True, I was going Monday and get an  
23 eviction notice.

24 Q And the police were there on Sunday?

25 A Right.



1 Q And you had been planning on that for some time?

2 A Yes, sir.

3 MR. HOSKINSON: Nothing further.

4 THE COURT: Any redirect?

5 MS. SEAY: Nothing further.

6 May she be excused?

7 THE COURT: Any objection?

8 MR. HOSKINSON: No objection, Judge.

9 THE COURT: All right. Ladies and gentlemen, we're  
10 going to take a brief recess. And don't talk about the  
11 case. And continue to keep an open mind.

12 And, if you would, select someone to be the  
13 Foreperson of the jury and just write their name down and  
14 give it to one of the bailiffs.

15 Thank you.

16 (WHEREUPON, the jury was excused from open court at  
17 approximately 10:59 a.m.)

18 THE COURT: All right. So you've got the  
19 pediatrician and --

20 MS. SEAY: And I, also, have Investigator Heather  
21 Hubert, Your Honor. I can call her while we're waiting on  
22 the doctor, if we need to. The doctor said she would be  
23 about 30 minutes. So if you wanted me to, I could go  
24 ahead and call the investigator. She will not be too  
25 lengthy either, I don't think.

1 And then after lunch would be the forensic  
2 interviewer and the forensic interviews. If you would  
3 tell me what time you plan on breaking, that might help me  
4 know what time --

5 THE COURT: Well, I was just trying to figure out --  
6 Heather Hubert, and how long is the pediatrician going to  
7 last?

8 MS. SEAY: She will probably be about -- with me,  
9 probably about 15 minutes or so.

10 THE COURT: Okay.

11 MS. SEAY: 15 or 20 minutes.

12 THE COURT: Do you anticipate a lengthy  
13 cross-examination, Mr. Hoskinson?

14 MR. HOSKINSON: Of which witness, Judge?

15 THE COURT: Either Ms. Hubert or --

16 Is it Dr. Crosswell? Is that the pediatrician?

17 MS. SEAY: Yes, Dr. Crosswell.

18 MR. HOSKINSON: I'm not very good at estimating that  
19 kind of thing, Judge. But if I can say, I don't think  
20 it's going to be lengthy. I could be mistaken, but I  
21 don't think it will be.

22 THE COURT: Well, I guess then we can maybe start  
23 back around 1:45 or 2:00, if that will help you.

24 MS. SEAY: Okay.

25 THE COURT: So we'll take about a 15-minute break and

1 then resume the testimony.

2 (WHEREUPON, a break was taken.)

3 THE COURT: Okay. Anything before we bring the jury  
4 in?

5 MS. SEAY: Nothing further. We're ready to start.

6 THE COURT: All right. Bring the jury in.

7 (WHEREUPON, the jury came into open court at  
8 approximately 11:27 a.m.)

9 THE COURT: Okay. Mr. Garrison, you've been selected  
10 to be the Foreperson, sir. So you will be the liaison  
11 between the Court and the jury. If you need to  
12 communicate with me or any member of the jury needs to  
13 communicate with me, I can only communicate with you out  
14 here on the record, or by way of a written note that later  
15 becomes part of the record. So, hopefully, you won't  
16 have to communicate with me. But if you do, that's the  
17 method.

18 And, of course, you'll preside over the  
19 deliberations. Your vote is not any greater or lesser  
20 than any other member of the jury. You have an equal vote  
21 as everyone else.

22 So with that statement, we'll call the next witness.

23 MS. SEAY: The State calls Dr. Mary Fran Crosswell.

24 THE CLERK: Ms. Crosswell, come forward to be sworn  
25 in.

1 WHEREUPON,

2 MARY FRAN RATCHFORD CROSSWELL,

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

4 THE CLERK: Thank you.

5 You may be seated.

6 Would you, please, state your full name for the  
7 record.

8 THE WITNESS: Mary Fran Ratchford Crosswell.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION

11 BY MS. SEAY:

12 Q Dr. Crosswell, what is your occupation?

13 A I am a pediatrician in the division of child abuse  
14 and neglect with the Children's Hospital of Greenville  
15 Hospital System.

16 Q Okay. By -- and what is your educational background?

17 A I have a Bachelor's from Wake Forest University, and  
18 a medical degree from the University of Louisville School  
19 of Medicine.

20 Q Okay. And can you give us some more information  
21 about your background and training in the field of  
22 medicine?

23 A Certainly. I completed a pediatric residency at  
24 Greenville Hospital System. I practiced, at first, as a  
25 general pediatrician within Atlanta. And then I have been

1 employed in child abuse and neglect for about five years  
2 now.

3 Q Okay. And what do you do, specifically, in the area  
4 of child abuse and neglect now?

5 A When there is a concern that a child has been  
6 maltreated, either physically or sexually abused, then I  
7 am requested to evaluate the child to determine if any  
8 maltreatment has you occurred.

9 Q And do you have specialized training in the field of  
10 child sexual assault examinations?

11 A I have taken multiple continuing medical education  
12 courses, specifically, in the field of child sexual abuse.

13 Q Approximately how many such exams have you performed?

14 A I would estimate probably 400 to 500 exams.

15 Q Okay. And have you previously been qualified as an  
16 expert in the field of child sexual assault examinations?

17 A Yes, I have.

18 Q And have you testified in court before?

19 A Yes, I have.

20 Q As an expert?

21 A Yes.

22 Q Do you know approximately how many times?

23 A I would estimate 10 to 12 times.

24 Q And in what courts have you testified.

25 A I've testified in Family Court and criminal court in

1 the State of South Carolina.

2 MS. SEAY: Your Honor, at this time, I'm going to  
3 offer Dr. Crosswell as an expert in the field of  
4 pediatrics and child sexual assault examinations.

5 THE COURT: Any voir dire?

6 MR. HOSKINSON: No, Your Honor. No objection.

7 THE COURT: Okay. She's qualified.

8 Ladies and gentlemen, just briefly, let me tell you  
9 about expert witnesses. Generally, the rules of evidence  
10 only allow witnesses to testify about things they have  
11 seen or observed through one of their five senses.

12 There is an exception for expert witnesses, who are  
13 persons who have achieved some expertise in their field.  
14 And by reason of their training, education, and  
15 experience, the law deems them expert witnesses. And they  
16 are able to give opinions from things they have observed  
17 or been made aware of. Unlike other witnesses, who cannot  
18 give their opinions as to the facts, the expert witness is  
19 allowed to give such an opinion. However, you, the jury,  
20 are the exclusive judge of the credibility of all the  
21 witnesses, including expert witnesses.

22 And, with that, you may continue.

23 MS. SEAY: Thank you, Your Honor.

24 BY MS. SEAY:

25 Q Did you have an opportunity to examine **Minor 1**

1       Minor 1 ?

2       A     Yes.

3       Q     Did you have an opportunity to examine Minor 2

4       Minor 2 ?

5       A     Yes, I did.

6       Q     Okay. What was the date of the exams for each of  
7       those children?

8       A     I examined them both on September 22nd, 2010.

9       Q     Okay. Where did you perform the examination?

10      A     The exam was performed at the Greenville Rape Crisis  
11      and Child Abuse Center, which is now known as the Julie  
12      Valentine Center.

13      Q     Okay. And what type of exam was performed and for  
14      what purpose?

15      A     This was a sexual abuse exam that was performed in an  
16      outpatient setting versus the emergency room setting.  
17      Because the abuse was alleged to have happened more than  
18      72 hours after the alleged incident.

19            So this exam was to evaluate the child for any signs  
20      of abuse, as well as to perform any necessary testing to  
21      ensure health and well-being of the child.

22      Q     All right. Did you perform a general pediatric  
23      physical exam as part of what you did?

24      A     Yes. We perform a head to toe physical exam on each  
25      patient that comes to the center.

1 Q Okay. And could you briefly describe the nature of  
2 that examination?

3 A Yes. When the child first comes to the center, we  
4 have a child life specialist who will help the child know  
5 exactly what it is that we're going to do during the  
6 examination. So the child is allowed to use all pieces of  
7 medical equipment on a doll so they fully understand what  
8 is going to be done to them as well.

9 After that education piece occurs, I take a thorough  
10 medical history from the care giver who brings the child.  
11 Once that is completed, then I take a history directly  
12 from the child themselves as to what has or hasn't  
13 happened to them.

14 Then we move to the physical examination. We start,  
15 literally, at the head looking at their scalp and their  
16 skin, checking their eyes, ears, nose, mouth, neck, moving  
17 down to the heart and lungs, stomach. And then, lastly,  
18 we perform a genital exam.

19 Q Okay. And did you perform a genital examination in  
20 this case?

21 A Yes, I did.

22 Q All right. Let me back up. And, before we get to  
23 that, I want to ask you, do you have indicated in your  
24 chart the height and weight of each child at the time that  
25 you examined them?



1 A Yes, I do.

2 Q Would you, please, state what the height and weight  
3 of each child was?

4 A **Minor 2** s weight was 50 pounds, and she was 48 inches  
5 tall. **Minor 1** 's weight was 43 pounds, and she was 45  
6 inches tall.

7 Q Okay. Were these girls prepubescent? And, if so,  
8 what does that mean?

9 A Yes, they were.

10 Prepubescent means that they haven't gone through  
11 puberty, so that the effects of any hormones that children  
12 experience were not seen yet. So they had not had any  
13 breast development. They had not had any pubic hair  
14 development, at that point.

15 Q Okay. Could you briefly describe the nature of the  
16 sexual assault examination, and how it's performed?

17 A Yes. We use a piece of medical equipment called a  
18 colposcope. And, in child sexual abuse exams, the purpose  
19 of this equipment is to provide a good light source. It's  
20 a magnification system so that everything we see is  
21 magnified. And then it has a digital camera in which to  
22 record photographs of any findings that we have. And  
23 using the colposcope, we have the child lay on their back  
24 and examine the genital area using the colposcope.

25 Q Okay. And did you do that on both of these children?

1 A Yes, I did.

2 Q Okay. Did you perform any tests on these girls?

3 A Yes, I did.

4 Q Would you, please, describe the tests you performed?

5 A Yes. Based on my evaluation, I felt they were at  
6 risk for sexually transmitted infections. So we tested  
7 the urine for gonorrhea and chlamydia. We did a swab of  
8 the back of their throat testing for gonorrhea. And then  
9 we provided an order for them to take to the hospital to  
10 have blood drawn to check for HIV and syphilis, as well as  
11 Hepatitis B.

12 Q And do you know the results of those tests?

13 A They were all negative.

14 Q Okay. What were your findings in **Minor 1**'s exam?

15 A She had a well-healed burn scar on her back, and some  
16 superficial abrasions or scratches on her stomach. Her  
17 genital exam was normal.

18 Q Okay. And what were your findings in **Minor 2**'s exam?

19 A She had some mild speech difficulties, but otherwise  
20 had a normal exam.

21 Q Okay. Did she have any symptoms noted that might be  
22 associated with sexual abuse?

23 A Yes. Her care givers described her as becoming much  
24 more violent. They had seen a behavioral change in her.  
25 She, also, had previously been potty trained, but had had

1 some wetting accidents at school. And she was having some  
2 itching in her vaginal area.

3 Q Okay. Would you always expect to find evidence of  
4 trauma following a sexual assault, Dr. Crosswell?

5 A No, I would not.

6 Q Can you explain why or why not -- why that might be?

7 A Well, studies have shown that in legally confirmed  
8 child sexual cases, most exams are normal. Currently, the  
9 estimates are around 85 percent of child physical exams  
10 are normal in the setting of sexual abuse. And the reason  
11 for that is either the abuse didn't cause an injury that  
12 could be seen by the eye, or there was an injury and it  
13 has healed without leaving any remnants behind.

14 Q Okay. And, in the case of oral sex, would you expect  
15 to find any sort of evidence?

16 A No. And especially in the history in the way it was  
17 given to me, I would not have expected to find any  
18 findings at that point in time.

19 Q Okay. Can you explain what the hymen is?

20 A Yes. The hymen is a membranous tissue that partially  
21 covers the entrance into the vagina.

22 Q Okay. Does it have an opening? You said it  
23 "partially covers."

24 A Yes. It normally does have an opening, which allows  
25 either vaginal secretions or fluids to exit the vagina, or

1 later after puberty to allow menstrual blood to exit.

2 Q How does it normally allow for penetration?

3 A In a pubertal girl, someone who has gone through  
4 puberty, there are hormones that have an effect on it to  
5 allow it to stretch and close without any problems.

6 Q Okay. What are some common myths or misconceptions  
7 about the hymen that you're aware of?

8 A What's often expressed to me is that the hymen is a  
9 very fragile tissue that would be torn or lacerated with  
10 any signs of injury. That is not always the case. And,  
11 also, it can repair itself, even if there was a tear  
12 there.

13 Q Does a penetrating injury necessarily leave scarring  
14 or tears?

15 A No, it doesn't. Especially in children, the anatomy  
16 of the female genital area, there's multiple layers of  
17 tissue and structures that have to be passed to get to the  
18 vagina. So there's the labia majora, which is the outside  
19 two layers. There's the labia minora. And then between  
20 the labia minora and the hymen, there's a space called the  
21 vaginal vestibule. And all of those can be penetrated  
22 without the hymen even being touched.

23 Q Okay. So, in fact, could a normal exam still be  
24 consistent with the history that you received of sexual  
25 assault by **Minor 1** and by **Minor 2**?

1 A Yes, it could.

2 Q How may a child confuse attempted penetration with  
3 actual penetration?

4 A Well, as I just described it, if those tissues are  
5 penetrated, it can be perceived as something entering into  
6 them. Also, you can have -- in some cases of child sexual  
7 abuse, there's penile contact with the -- just the labia.  
8 So that's perceived as penetration, whereas the vagina has  
9 not, actually, been penetrated.

10 Q Did **Minor 1** tell you that she had been sexually  
11 assaulted?

12 A Yes, she did.

13 Q Okay. Did **Minor 2** tell you that she had been sexually  
14 assaulted?

15 A Yes, she did.

16 Q Did **Minor 1** tell you when she was sexually assaulted?

17 A Yes, she did.

18 Q Did **Minor 2** tell you when she was assaulted?

19 A Yes.

20 Q Did each child tell you where they were assaulted?

21 A Yes.

22 MS. SEAY: Thank you, Dr. Crosswell.

23 Please answer any questions Mr. Hoskinson may have  
24 for you.

25 THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MS. HOSKINSON:

Q Doctor, you mentioned that they're both prepubescent?

A Yes.

Q Okay. You mentioned one is 50 pounds, and the other is 43 pounds?

A Yes.

Q Part of your exam -- the purpose of your exam is to see if there was anything abnormal about the genital area?

A Yes.

Q Because -- well, let me put it this way. If a grown adult male fully erect would penetrate somebody who's small and younger, it's possible that they would cause a change to the genital area?

A There's a possibility if it entered the vagina.

Q Right. And, if it was repeated, that increases the possibilities; correct?

A Correct.

Q And if it's done -- now, you mentioned that someone who's postpuberty would have hormones that would enable the genital area to stretch more freely?

A Correct.

Q In which instance, if they stretch more freely, it would be less likely to have a tear?

A Correct.

1 Q In your examination of these children, the genital  
2 area was normal?

3 A Correct. And, based on their history, I would have  
4 expected it to be normal.

5 Q And all lab tests were negative, which means nothing  
6 showed up?

7 A Correct.

8 MR. HOSKINSON: Thank you, Doctor.

9 THE COURT: Redirect?

10 MS. SEAY: Just briefly.

11 REDIRECT EXAMINATION

12 BY MS. SEAY:

13 Q You said that based on the history, you would have  
14 expected it to be normal. Can you state what the history  
15 was that you received for each child?

16 A There wasn't any description of any blood surrounding  
17 the incident, nor was there a description of pain  
18 surrounding the incident.

19 MS. SEAY: Thank you.

20 May the Doctor be excused, Your Honor?

21 THE COURT: Any objection?

22 MR. HOSKINSON: No objection.

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

24 You may call your next witness.

25 MS. SEAY: We call Investigator Heather Hubert.

1 THE CLERK: Investigator Hubert, would you come  
2 forward, please.

3 WHEREUPON,

4 HEATHER EDWARDS HUBERT,  
5 after first having been duly sworn, testified as follows:

6 THE CLERK: Thank you.

7 You may be seated.

8 Would you, please, state your full name for the  
9 record.

10 THE WITNESS: Heather Edwards Hubert.

11 THE CLERK: Thank you.

12 DIRECT EXAMINATION

13 BY MS. SEAY:

14 Q Investigator Hubert, where are you, currently,  
15 employed?

16 A The Greenville County Sheriff's Office.

17 Q How long have you been so employed?

18 A 13 years.

19 Q Okay. In what capacity do you work with the  
20 Greenville County Sheriff's Office?

21 A I investigate child sexual assaults formerly with the  
22 sex crimes unit, under reorganization, it's now crimes  
23 against children.

24 Q Okay. Do you have previous work experience with the  
25 Sheriff's Office?



1 A I do.

2 Q Would you, please, describe it?

3 A Yes, ma'am. I have worked as a deputy and master  
4 deputy in the uniform patrol division. I have done brief  
5 investigative cross-training stints with vice and  
6 narcotics units and our economic crimes units.

7 Q Okay. And how long did you say you have been  
8 investigating crimes against children?

9 A Our crimes against children unit, actually, just  
10 began this week. I've been with the sex crimes unit since  
11 March of 2010, I believe, a year and a half.

12 Q Okay. Do you know approximately how many cases that  
13 you've investigated during that time period?

14 A I've investigated approximately 175 to 200 sexual  
15 assaults, probably somewhere around 140 to 160 of those  
16 being child sexual assaults.

17 Q Okay. What's your education and training to perform  
18 the duties that you perform?

19 A I have a Bachelor's Degree from Clemson University.  
20 I'm, currently, in course work for a Master's in public  
21 administration. I'm a certified law enforcement officer  
22 by the Criminal Justice Academy in South Carolina. I do  
23 yearly in-service training. I've been through basic  
24 investigation schools, sexual assault investigation  
25 school. I've been to three national training events with

1 the national child -- children's advocacy center. And  
2 I've done five additional courses within child abuse.  
3 I've done a national training event with the National  
4 Child Protection Training Counsel, the NCIS assessment  
5 management and other various less related advanced  
6 training classes.

7 Q Okay. Did you have an opportunity, in your current  
8 capacity, to respond to [REDACTED]?

9 A Yes, ma'am, I did.

10 Q Is that location in Greenville County?

11 A Yes, ma'am, it is.

12 Q And on what date did you respond there?

13 A It was August the 15th, 2010.

14 Q Okay. So right at about a year ago?

15 A That's correct.

16 Q What did you do upon your arrival at [REDACTED]  
17 Drive?

18 A I was briefed by the on-scene uniform patrol  
19 deputies, who had, initially, responded. I spoke with  
20 Rebecca Chastain, Ruby Kaluff, and Jessica Hufflin. And I  
21 interviewed [REDACTED] Minor 2, [REDACTED] Minor 1, and [REDACTED] S.C.

22 Q Okay. Did [REDACTED] Minor 1 tell you that she had  
23 been sexually assaulted?

24 A Yes, ma'am, she did.

25 Q Did she tell you when she had been assaulted?

1 A Yes, ma'am, she did.

2 Q And when was that?

3 A **Minor 1** said since age six.

4 Q Okay. Did **Minor 2** tell you that she had been sexually  
5 assaulted?

6 A Yes, ma'am, she did.

7 Q And did she tell you when that was?

8 A Since age seven.

9 Q Okay. Did they tell you where they had been  
10 assaulted?

11 A Yes, ma'am, they did.

12 Q Where did each child tell you she had been assaulted?

13 A They both stated that it was in the Defendant's  
14 bedroom, also, known as the play room.

15 Q Okay. And what did you do as a result of your  
16 interviews with all those folks?

17 A I obtained warrants for the Defendant's arrest in  
18 this case. And I made a referral to the Julie Valentine  
19 Center, formerly known as the Greenville Rape Crisis and  
20 Child Abuse Center, for the children to have medical exams  
21 and forensic interviews.

22 Q And is that normally what you would do in a child  
23 sexual assault case is do an interview, and then refer the  
24 child for a forensic interview?

25 A It's done in some cases. In a case like this where

1 the alleged perpetrator is in the home with the child, it  
2 is. If the perpetrator is outside the home and we can  
3 ensure that there is no contact, then we may just go to  
4 the forensic interview, but those are not scheduled  
5 immediately.

6 So in an exigent case like this, I would do  
7 interviews myself, yes, ma'am. I probably should have  
8 stated I've, also, been through the forensic interview  
9 training. I'm trained in forensic interviewing with  
10 children.

11 Q Okay. So you did an interview. But then you, also,  
12 referred them for a later forensic interview?

13 A That is correct.

14 Q Okay. What did you determine Marshall McGaha's age  
15 to be?

16 A At report date, he was 58 years old.

17 Q 58 years old?

18 A That's correct.

19 MS. SEAY: Thank you.

20 Please answer any questions Mr. Hoskinson may have  
21 for you.

22 THE WITNESS: Yes, ma'am.

23 CROSS-EXAMINATION

24 BY MS. HOSKINSON:

25 Q Thank you, Officer. Are you Master Deputy now?

1 A Master Deputy, investigator, I'm not picky.

2 Q Okay. You weren't the only officer on scene, were  
3 you?

4 A No, sir. I was the on-call investigator. I was  
5 called in after uniform patrol went out.

6 Q And when you arrived, were a lot of people around at  
7 that point?

8 A That's correct.

9 Q A lot of non-police officers?

10 A There were some.

11 Q They were inside, some were outside?

12 A That's correct.

13 Q And you were talking to the children outdoors?

14 A No, sir. I spoke with them privately, individually  
15 in a room alone inside the home.

16 Q Okay. Before you talked to them, did you have a  
17 chance to talk to any of the family about the report  
18 itself?

19 A Prior to speaking with the children, I spoke with  
20 Ms. Hufflin. After speaking with the children, I spoke to  
21 the grandmother and great-grandmother.

22 Q And Ms. Hufflin -- I'm not asking you what she said,  
23 but she relayed to you information about what she was  
24 told?

25 A Briefly.

1 Q Did you come -- you were there for approximately how  
2 many hours?

3 A How many hours was I on scene?

4 Q Yeah. Do you remember?

5 A I arrived on scene at about 6:00 p.m. I was there, I  
6 would estimate, probably four hours.

7 Q Four hours. And, during that time frame, Marshall  
8 was taken away from the home while you were there doing  
9 what you were doing?

10 A That is correct.

11 Q And he was taken away probably early on during that  
12 four-hour time frame?

13 A That is correct.

14 Q Would it be safe to say sometime between 6:00 and  
15 7:00?

16 A I would estimate.

17 Q Okay. And then, during that four-hour time frame,  
18 the various family members were still present while you  
19 were conducting your questions and investigations; isn't  
20 that true?

21 A When I spoke with the people that I spoke with, that  
22 was very early on in those four hours.

23 Q Okay. But they remained?

24 A That's correct.

25 Q They remained that whole time frame?

1 A Not all of them.

2 Q Okay. You came back later to -- well, you were there  
3 the whole time. You didn't leave and come back; isn't  
4 that true?

5 A That's correct.

6 Q And isn't it true that Rebecca told you that Marshall  
7 was her boyfriend, and that they had broken up about five  
8 or six months earlier?

9 A That's correct.

10 Q And that she was working on trying to get him out?

11 A That's correct.

12 Q That's correct?

13 A She made that statement after I asked her some very  
14 pointed questions about why he was in the home.

15 Q All right. But -- and it's true that she said she  
16 was planning to evict him that next day? Isn't that true?

17 A She did make that statement eventually.

18 MR. HOSKINSON: Thank you, Officer.

19 THE WITNESS: Yes, sir.

20 MS. SEAY: May she be excused from the stand, Your  
21 Honor?

22 THE COURT: Any objection?

23 MR. HOSKINSON: No objection.

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

25 Let me ask you all something up here real quick, if I

1 could, Ms. Seay, and, Mr. Hoskinson.

2 (WHEREUPON, a bench conference was held.)

3 THE COURT: All right. We're trying to juggle the  
4 witnesses schedules, and it's often hard to estimate  
5 times, as you can imagine. But, right now, we're going to  
6 have a lunch break. Just come back at 1:30. Don't talk  
7 about the case. And continue to keep an open mind. And  
8 we'll see you back at 1:30.

9 (WHEREUPON, the jury was excused from open court at  
10 approximately 11:56 a.m.)

11 THE COURT: All right. Your final witnesses will be  
12 the interviewer and the DVD's; is that right?

13 MS. SEAY: That's correct.

14 THE COURT: So, potentially, the case will go to the  
15 jury this afternoon. I don't know how long the Defense is  
16 going to be. And I'm, certainly, not trying to get you to  
17 disclose your strategy, or prevent you from putting forth  
18 whatever witnesses or evidence you wish to.

19 But, just for planning purposes, could you tell me if  
20 you think we'll -- we just need to know so we can get our  
21 materials ready, if you think we might be able to get it  
22 to the jury today.

23 MR. HOSKINSON: I'm estimating that with the two  
24 videos and that testimony, that would probably take  
25 somewhere between one and a half to two hours for the



1 State's witness. That would be 3:30ish when the State  
2 would be done. I don't know if we will do closings. If  
3 he chooses to testify, I think that would be pushing 4:30.

4 THE COURT: Well, we can -- okay.

5 MR. HOSKINSON: That's my best. I'm not good at  
6 estimating.

7 THE COURT: Well, and while we're on that subject,  
8 let me ask Mr. McGaha some questions about his rights to  
9 testify.

10 So, sir, if you could just raise your right hand.

11 WHEREUPON,

12 MARSHALL DEWITT MCGAHA,  
13 after first having been duly sworn, testified as follows:

14 THE COURT: All right. And if you don't understand  
15 anything I ask you, or if you need me to repeat something,  
16 or if I'm just, generally, not making sense, let me know.  
17 Okay, sir?

18 DEFENDANT MCGAHA: Yes, sir.

19 THE COURT: First of all, I need to make sure you  
20 understand your right to testify. You have the absolute  
21 right to take the stand and testify and present your side  
22 of the story. And, if you do that, you just need to  
23 understand, as I'm sure you already do, that you'll be  
24 subject to cross-examination, and Ms. Seay can ask you  
25 questions, much like your lawyer has already asked the

1 State's witnesses questions on cross-examination. And she  
2 can ask you anything that might be relevant or anything  
3 that might bear on your credibility. And she could ask  
4 you questions about any prior convictions you have that  
5 meet the requirements of the rules of evidence.

6 I don't know what, if any, record you have, sir.

7 Would there be anything you would seek to impeach  
8 with as far as the prior record, Ms. Seay?

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

10 He has an auto breaking charge from 2008; a grand  
11 larceny from 2006; a burglary third degree 2006; and a  
12 receiving stolen goods from 2007. Those would be the  
13 offenses I would seek to impeach him with.

14 THE COURT: All right. So, if you took the stand,  
15 the jury might learn of those. And if you did not take  
16 the stand, the jury would not know about those prior  
17 convictions.

18 Whether you take the stand or not is your choice.  
19 And it's a personal right you have, and a decision you  
20 need to make after consulting with your lawyer, which I'm  
21 sure you've already done. But you, certainly, can do so  
22 further over the break.

23 If you choose not to testify, Mr. McGaha, the Court  
24 will tell the jury, as I've already told them, that you  
25 have the absolute right to not present any evidence. You

1 don't have any burden of proof. And you have the right  
2 the Constitution guarantees you to remain silent. And  
3 they cannot hold it against you in any way, or take it  
4 into account whatsoever that you have chosen not to  
5 testify and you've chosen to claim your Constitutional  
6 right. So the Court would tell the jury that if you chose  
7 not to testify.

8 If you chose to testify or present any evidence, you  
9 should know, also, that you give up your right to have  
10 your lawyer make the final closing argument to the jury,  
11 to have the last word, so to speak. If you do not testify  
12 or present evidence, then your lawyer would have the final  
13 word with the jury. Otherwise, the State would have the  
14 final closing argument.

15 Do you understand your rights to testify and not to  
16 testify, sir?

17 DEFENDANT MCGAHA: Yes, sir, Your Honor.

18 THE COURT: And do you have any questions of me about  
19 your rights?

20 DEFENDANT MCGAHA: No, sir.

21 THE COURT: Okay. And I'm not going to ask you now  
22 whether you want to testify or not, because I'm sure you  
23 want to discuss it further with Mr. Hoskinson in regards  
24 to your strategy. But I just need to make sure you  
25 understand your rights, and your options, and the

1 consequences of choosing to testify or not to testify.

2 Thank you very much.

3 DEFENDANT MCGAHA: Thank you.

4 THE COURT: Okay. We'll be back at 1:30 then.

5 (WHEREUPON, a lunch break was taken.)

6 THE COURT: Anything before we bring the jury in?

7 MS. SEAY: Nothing further.

8 MR. HOSKINSON: Nothing, Your Honor.

9 THE COURT: Okay. Bring the jury in.

10 Thank you.

11 (WHEREUPON, the jury came into open court at

12 approximately 1:37 p.m.)

13 THE COURT: All right. Yes, ma'am, you may call your  
14 next witness.

15 MS. SEAY: The State calls Christine Carlberg.

16 THE CLERK: Ms. Carlberg, if you'll come forward to  
17 be sworn in, please.

18 WHEREUPON,

19 CHRISTINE CARLBERG,

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

21 THE CLERK: Thank you.

22 You may be seated.

23 Would you, please, state your full name for the  
24 record.

25 THE WITNESS: Christine Carlberg.

1 THE CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MS. SEAY:

4 Q Ms. Carlberg, where do you work?

5 A I am employed by the Greenville Department of Mental  
6 Health.

7 Q Okay. And do you work anywhere particular as a  
8 result of being employed by the Greenville Department of  
9 Mental Health?

10 A I'm contracted to conduct forensic interviews at the  
11 Julie Valentine Center.

12 Q All right. And the Julie Valentine Center, is that  
13 formerly the Greenville Rape Crisis and Child Advocacy  
14 Center?

15 A Child Abuse Center.

16 Q Child Abuse Center, excuse me.

17 A Uh-huh.

18 Q What does your job entail?

19 A My job entails conducting forensic interviews on  
20 children and developmentally delayed adults.

21 Q Can you explain your work experience and training?

22 A I've been working as a forensic interviewer since May  
23 of 2000. Prior to that, I, also, have been a therapist  
24 with mental illness disorders. And my training -- in  
25 forensic interviewing?

1 Q Yes.

2 A My training -- I'm sorry. I've been to forensic  
3 interview training at Corner House, which is a nationally  
4 recognized training program for forensic interviewers.  
5 And I've, also, been trained at Finding Words in  
6 Mississippi, and here in South Carolina, and various other  
7 training conferences for forensic interviewing across the  
8 nation.

9 Q Okay. Do you have any particular licenses or degrees  
10 in your field?

11 A I am a licensed professional counselor in the State  
12 of Mississippi.

13 Q Okay. And are you a member of any boards, past or  
14 present?

15 A I was a member of the Mississippi -- the Board of  
16 Mississippi Children's Advocacy Centers. I was a member  
17 of that Board in Mississippi.

18 Q Okay. Have you ever given or participated in giving  
19 training in the area of forensic interviewing?

20 A When I worked at the Children's Advocacy Center in  
21 Mississippi, I trained upcoming forensic interviewers at  
22 Finding Words there. And I've, also, helped to train some  
23 of our interviewers at the Julie Valentine Center.

24 Q Okay. Do you have occasion to consult with other  
25 professionals in your field related to child sexual

1 assault?

2 A I -- we do monthly peer review on a national level.  
3 And then we, also, do peer review at our own center with  
4 each other, with the other interviewers.

5 Q So that means other people review your work  
6 periodically?

7 A Yes.

8 Q What is a forensic interview?

9 A A forensic interview is a way for a child to tell  
10 their statement in a non-leading, child-friendly manner.  
11 It's fact finding. It's a way to ask children questions  
12 in a developmentally appropriate manner.

13 Q Okay. What are the scientifically based standards  
14 used to conduct an interview of a child that has been  
15 assaulted?

16 A Well, each stage of the protocol that we use is based  
17 on research. And it's based on like child linguistics, a  
18 continuum of questions, just the research that they know  
19 about the different aspects of each stage of our protocol.

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

22 A I use a protocol called RATAC.

23 Q Can you spell that?

24 A It's R-A-T-A-C.

25 Q And what does RATAC stand for?

1 A It stands for Rapport, Anatomy ID, Touch Inquiry,  
2 Abuse Scenario, and Closure.

3 Q Okay. Is the RATAC method a method that's widely and  
4 generally accepted in your field of expertise?

5 A Yes, ma'am.

6 Q Have you read articles on RATAC that are subject to  
7 peer review?

8 A Yes, ma'am.

9 Q Have you received special training in the RATAC  
10 method?

11 A Yes, ma'am.

12 Q In your past experience as a forensic interviewer,  
13 can you estimate how many children you've seen and  
14 conducted forensic interviews on?

15 A I have conducted 1,784 forensic interviews.

16 Q Okay. And have you ever testified in the courts of  
17 this state?

18 A Yes, ma'am.

19 Q Approximately how many times?

20 A About 22 times.

21 Q Okay. Have you previously been qualified as an  
22 expert in the courts of this state?

23 A Yes, ma'am.

24 Q Approximately how many times?

25 A All those times.



1 MS. SEAY: Your Honor, at this time, I would offer  
2 Ms. Carlberg as an expert in the field of forensic  
3 interviewing and treatment, and diagnosis of children  
4 thought to be sexually abused.

5 THE COURT: Any voir dire or objection?

6 MR. HOSKINSON: Judge, I don't think it's something  
7 that would need to be qualified as an expert under State  
8 v. Douglas. I have a copy of that case.

9 THE COURT: I'm familiar with it.

10 What's the State's position on that?

11 MS. SEAY: The State's position is that she is an  
12 expert in her field, and that she should be qualified as  
13 such.

14 THE COURT: Do you have any questions or voir dire  
15 you wish to ask her, Mr. Hoskinson?

16 MR. HOSKINSON: Yes, Judge.

17 THE COURT: Okay.

18 VOIR DIRE EXAMINATION

19 BY MR. HOSKINSON:

20 Q These courses you took were through Corner House?

21 A Through Corner -- well, not all the courses. I've  
22 been through Corner House, which is just a one-week  
23 course, as well as Finding Words. And then I've been to  
24 conferences across the nation that had different kinds of  
25 courses.

1 Q And those are just follow-up courses?

2 A Yes, some advanced training.

3 Q Is Finding Words out of Minnesota?

4 A No. Finding -- Corner House partnered up with the  
5 National District Attorneys Association. And they wanted  
6 to put training in each state, and that's what Finding  
7 Words is. It's now called Child First. They changed the  
8 name.

9 MR. HOSKINSON: I have nothing further on voir dire,  
10 Judge.

11 THE COURT: Okay. Ladies and gentlemen, I'm just  
12 going to ask you to go back to the jury room for a few  
13 minutes while we take up a matter. And don't talk about  
14 the case, continue to keep an open mind.

15 Thank you.

16 (WHEREUPON, the jury was excused from open court at  
17 approximately 1:45 p.m.)

18 THE COURT: All right. Is there anything further you  
19 want to put on the record related to your objection,  
20 Mr. Hoskinson?

21 MR. HOSKINSON: Do you mean with respect to voir  
22 dire, or with Your Honor?

23 THE COURT: Is there anything further you wish to put  
24 on the record?

25 MR. HOSKINSON: Well, yes, Judge.

1 Under State v. Douglas, the Court said that the  
2 testimony provided by the forensic interviewer in that  
3 case was not something that required them to be an expert  
4 witness. And I would object to certain testimony that  
5 could come from a forensic interviewer that would be  
6 construed as an expert opinion, or the jury would  
7 characterize it even if they weren't an expert as to  
8 impermissible areas of veracity and credibility of a  
9 witness.

10 THE COURT: Are you intending to get into that?

11 MS. SEAY: Your Honor, the Douglas -- I do intend to  
12 get into some issues with her concerning her dealings with  
13 children who have been sexually assaulted, such as delayed  
14 reporting, and time frames, and different things like  
15 that. But the Douglas case can, clearly, not apply here  
16 because the forensic interviewer in that case didn't need  
17 to be qualified, because it didn't include admission of a  
18 videotaped investigative interview. This was prosecuted  
19 prior to the enactment of the law that we're dealing with  
20 now.

21 Prior to the enactment of the child hearsay statute,  
22 corroborating witnesses were primarily limited to  
23 testimony concerning the time and place of an alleged  
24 assault pursuant to Rule 810(d)(1)(d) -- excuse me, 801.  
25 Therefore, the forensic interviewer in Douglas was not

1 offering an expert opinion to coincide with the admission  
2 of a videotaped investigative interview. So this is a  
3 little bit different.

4 And 17-23-175(b) requires a showing that the child's  
5 statement possesses particularized guarantees of  
6 trustworthiness. So one of the factors that you can  
7 consider is whether the interviewer has been trained in  
8 conducting investigative interviews of children, and  
9 certain training qualifications could be established prior  
10 to offering the content of the child's statement or  
11 offering the videotape into evidence.

12 And I would be prepared to offer her expert opinion  
13 concerning various issues which may arise from the  
14 interview, the child's level of competency or  
15 comprehension, delayed reporting, affection for the  
16 perpetrator, several different areas that I'm going to ask  
17 for an expert opinion on.

18 THE COURT: But are you going to ask her about her  
19 opinion as to the childrens veracity?

20 MS. SEAY: I'm going to ask her about whether the  
21 interview was compelling and whether she you found it --  
22 you know, what did she find compelling about the  
23 interviews.

24 THE COURT: Well, I would sustain the objection. I  
25 don't believe Douglas would allow that. I think bringing

1 a witness to give an opinion as to whether someone else is  
2 telling the truth is --

3 MS. SEAY: Well, I don't have to ask that question.

4 THE COURT: Well, I know, but that's what you're  
5 implying.

6 MS. SEAY: Well, if that is why you're not going to  
7 qualify her as an expert, then I would -- you know, I  
8 would tell you I'm limiting -- I'm going to limit myself  
9 to delayed disclosure, reasons that children often don't  
10 tell others about their abuse, time spans for delayed  
11 reporting, time frames based on children developmentally  
12 being able to give time frames, and affection for the  
13 perpetrator. And I can limit it to that, to her giving an  
14 opinion as to those issues.

15 THE COURT: Do you still have an objection given that  
16 limitation, Mr. Hoskinson?

17 MR. HOSKINSON: I do. There's, also, a South  
18 Carolina DSS v. Lisa Seay, where this follows that  
19 decision. I don't know if you're familiar with it, but it  
20 follows the Douglas decision. And it's a DSS case. But  
21 they had an expert saying that the child gave consistent  
22 disclosure about putting a card in her vagina area, biting  
23 her butt and putting a card in her rectum. And,  
24 ultimately, the court said that that's the -- there's  
25 little doubt that the expert found the child's testimony

1 to be credible, and testimony to that effect is  
2 inadmissible.

3 I think what we're seeing is even though the expert  
4 might not be, specifically, saying credibility, the  
5 implication through explaining different reasons for why  
6 something was or wasn't said, or was consistent or was  
7 inconsistent is in the guise of commenting on veracity.  
8 And so that inferential leap is what they're trying to  
9 portray through the use of expert witness.

10 THE COURT: Well, I thought I heard Ms. Seay say that  
11 she was going to stay away from that. She was not going  
12 to ask about whether this witness found the childrens  
13 statements to be credible, or believable, or compelling,  
14 or anything else that would be some synonym for her  
15 opinion as to what the veracity of the children were, so.

16 MR. HOSKINSON: Well, in the Lisa Seay case, the  
17 doctor indicated the child gave consistent disclosure and  
18 recommended therapy.

19 Well, my point is that, Judge, if they're talking  
20 about things -- they're not saying the word veracity, or  
21 credibility, or consistent, but they're talking about  
22 other things that are near synonyms to that, as, oh, the  
23 child -- here's why they didn't do a report right way.  
24 They're suggesting that the child is still telling the  
25 truth.

1 THE COURT: Well, I think -- well, is that the sole  
2 basis of your objection to this witness is her commenting  
3 on the veracity of the witness, directly or indirectly?

4 MR. HOSKINSON: Yes, Judge.

5 THE COURT: All right. So you don't have any  
6 objection to her being qualified as an expert in forensic  
7 interviewing?

8 I guess that's what she's being offered for?

9 MS. SEAY: That's correct. I think she's, clearly,  
10 qualified as one.

11 THE COURT: You just object to her making statements  
12 or giving opinions as to the veracity of the child,  
13 whether she's doing it expressly or --

14 MR. HOSKINSON: Yes, Judge.

15 THE COURT: All right. Well, I find that under Rule  
16 702, the evidence would assist the jury, that the expert  
17 witness is qualified. Based on earlier testimony, I find  
18 the underlying science is reliable.

19 I don't know if there's been publications and peer  
20 reviews of the technique. There's been a prior  
21 application of the method to the type of evidence that's  
22 involved in this case. She spoke about quality control  
23 procedures in the form of peer reviews. And there's no  
24 inconsistency in the method and, in fact, there's  
25 consistency with recognized scientific roles and

1 procedure.

2 I am concerned about -- I mean, what is there -- is  
3 there some kind of error rate involved in this type of  
4 interviewing?

5 MS. SEAY: That is a question you would have to  
6 direct to Ms. Carlberg, Your Honor. I don't know the  
7 answer.

8 THE COURT: Well, I'll let you ask her. I think that  
9 bears on the peer review and the quality control  
10 procedures. I think that's something that I would have to  
11 hear about.

12 Can you ask her about that?

13 MS. SEAY: I can.

14 Would you like for me to ask her now?

15 THE COURT: Yes.

16 DIRECT EXAMINATION

17 BY MS. SEAY:

18 Q Is there an error rate of which you are aware in  
19 forensic interviewing?

20 A There's not an error rate, because there's no right  
21 or wrong in a child's statement. There's not a right  
22 thing for a child to say, or a wrong thing for a child to  
23 say. So in that way, it's not a test. So there's no  
24 error rate that -- you know, for that.

25 Q Would you describe what you're doing as more of a



1 fact-finding mission?

2 A It's fact finding. It's an interview. It's a place  
3 for a child to tell his or her statement about what  
4 happened.

5 THE COURT: Well, there's been a lot of decisions on  
6 the admissibility of scientific evidence recently in our  
7 state and we're still -- even though it's been somewhat  
8 refined, we're still using the framework of State v.  
9 Council, which picked up on the reliability test and State  
10 v. Jones.

11 Based on the record, she's spoke about publications,  
12 and peer reviews, and techniques. And, as I've already  
13 gone through those factors, I'm not going to repeat them  
14 again. But it appears to me that under Rule 702 that  
15 there's been a threshold met as to the reliability. It's  
16 a recognized technique. It is the subject of training and  
17 professional acceptance. There were statements made that  
18 some of the techniques were widely accepted.

19 The RATAC method, I believe, has already been  
20 discussed in case law. And I find that it is admissible.  
21 And, furthermore, I find the probative value is not  
22 outweighed by any unfair prejudice under Rule 403. And  
23 the jury will be able to hear this testimony and give it  
24 whatever weight they wish to.

25 However, as I said, I'm not allowing any testimony

1 about this witness' opinion as to the veracity of any of  
2 the people she interviewed, whether she believed them or  
3 any statements such as I found it compelling, because that  
4 is outside the gambit of the expertise. And that gets  
5 into witnesses who come in to simply testify about whether  
6 someone is telling the truth, which has never ever been  
7 allowed. And I think in the dissent in State v. Douglas,  
8 it was eloquently put forth as to why that is a singularly  
9 bad idea and inadmissible, and could cause a mistrial. So  
10 we'll stay away from that.

11 Anything else before we bring the jury in?

12 MS. SEAY: No.

13 I just want to make sure I'm clear on your ruling  
14 that I can still ask her about the areas that I do intend  
15 to ask her about, about the delayed disclosure, time  
16 frame, and things that she has particular knowledge about  
17 as an expert.

18 THE COURT: Yes. You can ask her about that.

19 MS. SEAY: Okay.

20 THE COURT: What I don't want to happen is for that  
21 be used as some type of guise to imply to the jury that  
22 the witness found these witnesses to be credible.

23 MS. SEAY: I understand.

24 THE COURT: Okay. Is everybody clear on that?

25 MS. SEAY: I think so.

1 THE COURT: You can bring the jury back in.

2 Thank you.

3 (WHEREUPON, the jury came into open court at  
4 approximately 2:01 p.m.)

5 THE COURT: All right. Ms. Seay, you had proffered  
6 the witness, Ms. Carlberg, as an expert in what field?

7 MS. SEAY: In forensic interviewing.

8 THE COURT: Okay. And I find she is qualified.

9 You can proceed.

10 MS. SEAY: Thank you.

11 CONTINUED DIRECT EXAMINATION

12 BY MS. SEAY:

13 Q Ms. Carlberg, did you have an occasion to conduct  
14 forensic interviews of the victims in this case, Minor 1  
15 and Minor 2?

16 A Yes, ma'am.

17 Q Were they referred to you by a law enforcement  
18 agency?

19 A Yes, ma'am.

20 Q By whom were they referred?

21 A Heather Hubert with the Greenville County Sheriff's  
22 Office.

23 Q Okay. Why were they referred to you?

24 A There were allegations of sexual abuse.

25 Q Okay. When and where did your interviews take place?

1 A They took place at what is now called the Julie  
2 Valentine Center, which was then called the Greenville  
3 Rape Crisis and Child Abuse Center on September 20th,  
4 2010.

5 Q All right. How old were they at the time of the  
6 interviews?

7 A [Minor 2] was eight years old, and [Minor 1]  
8 [Minor 1] was seven years old.

9 Q Did you make an audio and/or video recording of the  
10 interviews?

11 A Video recordings.

12 MS. SEAY: Your Honor, I'm going to ask that these  
13 two DVDs be marked for identification purposes.

14 THE COURT: All right.

15 (WHEREUPON, State's Exhibit Nos. 6 and 7 were marked  
16 for identification only.)

17 BY MS. SEAY:

18 Q I just want to ask you a few other questions before  
19 we get into these DVDs of your interviews. During the  
20 interviews, did you utilize non-leading questions with  
21 [Minor 1] and with [Minor 2]?

22 A Yes, ma'am.

23 Q In your field, what is meant by the term delayed  
24 disclosure or delayed reporting?

25 A Delayed disclosure is just any kind of disclosure

1 that's not made immediately following the abuse or the  
2 event.

3 Q Okay. And, in your experience and your training, is  
4 it common or uncommon for children to delay in reporting?

5 A It's common.

6 Q What are some of the reasons, in your experience,  
7 that children do not tell about being sexually abused?

8 A There's a whole host of reasons. Sometimes, children  
9 think they're the only ones who have ever been you abused.  
10 Sometimes, they're embarrassed. Sometimes, they've been  
11 threatened not to tell, either directly or indirectly.

12 They might think -- you know, they might think they  
13 have to go into foster care or their mom might get mad, or  
14 some other family member might get mad. Sometimes, when  
15 there's siblings involved, the child might think that, you  
16 know, they're the only ones being abused, so they're not  
17 going to tell to make sure their siblings are being safe.

18 Q So there are a variety of reasons?

19 A Yes, ma'am.

20 Q In your experience and in your training, is it common  
21 or uncommon for children to be abused by people who are  
22 family members or known and trusted individuals in their  
23 lives?

24 A It's common.

25 Q Based on your professional experience, can you give

1 some examples of the different time spans you've seen  
2 involving the issue of delayed disclosure?

3 A I've seen kids that have told a few hours later, the  
4 day after. I've seen it span months, years. I know of  
5 cases that adults are now disclosing in their 50's or 60's  
6 of abuse that occurred in childhood. So it can -- it's  
7 all lengths of time.

8 Q And, based on your training and experience, is it  
9 common or uncommon for children to be able to give the  
10 exact time frame of their abuse?

11 A It's hard for children to give exact dates. Time is  
12 such an abstract concept, especially to younger children.  
13 And it's very hard, especially if something has occurred  
14 repeatedly. It's hard for children to pinpoint, you know,  
15 the exact date, month, day, year of when something might  
16 have occurred.

17 Q Okay. Based on your training and experience, is it  
18 common or uncommon for children to express affection at  
19 times for the perpetrator of their abuse?

20 A That is common. You know, a lot of times when  
21 children are abused by someone that they trust who is a  
22 like a family member, someone that they're close to, a lot  
23 of times when they're not being abused the -- they have a  
24 good relationship with that person. That person does nice  
25 things for them. They pay them attention. And, besides

1 the actual abuse times, there might be other good things  
2 going on with that person.

3 MS. SEAY: Your Honor, I would like to ask for us to  
4 approach briefly, if we may?

5 THE COURT: Sure.

6 (WHEREUPON, a bench conference was held.)

7 THE COURT: All right. Ladies and gentlemen, I hate  
8 to keep shuffling you in and out, but we're just going to  
9 take another recess and set something up so, hopefully, it  
10 will run smoothly once you return. So I'm sorry for the  
11 inconvenience. But we'll take a brief recess. Don't talk  
12 about the case and continue to keep an open mind.

13 (WHEREUPON, the jury was excused from open court at  
14 approximately 2:08 p.m.)

15 THE COURT: Okay.

16 MS. SEAY: Thank you, Your Honor..

17 And I apologize.

18 THE COURT: No problem. We'll take --

19 MS. SEAY: We just got the DVD back from forensics.

20 And I'd just like to say that that portion is, in fact,  
21 removed. And that way we don't have to rely on our  
22 manipulation of the computer and worry about what may or  
23 may not happen. After falling down the stairs, who knows  
24 what might happen.

25 THE COURT: Yes. I empathize with you. If I look at

1 it, it will break.

2 So we'll take about a 10-minute break.

3 Thank you.

4 (WHEREUPON, a break was taken.)

5 THE COURT: Are you all ready for the jury?

6 MS. SEAY: Yes, sir.

7 Mr. Hoskinson has viewed that portion, and he's  
8 satisfied with it. So I think we're ready to go.

9 THE COURT: All right. You can bring the jury in.

10 Thank you.

11 (WHEREUPON, the jury came into open court at  
12 approximately 2:31 p.m.)

13 THE COURT: Yes, ma'am, Ms. Seay.

14 BY MS. SEAY:

15 Q Ms. Carlberg, let me show you what's been marked as  
16 State's Exhibit Nos. 6 and 7 for identification purposes.  
17 Do you recognize these?

18 A Those are the videos of **Minor 2** and **Minor 1**.

19 Q Okay. Have you viewed these recently?

20 A Yes, ma'am.

21 MS. SEAY: Your Honor, I would, at this time, request  
22 to publish these to the jury.

23 THE COURT: All right. Any objection?

24 MR. HOSKINSON: I just renew prior objections, Judge.

25 THE COURT: Subject to the prior objections, which



1 are incorporated.

2 (WHEREUPON, State's Exhibit Nos. 6 and 7 were  
3 admitted into evidence.)

4 MS. SEAY: May the witness come down from the stand  
5 so we can pull the screen down?

6 THE COURT: Sure.

7 (WHEREUPON, State's Exhibit Nos. 6 and 7 were played  
8 in open court.)

9 THE COURT: Okay. Yes, ma'am.

10 MS. SEAY: I think that I am finished questioning  
11 Ms. Carlberg. And Mr. Hoskinson can ask her any questions  
12 he has.

13 THE COURT: All right. Ma'am, if you'll just resume  
14 the witness stand.

15 MS. SEAY: And we can put that screen up.

16 CROSS-EXAMINATION

17 BY MS. HOSKINSON:

18 Q Good afternoon.

19 A Hi.

20 Q As a forensic examiner, you don't want to inject your  
21 own ideas into the conversation you would have with  
22 children?

23 A Yes, sir.

24 Q And one method of avoiding suggesting something to  
25 the child is the avoidance of what are called leading

1 questions?

2 A Yes, sir.

3 Q And leading questions, an example would be me asking  
4 you, isn't it true that I have a gray coat?

5 A Yes, sir.

6 Q Or I could say it a different way, I'm wearing a gray  
7 coat, aren't I?

8 A Yes, sir.

9 Q Those would be leading questions. An open-ended  
10 question might be if I were to ask you what color is my  
11 coat?

12 A Yes, sir.

13 Q And children, when answering questions, are a little  
14 different from adults in that they often perceive an  
15 adult's question as having more validity than you and I  
16 would have with one another?

17 A They could.

18 Q Very often, adults are the ones who are quizzing them  
19 with questions. That's not something we are, typically,  
20 accustomed to as adults with one another?

21 A Yes.

22 Q And a child may formulate an answer an adult gives  
23 them based on what they think the adult expects the answer  
24 to be?

25 A They could.

1 Q Children are, also -- well, if asked the same  
2 question again and again, if they keep giving the same  
3 answer, they might change the answer because they think  
4 the adult is expecting a different kind of reply?

5 A They could.

6 Q Another important method of questioning, as a  
7 forensic interviewer, is that you try to avoid praising a  
8 child, specifically, for disclosing abuse?

9 A Yes.

10 Q You might say, Thank you for answering my questions.  
11 That would not be a praise in your view, would it?

12 A No. I mean, I did that at the end of the interview.

13 Q That would be different from saying thank you for  
14 disclosing abuse versus saying thank you for answering the  
15 questions?

16 A Yes.

17 Q And, as an interviewer, the style of questioning that  
18 you would give to a child is, typically, not what a lay --  
19 if someone who's not trained would do if they meet up with  
20 a child who has reported or disclosed abuse?

21 A Usually.

22 Q Another thing you don't want to do when you're  
23 questioning a child is to promise them something in return  
24 for their answers?

25 A Yes, sir.

1 Q And I'm not, specifically, saying promising some kind  
2 of item or reward, although that has -- that could take  
3 place, someone could say, if you tell me this, I'll give  
4 you a reward. Do you understand what I mean?

5 A Yes, sir.

6 Q But another more subtle way a person could do that is  
7 if they say, if you provide us this information, we will  
8 make sure you are safe, or we will take -- we'll give you  
9 a new place to live?

10 A I mean, if you're telling them the information you  
11 want them to tell before you say that, then, yes.

12 Q And it's true that when you were meeting with these  
13 children, all three of them were brought to the place the  
14 same day?

15 A Yes, sir.

16 Q And, before you met with them, you were given some  
17 background information about what was going on?

18 A Yes, sir.

19 Q And when you were questioning the first child,  
20 whoever that was, you had that background information  
21 already to yourself; isn't that true?

22 A Yes, sir.

23 Q When you were questioning the second child, and then  
24 the third child -- by the time you reached the third one,  
25 you've already heard not only the background information,

1 but information provided by child one and child two?

2 A Yes, sir.

3 MR. HOSKINSON: Thank you.

4 No further questions, Judge.

5 THE COURT: All right. Thank you, Mr. Hoskinson.

6 Ms. Seay.

7 MS. SEAY: Nothing further from her.

8 May she be excused?

9 THE COURT: Any objection?

10 MR. HOSKINSON: No objection.

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

12 You may call your next witness.

13 MS. SEAY: The State calls Doug Smith.

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

17 WHEREUPON,

18 DOUG SMITH,

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

20 THE CLERK: Thank you.

21 You may be seated.

22 Would you, please, state your full name for the  
23 record.

24 THE WITNESS: Doug Smith.

25 THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. SEAY:

Q Mr. Smith, where are you employed?

A I work for the Greenville County Department of Public Safety, forensics division. I'm assigned to the crime scene unit.

Q How long have you worked for the forensic division crime scene unit?

A Six and a half years.

Q What are your duties?

A I come in behind the first responders and I locate, collect, and preserve physical evidence related to crime scenes.

Q All right. Have you testified in court before?

A Yes, I have.

Q I imagine numerous times?

A Yeah.

Q Let me show you State's Exhibit No. 5 for identification purposes. This package has already been opened, but I want to ask if you recognize it?

A Yes. And it would be item DES-A, which is my initials. And item A identifies the fact that it was collected off another evidentiary item from the incident location. It's packaged with my initials and sealed. And this is, also, my label on -- no one else in this

1 department uses it.

2 Q So that's how you recognize it?

3 A Yes.

4 Q What is in this package?

5 A There is a pair of white panties, girls panties, size  
6 six.

7 Q Where did you find those?

8 A I found them in between a set of three pillows when I  
9 responded to the scene and collected three sets of  
10 pillows. They don't get separated on scene. It comes  
11 back as one unit. It's then separated back at the crime  
12 scene unit in a controlled environment.

13 They were located in between the second and third  
14 pillow. There's two identical bedding pillows, which was  
15 item DES-1. And it was located between the two -- the  
16 ones that had pillow cases on them.

17 Q Do you know what room those came from?

18 A It came from a back bedroom -- I was being advised it  
19 was being utilized as a bedroom, but it was a  
20 multi-purpose room.

21 Q So you packaged these panties up yourself?

22 A Yes, I did.

23 MS. SEAY: Your Honor, at this time, I would offer  
24 this into evidence as State's Exhibit No. 5.

25 THE COURT: Any objection?

1 MR. HOSKINSON: No objection -- subject to our prior  
2 objections, Judge.

3 THE COURT: Sure.

4 Okay. It's in evidence.

5 (WHEREUPON, State's Exhibit No. 5 was admitted into  
6 evidence.)

7 MS. SEAY: Thank you.

8 Please answer any questions that Mr. Hoskinson has.

9 CROSS-EXAMINATION

10 BY MS. HOSKINSON:

11 Q Officer, did you say you found them in the pillow  
12 cases?

13 A In between the pillow cases.

14 Q Are these the pillow cases you're referring to?

15 A Yes.

16 Q Okay. And is this the item you are identifying into  
17 evidence?

18 A Yes.

19 Q Now, what color are these pillows? Would you say  
20 they're white with a red floral design?

21 A You're leading me into that answer.

22 They are -- to me, I would call them a white pillow  
23 with chintz fabric.

24 Q Is there a floral design on those pillows?

25 A Yes.



1 Q And is it a red floral design?

2 A Yes.

3 Q And the panties are white with a pink floral design?

4 A Multi-colored, but the base fabric is white.

5 Q And then the colors are pink and light blue?

6 A I would say that.

7 MR. HOSKINSON: No further questions.

8 Thank you.

9 THE COURT: Redirect?

10 MS. SEAY: Nothing further from him.

11 May he be excused?

12 THE COURT: Any objection?

13 MR. HOSKINSON: No, Judge.

14 THE COURT: All right. Thank you, Mr. Smith.

15 You may call your next witness.

16 MS. SEAY: Your Honor, at this time, the State  
17 rests.

18 THE COURT: Ladies and gentlemen, the State has  
19 completed their presentation of evidence. And we're going  
20 to take a brief recess at this time. Don't talk about the  
21 case, and continue to keep an open mind. Just go back to  
22 the jury room.

23 Thank you.

24 (WHEREUPON, the jury was excused from open court at  
25 approximately 3:52 p.m.)

MOTIONS

1  
2 THE COURT: Okay. Any motions or matters at this  
3 stage from the Defense?

4 MR. HOSKINSON: Yes, Judge.

5 We do wish to renew all of our prior motions and  
6 objections.

7 THE COURT: Yes, sir.

8 MR. HOSKINSON: And, also, I have a motion for a  
9 directed verdict. I understand the Court's concern with  
10 the existence or nonexistence of evidence, but we would  
11 ask that Your Honor consider that. And that there may not  
12 be substantial evidence which would prove the guilt of the  
13 accused. And I would ask for directed verdicts.

14 THE COURT: Okay. Thank you.

15 I respectfully deny any prior motions.

16 And, as far as the directed verdict, I can't weigh  
17 the evidence or gauge the credibility of the witnesses.  
18 And, as you mentioned, I can only determine whether there  
19 is evidence in the record that would support a conviction  
20 by a reasonable jury. And I find that there is evidence  
21 sufficient to send the case to the jury pursuant to Rule  
22 19, and the directed verdict standard. And I decline to  
23 grant a directed verdict.

24 How many witnesses are you going to have,  
25 Mr. Hoskinson?

1 MR. HOSKINSON: If any, it would be one, and that  
2 would be Mr. McGaha. I don't intend to call any other  
3 witnesses.

4 THE COURT: Okay. Yes, ma'am.

5 MS. SEAY: I was just going to ask if we could have a  
6 brief break before we proceed?

7 THE COURT: Oh, yes.

8 Mr. McGaha, do you plan to testify, sir?

9 DEFENDANT MCGAHA: Yes, sir.

10 THE COURT: Okay. We're going to take about a  
11 10-minute recess. And then we'll have the continuation of  
12 the evidence.

13 Thank you.

14 (WHEREUPON, a break was taken.)

15 THE COURT: Anything before we bring the jury in?

16 MS. SEAY: No, sir.

17 THE COURT: Okay. Bring the jury in.

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

20 THE COURT: Ladies and gentlemen, as you heard, the  
21 State has completed their presentation of evidence. And  
22 now it is the opportunity for the Defense to present any  
23 evidence it wishes to. And, of course, as I mentioned  
24 earlier, the Defense has no obligation to produce evidence  
25 of any type or kind, but they, certainly, have the

1 opportunity to do so.

2 So, Mr. Hoskinson, yes, sir.

3 MR. HOSKINSON: The Defense would call Marshall  
4 McGaha.

5 THE CLERK: Mr. McGaha, if you'd come forward to be  
6 sworn in, please. Place your left hand on the Bible and  
7 raise your right.

8 WHEREUPON,

9 MARSHALL DEWITT MCGAHA,  
10 after first having been duly sworn, testified as follows:

11 THE CLERK: Thank you.

12 You may be seated.

13 Please state your full name for the record.

14 THE WITNESS: Marshall Dewitt McGaha.

15 THE CLERK: Thank you.

16 DIRECT EXAMINATION

17 BY MS. HOSKINSON:

18 Q Marshall --

19 A Yes, sir.

20 Q -- I'm going to ask you a few questions. And we're  
21 going to get into something that's pretty important pretty  
22 soon.

23 A Yes, sir.

24 Q But I want the jury to understand a little bit about  
25 how old you are. So, please, tell the jury how old you

1 are.

2 A 59 years old. I'll be 60 on [REDACTED].

3 Q And tell us, where do you call home?

4 A Well, my daughter, she's up in Norfolk, Virginia.

5 But I was born and raised in Pickens, South Carolina. My  
6 mother, she's 92 years old. She's still alive. My father  
7 is dead. My oldest brother is dead. I've got two  
8 brothers alive, and I have two sisters.

9 Q Okay. Where did you go to high school?

10 A Pickens High.

11 Q Did you live in Virginia for a little while?

12 A I lived there from 1980 to 1989.

13 Q And did you come back to Pickens after that?

14 A Yes, sir.

15 Q And were you ever married?

16 A Yes, sir.

17 Q For how long?

18 A I was married for four years..

19 Q Do you have children?

20 A Yes, sir, one daughter.

21 Q Okay. And, over the years, what kind of work have  
22 you done?

23 A Well, I done roofing for about 23, 24 years, hot tar  
24 and gravel roofing and single roofing, just about any type  
25 of roofing. But, for the past 15 years, I've been doing

1 mostly painting. But I can do anything to a house, vinyl  
2 siding, facial windows, flooring and all.

3 Q Do you do electrical work?

4 A Yes, sir.

5 Q Plumbing?

6 A Yes, sir.

7 Q It sounds like anything with a house?

8 A Yes, sir.

9 Q Now, you have a criminal record. And it's true that  
10 you have a grand larceny, a burglary?

11 A Yes, sir.

12 Q Receiving stolen goods --

13 A Yes, sir. In '06, I went to prison for it, the first  
14 time in my life.

15 Q All right. Now, this work over the year -- tell me a  
16 little bit -- how is your health?

17 A Well, my marriage broke up in Virginia. I run around  
18 on my wife. And I caught Hepatitis B, which is a sexually  
19 transmitted disease. And I give my wife the house and  
20 all. I paid spousal support, and child support, and kept  
21 upkeep on the house.

22 And I got with the girl that I got the hepatitis  
23 from. And me and her was together for seven years. And I  
24 tried to get her to come back to South Carolina in 1989  
25 and -- but she didn't want to leave Virginia. She was

1 born and raised up in Virginia.

2 And in 1996 --

3 Q Well, let's -- we'll go through the time frame a  
4 little bit better. I know you've got a lot you want to  
5 say. I understand that. Let's kind of fast-forward a  
6 little bit and talk -- let's talk a little bit more about  
7 recent times in the last few years.

8 A Yes, sir.

9 Q Did you have occasion -- just simply "yes" or "no."  
10 Did you have occasion to come to know the Chastains, and  
11 Ms. Kaluff, and that family? Is that true?

12 A Yes, sir.

13 Q And you've known them for a few years?

14 A I met them in 2005.

15 Q And you heard a lot of talk about the play room?

16 A Yes, sir.

17 Q Now, that play room -- what else is in that room? Is  
18 there a washer and dryer?

19 A There's a washer and dryer there. It's got a door  
20 that closed it off. I hung the door up there. But coming  
21 out of the kitchen into the room, it's about probably a  
22 48-inch opening space with no door.

23 Q Okay. Talk about -- if you wanted to go from that  
24 room to the kitchen, what's that like?

25 A It's about three steps from the back door to the

1 kitchen where there ain't no door at.

2 Q Tell me what you mean there's no door at.

3 A It's just a casing. They ain't never had a door  
4 there.

5 Q Between the what?

6 A Between the kitchen and the -- it's like a  
7 multi-purpose room. The kids, at one time, used it as a  
8 play room. Adam Taylor and Darren, they moved in and they  
9 cleaned out all the toys and all from the kids.

10 Q So this multi-purpose room, is this the play  
11 room/bedroom that we've been hearing about?

12 A Yes, sir.

13 Q That room and the kitchen has what?

14 A Wide open space. It's this wide. You can walk right  
15 through.

16 Q No door?

17 A No door.

18 Q And you were staying in this room for a little while;  
19 isn't that true?

20 A A little while.

21 Q Now, you heard the testimony that we've been  
22 listening to this past day; isn't that right?

23 A Yes, sir.

24 Q Mr. McGaha, did you do anything inappropriate with  
25 those children in that room?



1 A No, sir.

2 Q Did you put your weiner in their mouth?

3 A No, sir. That would be the lowest thing I could ever  
4 do in my whole life. Because Hepatitis B is a sexually  
5 transmitted disease, and them kids would have got it  
6 immediately, just like I did. I got it --

7 Q Mr. McGaha, did you touch those children in their  
8 privates?

9 A No, sir.

10 Q Mr. McGaha, in that room, were there some boxes on  
11 the floor?

12 A Yes, sir. I had my stuff packed. I was going to  
13 leave that Monday morning and go back to Virginia to my  
14 daughter and my grandkids up there. Because there was too  
15 much drug use going on around that place. And it got to a  
16 point where you couldn't handle it no more.

17 Q Well, Mr. McGaha, are you telling the jury that you  
18 did not do anything inappropriate to those children?

19 A Yes, sir.

20 Q Are you telling the jury that you did not put your  
21 weiner in their mouth?

22 A Yes, sir.

23 Q And you did not touch them?

24 A Yes, sir. I did not touch them. I picked them up  
25 getting them out of bed some mornings. Getting them ready

1 for school, I picked them up. They didn't want to get up  
2 out of bed unless I come and got them up out of the bed.

3 **Minor 2** and all, she's a good kid. All of them are  
4 good kids. I feel sorry for them. I've got a soft heart  
5 for kids, always have, and old people. I ain't no saint.  
6 I'm a long way from being a saint.

7 MR. HOSKINSON: Well, Marshall, thank you for your  
8 testimony.

9 And, please, answer any questions the Solicitor might  
10 have.

11 THE WITNESS: I'll be happy to.

12 CROSS-EXAMINATION

13 BY MS. SEAY:

14 Q Mr. McGaha, you lived in the home with Ms. Chastain  
15 and Ms. Kaluff; is that correct?

16 A Off and on spots.

17 Q Okay. You lived there off and on spots for about  
18 five or six years; isn't that right?

19 A No, ma'am. I went down the road in 2006, and got out  
20 in 2009.

21 Q When did you get out in 2009? Was it April, I  
22 believe?

23 A I think it was in April.

24 Q So you lived there before that and you lived there  
25 after that; is that correct?

1 A I was there two little short spurts, and when they  
2 took the kids mother away.

3 Q But you lived there prior to what you said, going  
4 down the road, and you lived there when you got out in  
5 April of 2009, you lived there again; right?

6 A I lived there a little while in 2010.

7 Q Okay. In 2010?

8 A Yes, ma'am.

9 Q You were living there in August of 2010; is that  
10 right?

11 A Uh-huh.

12 Q And you stayed in the multi-purpose room that was a  
13 play room and the washer/dryer room; is that right?

14 A Yes, ma'am.

15 Q You had a bed in there, didn't you?

16 A Yes, ma'am.

17 Q And you slept in there?

18 A Yes, ma'am.

19 Q Okay. And you would make it your habit to go and  
20 pick these little girls up out of the bed while they were  
21 sleeping and take them to your bed?

22 A No, ma'am.

23 Q And then you would take your-penis and you would put  
24 it between their legs under their panties; isn't that  
25 right?

- 1 A No, ma'am.
- 2 Q And you would make it your habit to force these  
3 children to perform oral sex on you; isn't that right?
- 4 A They would have Hepatitis B.
- 5 Q They would, would they? When did you say you had  
6 that?
- 7 A I caught it in 1983.
- 8 Q And you've never cleared it up?
- 9 A No, ma'am.
- 10 Q And who's your doctor again?
- 11 A I went to a doctor in Virginia up on Willow Creek  
12 Road, like just a little health clinic. And he told me  
13 there wasn't nothing -- no medication, at the time, for  
14 it. And I looked it up a little bit and found out that  
15 yellow root would help it.
- 16 Q Okay. So you --
- 17 A I mean, I turned yellow as a gourd.
- 18 Q So you treated it yourself?
- 19 A Yes, ma'am.
- 20 Q And you don't go to the doctor for it?
- 21 A It don't bother me. But I know not to have sex with  
22 nobody.
- 23 Q So you would not have had sex with anybody because of  
24 this Hepatitis B?
- 25 A Not with no kid.

1 Q Because somebody would catch it?

2 A Yes, ma'am.

3 MS. SEAY: Okay. That's all the questions I have.

4 And I'll have a brief reply, Your Honor.

5 THE COURT: Any redirect?

6 MR. HOSKINSON: None, Your Honor.

7 THE COURT: Thank you.

8 You may step down.

9 You may call your next witness.

10 MR. HOSKINSON: The Defense rests, Judge.

11 THE COURT: All right. Do you have a reply?

12 MS. SEAY: I have a very brief reply, Your Honor.

13 THE COURT: All right.

14 MS. SEAY: Dr. Mary Fran Crosswell.

15 THE COURT: Okay.

16 THE CLERK: You can sit down.

17 You're still under oath.

18 THE COURT: Yes, ma'am, you're still under oath.

19 THE WITNESS: Okay.

20 DIRECT EXAMINATION

21 BY MS. SEAY:

22 Q Dr. Crosswell, can you tell us a little bit about  
23 Hepatitis B?

24 A Hepatitis B is a viral infection. It can be found in  
25 blood and other bodily fluids.

1 Q Okay. How does a person contract Hepatitis B?

2 A It can be transmitted either through blood products  
3 or contact with other infected bodily fluids, such as  
4 saliva or semen.

5 Q Okay. What happens when a person contracts Hepatitis  
6 B?

7 A There are two different courses that Hepatitis B can  
8 take. An acute infection can have a range of symptoms.  
9 And the acute infection can clear, which it does in most  
10 cases, or it can progress to a chronic infection.

11 After the age of five years old, most people clear  
12 the infection. Approximately 92 to 96 percent of people  
13 will clear the infection and they will not have any other  
14 trace -- they won't be able to transmit the infection any  
15 further, because their body has become immune to it and is  
16 able to fight it.

17 Q Did you say 92 to 96 percent of people? Is that what  
18 you said?

19 A Yes.

20 Q Clear the infection?

21 A Clear the infection.

22 Q Okay.

23 A So there's a small percentage that will become  
24 chronic carriers of Hepatitis B.

25 Q Okay.

1 A And once a person has chronic Hepatitis B, a very  
2 small percentage of those will still be able to clear it  
3 over time.

4 Q Okay. And would a person self-medicate that  
5 condition? Would that be effective?

6 A It requires medication by a physician.

7 Q Okay. So if a person had chronic -- let's say a  
8 person had chronic Hepatitis B, for example, if they did,  
9 would they need to be treated by a doctor?

10 A They would need to be followed by a physician to --  
11 yes, followed and treated.

12 Q Would they have symptoms of this disease?

13 A Most likely, they would have symptoms of the disease.

14 Q Okay. So they would need to be treated by a doctor?

15 A Yes.

16 Q Okay. And you testified earlier that you performed  
17 some tests on the girls in this case. Was Hepatitis B one  
18 of the tests you performed?

19 A It was.

20 Q And that test, I believe, you testified was negative;  
21 is that correct?

22 A That's correct.

23 Q If the Defendant in this case were a chronic carrier  
24 of Hepatitis B, how likely would it be that these girls  
25 would have contracted Hepatitis B from him?

1       A     In the medical history that I took from the care  
2       giver, I was told that the two, **Minor 2** and **Minor 1**, were  
3       both up-to-date on all their immunizations. They would  
4       have, therefore, received a series of three doses of  
5       Hepatitis B vaccine.

6             Children who've had the full series of Hepatitis B  
7       vaccine are at almost no risk at all of acquiring the  
8       infection. And, currently, even since the time that we --  
9       I did the evaluation on them, the recommendations -- the  
10      current recommendations are that you don't even test for  
11      Hepatitis B any more. So even a child who's had known  
12      exposure to Hepatitis B, if they've had the full series of  
13      vaccines, then we don't even check for Hepatitis B.

14      Q     And it would be highly unlikely that they would  
15      contract it if they were fully immunized as these children  
16      were; is that correct?

17      A     That is correct.

18             MS. SEAY: Thank you.

19             Please answer any questions Mr. Hoskinson has.

20             THE COURT: Cross-examination?

21             MR. HOSKINSON: No questions, Judge.

22             THE COURT: All right. Thank you, Doctor.

23             MS. SEAY: May she be excused?

24             THE COURT: Yes, ma'am.

25             Okay. Any further evidence from the State?



1 MS. SEAY: Nothing further.

2 THE COURT: Ladies and gentlemen, I do understand  
3 what time it is. And if we were to now go into the  
4 closing arguments and instruction on the law, it would  
5 probably take us close to 6:00. And that would interfere  
6 with plans y'all probably have for the evening, in  
7 addition to making a very long day. So we're going to  
8 adjourn this afternoon. And just be back in the jury room  
9 at 9:30 in the morning.

10 I want to mention a couple of things to you. First  
11 of all, somebody has advised me that there's some event at  
12 the Bi-Lo Center tomorrow that may generate a lot of  
13 traffic. So bear that in mind as you come in and try to  
14 get here on time. That's why we're going to start a  
15 little bit later, one reason.

16 The second thing I want to remind you and caution you  
17 about is, as you know, you have to decide this case solely  
18 on the evidence that you've heard during this trial. And  
19 there has been and will be -- as you can tell by the  
20 presence of some of the photographers today, there's going  
21 to be some media coverage of this case. Please don't  
22 expose yourself to any of that coverage. Don't look at  
23 the paper. And, please, refrain from any type of viewing  
24 of any media coverage.

25 Because, under your oath, you must limit your

1 determination of what the facts are in this case to sworn  
2 witness testimony and exhibits. So that means you should  
3 not look at any media coverage, or do any kind of outside  
4 investigation whatsoever. So I know you're growing weary  
5 of me telling you that, but that is imperative that you  
6 follow that instruction.

7 So thank you very much for your patience and  
8 cooperation. And just be back in the jury room at 9:30  
9 for the conclusion of the case.

10 (WHEREUPON, the jury was excused from open court at  
11 approximately 4:38 p.m.)

12 THE COURT: Anything for the record before we recess?

13 MR. HOSKINSON: I renew all my prior objections,  
14 Judge.

15 THE COURT: Yes, sir.

16 MR. HOSKINSON: And I think that -- all prior  
17 objections -- all prior motions and objections.

18 THE COURT: Yes, sir.

19 Thank you.

20 I respectfully deny the motions at this time.

21 Okay. Yes, ma'am, Ms. Seay.

22 MS. SEAY: I just want to mention to the Court that  
23 these were published. You said they were in evidence. I  
24 would hesitate to send these back with the jurors because  
25 they have been notated by Mike Peterson from forensics who

1 worked on them with different dates and things.

2 So I think it would be best if the jury wants to see  
3 any of them that they view them in the courtroom based  
4 on --

5 THE COURT: Okay. Well, if they request --

6 MS. SEAY: -- confusing them.

7 THE COURT: Well, if they request to see the DVD's,  
8 we'll bring them back out here.

9 MS. SEAY: Okay. If that were to happen.

10 THE COURT: I believe we have a proposed verdict  
11 form, so come look at that. Other than that, we'll be  
12 adjourned for the day.

13 Thank you.

14 We'll start at 9:30 in the morning.

15 MS. SEAY: It looks good to me, Your Honor.

16 MR. HOSKINSON: It looks fine to me, Judge.

17 THE COURT: All right. We'll see you in the morning.

18 (WHEREUPON, the proceedings were concluded at  
19 approximately 4:41 p.m., to be reconvened on  
20 Wednesday, August 10, 2011.)  
21  
22  
23  
24  
25

1                    WEDNESDAY, AUGUST 10, 2011

2            THE COURT:    Okay.    We had a delay.    Some of the  
3            jurors were late, so that's why we're starting late.

4            So anything before we bring the jury out?

5            MS. SEAY:    No, sir.

6            MR. HOSKINSON:    Nothing from the Defense.

7            THE COURT:    Yes, sir.    Bring the jury in.

8            (WHEREUPON, the jury came into open court at  
9            approximately 9:48 a.m.)

10          THE COURT:    Good morning, ladies and gentlemen.

11          We are going to have the closing arguments at this  
12          time.    You've heard all the evidence you're going to hear.  
13          And it's now time for the attorneys to give you their  
14          closing arguments, and then I will give you the  
15          instructions on the law.    And then the case will be in  
16          your hands for a decision and a verdict.

17          So, Ms. Seay, whenever you're ready.

18          MS. SEAY:    Your Honor, I will waive opening on the  
19          law.

20          THE COURT:    All right.    Mr. Hoskinson.

21          MR. HOSKINSON:    Thank you.

22          May it please the Court.

23          THE COURT:    Yes, sir.

24                    CLOSING ARGUMENTS

25          MR. HOSKINSON:    Ladies and gentlemen, good morning.

1           Now, this is the point in the case where we come  
2 before you and sum up all this evidence we've been hearing  
3 these last couple of days. And, as I mentioned at the  
4 beginning, evaluating a case like this is no easy task.  
5 We need to pause for a moment and realize that we're  
6 dealing with a charge that by the name itself causes  
7 people to have a bit of hesitation, or shock, or make  
8 assumptions about things. And we need to step back a  
9 little bit and assess this case logically and scrutinize  
10 what we've heard. And what I'd like to do is kind of go  
11 through all this evidence and provide you with a way of  
12 viewing this evidence.

13           And what we've learned is that the children -- the  
14 three children are living in the home with three adults.  
15 Two of the children are coming forth with an allegation.  
16 Two of the adults are grandmothers, and the third adult is  
17 an uncle. The two children that are coming forward with  
18 an allegation share a room with a grandmother. The child  
19 that does not share a room is not coming forward with a  
20 claim. Marshall has his own room to himself. What used  
21 to be a play room is now his room. And there's a mother,  
22 but she's not around.

23           What is important to know is that there are people  
24 involved in the childrens lives. There's the Aunt Jessica  
25 that they call Sassy. They've got contact with DSS over

1 time. They've got doctors that they go to see. And the  
2 allegation, ultimately, comes at around the same time that  
3 one of the grandmothers is trying to get Marshall out of  
4 the house, and anticipated having him evicted on Monday.  
5 And the claim comes forward through the children, through  
6 Aunt Jessica that same weekend. So you say, whoa, wait a  
7 second, something is oddly convenient about all this  
8 happening at the same time.

9 I, also, want to talk to you about the witnesses and  
10 their testimony. And you heard from Marshall himself. He  
11 was pretty clear that nothing happened. He did not do  
12 anything inappropriate with those children. He's a man  
13 that works, paints houses, fixes roofs. He's lived in  
14 Pickens. He's lived in Virginia. He's had problems in  
15 his life. He has had some charges. He's been divorced.  
16 But he's told you he did not do anything inappropriate.  
17 Nothing with the weiner, no touching of the privates. He  
18 did not do what they are alleging.

19 Now, you've heard the children speak, too. You've  
20 heard them testify, and you've heard them on video. Now,  
21 let's talk about the video for a moment. The video is  
22 done through someone who's telling you that they're going  
23 to ask questions in a certain way. They're going to try  
24 to avoid asking what's called a leading question, because  
25 leading questions are very suggestive of what kind of

1       answer you're expecting to receive.

2               But if you think it through and you look at how this  
3 case developed, you know these children have already  
4 talked to somebody a little bit beforehand. And you know  
5 that the person who's asking the questions has been  
6 briefed about what is going on. So to what extent are  
7 those questions, maybe subconsciously or unintentionally  
8 by the examiner, trying to guide the children to reconfirm  
9 something they had already heard from the children, but  
10 not probe into areas that seem to be vague or  
11 inconsistent? They don't want to go too far and ask too  
12 many questions.

13              You have some vagueness about when. And they  
14 explain, well, children are not able to give too many  
15 details about that. You have a situation where a child  
16 would say, well, we were both on our backs. And the  
17 examiner will say, well, how could that have happened if  
18 you're lying on your back side by side to try to guide the  
19 child, to kind of force them to say something they expect  
20 them to hear.

21              It could be a question like, Did anything come out of  
22 the weiner? And that would be a leading question. The  
23 children say it was pee. One of them says it's yellow.  
24 But the probing forensic aspect of this question session  
25 is not asked more about. Yellow pee, what do you mean?

1 What did it -- you know, try to get some description. Was  
2 it sticky or not? You know, try to clarify what are they  
3 saying. Why is it yellow? Now, you might say, well, they  
4 pee, something comes out, that's the word they used for  
5 it. But then they say yellow, and you're saying, wait,  
6 things are not quite adding up. It could be questions  
7 like no part of his body ever touched any other part of my  
8 body. And then later on, the examiner will say, well, has  
9 anyone ever touched your pocketbook? Suggesting a leading  
10 question and trying to get to what they're looking for.

11 And I asked Christine, the examiner, isn't it true  
12 that adults will sometimes repeat questions to a child to  
13 try to get the answer they expect the child to have? And  
14 we understand that children, if you keep asking them the  
15 same thing over and over again and they give one answer,  
16 that's not the answer you want and you ask it again, the  
17 child will then shift their answer because adults to them  
18 are authority figures. Adults know more than a child  
19 knows and a child wants to please an adult by giving them  
20 the answer the adult is expecting to receive.

21 Then you'll have a series of questions with **Minor 1**  
22 where, Did anything else happen? Did anything happen to  
23 your mouth? **Minor 1** shakes her head. Christine asks  
24 again, Did anything else happen? I thought you said  
25 something happened to your mouth. There's a pause. She



1 asks again, Did his weiner touch your mouth? And they're  
2 asking the questions over and over again. And you have to  
3 assess this and decide for yourselves how much of a  
4 forensic interview is this. How valid -- is this really  
5 validating anything for you, other than just hearing  
6 something twice in the courtroom and by repetition you're  
7 somehow going to think, well, it's more true because I  
8 heard it once on the stand and heard it on a video. It's  
9 just there for you to evaluate.

10 And another part with **Minor 1**'s session with the  
11 dolls. Towards about the 31 minute mark, 31:40,  
12 thereabouts -- and each video is approximately, you know,  
13 30, 35 minutes long, so towards the end. Christine, as  
14 she's asking a question, it seems like her voice was  
15 taking a different inflection. Because the dolls were  
16 being demonstrated with the feet to head -- feet to the  
17 head. And she's saying, well, you know, is that how it  
18 was, his feet were at your head that way? Like she's  
19 curious and a bit surprised, and thinking something  
20 doesn't seem right here about what they're describing.  
21 You know the positions didn't quite make sense.'

22 And you have to wonder, she's kind of like  
23 double-checking with the child. Is she trying to guide  
24 the child to get her answer the way they expect it to be?  
25 And look at how the children talked. They're not

1 demonstrating themselves as someone who's been completely  
2 traumatized and upset. And one wants to play with  
3 puppets. That doesn't seem very -- like how you would  
4 expect someone to be after they've been through what  
5 they're describing.

6 So we're looking at this thinking, well, are things  
7 really adding up the way we want them to be or what they  
8 expect them to be. And you have vagueness. And you start  
9 to wonder, why aren't they getting down to the things we  
10 kind of want to know. We want to know more about the  
11 grandmothers in the home saying they're sharing a room  
12 with the children. And the children are saying that  
13 they're being lifted out of their beds and brought back  
14 and forth and the grandmothers are not telling you about  
15 disturbances, like someone waking you up at night. This  
16 is going on like this -- we have grandmothers there. We  
17 have other people involved in their lives, doctors, and  
18 DSS. And no one is detecting anything.

19 And you find out that the room where this is alleged  
20 to have occurred has no door. They're saying the stuff  
21 would happen in a room to the kitchen, a room in the home  
22 where people for any reason would come into the kitchen  
23 randomly, surprised. You know, you don't know when  
24 someone might come into a kitchen. And this is supposedly  
25 occurring in that room where anybody can just come in and

1 see what's happening.

2       Minor 1's video, she says it happened in the daytime  
3 and the nighttime. Grandmas are in the house in the  
4 living room. No one saw Marshall do anything to her. The  
5 sisters are sometimes in the living room. It doesn't add  
6 up that these kinds of things would take place in a  
7 location where -- and not even the grandmother, some of  
8 the other children are wandering in, coming in and seeing  
9 something happen like this. So it gives you some pause  
10 and questions, are things really adding up the way we  
11 would expect them to if what they're saying is true?

12       And the police talked about the underwear they  
13 discovered. Even they did not notice it at first. It was  
14 something that they found -- like when they get back to  
15 the evidence room and they're taking things apart, they  
16 notice it there. And I questioned the officer about  
17 what -- well, you found the pillows, tell me about the  
18 pillows. They were white pillows with a floral design.  
19 The underwear is white with pink and light blue  
20 floral-type designs through it.

21       And from our own personal experiences, we often find  
22 clothes in places where we don't expect them to be. We  
23 lose a sock in the laundry, or something is stuck to some  
24 of our clothing. Who knows? They're similar colors. Are  
25 they trying to say one thing about this or not? Are the

1 children saying that he would keep things from them  
2 afterwards? But when you start to look at what else is  
3 not consistent about their descriptions and how things are  
4 not adding up, you have to wonder, is the State succeeding  
5 in their attempt to prove to you beyond a reasonable doubt  
6 that what the children are saying, actually, happened.

7 Now, as I said at the beginning of the trial, it  
8 might not be clear why the children are saying this, but  
9 that's not something we -- that's not something that you  
10 need to necessarily answer. What you do know is that they  
11 were talking to Aunt Jessica. And Jessica was talking to  
12 them about, you know, has anyone touched you or hurt you?  
13 And then information she says comes to her.

14 They had medical exams which come back -- well,  
15 there's two medical issues. There's the physical medical  
16 exam showing there's nothing wrong with them. And that's  
17 good. There's no damage to their private area. They have  
18 a -- the other medical screening, the results come back  
19 negative. That's good, too. So what you're left with is  
20 them saying something.

21 Now, it's clear they're saying something. But your  
22 question is whether or not that's true, and it's been  
23 proven beyond a reasonable doubt. Now, Aunt Jessica is,  
24 obviously, upset. She's been through a lot herself. And  
25 I understand that. And she cares about the children. And

1 that's good. But you need to assess whether or not the  
2 claim that's being made, is it an accurate and true claim  
3 from the children themselves.

4 Now, they enjoy spending time in Anderson with their  
5 Aunt Jessica and their cousins. They go there on  
6 weekends, and they have a good time. And during the week,  
7 they're with their grandmothers in their own home with  
8 this old guy that lives in the laundry room. It used to  
9 be their play room, now it's his room. It's occupying  
10 space in their home. And one of the grandmothers has been  
11 trying to get him out of there for a long time. And that  
12 Monday, they want to evict him. And the claim comes  
13 forward that weekend as well.

14 So we need to evaluate the real question of this  
15 case, can they prove what they are saying is, actually,  
16 true? There's some vagueness. They're unclear about  
17 when. They aren't clear about the details of exactly when  
18 it occurred. They're unclear about the pee, yellow pee.  
19 There's activity in a room that has no door. The  
20 allegation is kind of a certain period to be more  
21 convenient than you would necessarily expect. And it's  
22 just people saying something.

23 So we hear a lot about this term beyond a reasonable  
24 doubt. And the Judge is going to explain that term to  
25 you. At the end of the day, it's not just some old phrase

1 that we throw around. It's a way to make sure that  
2 there's no mistake. It's to make sure that something  
3 doesn't happen based on just some assumptions, or vague  
4 evidence, or insufficient evidence. And when things don't  
5 add up and there's doubt and there's hesitation to  
6 convict, then that person is not guilty.

7 I thank you for your time. And I turn it over to  
8 you.

9 Thank you.

10 THE COURT: Thank you, Mr. Hoskinson.

11 MR. HOSKINSON: Thank you, Your Honor.

12 THE COURT: Yes, ma'am, Ms. Seay.

13 MS. SEAY: Thank you, Your Honor.

14 Good morning, ladies and gentlemen.

15 First of all, I'd like to thank you for being back  
16 today. Thank you for your service on this jury. I know  
17 that everyone has personal obligations, and business  
18 obligations, and family obligations that this jury service  
19 has taken you away from. We know that. And we appreciate  
20 your being here. It's very important. This process would  
21 not work if it weren't for you being here. And it's a  
22 very important day for both this Defendant and for these  
23 victims. It's very important that you're here. And we  
24 thank you for that.

25 This Defendant thought that he had committed the

1 perfect crime when he chose to go live with two elderly  
2 women with three children. And he figured out who were  
3 the weaker of those children, who were the most  
4 vulnerable, who could he pick on that wouldn't tell about  
5 what he was going to do. And he chose this eight-year-old  
6 and this nine-year-old. And he stole their innocence away  
7 before it should have been taken.

8 I want to tell you a little bit about why I believe  
9 that the State has proven its case beyond a reasonable  
10 doubt. And I thank you for your attention. You heard how  
11 this sexual abuse came to light. The kids told their Aunt  
12 Jessica, Aunty Sassy, when they were on a weekend visit  
13 with her away from the Defendant in Anderson. You heard  
14 about that she had a talk about female things, that she  
15 felt that that was her place.

16 They don't have a mother in their life. And they're  
17 being raised in the legal custody of their grandmother and  
18 great-grandmother. Aunt Sassy felt that it was her place  
19 to have a talk about girl stuff, so she did. And she said  
20 for the first time she, also, included something about the  
21 fact that if anybody ever touches you, you ought to tell  
22 somebody. You ought not keep that a secret.

23 The next morning, both girls came to her and said,  
24 Marshall has been touching us. She took immediate action  
25 by getting in the car with the children and her husband

1 and driving to Greenville and calling the police. The  
2 police responded over to the home where the grandmothers  
3 and the children were living, along with the Defendant.

4 Now, I think it's important to note that these  
5 children told an adult that they trusted. And Ms. Hufflin  
6 was candid with you about some of the problems that she's  
7 had and that she's overcome. And that she was clean at  
8 the time of this disclosure, that she had been through  
9 treatment. So I ask you not to hold that against her,  
10 that some of her history is not so good. You're the judge  
11 of her credibility and her believability as a witness on  
12 the stand. And the Judge is going to tell you that, that  
13 you're the sole judge of the credibility and believability  
14 of each witness on the stand.

15 And Ms. Hufflin just happens to be somebody that  
16 these children were close to. They spent a lot of time  
17 with her. She picked them up almost every weekend, I  
18 believe she testified, and took them to her house to play  
19 with their cousins and to have a good time. And she  
20 helped care for them. And they trusted her.

21 And **Minor 1** testified that she told her -- when I  
22 asked her, Why did you tell your aunt? She said, So she  
23 could know. That was her answer. That's a child's  
24 answer. So she could know. That's not some grand  
25 conspiracy to get Marshall McGaha out of the house.



1 That's a child's answer.

2 And the other child, **Minor 2**, testified when I asked  
3 her why did you tell your aunt, she said, So she could do  
4 something about it. Because, in her mind, she wanted it  
5 to stop. And she thought maybe her aunt could put a stop  
6 to it somehow.

7 But I submit to you that the children aren't  
8 sophisticated enough, or old enough, or smart enough to  
9 come up with some grand plan to get Marshall McGaha  
10 evicted by making this disclosure on the weekend before  
11 grandma was going to evict him. They just aren't. And I  
12 think that you could tell that about them when they  
13 testified, about their developmental levels, and what kind  
14 of kids they are.

15 Both of those little girls were very brave yesterday.  
16 And they took the stand, and they testified about what  
17 this man did to them in front of all of you, people that  
18 they don't know, people out here in the courtroom that  
19 they don't know, a Judge, and the man who did it to them  
20 was sitting here. They were very brave. I think that  
21 they did something that most adults might not be able to  
22 do. I'd like to ask some adult in the courtroom to just  
23 go take the stand and just tell us about your last sexual  
24 encounter and all the details. You'd be probably sick  
25 with embarrassment and shame. And that's a little bit how

1       they were. You could tell that they really didn't want to  
2       be talking about it, but I asked them to tell you the  
3       truth. And I submit to you that that's what they did.  
4       They told you the truth.

5               And **Minor 1** told you that Marshall touched her with  
6       his hands on her pocketbook. And that's the word that she  
7       uses for her vaginal area. So she used her own words to  
8       describe to you what happened. And she said that it  
9       happened more than one time, that it happened every time  
10      in the play room, and that it happened at night when he'd  
11      come get her out of the bed.

12             And we're talking about she's sleeping either with --  
13      I don't know which grandmother she slept with, but you  
14      remember it how they testified to it. But she slept with  
15      one of the grandmothers. One of the grandmothers is  
16      practically blind. The other one is quite elderly. And I  
17      submit to you that it is entirely possible that this man  
18      could lift a child out of the bed with the parent -- the  
19      grandparent unknowing in a deep sleep and take the child  
20      to the play room. That is entirely possible. You think  
21      about at home at night when your child falls asleep in  
22      your bed because you let them lay there --

23             MR. HOSKINSON: Objection, Judge.

24             THE COURT: Okay.

25             MR. HOSKINSON: May we approach?

1 THE COURT: Sure.

2 (WHEREUPON, a bench conference was held.)

3 MS. SEAY: If I think about how deep my children  
4 sleep and, sometimes, I'm able to pick them up and move  
5 them to their beds without them arousing or my husband  
6 arousing. I think you can see it's an entirely possible  
7 situation that this could have occurred.

8 **Minor 1**, as I said, told you that he touched her  
9 pocketbook. And she showed you on this diagram that  
10 you'll have in evidence what private area she's talking  
11 about. And she said that he touched her with his front  
12 part. And she showed you on this diagram what she  
13 considers to be Marshall's front part.

14 But she gave you other details. She told you it was  
15 under her clothes, under her panties, more than one time  
16 in the play room. And she, also, said that he made her  
17 hold his front part. She described that. She, also,  
18 described that he made her suck it. That's what she said.  
19 Those were her words. That is a sexual battery, ladies  
20 and gentlemen. Criminal sexual conduct requires you to  
21 find a sexual battery. And oral sex forced upon a child  
22 is a sexual battery. She said that he peed in her mouth,  
23 and he told her not to tell anybody. But she, also, said  
24 that they got along well, that he took her to the park.

25 So here we have what I was talking to the forensic

1 interviewer about yesterday, that it's common for a  
2 perpetrator to be a known and trusted adult in a child's  
3 life. Because that's how they gain that child's trust.  
4 They pick a weak and a vulnerable child. And these  
5 children have multiple problems. You heard about the fact  
6 that they have to go to a rheumatologist every six weeks,  
7 that they have some other issues going on. And they don't  
8 have any other male guidance in their life. And so he did  
9 good things with them. But he, also, did the bad things.  
10 And that's what they wanted to stop.

11 There was some mention made by the Defense about the  
12 fact that the children have had to talk to a lot of  
13 people, including me. And I submit to you that I wouldn't  
14 be much of a prosecutor if I had a witness that I just put  
15 on the stand without knowing what they were going to say.  
16 So, of course, they've talked to me. And did I show them  
17 the courtroom? Yes, I showed them the courtroom. I  
18 wanted them to know what to expect. And I would do the  
19 same for an adult sexual assault victim as well. Because  
20 you want them to know what's going to happen in this  
21 strange world. This is not somewhere people come every  
22 day. These children are eight and nine years old.

23 What I'm getting at is, please, consider what kind of  
24 motive these children would have to have said what they  
25 said a year ago, and then to continue to say what they're

1 saying now to you yesterday. What is their motive?  
2 They're not gaining anything by this. They're still in  
3 their same situation. And they've gained nothing, except  
4 having to come in here and talk about personal, shameful,  
5 awful things. And they didn't have any motive, except  
6 that it's the truth. And I submit to you that it  
7 happened, and that's why they said it then and they're  
8 still saying it now. And they've been consistent. And  
9 you can see that from the forensic interview and from what  
10 you heard yesterday.

11 They had no idea that when they told their Aunt Sassy  
12 that what would end up happening is that the police would  
13 get involved, that DSS would get involved in their life,  
14 that they would have to come talk to a forensic  
15 interviewer, that they would have to talk to police, that  
16 they would have to have a very invasive medical exam that  
17 you heard about, that they would have to come and talk in  
18 court in front of a bunch of strangers. They didn't  
19 anticipate any of that happening. They just told because  
20 they wanted it to stop. And each of the children provide  
21 different details in different ways. And you remember  
22 their testimony as you remember it. And I've already gone  
23 over the highlights of what **Minor 1** testified to.

24 **Minor 2** testified that Marshall put his weiner in her  
25 mouth. And that was her word that she used for his

1 private area that she showed you on the diagram. That was  
2 her word. And she, also, called it her private area. And  
3 she showed you what she meant by that. She said he put  
4 his weiner in her mouth and he started peeing. And he got  
5 a sock and he wiped it off. Does that sound like  
6 something that didn't happen, or does that sound like  
7 something that has the ring of truth, as I like to call  
8 it? That's a detail that a child would have a hard time  
9 just making up as part of some grand scheme to evict a  
10 man.

11 Marshall, also, touched her where she uses the  
12 bathroom. He touched her private with his weiner under  
13 her panties. And he made her touch his weiner with her  
14 hand. And he told her not to tell.

15 So both children have given you different details  
16 about similar things that the Defendant did to them.  
17 There are vulnerable children. And I submit to you that  
18 when the Defendant did this stuff that he didn't think  
19 that these two little girls would ever tell on him. And  
20 that if they did, that nobody would believe them because  
21 of the fact that maybe they've got some problems or  
22 different things like that, maybe he thought nobody would  
23 believe them. But you have to believe -- he wants you to  
24 think that you have to believe him, because he's an adult  
25 over these kids. And that's not the case.

1           What he did, he did in an insidious way. He did not  
2           have sex with these children. The Defense wanted to  
3           suggest through cross-examination of the doctor that if he  
4           had had sex with these children that that would have  
5           been -- there would have been evidence, and there would  
6           have been pain, and there would have been blood, and there  
7           would have been -- there would have been evidence left.  
8           Well, he did it in a way that didn't leave evidence. He  
9           knew what he was doing. He put his penis in their vaginal  
10          area. They described that. She said, He put it on my  
11          pocketbook. And he touched me with his hand. He did  
12          things that he knew wouldn't leave physical evidence.  
13          Oral sex, he knew, would leave no physical evidence.

14          The doctor told you that based on the history she  
15          received that she expected both of those kids to have a  
16          normal medical exam. She said there was no history of  
17          blood, or pain, or anything like that. She did not  
18          believe that they had been penetrated in a sexual -- a  
19          full sexual way. She believed he had penetrated their  
20          vaginal area. And she talked about that. And she, also,  
21          talked about how **Minor 2** had some other behaviors, like  
22          some acting out, and genital itching, and bed wetting that  
23          were new things for her that had come about that could be  
24          related to sexual abuse.

25          The lewd act charge, ladies and gentlemen, can come

1 from many of the behaviors you've heard described by the  
2 children, him touching their vaginal area with his hand,  
3 touching their vaginal area with his penis. That's lewd  
4 act. That's lewd and lascivious, ladies and gentlemen.  
5 And that's what you'll find the indictment says.

6 So if you find that the oral sex occurred, you have a  
7 sexual battery. That's criminal sexual conduct with a  
8 minor. And the child has to be under the age of 11. And  
9 you've heard testimony about the ages of the children.

10 You can evaluate the forensic interview for yourself.  
11 You've seen the forensic interviews. And you're  
12 intelligent people, you can evaluate the interview for  
13 yourself about whether she was leading them into their  
14 answers, or whether they were just answering her questions  
15 and they were embarrassed to talk about it like they were  
16 here yesterday.

17 The forensic interviewer talked about how it's common  
18 for kids to not report right away, that it's common for  
19 them to have a relationship with the person who abuses  
20 them, for it to be a known and trusted individual in their  
21 life. That's common. Kids are taught to trust adults.  
22 Kids are taught to obey them.

23 And she, also, talked about how children are unable  
24 to relate time frames. You heard -- some of the testimony  
25 was, well, the last time it happened, I was -- it happened



1 when I was seven, but then the last time it happened I was  
2 five. Well, that can't be right. And kids  
3 developmentally have a hard time with time frames. I  
4 can't remember what I did three months ago sometimes. And  
5 we're asking these children to give us specific dates and  
6 times that this man abused them. That's not fair. They  
7 can't do it. Developmentally, they're unable to do it.  
8 And you heard that from a trained professional.

9 Finally, I want to talk to you a little bit about  
10 what the Defendant said. And I want to say that  
11 confessions from this stand only happen on TV. They don't  
12 happen in real life. So don't expect that that was what  
13 should have happened yesterday.

14 But I submit to you that the Defendant sat here  
15 through all the testimony. And he, conveniently,  
16 formulated this idea that he had Hepatitis B after he  
17 heard the doctor testify that these children had been  
18 tested for all these sexually transmitted diseases, and  
19 had tested negative. He formulated this idea that in the  
20 '80s, he had contracted Hepatitis B.

21 And he told you he didn't have sex with the girls  
22 because he has Hepatitis B. He said that would have been  
23 a death sentence for them. And what I find interesting  
24 about that is that he didn't say I didn't have sex with  
25 them because it would be wrong to have sex with the

1 children. He said, I didn't have sex with them because I  
2 would have given them Hepatitis B. They would have had  
3 Hepatitis B.

4 And you heard from Dr. Mary Fran Crosswell who talked  
5 about Hepatitis B. And she said that 92 to 96 percent of  
6 people who have it, it clears up on its own, for one  
7 thing. And that's a very high percentage. And if you are  
8 a chronic carrier, if you're one of that small percentage  
9 that's a chronic carrier of Hepatitis B, and you come in  
10 contact with somebody who's been properly immunized like  
11 these children, that there is a just absolutely remote  
12 chance of contracting it.

13 So that was just a convenient thing that he thought  
14 you were going to just take his word for. You were just  
15 supposed to take his word for the fact that he has  
16 Hepatitis B, and he's had it since the '80s. And he would  
17 have given it to the these girls, and that was the end of  
18 that.

19 And then you heard from Dr. Crosswell who said, no,  
20 that's not right at all. He would have symptoms. He  
21 should go to a doctor. He does none of those things.  
22 From my cross-examination, you heard him say, I don't go  
23 to the doctor, I treated myself, all that stuff. I submit  
24 to you that he does not have Hepatitis B. And if he does,  
25 then there is a remote chance these children could have

1 contracted it and, fortunately, they didn't.

2 He admitted on the stand that he lived in the home  
3 during the time frame that's alleged in the indictments.  
4 So that has been satisfied. He was there from April of  
5 2009, through 2010, during the time frame of the  
6 indictments. He had the opportunity to do what he did.  
7 He was in the home. He was living there. He was helping  
8 to care for the children, two elderly people. **Minor 1**'s  
9 panties were found in his bed.

10 The Defense wants to talk a lot to you about  
11 reasonable doubt, because that's what they want you to  
12 hang your hat on. That's exactly what they want you to  
13 do. Well, I'm just not sure, so I can't convict.

14 The Judge is going to give you the law on reasonable  
15 doubt. And he's going to tell you that if you're firmly  
16 convinced, then you can find someone guilty of a crime.  
17 And reasonable doubt doesn't mean a doubt or any doubt.  
18 It means the doubt must be reasonable. It can't be just  
19 anything you can come up with. Because if that were the  
20 case, no one would be convicted in any court in any state  
21 or city in the United States, if that were the standard.

22 The standard is, after you heard these children  
23 testify yesterday, if you are firmly convinced that they  
24 were telling you the truth, then your oath requires you to  
25 apply the law to the facts and the evidence in this case

1 and to render a verdict of guilty. And I submit to you  
2 that they deserve that much. They will have to live with  
3 this for the rest of their lives. Regardless of what you  
4 end up doing, they will have to live with this for the  
5 rest of their lives. But I submit to you that they told  
6 you the truth, and they should be vindicated.

7 Thank you.

8 CHARGE ON THE LAW

9 THE COURT: Thank you, Ms. Seay.

10 Ladies and gentlemen, you've heard all the evidence  
11 in this case, and it is now my duty to instruct you on the  
12 law that applies. It's your duty to find the facts from  
13 all the evidence in this case. And to those facts, you  
14 must apply the law as I give it to you.

15 You should not be concerned with what the law should  
16 be, but with what it is. And you must not be influenced  
17 by any personal likes, or dislikes, or opinions, or  
18 prejudice, or undue sympathy. And that means you must  
19 decide this case based solely on the evidence before you  
20 and according to the law. And you will recall, you took  
21 an oath to do just that when we began this case on Monday.

22 Now, in following my instructions, you must follow  
23 all of them and not single out some and ignore others.  
24 They are all equally important. And you must not read  
25 into these instructions or into anything I may have said

1 or done during the course of this trial as any suggestion  
2 as to what I think your verdict should be, or what I think  
3 the facts are. As I told you at the beginning, that is a  
4 matter entirely for you to decide. Because, under our  
5 Constitution, I'm not allowed to have an opinion about or  
6 comment upon the facts of this case.

7 You and you alone are the judges of what the facts  
8 are. You decide what the facts are by evaluating or  
9 weighing the evidence you've heard during the trial.  
10 There's no way for you to weigh the evidence in a literal  
11 sense. I, certainly, am not going to give you a set of  
12 scales to go back and conduct experiments with. That  
13 wouldn't be practical. It is, instead, a mental process.  
14 And you weigh and evaluate evidence simply by using your  
15 good common sense and your sound judgment.

16 Now, you must determine what the facts are from the  
17 evidence and the evidence alone. And I told you at the  
18 beginning and I'll repeat to you now that evidence  
19 consists of two sources. The first is witness testimony  
20 under oath, and the second is by way of an exhibit.

21 There are other things that are not evidence that I  
22 briefly want to mention to you. And those things are,  
23 first of all, the arguments and the lawyers -- the  
24 arguments and statements of the lawyers. The lawyers are  
25 not witnesses. So if their memory of the testimony

1 differs from yours, your memory controls. But the lawyers  
2 statements and arguments are very important. And, as I  
3 said at the beginning, please, pay keen attention to what  
4 they said, because they're trying to help you understand  
5 the evidence.

6 The questions and objections by the lawyers are not  
7 evidence. The lawyers have a duty to their clients to  
8 object when they think evidence is improper. And I know  
9 you would not hold it against them from doing their job.  
10 And, likewise, anything you may have seen or heard while  
11 court is not in session is not evidence, and you may not  
12 use that in deciding what the facts are.

13 Now, there are two types of evidence, generally,  
14 presented during a trial. What I'm talking about now is  
15 direct evidence and circumstantial evidence. Direct  
16 evidence is the testimony of someone who claims to have  
17 actual and direct knowledge of a fact, such as an  
18 eyewitness. It is evidence that, if believed, immediately  
19 establishes a fact.

20 Circumstantial evidence is indirect evidence, or put  
21 another way, circumstantial evidence is proof of a chain  
22 of facts and circumstances from which you could find that  
23 another fact exists, even though it has not been proven  
24 directly. The law makes no distinction between the weight  
25 or value to be given to direct or circumstantial evidence.

1 You may consider both kinds of evidence. And there is no  
2 greater degree of certainty required of circumstantial  
3 evidence over direct evidence.

4 You are to consider all the evidence in light of  
5 reason, common sense, and experience and give each piece  
6 of evidence the weight you find it deserves. After  
7 weighing all the evidence, if you are not convinced of the  
8 guilt of the Defendant beyond a reasonable doubt, you must  
9 find him not guilty.

10 Now, ladies and gentlemen, in deciding what the facts  
11 are, you must consider the credibility or believability of  
12 each witness who testifies and each exhibit that has been  
13 admitted into evidence. I told you a little bit about  
14 credibility at the outset, and I'm not going to repeat it  
15 because I know you heard me the first time, but I will  
16 tell you this. You must decide which testimony to believe  
17 and which testimony not to believe.

18 You may disbelieve all or part of any witnesses  
19 testimony. You may believe all of what a witness says, or  
20 nothing of what a witness says, or believe parts and  
21 disbelieve other parts. You may believe one witness over  
22 several, or several witnesses over one. It is up to you  
23 to determine what the true facts are in this case. And I  
24 know you will not decide the credibility of a witness or  
25 piece of evidence arbitrarily, but you'll have a sound and

1       logical reason for the decision you reach as to  
2       credibility.

3               Now, ladies and gentlemen, you've heard testimony  
4       from persons who have been described as experts. And, as  
5       I told you at an earlier stage of the trial, experts are  
6       people who by reason of their education, training, or  
7       experience have become an expert in some field and they  
8       may state their opinion on matters in that field and state  
9       their reasons for that opinion.

10              As jurors, it is your duty to determine the effect,  
11       and the value, and the weight, and the truth of the  
12       evidence presented. You should consider expert opinions  
13       like any other evidence and give it the weight you think  
14       it deserves.

15              If you decide that the opinion of an expert is not  
16       based on sufficient education and experience, or if you  
17       conclude that the reasons given in support of the opinion  
18       are not sound, or that the opinion is outweighed by other  
19       evidence, you may disregard the opinion entirely. An  
20       expert witness' testimony is to be given no greater weight  
21       than that of other witnesses simply because the witness is  
22       described as an expert. And, furthermore, you are not  
23       required to accept an expert's opinion, even though the  
24       opinion is uncontradicted.

25              Now, ladies and gentlemen, this is a criminal case.



1 And I told you some general principles of criminal law  
2 that apply when I gave you my preliminary instructions.  
3 And I want to go over those again, because they are so  
4 important and fundamental to our system of justice.

5 The mere fact that the Defendant, Mr. McGaha, was  
6 indicted and charged in this case is not evidence. The  
7 indictments are not witnesses. They are not exhibits.  
8 And so, therefore, they are not something you can take  
9 into account in determining what the facts are in this  
10 case. The indictments are simply allegations. They don't  
11 even create a suspicion of guilt. The indictment is  
12 simply the formal written instrument that contains the  
13 charges made against a citizen, and let's the citizen know  
14 what he's charged with. It is not evidence in any way,  
15 shape, or form, and is not to be considered or construed  
16 by you as evidence of anything.

17 Mr. McGaha has pled not guilty. And that plea puts  
18 the burden of proof on the State to prove him guilty.  
19 Someone charged with committing a crime is never required  
20 to prove himself innocent. And you've heard that phrase  
21 innocent until proven guilty. And this is the principle  
22 I'm discussing with you now.

23 It is a fundamental and important rule of law that a  
24 defendant in a criminal case, no matter what the charge  
25 may be, is always presumed innocent. And that presumption

1 of innocence is not something that ends when you begin  
2 your deliberations. The presumption of innocence  
3 accompanies a defendant throughout the trial and can only  
4 be removed unless -- it can only be removed if you reach a  
5 verdict of guilt based on evidence satisfying you of guilt  
6 beyond a reasonable doubt.

7 The presumption of innocence has been likened to a  
8 robe of righteousness that's placed around the shoulders  
9 of a defendant. And it remains with him until it has been  
10 stripped by evidence satisfying you of guilt beyond a  
11 reasonable doubt. This presumption of innocence is not a  
12 legal technicality or some mere legal theory. It is a  
13 substantial and fundamental right to which everyone is  
14 entitled.

15 Now, ladies and gentlemen, the State bears the burden  
16 of proof. And that burden is proof beyond a reasonable  
17 doubt. What does that mean? In the law, a reasonable  
18 doubt is defined as the kind of doubt that would cause a  
19 reasonable, sincere, honest, and conscientious person to  
20 hesitate to act in an important matter in their own  
21 affairs.

22 Proof beyond a reasonable doubt is proof that leaves  
23 you firmly convinced of the Defendant's guilt. There are  
24 few things that we can know in this world with absolute  
25 certainty. And the law does not require proof that

1 overcomes every possible doubt. If based on your view of  
2 the evidence, you are firmly convinced that Mr. McGaha is  
3 guilty of the crime charged, you must find him guilty. On  
4 the other hand, if you think there is a real possibility  
5 that he is not guilty, you must give him the benefit of  
6 the doubt and find him not guilty.

7 A reasonable doubt may arise from the evidence or  
8 from a lack of evidence. And a defendant is entitled to  
9 every reasonable doubt that may arise in a case. And that  
10 means that if upon any issue of fact that is essential to  
11 a finding of guilt and a conviction you have a reasonable  
12 doubt as to how that issue should be resolved, it is your  
13 duty to resolve that doubt in favor of Mr. McGaha.

14 Now, as I mentioned, there are four indictments in  
15 this case. And there are two indictments for lewd act on  
16 a minor, and two indictments for criminal sexual conduct  
17 with a minor first degree. So there are four separate  
18 charges that you must consider. And you must consider the  
19 evidence the State has put forward as to each charge.

20 So you're going to have a verdict form that will set  
21 this out more clearly. But I instruct you that you will  
22 have to weigh and evaluate the evidence as to each of the  
23 four charges. And you must not let your decision on one  
24 charge influence your decision on another. You must weigh  
25 and evaluate the evidence separately as to all four

1 charges and give them independent separate consideration.

2 I want to go over with you the substantive law of  
3 lewd act upon a minor and the substantive law on criminal  
4 sexual conduct with a minor first degree. First of all,  
5 regarding the charge of lewd act upon a minor. A minor is  
6 a person under the age of 18. And in order to convict  
7 someone of this crime, the State must, first, prove beyond  
8 a reasonable doubt that the Defendant, Mr. McGaha, was  
9 over the age of 14.

10 Next, the State must prove the Defendant willfully  
11 and lewdly committed or attempted a lewd or lascivious act  
12 on or with the body or its parts of a child under the age  
13 of 16 years with the intent to arouse, appeal to, or  
14 gratify the lusts, passions, or sexual desires of the  
15 Defendant or the child. Willfully means voluntarily and  
16 intentionally with a specific intent to do something the  
17 law forbids. Lewd means obscene, lustful, indecent, or  
18 lecherous. Lascivious means tending to incite lust, lewd,  
19 indecent, obscene, or tending to deprave the morals in  
20 respect to sexual relations.

21 Now, as to the charge of criminal sexual with a minor  
22 in the first degree. The State must prove beyond a  
23 reasonable doubt that the Defendant engaged in a sexual  
24 battery with the victim. A sexual battery is sexual  
25 intercourse, cunnilingus, fellatio, anal intercourse, or

1 any intrusion, however slight, of any part of a person's  
2 body or of any object into the genital or anal openings of  
3 another person's body, except when the intrusion is  
4 accomplished for medically recognized treatment for  
5 diagnostic purposes.

6 The State must then prove beyond a reasonable doubt  
7 that the victim was less than 11 years old at the time of  
8 the sexual battery. Consent, willingness, indifference,  
9 or ignorance on the part of the minor, if any, as to what  
10 was taking place does not in any way affect the charge of  
11 criminal sexual conduct with a minor. Because an  
12 unmarried woman under the age of 14 cannot legally consent  
13 to sexual intercourse.

14 Now, those are the substantive elements of the  
15 offenses at issue in this case. In order to establish a  
16 criminal conviction, criminal intent is required to be  
17 proven by the State beyond a reasonable doubt. Criminal  
18 intent is always a matter that must be determined by you,  
19 the jury, from the circumstances surrounding the  
20 situation. There's no way to prove intent to a  
21 mathematical certainty. Science cannot dissect someone's  
22 brain and determine what they had in mind at a particular  
23 point in time.

24 So the law says that criminal intent may be inferred  
25 from the circumstances. It is not necessarily --

1 necessary to establish intent by direct and positive  
2 evidence. But intent may be shown by inference in the  
3 same way as any other fact by taking into account the acts  
4 of the parties and all the facts and circumstances.  
5 Criminal intent is a mental state of conscious wrongdoing.  
6 And it's up to you to determine what the Defendant  
7 intended to do based on the circumstances.

8 Now, ladies and gentlemen, that concludes the  
9 substantive part of my instructions. I do want to give  
10 you a few closing instructions about your deliberations,  
11 and go over the verdict form with you.

12 First of all, you don't serve as partisans -- serve  
13 as jurors to be partisans or advocates for either side,  
14 for either the State or for Mr. McGaha. You were chosen  
15 because both sides in this case believed you could be fair  
16 and impartial, and you could decide this case without any  
17 preconceived ideas, or any bias, or prejudice. And that  
18 means you must determine what the facts are from the  
19 evidence in this case and do so free of any partiality or  
20 unfairness.

21 You are required to give each side fair and impartial  
22 consideration and analysis of the evidence and the record  
23 in this case. You are judges, judges of the facts. And  
24 your sole objective is to determine whether the State has  
25 proven its case beyond a reasonable doubt as to the

1 charges, and determine what the facts are from the  
2 evidence in this case.

3 Now, if you looked up the word "deliberation" in the  
4 dictionary, you would see it came from an old word that  
5 meant a company of people sworn to render a true answer.  
6 And that is what you are to do, try to determine the true  
7 facts from the evidence. And once you determine the  
8 facts, apply the law as I've given it to you, and you'll  
9 reach a verdict.

10 Now, this verdict form, Mr. Garrison, has each of the  
11 charges set out. And, as I said, the jury will have to  
12 separately consider each charge and reach a verdict as to  
13 each one independently of the other. There are two  
14 options for each charge. And, please, don't assign any  
15 meaning to which option I've placed first. I just have to  
16 put one first. And that, certainly, doesn't mean  
17 anything.

18 Now, ladies and gentlemen, Mr. Garrison is only  
19 authorized to sign that form when the verdict is  
20 unanimous, as I'm sure you all know. And the verdict must  
21 be unanimous, and each of you has a vote. And I know you  
22 will discuss the evidence calmly, rationally, and  
23 courteously amongst each other. And the genius of our  
24 jury system is it allows 12 different people from  
25 different background and walks of life and perspectives to

1       come together, look at the evidence, and, ultimately,  
2       reach a verdict through collective deliberation.

3               Now, your vote is exactly that, it's your vote and no  
4       one else's. And don't be afraid to change your mind  
5       should the discussion persuade you that you should. But  
6       don't give up a sincere, honestly, and conscientiously  
7       held belief about the evidence simply to get the case over  
8       with, or to reach a unanimous verdict. Because this case  
9       is important to both sides, and this is their day in  
10      court.

11             Now, the record is closed. There are not going to be  
12      any more witnesses. We're not going to have any more  
13      evidence. So if there's something that was discussed in  
14      the trial that you want back there with you, I can't give  
15      it to you.

16             Now, I understand from the parties that the DVD, if  
17      you do request it, we can handle that separately. It's  
18      not going to, actually, come back to the jury room with  
19      you. But, other than that, if you don't have it back  
20      there with you, I can't give it to you because the record  
21      is closed.

22             So don't begin deliberations until you get the  
23      exhibits, because that will be your signal that you can  
24      start talking about the case. And, in the meantime, I  
25      will be talking with the lawyers because, believe it or



1 not, for as long as I've been talking, I might have left  
2 something out, and they'll be quick to tell me.

3 So thank you for your attention to me. You can go  
4 back to the jury room now, but don't start discussing the  
5 case until you've received the exhibits.

6 Now, Ms. Dendy, and, Mr. Terry, if you'll just stay  
7 right here, I'll give you your instructions separately.

8 Thank you.

9 (WHEREUPON, the jury was excused from open court at  
10 approximately 10:52 a.m.)

11 THE COURT: All right. As the alternates, the law  
12 doesn't allow you to go in the jury room during  
13 deliberations. So I just want to thank you for your  
14 service this week. And you're free to go at this time.

15 What time do they need to be back?

16 THE CLERK: Actually, Judy would like for them to  
17 stop downstairs.

18 THE COURT: All right. Ms. Olson wants you to check  
19 in downstairs, and she'll give you instructions there.

20 But thank you very much for your service.

21 (WHEREUPON, Juror #46, Latweeta Dendy, and Juror  
22 #163, Kevin Terry, exited the courtroom.)

23 THE COURT: Any objections or exceptions to the  
24 charge from the State?

25 MS. SEAY: Nothing from the State.

1 THE COURT: From the Defense?

2 DEFENDANT MCGAHA: Yes, sir. I object.

3 THE COURT: Okay.

4 DEFENDANT MCGAHA: I --

5 THE COURT: Hold on a second. You have to let your  
6 counsel make objections.

7 MR. HOSKINSON: I don't have any objections to the  
8 instructions, Judge.

9 DEFENDANT MCGAHA: Your Honor, may I speak, sir?

10 THE COURT: Well, have you talked to your lawyer  
11 about that?

12 DEFENDANT MCGAHA: I talked to him earlier about all  
13 the stuff that I went over last night and all the  
14 paperwork, from the physical evidence and all. He didn't  
15 bring none of it up.

16 MR. HOSKINSON: I don't think he has anything about  
17 the instructions, Judge.

18 THE COURT: All right. Thank you very much.

19 We'll be at ease until we hear something. And it's  
20 about five until 11:00. I want y'all to make sure the  
21 exhibits are in order, and nothing extraneous is in there,  
22 and everything that has been put in evidence is ready to  
23 go back to the jury, except, as I understand, the DVD's  
24 will be kept out here and viewed in the courtroom upon  
25 their request.

1 All right. We'll be at ease until we hear something  
2 else.

3 (WHEREUPON, the proceedings were recessed at  
4 approximately 10:58 a.m.)

5 (WHEREUPON, Court's Exhibit No. 1 was marked for  
6 identification and admitted into evidence.)

7 THE COURT: We have a note from the jury.

8 Please bring Mr. Garrison in.

9 (WHEREUPON, Juror #63, James Garrison, entered the  
10 courtroom at approximately 12:08 p.m.)

11 THE COURT: Yes, sir, Mr. Garrison.

12 JUROR #63, JAMES GARRISON: Yes, sir.

13 THE COURT: I received your note. We made it a  
14 Court's Exhibit. And we're going to arrange to have the  
15 DVD player brought back to the jury room. And I'm going  
16 to give you the DVD's. And this is being done with the  
17 consent of both sides. And you can play them back there  
18 for your convenience.

19 And, also, as you know, we got menus and y'all have  
20 already ordered lunch.

21 JUROR #63, JAMES GARRISON: Yes, sir.

22 THE COURT: It takes about 45 minutes, at least, to  
23 get here. And if you need anything else, again, just  
24 write a note, or -- I can only talk to you out here on the  
25 record.

1 JUROR #63, JAMES GARRISON: Thank you.

2 (WHEREUPON, Juror #62, James Garrison, exited the  
3 courtroom at approximately 12:10 p.m.)

4 THE COURT: Any objections or exceptions to that  
5 procedure?

6 MS. SEAY: No, sir.

7 MR. HOSKINSON: No, Your Honor.

8 THE COURT: Okay. Well, we'll be at ease until we  
9 hear something else.

10 Thank you.

11 (WHEREUPON, the proceedings were recessed at  
12 approximately 12:12 p.m.)

13 THE COURT: I understand we have a verdict.

14 Is there any matter before we bring the jury out?

15 MS. SEAY: Nothing further from the State.

16 MR. HOSKINSON: Nothing from the Defense.

17 THE COURT: All right. You can bring the jury on in.

18 Thank you.

19 (WHEREUPON, the jury came into open court at  
20 approximately 2:08 p.m.)

21 THE COURT: All right. Mr. Foreman, has the jury  
22 reached a unanimous verdict, sir?

23 JUROR #63, JAMES GARRISON: Yes, we have, Your Honor.

24 THE COURT: If you'll hand it to Mr. Lynch, we'll  
25 receive it and publish it.

1 If I could just get you to date it. I think today is  
2 the 10th.

3 (Pause.)

4 THE COURT: Thank you.

5 Yes, ma'am.

6 VERDICT

7 THE CLERK: Your Honor, the State of South Carolina  
8 v. Marshall Dewitt McGaha, as to the charge of lewd act  
9 upon a child, indictment 2010-GS-23-7403, we, the jury,  
10 unanimously find the Defendant, Marshall Dewitt McGaha,  
11 guilty.

12 As to the charge of criminal sexual conduct with a  
13 minor first degree, indictment 2010-GS-23-7404, we, the  
14 jury, unanimously find the Defendant, Marshall Dewitt  
15 McGaha, guilty.

16 As to the charge of lewd act upon a child, indictment  
17 number 2010-GS-23-7405, we, the jury, unanimously find the  
18 Defendant, Marshall Dewitt McGaha, guilty.

19 As to the charge of criminal sexual conduct with a  
20 minor first degree, indictment number 2010-GS-23-7406, we,  
21 the jury, unanimously find the Defendant, Marshall Dewitt  
22 McGaha, guilty, signed by the Foreperson, James Garrison.

23 THE COURT: Any matters or motions before the jury is  
24 discharged?

25 MS. SEAY: Nothing further from the State.

1 THE COURT: From the Defense?

2 MR. HOSKINSON: I renew all prior motions and  
3 objections, Judge.

4 THE COURT: Do they need to call back tonight?

5 THE CLERK: Yes. Call back after 6:00.

6 THE COURT: Ladies and gentlemen, there are still  
7 some cases on the docket. So while we appreciate your  
8 service on this case, we do need you to call back tonight  
9 after 6:00 to see what time you need to come back in for  
10 other cases. And I hope you have a good evening.

11 And thank you again for your service.

12 (WHEREUPON, the jury was excused from open court at  
13 approximately 2:11 p.m.)

14 DEFENDANT MCGAHA: Your Honor, I'd like to file a  
15 motion for an appeal --

16 THE COURT: Okay.

17 DEFENDANT MCGAHA: -- for ineffective counsel. I  
18 pled motions for the past five months telling him about  
19 witnesses on my behalf and he has failed to do anything.

20 And, also, on the closing argument, he never did  
21 bring none of that up. I went through the case. I was up  
22 all night going through it, all the State witnesses and  
23 stuff.

24 And then he's been ineffective throughout the whole  
25 trial. Every time I've tried to get him to do questions

1 of witnesses, he wouldn't question them. I've got  
2 everything wrote down. I've got copies. And I've made  
3 phone calls to tell him to put in motions. He never did  
4 it. I asked him about my phone records. He says he had  
5 them, but I ain't never saw them. He wouldn't even give  
6 them to me. He's been ineffective from day one. That's  
7 the reason I wanted to represent myself.

8 THE COURT: Yes. And we discussed that, sir, at the  
9 beginning of the trial. And there's, certainly, another  
10 time and place where you can bring up these statements, if  
11 you wish to.

12 But, right now, are there any further motions from  
13 the Defense, Mr. Hoskinson?

14 MR. HOSKINSON: Other than renewing what I have, no,  
15 sir.

16 THE COURT: Okay. And I would respectfully deny  
17 those motions.

18 I do want to elaborate a little bit on one matter,  
19 and that is the objection that was made to the forensic  
20 interviewer being qualified as an expert. As the record  
21 will demonstrate, the objection was made to the  
22 interviewer giving an opinion as to the veracity of the  
23 victims based on her forensic interview. I ruled that  
24 that would not be allowed. And I granted the Defendant's  
25 motion in that regard.

1           So Ms. Carlberg could not and did not give an opinion  
2           as to the veracity or the credibility of the victims,  
3           indirectly or directly. And I did qualify her on the  
4           State's motion as an expert. And I would note that State  
5           v. Douglas talks about the fact that the forensic  
6           interviewer in that case, who was simply a police officer  
7           with the Sumter police and while had many qualifications  
8           for that position was not as far as the opinions reveal  
9           schooled in or trained in psychology, or psychiatry, or  
10          counseling.

11          And the majority in that Court, in the 2009 decision  
12          of the South Carolina Supreme Court, found that the  
13          forensic interviewer -- it was not necessary for Officer  
14          Herod to be qualified as an expert, because she didn't  
15          give any expert opinion. She simply gave her analysis of  
16          her observations of the children as she interviewed them.  
17          And the majority found she did not opine as to the  
18          childrens believability. The dissent, Justice Pleicones  
19          concluded that she did opine on the credibility by  
20          referring the children for treatment.

21          In this case, first of all, the witness,  
22          Ms. Carlberg, is a licensed professional counselor. She  
23          testified to and laid out what, in my opinion, was an  
24          adequate foundation for the scientific validity of her  
25          field and what she was qualified as an expert in.



1       However, she did not give even remotely an opinion as to  
2       the credibility of these victims. And by the time  
3       Ms. Carlberg had seen them, of course, she was the one who  
4       had been referred for the children to see, rather than the  
5       other way around. In other words, she didn't take any  
6       other action based on the interviews that could be  
7       construed as the dissent construed in Douglas as some kind  
8       of opinion as to the childrens believability.

9       I, also, find that Ms. Carlberg was trained in and  
10      could properly give an opinion on delayed reporting and  
11      the frequency of close relatives or friends of victims  
12      being the abusers. That's something that would be beyond  
13      a layperson and would be within Rule 702's gambit of  
14      proper expert testimony. And that's really the only  
15      opinion that she gave.

16      So I just wanted to clarify that. And I'm relying on  
17      State v. Baker, and that's a 2010 Court of Appeals case.  
18      And, also, State v. Hill, which is opinion number 4856 of  
19      the South Carolina Court of Appeals and reported on July  
20      27, 2011.

21      All right. Anything further before we have the  
22      sentencing?

23      MS. SEAY: Nothing further.

24      THE COURT: All right.

25      MR. HOSKINSON: Nothing, Judge.

1 THE COURT: Okay. Yes, ma'am, Ms. Seay.

2 MS. SEAY: Your Honor, you, obviously, have heard the  
3 facts and evidence in this case. And you have heard these  
4 young victims testify and are aware of the abuse that they  
5 went through. And we would ask that the Defendant be  
6 sentenced accordingly.

7 THE COURT: Mr. Hoskinson.

8 MR. HOSKINSON: Judge, I know you're well aware of  
9 what the sentence guidelines are, but I do ask that you  
10 consider a minimal sentence for him. You have heard a bit  
11 about his past when he testified, so I will not repeat all  
12 that at this time.

13 But I will tell that you Mr. McGaha does want to  
14 appeal this case, and he'll do that. And I ask that you  
15 be merciful with the minimal sentence.

16 THE COURT: All right. Thank you, Mr. Hoskinson.

17 And thank you for your representation of Mr. McGaha.

18 Yes, sir, Mr. McGaha. I'll be glad to hear anything  
19 you'd like to say, sir.

20 DEFENDANT MCGAHA: I wish I had represented myself.  
21 I probably would have been better off, but I didn't have  
22 time to. I'm glad you granted my appeal and my innocence  
23 will be proven one day.

24 THE COURT: Well, let me clarify, sir. I don't have  
25 the authority to grant your appeal. That's something

1 you'll have to appeal. And I can't do anything here to  
2 grant an appeal. So you'll have to file and perfect your  
3 appeal pursuant to the South Carolina Appellate Court  
4 Rules. And I don't have anything to do with that. All  
5 right, sir?

6 DEFENDANT MCGAHA: Yes, sir.

7 THE COURT: Okay. So anything further?

8 DEFENDANT MCGAHA: No, sir, Your Honor.

9 THE COURT: How long has he been in jail?

10 MS. SEAY: Let me give you that exact number.

11 DEFENDANT MCGAHA: Since August the 15th, 2010, Your  
12 Honor.

13 THE COURT: Okay, sir.

14 MS. SEAY: 360 days.

15 SENTENCE

16 THE COURT: All right. I did listen closely to all  
17 the evidence. And the sentence on case 2010-GS-23-7406 is  
18 you be committed to the Department of Corrections for  
19 life. Case 7403, the sentence is 15 years consecutive.  
20 The sentence on case 7404 is a life sentence concurrent.  
21 And the sentence on 7405 is 15 years consecutive.

22 Good luck to you, sir.

23 \*\*\*\*\*END OF TRANSCRIPT OF RECORD\*\*\*\*\*  
24  
25

CERTIFICATE OF REPORTER

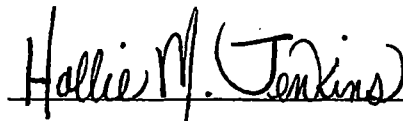
STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 8th, 9th and 10th days of August, 2011.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 23, 2012



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

DOCKET NO. 2010-GS-23-  
BSD

007403

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

March TERM 2010 2011

THE STATE

vs.

MARSHALL DEWITT MCGAHA

*[Signature]*

ACTION OF GRAND JURY

TRUE BILL

*[Signature]*

Foreperson of Grand Jury

VERDICT

*[Signature]*

Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

Foreperson of Petit Jury

Date:

any 10/20/11

RECEIVE

SEP 27 2010

Clerk of Court  
Greenville County

STATE OF SOUTH CAROLINA     )  
                                          )  
COUNTY OF GREENVILLE     )

INDICTMENT FOR  
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on **MAR 15 2011** the Grand Jurors of Greenville

County present upon their oath:

That MARSHALL DEWITT MCGAHA did in Greenville County, between the 14th day of March, 2009 and the 11th day of August, 2010, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of H.C., a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Cynthia S. Seay  
SOLICITOR

007404

DOCKET NO. 2010-GS-23-

BSD

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

March

TERM 2010 2011

THE STATE

VS.

MARSHALL DEWITT MCGAHA

WITNESSES

H E Hubert

Greenville County Sheriffs Office

8/15/2010

ARREST WARRANT NUMBER

1482150

ACTION OF GRAND JURY

TRUE BILL  
*Bobby Damm*

Foreperson of Grand Jury

VERDICT

*Guilty*

Foreperson of Petit Jury

Date: 8/10/2010

✓  
0385

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A MINOR  
FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

RECEIVE

SEP 27 2010

Clerk of Court  
Greenville County

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on

MAR 15 2011

the Grand Jurors of Greenville

County present upon their oath:

That MARSHALL DEWITT MCGAHA did in Greenville County, between the 14th day of March, 2009 and the 11th day of August, 2010, commit a sexual battery on H.C., who was less than eleven years of age. This is in violation of §16-3-655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Supra S. Seay  
SOLICITOR



## WITNESSES

H E Hubert *HEH*

Greenville County Sheriffs Office

8/15/2010

## ARREST WARRANT NUMBER

1482152

## ACTION OF GRAND JURY

TRUE BILL

*Bohly Dacus*  
Foreperson of Grand Jury

## VERDICT

*Gu. He**J. M. D.*  
Foreperson of Petit JuryDate: *Aug 10 2010*

DOCKET NO. 2010-GS-23-

BSD

007405

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

March

TERM 2010 2011

THE STATE

VS.

MARSHALL DEWITT MCGAHA

Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

RECEIVE

SEP 27 2010

Clerk of Court  
Greenville County

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
LEWD ACT UPON A CHILD

MAR 15 2011

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That MARSHALL DEWITT MCGAHA did in Greenville County, between the 11th day of May, 2009 and the 11th day of August, 2010, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of M.C., a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Barbara S. Seay  
SOLICITOR

WITNESSES

H E Hubert *HEH*

Greenville County Sheriffs Office

8/15/2010

ARREST WARRANT NUMBER

1482151

ACTION OF GRAND JURY

**TRUE BILL**  
*Bohly Lamm*

Foreperson of Grand Jury

VERDICT

*Guilty*

*[Signature]*  
Foreperson of Petit Jury

*Aug 2010*  
Date:

DOCKET NO. 2010-GS-23-  
BSD

007406 285

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

March

TERM 2010 2011

THE STATE

VS.

MARSHALL DEWITT MCGAHA

Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR  
FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

RECEIVE

SEP 27 2010

Clerk of Court  
Greenville County

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

INDICTMENT FOR  
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on  
County present upon their oath:

MAR 15 2011

the Grand Jurors of Greenville

That MARSHALL DEWITT MCGAHA did in Greenville County, between the 11th day of May, 2009 and the 11th day of August, 2010, commit a sexual battery on M.C., who was less than eleven years of age. This is in violation of §16-3-655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Bryana S. Seay  
SOLICITOR

## STATE OF SOUTH CAROLINA

COUNTY OF Greenville  
STATE VS.

Marshall Dewitt McGaha

AKA:

Race: WHITE Sex: M Age: 59

DOB: 1951 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Greenville, SC 29605-4636

DL#: [REDACTED] SID#: [REDACTED]

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

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

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

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS2307403

A/W#: 1482153

Date of Offense: 3/14/2009

S.C. Code § : 16-15-140

CDR Code #: 2468

## SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

In violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468

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

ATTEST:

Bryna S. Seay  
Seay, Bryna65348  
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years

and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment

of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Since 8/15/10☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

## SPECIAL CONDITIONS:

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

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

Payment Terms: \_\_\_\_\_

☐ Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine:

|                                        |         |           |
|----------------------------------------|---------|-----------|
| § 14-1-206 (Assessments 107.5 %)       |         | \$        |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ 100.00 |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$        |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$        |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$        |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$        |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$ 25.00  |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$        |
| § 50-21-114(BUI Breath Test Fee)       | \$50    | \$        |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$        |
| Proviso 90.5 (SCCJA Surcharge)         | \$5     | \$ 5.00   |
| 3% to County (if paid in installments) |         | \$        |
| TOTAL                                  |         | \$        |

PTUP \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

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

Clerk of Court/ Deputy Clerk

Court Reporter: Jenkins

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2138

Sentence Date: 8-10-2011

## STATE OF SOUTH CAROLINA

COUNTY OF Greenville  
 STATE VS.  
Marshall Dewitt McGaha

AKA:

Race: WHITE Sex: M Age: 59DOB: 1951 SS#: Address: City, State, Zip: Greenville, SC 29605-4636DL#:  SID#: \*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First degree

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS2307404A/W#: 1482150Date of Offense: 3/14/2009S.C. Code § : 16-03-0655(A)(1)CDR Code #: 0385

## SENTENCE SHEET

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

TEST:

Prima & Lacy  
Seay, Bryna65348  
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of LIFE days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years

and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment

of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 7406  
CS 14 8/15/10☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

## SPECIAL CONDITIONS:

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

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

Payment Terms: \_\_\_\_\_

☐ Set by SCDPPPS

Recipient: \_\_\_\_\_

\*Fine:

|                                        |         |          |
|----------------------------------------|---------|----------|
| § 14-1-206 (Assessments 107.5 %)       | \$      | \$       |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$100.00 |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$       |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$       |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$       |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$       |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$25.00  |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$       |
| § 50-21-114(BUI Breath Test Fee)       | \$50    | \$       |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$       |
| Proviso 90.5 (SCCJA Surcharge)         | \$5     | \$5.00   |
| 3% to County (if paid in installments) | \$      | \$       |
| TOTAL                                  | \$      | \$       |

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

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

Clerk of Court/ Deputy Clerk

Court Reporter: Jenkins

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2138Sentence Date: 8-10-2011

## STATE OF SOUTH CAROLINA

## IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville  
 STATE VS.  
Marshall Dewitt Mcgaha

INDICTMENT/CASE#: 2010GS2307405

AKA:

A/W#: I482152Race: WHITE Sex: M Age: 59Date of Offense: 5/11/2009DOB: 1951 SS#: [REDACTED]S.C. Code §: 16-15-140CDR Code #: 2468Address: [REDACTED]City, State, Zip: Greenville, SC 29605-4636DL#: [REDACTED] SID#: [REDACTED]

## SENTENCE SHEET

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

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

☒ CONVICTED OF or ☐ PLEADS

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

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS(CSC ☐ §17-25-45  
 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

QUEST:

Chad J. Seay 65348

(Seay, Bryna

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed        yearsand/or to pay a fine of \$       ; provided that upon the service of        days/months/years and/or paymentof \$       ; plus costs and assessments as applicable\*; the balance is suspended with probation for       

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

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: # 7403 and 7406☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 4360 days (since 5/15/10)☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

## SPECIAL CONDITIONS:

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

PTUP

Total: \$        plus 20% fee:        \$              days/hours Public Service EmploymentPayment Terms:       Obtain GED ☐☐ Set by SCDPPPS       Attend Voc. Rehab. or Job Corp.       Recipient:       May serve W/E beginning       

\*Fine:

§ 14-1-206 (Assessments 107.5 %)        \$       Substance Abuse Counseling ☐§ 14-1-211(A)(1) (Conv. Surcharge) \$100        \$ 100.00Random Drug/Alcohol testing ☐§ 14-1-211(A)(2) (DUI Surcharge) \$100        \$       Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$        beginning       § 56-5-2995 (DUI Assessment) \$12        \$       \$        paid to Public Defender Fund§ 56-1-286 (DUI Breath Test) \$25        \$       Other:       Proviso 47.9 (Public Def/Prob) \$500        \$       § 14-1-212 (Law Enforce. Funding) \$25        \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150        \$       § 50-21-114(BUI Breath Test Fee) \$50        \$       § 56-5-2942(J) (Vehicle Assessment) \$40/ea        \$       Proviso 90.5 (SCCA Surcharge) \$5        \$ 5.003% to County (if paid in installments)        \$       TOTAL        \$       

Clerk of Court/ Deputy Clerk

Court Reporter:       

SCCA/217 (03/2011)

Presiding Judge       Judge Code: 2138Sentence Date: 8-10-2011

## STATE OF SOUTH CAROLINA

COUNTY OF Greenville  
STATE VS.Marshall Dewitt McGaha

AKA: \_\_\_\_\_

Race: WHITE Sex: M Age: 59DOB: 1951 SS#:           Address:                                 City, State, Zip: Greenville, SC 29605-4636DL#:            SID#:           \*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First degree

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS2307406A/W#: 1482151Date of Offense: 5/11/2009S.C. Code § : 16-03-0655(A)(1)CDR Code #: 0385

## SENTENCE SHEET

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ARREST: Christina S. Leaf 65398  
Seay, Bryna SC Bar#

Defendant

Attorney for Defendant

SC Bar#

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

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Since 8/5/10☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

## SPECIAL CONDITIONS:

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

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

Payment Terms: \_\_\_\_\_

☐ Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine:

|                                        |         |           |
|----------------------------------------|---------|-----------|
| § 14-1-206 (Assessments 107.5 %)       | \$      | \$        |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ 100.00 |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$        |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$        |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$        |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$        |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$ 25.00  |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$        |
| § 50-21-114(BUI Breath Test Fee)       | \$50    | \$        |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$        |
| Proviso 90.5 (SCCJA Surcharge)         | \$5     | \$ 5.00   |
| 3% to County (if paid in installments) | \$      | \$        |
| TOTAL                                  | \$      | \$        |

PTUP \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

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

Clerk of Court/ Deputy Clerk

Court Reporter: Jenkins

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2138Sentence Date: 8-10-2011



## FORM 5

STATE OF SOUTH CAROLINA )

COUNTY OF Greenville )Marshall Dewitt McGaha 250723 )  
Full name and prison number (if any) of Applicant. )

v. )

State of South Carolina )

IN THE COURT OF COMMON PLEAS

2014-CP-23- 02476

APPLICATION FOR

POST-CONVICTION RELIEF

ENTERED COMPUTER

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correction Institution
2. Name and location of Court which imposed sentence 13th Circuit Greenville, S.C.
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) \_\_\_\_\_
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence: 8-15-2011
  - (a) Life in prison on each sexual conduct conviction
  - (b) 15 year, consecutive, on each alleged lewd act conviction

Revised 3/2003

- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) ☒ after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- 
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The State of South Carolina In The Court of Appeals
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed: affirm
- i. South Carolina Court of Appeals
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. Heard May 8, 2013 - Filed June 26, 2013
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: The Court with held documents from Family Court 13th Circuit CA No: 2010-DR-23-0935. I was falsely accused over on back of this Page #2

Supporting Documentation Evidence of my NOT being guilty 293

is upon 12-03-09 South Carolina Department of Social Services did drug Test Child [REDACTED] and Tested Positive for Cocaine 119 pg/mg and for Benzoyllecgonine 22 pg/mg. The Biological Mother Shannon Chastain was drug Tested and her results were positive also for cocaine 13300 pg/mg, and Benzoyllecgonine 1919 pg/mg and Norcocaine 293 pg/mg. Ms Chastain denied having a current drug problem. Rebecca Chastain and Ruby Califf was also Tested for cocaine. Ruby Califf "did" Test Positive for cocaine 730 pg/mg and 103 pg/mg for Benzoyllecgonine. The mother Shannon Chastain, and Ruby Califf - Great Grandmother, and Rebecca Chastain was smoking Crack Cocaine using The Money from [REDACTED] and [REDACTED] Checks To buy Crack Cocaine To smoke.

Rebecca Chastain and Ruby Califf did allowed access To The home of The minor Children for The Three (3) of Them To smoke Crack after The Court Set Treatment Goals for The defendants, Date of This hearing was March, 16-2010

The witness Sammy Coursey Lived with Jessica Hufflin in Anderson, S.C. The father of [REDACTED], and [REDACTED] is a Registered Sex offender. Sammy Coursey. The charges brought on me under false pretence by Rebecca Chastain, Ruby Califf, Sammy Coursey, Jessica Hufflin for revenge for me calling DSS, SC on Them for smoking Crack Cocaine and allowing minor Children To be exposed To all sorts of drugs, KORTABS, marijuana, Pot, Crack, Beer, liquor. I also called Ms Buchanan, Shannon's Chastain's Probation officer at [REDACTED]. Ms Rebecca Chastain Told me That/She would get even, pay back for me getting DSS involved. This Court also Dismissed warrant # 1482154 on Aug. 12th, 2011 which would show That Ms Rebecca Chastain STATED That on Aug 8th, Monday - 2010 did see - observed Marshall McGowan put a black dog collar around Hannah's neck and force her in The house (lie), while Ms Chastain remained seated in The living Room. Ms Chastain is diabetic and is also "Blind" Can not see.

- (a) <sup>Hoskin son Esquire</sup> Thomas Hoskins My Attorney was ineffective counsel
- (b) I am innocence of said alleged crimes,
- (c) Charges was brought for revenge from me having DSS drug Test family (Chastains) Califf.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Legal-Blind Rebecca Chastain written Statment of dog collar over on back
- (b) Summy Coursey father of children is a Sex offender and I was trying to stop the girls from spend time on week ends with Him & Jessie Hufflin in Anderson, SC
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? S.C. Appeal Court
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NOT at This Time
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? \_\_\_\_\_
- (d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (c) the disposition thereof:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

dog collar was not put into evidence in court of alleged incident or the eleven so called pictures of females children seized from drawer to show my McGaha's finger prints, these photo's is shown on Forensics photographs these pictures was planted, placed by

Sammy Coursey see his statement case NO: 10-127021 on 8-15-2010. This court, and prosecution, my connect was

evasive about these photographs, and statement from Rebecca Chastain was is completely blind, an saw a black dog collar placed on [REDACTED] neck and dragged in to house and the family court records to be presented at trial for my defense. The photographs of Greenville forensics

all of my clothes and possessions packed in boxes and suitcase because I was moving out of house because of drug use of Ruby Califf, Rebecca Chastain, Shannon Chastain, Sammy Coursey Jessica Hufflin, Darian Califf, Adam Califf, Greenville Forensic photographs show's my belongings packed to move. nothing in Chester drawers except planted photographs in one drawer as shown in pictures, one photograph shows Jessica's arm in photographs Ms Hufflin's has habit to hold out arm in photo's when taken. Ms Jessica Hufflin also is shown holding arm out in photographs taken by forensics of the house at 24 Sequoia Drive on 8-15-2010.

Also see 13th Judicial Court Family Court Records Docket NO: 10-DR-23-935 about Drug Test on [REDACTED], [REDACTED] Ruby Califf, Shannon Chastain. Also the care giver of Ms Chastain and Ruby Califf Tammy Tollison of [REDACTED] Greenville, S also did drugs with Shannon Chastain and Buys her tabs, from Rebecca Chastain & Ruby Califf. I was informant for Michael McGa Greenville County Drug enforcement I was in process on getting the whole family busted on drugs. These charges on false brought against me for revenge from DSS Drugs Testing.

iv., \_\_\_\_\_

(d) the date of each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? **NO**

This Court refused any documents from Family Court and Prison Release recd

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Thomas M. Hoskinson was ineffective in Trial Court

(b) Susan Barber Hackett of Columbia S.C. appeal was ineffective

(c) I can not file work for lack of education 8th grade need court appointed Attorney to do legal work

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes - ineffective on plea agreement
- (b) your trial, if any? yes, Thomas Hoskinson, would not ask Question Told To Ask
- (c) your sentencing? yes, I was Refused All Brady Material
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes, if you call never Talking To Susan Hacket about case
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes, but refused To cooperate with me

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- Thomas M. Hoskinson - Public Defender Office - Greenville CO.
  - Susan Barber Hacket - Appeal never Talk about case before appeal or durin appeal both ineffective Assistance of Counsel
  -
- (b) the proceedings at which each such attorney represented you:
- Thomas Hoskinson - 13th Circuit Court
  - Susan Barber Hacket S.C. Appeal Court
  -

19. State clearly the relief you seek in filing this application:

- Vacate Sentence, Correcting Conviction  
New Trial Released, Family Court Records To be allowed, all other documents such as photographs, and a Good PCR Attorney

20. Are you now under sentence from any other court that you have not challenged?

No

**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, \_\_\_\_\_, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Marshall D. McTala  
Applicant

SWORN or affirmed to and subscribed before me this  
14 day of April, 2014.

J. J. Franklin  
Notary Public

My Commission Expires: 12-16-2015



|                                                            |                              |
|------------------------------------------------------------|------------------------------|
| State of South Carolina<br>County of Greenville            | In The Court of Common Pleas |
| Marshall D. McGaha 250923<br>vs Applicant <del>State</del> | Case No:                     |
| State of South Carolina<br>Respondent                      |                              |

### Certificate of Service and Mailing

I, The applicant in The above captioned Matter, do hereby certify That I have mailed The following documents: (1) Post Conviction Relief Application, with a certificate of service and mailing, an application To proceed with payment of cost and Affidavit in Support There of, by personally depositing copies There of in The United States Mail, first Class prepaid postage and addressed To.

The Honorable Paul B. Wickensimer  
Greenville County Clerk of Court  
305 East North Street  
Greenville, S.C.

29601-02121

Sworn To before me This 14  
Day April of April, 2014

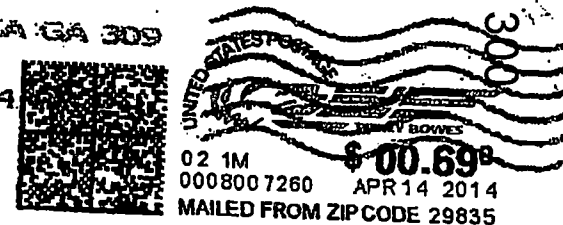
Franklin  
Notary Public for South Carolina  
12.16.2019

Respectfully Submitted by:  
Marshall McGaha  
Marshall D. McGaha 250923  
McCormick Corr. Institution  
386 Redemption Way F-3A  
McCormick, SC 29899

Marshall D. McGaha

Marshall McGaha 250923  
386 Redemption Way F-3-A-273  
McCormick, S.C. 29899

AUGUSTA GA 309  
14 APR 2014



Honorable Paul B. Wickensimer  
Greenville County Clerk of Court  
305 East North Street  
Greenville, S.C.  
29601-02121

(.6a)  
.21

29601+2190



|                          |   |                              |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS |
|                          | ) | C.A. No. 2014-CP-23-2476     |
| COUNTY OF GREENVILLE     | ) |                              |
|                          | ) |                              |
| Marshall Dewitt McGaha,  | ) |                              |
| S.C.D.C. No. 250923,     | ) |                              |
|                          | ) |                              |
| Applicant,               | ) |                              |
|                          | ) | <b>RETURN</b>                |
| v.                       | ) |                              |
|                          | ) |                              |
| State of South Carolina, | ) |                              |
|                          | ) |                              |
| Respondent.              | ) |                              |
|                          | ) |                              |

In response to the post-conviction relief application filed May 2, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the March 2011 term of General Sessions for two counts each of lewd act upon a child (2010-GS-23-7403, -7405) and first-degree criminal sexual conduct (CSC) with a minor (2010-GS-23-7404, -7406). Thomas Hoskinson, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On August 10, 2011, the Honorable D. Garrison Hill sentenced the Applicant to concurrent terms of life imprisonment for each count of first-degree CSC with a minor and 15 years for one count of lewd act upon a child (2010-GS-23-7403). Judge Hill levied a consecutive 15-year sentence for the second count of lewd act upon a child.

A notice of appeal was filed at the South Carolina Court of Appeals. Susan B. Hackett,

Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences on June 26, 2013. State v. McGaha, 404 S.C. 289, 744 S.E.2d 602 (Ct. App. 2013). The Remittitur was sent on July 17, 2013.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

## II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
2. "I am innocence of said alleged crimes."
3. "Charges was brought for revenge for me having DSS drug test family (Chastain's) Califf."

## III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation

within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

#### IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

MARSHALL DEWITT MCGAHA, 250923

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2014-CP-23-2476

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Marshall Dewitt McGaha, 250923**  
**McCormick Correctional Institution**  
**386 Redemption Way**  
**McCormick SC 29899**

DATED this 30th day of October, 2014.

  
 Judy A. C. Carey, Legal Assistant  
 For Respondent

|                          |   |                       |
|--------------------------|---|-----------------------|
| STATE OF SOUTH CAROLINA  | ) | COURT OF COMMON PLEAS |
|                          | ) | 2014-CP-23-2476       |
| COUNTY OF GREENVILLE     | ) |                       |
|                          | ) |                       |
|                          | ) |                       |
|                          | ) |                       |
|                          | ) |                       |
| MARSHALL DEWITT MCGAHA,  | ) |                       |
| PLAINTIFF,               | ) |                       |
|                          | ) |                       |
| vs.                      | ) | TRANSCRIPT OF RECORD  |
|                          | ) |                       |
| STATE OF SOUTH CAROLINA, | ) |                       |
| DEFENDANT.               | ) |                       |
|                          | ) |                       |

Tuesday, April 21, 2015  
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE

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

CAROLINE M. HORLBECK, ESQ.  
Attorney for the Plaintiff

KAREN C. RATIGAN, ESQ.  
Attorney for the Defendant

CHERYL A. SMITH  
Circuit Court Reporter

INDEX

(PW) - Denotes Plaintiff Witness  
(SW) - Denotes State's Witness

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EXHIBITS

|           |                    |           |            |
|-----------|--------------------|-----------|------------|
| <u>NO</u> | <u>DESCRIPTION</u> | <u>ID</u> | <u>EVD</u> |
|-----------|--------------------|-----------|------------|

There were no exhibits introduced.



P R O C E E D I N G S

MS. RATIGAN: May it please the Court, Your Honor.  
This is the case of Marshall McGaha vs. The State of South  
Carolina. Docket number is 2014-CP-23-2476.

Mr. McGaha was indicted for two counts each of lewd  
act upon a child and first degree criminal sexual conduct  
with a minor. He was represented on these charges by  
Mr. Hoskinson. The case was brought to trial before --

THE COURT: By who?

MS. RATIGAN: Mr. Tom Hoskinson.

THE COURT: Oh, okay.

MS. RATIGAN: The case was brought to trial back in  
August of 2011 before Judge Hill. Mr. McGaha was found  
guilty of all four charges. On August 10th of 2011, Judge  
Hill sentenced him to concurrent terms of life imprisonment  
for each count of CSC first with a minor, and 15 years for  
one count of lewd act. Judge Hill then levied a  
consecutive 15-year sentence for the second count of lewd  
act. The case was appealed. The Court of Appeals affirmed  
the convictions and sentences June 26th of 2013.

The application was timely filed. The State is ready  
to proceed. Even though Mr. Hoskinson is unavailable  
since, just for the record, he now lives in South America,  
we are ready to proceed, and I have the solicitor on  
standby if she needs to come and testify.

1 THE COURT: Okay.

2 MS. HORLBECK: Judge, Mr. McGaha presented me a number  
3 of witnesses to contact in his case, and some of them are  
4 DSS witnesses. Let me just start with the lay witnesses  
5 that he wanted me to contact. We tried to contact  
6 everybody. One was James Valentine. We were able to get  
7 in contact with Mr. Valentine; however, Mr. Valentine was  
8 not able to confirm the information that Mr. McGaha said  
9 that Mr. Valentine would be able to confirm.

10 We tried to contact Sammy Coursey [phonetic]. We were  
11 unable -- we tried several times and were unable to get  
12 anybody to answer, and apparently there is no voicemail box  
13 set up on that phone number.

14 We contacted a Ms. Jessica Hufflin at both of the  
15 numbers that Mr. McGaha provided. And on one of the  
16 numbers, [REDACTED], that number was disconnected. The  
17 second number, [REDACTED], we left a message and have not  
18 received a return phone call.

19 We contacted a Rebecca Chastain. That number was  
20 disconnected.

21 We contacted a Tammy Tollison [phonetic], and  
22 contacted her twice and left messages. Never got a return  
23 phone call from her.

24 We also contacted a Bob Gosnell. Mr. Gosnell was  
25 unable -- Mr. Gosnell had a stroke, and he could not

1 remember Mr. McGaha. We also spoke to Mr. Gosnell's wife.  
2 She remembered Mr. McGaha. All she remembered was that  
3 Mr. McGaha was a good painter, and they didn't have any  
4 information to provide other than that.

5 Judge, as a follow-up, everyone that we -- all the  
6 witnesses that we were not able to contact we followed up  
7 with letters and have received no response.

8 Mr. McGaha also wanted me to subpoena a number of DSS  
9 workers. There was not a companion DSS case to  
10 Mr. McGaha's criminal charges. There was a DSS case,  
11 however. It did involve the children's mother, possibly  
12 some other family members. I don't know. I have not run  
13 that information down. I was concerned about the relevance  
14 of that information. I explained that to Mr. McGaha. I  
15 think that information would have been more relevant had it  
16 involved sexual allegations; however, they did not, is my  
17 understanding. I'm happy to try to run that information  
18 down, but it is extraordinarily difficult to get. I've  
19 tried to subpoena DSS on other occasions. It's very --  
20 it's difficult to get them to accept the subpoena; however,  
21 I will try. I'm not going to be able to do it today.

22 THE COURT: What does it have to do with this case?

23 MS. HORLBECK: I don't -- I'm going to let Mr. McGaha  
24 explain that. And he also has a motion to have me  
25 relieved.

1           MR. MCGAHA: Your Honor, it all started in 2009. I  
2           called DSS on the people. I got the drug test here where  
3           they failed crack cocaine charges. I was trying to protect  
4           the kids, and he retaliated on me. None of this was  
5           presented to me while I was representing myself.

6           Mr. Thomas Hoskins [sic] -- a transcript shows where  
7           Mr. Thomas Hoskins was unable to speak to me to set up any  
8           kind of trial strategy. It's in the transcript on page 17  
9           where it is hindered to communicate. And that's on line  
10          17. And then here on 24 and 25 it says there's been a  
11          communication difficulty that has hindered my ability  
12          where's he's wanting to -- wanting to try to defend me.

13          THE COURT: Where was that?

14          MR. MCGAHA: Page 17, 24 and 25. And right above it's  
15          on line 18 and 19.

16          THE COURT: Uh-huh. Yeah.

17          MR. MCGAHA: Then I put in a motion, a Stuckley  
18          motion, State vs. Stuckley. After the last time I talked  
19          to Mr. Hoskins, it was at the -- he come up and wrote down  
20          a 12-year plea agreement deal, just wrote it on paper. And  
21          I told him if he'd get it -- if he'd get it in writing --  
22          I've got it right here. I sent the other -- when I done  
23          the appeal when I first got the -- I was so tore up. I  
24          mean, this case is -- it literally -- it about killed me.  
25          I mean, it's all over drug charges. I got DSS records, got

1 my phone records. None of this was given to me. And I  
2 wasn't represented. All my due process was violated,  
3 period.

4 THE COURT: Why were you having trouble communicating  
5 with Mr. Hoskinson?

6 MR. MCGAHA: Sir?

7 THE COURT: Why did you have trouble communicating  
8 with Mr. Hoskinson?

9 MR. MCGAHA: Well, I was locked up in jail, and he  
10 couldn't get in to see me for some reason or something, so  
11 he said. Then when I kept trying to get my Brady material  
12 right here, well, he sent it to my appellate lawyer in 2012  
13 after I got convicted.

14 And I've got the drug records right here where the  
15 Omega Technology drug testing, I've got the DSS records and  
16 all. Before the case went to trial first, it started off  
17 with I was supposed to have choked [Minor 2] with a  
18 dog collar, which I didn't. A blind woman, Rebecca  
19 Chastain, was supposed to have been the eyewitness. I got  
20 papers showing where she's blind. And I told them ---

21 THE COURT: What does that have to do with this case?

22 MR. MCGAHA: That was part -- that was one of the  
23 charges. And they dismissed that charge.

24 THE COURT: Well, that's not part of this case.

25 MR. MCGAHA: Well, I didn't want it dismissed because

1       it was talking about the credibility, about -- where all  
2       this originated from, when he came up with these other  
3       charges. I had all my stuff packed up. I was fixing to  
4       move back to Virginia.

5             And Tom Hoskins tried to get the DSS records and all  
6       them, and they put it to a stop.

7             THE COURT: So he tried to get them and couldn't get  
8       them; is that what you're saying?

9             MR. MCGAHA: Yes, ma'am. I mean yes, sir. He tried  
10      to get them in. It's on -- I say -- I think it was a  
11      person named Jessica.

12            MS. RATIGAN: That would be 144 and 145.

13            MR. MCGAHA: Yeah. 144 and 145. That's when Ms. Seay  
14      objected, said it wasn't a Family Court matter. That's  
15      where it all stemmed from, from me calling DSS on them.  
16      The mom had 3,300 and something milligrams of crack in her  
17      system and said she wasn't addicted to crack no more. The  
18      83 year old great-grandma, she tested positive for crack  
19      cocaine. That little 5-year-old kid tested positive for  
20      crack cocaine. Omega Lab -- that's right here. And Becky,  
21      she told me, she said, "I'll get you," she said, "I'll put  
22      you away forever for getting DSS involved."

23            THE COURT: Who is Jessica Hufflin?

24            MR. MCGAHA: She's -- well, she's got about 16  
25      aliases. She's a crackhead, period. She's in and out of

1 prison her whole life, has been. Her husband, he embezzled  
2 \$250,000 from Flamingo Bingo.

3 Mike McGaha, he's an investigator for Greenville  
4 County Sheriff's Office, I worked with him, got some people  
5 busted for crack cocaine houses where these people was  
6 buying the crack back then. And Mike McGaha, he will  
7 testify that I was at Duke Street.

8 THE COURT: Ms. Horlbeck, what ---

9 MR. MCGAHA: I need a continuance so I can get --  
10 subpoena the witnesses and stuff.

11 THE COURT: So let me just ask you ---

12 MR. MCGAHA: Yes, sir.

13 THE COURT: I'm not talking to you.

14 Mr. Hoskinson was aware of the DSS pending action and  
15 attempted to go into it at the trial.

16 MS. HORLBECK: Yes, sir.

17 THE COURT: And the judge ruled ---

18 MS. HORLBECK: Yes, sir.

19 THE COURT: --- obviously, that he was not allowed to.  
20 By implication, we'll assume that happened, because the  
21 objection was made, there was a bench conference, and his  
22 examination went in a different direction, the defense  
23 lawyer's examination. So by implication, Judge Hill told  
24 him, "No, you can't go there," based on the solicitor's  
25 relevance objection. How does that -- and then this matter

1 was appealed.

2 MR. MCGAHA: She didn't bring ---

3 THE COURT: I am not speaking to you.

4 MR. MCGAHA: I'm sorry, sir.

5 THE COURT: Can you explain to me why there is -- that  
6 it's possible that it now becomes relevant just because  
7 we're in a postconviction relief action?

8 MS. HORLBECK: Well, Judge, I think the relevance  
9 would be Mr. McGaha would have used that as a defense, and  
10 he seems to be saying that he is the reporter, he is the  
11 one who reported the drug usage by the mother and perhaps  
12 the other family members while the children were present.  
13 And his position is that this charge was levied against  
14 him, and these allegations were levied against him in  
15 retaliation. I think it becomes relevant in that DSS would  
16 need to come in and confirm or deny that he was the  
17 reporter in this case.

18 THE COURT: Mr. Hoskinson had those records,  
19 obviously, and was aware of the DSS investigation. So by  
20 implication, I don't think that argument holds water.

21 Thank you.

22 MS. HORLBECK: All right, Judge.

23 Mr. McGaha, did you have a -- do you still wish to  
24 have me relieved? Did you want to go into that?

25 THE COURT: Yeah. What about your motion to fire her?



1 MR. MCGAHA: Well, Your Honor, right here on page 12,  
2 line 25 that's where I put -- I put -- Mr. Hill, Your  
3 Honor, where I was trying to have Mr. Thomas removed from  
4 my counsel so I could ask for a continuance. And -- and  
5 Mr. Hill denied -- denied me relieving him.

6 THE COURT: You're talking about Judge Hill?

7 MR. MCGAHA: Yes, sir. It's right here on page -- I  
8 mean on page ---

9 THE COURT: So you tried to fire him.

10 MR. MCGAHA: He ain't come to see me to go over no  
11 trial strategy, sir. And I wanted the DSS people to hear,  
12 I wanted the expert witnesses to hear about -- about the  
13 crack and stuff. And all I got was my phone records. I  
14 didn't have none of this stuff.

15 THE COURT: You talked to Mr. Hoskinson about all  
16 that, right?

17 MR. MCGAHA: Well, this here was about a case where I  
18 reported it. The only case I had was the one ---

19 THE COURT: Well, this is a simple "yes" or "no."  
20 This is a "yes" or "no" question. You had talked with  
21 Mr. Hoskinson about those issues, correct?

22 MR. MCGAHA: Well, not -- not -- not about -- I didn't  
23 know he had all these drug charges test and all for DSS and  
24 all that. The only thing I ever got from Mr. Hoskins was  
25 my warrants. I got them. And I got -- I got, I think,

1       just a few copies of the -- where the search warrant things  
2       was filled out.

3               THE COURT:   So you didn't tell Mr. Hoskinson about  
4       these issues?

5               MR. MCGAHA:   Yes, sir.

6               THE COURT:   Okay.   So he knew about them.

7               MR. MCGAHA:   He didn't -- well, he . . .

8               THE COURT:   Yes or no?   Yes or no?

9               MR. MCGAHA:   They didn't have no witnesses here for  
10       me.

11              THE COURT:   You talked to him about it, correct?

12              MR. MCGAHA:   I feel that DSS workers was here with my  
13       phone records and stuff.

14              THE COURT:   Well, answer my question "yes" or "no."  
15       You talked with Mr. Hoskinson about these issues, yes or  
16       no?

17              MR. MCGAHA:   Yes, sir.

18              THE COURT:   Okay.

19              MR. MCGAHA:   But I can represent myself, which is a  
20       constitutional right.

21              THE COURT:   Oh, yeah.   You have a constitutional right  
22       to due process and to present any relevant and competent  
23       evidence.

24              MR. MCGAHA:   He wouldn't give me my -- he wouldn't  
25       give me my -- my discovery.   I needed the whole record in

1 order to represent myself. I ain't got but an eighth-grade  
2 education, sir.

3 THE COURT: Okay. Well, right now we're talking about  
4 whether or not you're going to fire Ms. Horlbeck. What do  
5 you want to do?

6 MR. MCGAHA: I want to have DSS workers and all here,  
7 the ones that interviewed all the people and all.

8 THE COURT: Well, I've ruled on that. The trial judge  
9 ruled it was not relevant, the Court of Appeals reviewed  
10 the record and did not require it to be done. I am not  
11 going to do it in this proceeding.

12 MR. MCGAHA: The only thing the appeal court didn't  
13 even -- didn't bring none of that up, the appellate lawyer.

14 THE COURT: By implication, they agreed with it.

15 MR. MCGAHA: Your Honor, when I wrote Mr. Hoskins to  
16 get my -- so I can help the appellate lawyers to bring up  
17 these issues, he mailed -- he mailed my -- mailed my  
18 discovery to her. The Brady material is supposed to belong  
19 to the defendant.

20 THE COURT: Well, here's another simple "yes" or "no"  
21 question. Do you want to fire Ms. Horlbeck?

22 MR. MCGAHA: Well, I don't know enough about the law  
23 not -- I need -- I'd like to have my witnesses here. I'd  
24 really like to subpoena the ---

25 THE COURT: Well, let me tell you something. The DSS

1 witnesses are not coming. I'm not going to grant a  
2 continuance or a motion to continue this discovery to go  
3 into a nonrelevant subject, okay?

4 Do you want to fire her?

5 MR. MCGAHA: Well, I'm going to have to keep her  
6 because I need witnesses and all here, and she knows more  
7 about the law than I do.

8 THE COURT: What witnesses?

9 MR. MCGAHA: Well, Mike McGaha, I can get him here.  
10 He knows that I wasn't living over there in 2007, '8. They  
11 said I lived with them for five years. I was there -- I  
12 went there and stayed four days the month of July, then in  
13 August, I didn't -- I ---

14 THE COURT: Okay. What other witness?

15 MR. MCGAHA: I've got Buddy Todd. I'd like to have  
16 him here. And Terry Madelyn [phonetic].

17 THE COURT: Who is Buddy Todd?

18 MR. MCGAHA: He's a friend of mine, the one I stayed  
19 with up on Anderson Road right there across from ---

20 THE COURT: And what would he offer about this case?

21 MR. MCGAHA: Well, he could testify that I -- that I  
22 wasn't living there with these people when they -- that  
23 they said in five-year time period.

24 THE COURT: And what would that have to do with guilt  
25 or innocence about you -- what's been proven to have

1       happened in this case?

2               MS. HORLBECK: I think what he's saying is he didn't  
3       live in the same house as the children.

4               THE COURT: Well, there are a lot of CSC with minors  
5       where the person doesn't live in the same house.

6               MS. HORLBECK: And, Judge, these are just not  
7       witnesses that -- he didn't give me these names, but I'm  
8       happy to look into them. These just weren't names that he  
9       gave me, so that's why I have not looked into them at this  
10      point.

11              THE COURT: You got any other names?

12              MR. MCGAHA: No, sir.

13              THE COURT: So you're just coming up with names out of  
14      the blue at the last minute to tell your lawyer what to do.

15              MR. MCGAHA: Well, Mike McGaha, I forgot all about  
16      him. I was fixing to contact him anyway before I got  
17      locked up.

18              THE COURT: You forgot all about him?

19              MR. MCGAHA: Well, I've been trying to go over all  
20      this paperwork and all. It's hard to remember everything.  
21      I worked -- I was working down at Kershaw building chairs  
22      and stuff in the carpenter shop, not where they sell them  
23      to the public and all. And I just didn't have time to go  
24      -- my mind -- I mean, it's been a lot of stress to me, sir.  
25      A lot of stress. Thomas Hoskins, he didn't -- he didn't --

1        didn't have no expert testimony or nothing about the review  
2        the State's -- Fran -- the doctor that was supposed to have  
3        done exams and stuff, and didn't -- and then wouldn't ask  
4        the people the questions that I tried to get him to ask  
5        them.

6                THE COURT: Well, you just said yourself that you  
7        don't know much about the law, and he's a lawyer.

8                I'm sorry, ma'am. I see Ms. Ratigan has risen.

9                MS. RATIGAN: That's okay, Your Honor. I was just  
10       going to state that the witnesses that Mr. McGaha just  
11       listed would not be relevant in this case because by his  
12       own testimony at trial on page 221, he stated he was living  
13       there in August of 2010, that he was staying in that room.  
14       He had a bed in there. He slept in there. So I think the  
15       witnesses he listed today are irrelevant based on his own  
16       trial testimony.

17               THE COURT: How about that, Mr. McGaha?

18               MR. MCGAHA: Well, I was living up there with Terry  
19       Madelyn, and Becky called me -- my cell phone record shows  
20       where she called me. I went down there to pick her up and  
21       take her to church that Sunday morning.

22               THE COURT: It's in the record. You admitted you were  
23       living there at the time. You said it.

24               MR. MCGAHA: I was talking about -- no longer -- in  
25       July and August I wasn't there about four or five days

1 total.

2 THE COURT: All right. We're going to go forward with  
3 the case.

4 MS. HORLBECK: Your Honor, petitioner would call  
5 Mr. McGaha to the stand.

6 THE COURT: Come on around.

7 WHEREUPON,

8 MARSHALL DEWITT MCGAHA,  
9 After first having been duly sworn, testified as follows:

10 THE CLERK: Please state your full name for the  
11 record.

12 THE WITNESS: Marshall DeWitt McGaha.

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

14 DIRECT EXAMINATION

15 BY MS. HORLBECK:

16 Q Mr. McGaha, who represented you in the trial of this  
17 case?

18 A Thomas Hoskins.

19 Q How long did he represent you?

20 A Well, I started off with Chris Scalzo first, and they  
21 transferred me to Mr. Hoskins. And I talked to him, let's  
22 see, two times right here in the courtroom and one time at  
23 the jail.

24 Q All right. Did you ever make bond or were you  
25 incarcerated at the jail the whole time?

1 A Incarcerated the whole time.

2 Q All right. And you said that Mr. Hoskinson went to  
3 see you just one time at the jail?

4 A Yes, ma'am.

5 Q How long did Mr. Hoskinson represent you on these  
6 charges?

7 A On this, only for about -- probably about eight  
8 months, that I know of.

9 Q Okay. And during the eight months that he represented  
10 you, did you and Mr. Hoskinson review discovery?

11 A No, ma'am.

12 Q All right. Did anyone from the Public Defenders  
13 Office or anyone from Mr. Hoskinson's office bring the  
14 police reports and the statements down to review with you?

15 A I got that. The only thing I ever got was the  
16 warrants and a few of the statements that Sammy wrote,  
17 Rebecca Chastain wrote about the dog collar incident  
18 supposed to be that bind woman supposed to saw it. And  
19 Ruby Kay [phonetic] was the one that tested positive for  
20 crack cocaine, 700 something milligrams of crack in her  
21 system. And that's about all. I saw them.

22 Q Okay.

23 A They came down there one time to show -- they tried to  
24 show the video, but got into it for probably about five  
25 minutes, then he had to leave.



1 Q Okay. All right. And you said that -- did you ask  
2 Mr. Hoskinson to give you a copy of the discovery in the  
3 case?

4 A All I got -- I got paperwork back where I'd wrote him.  
5 If you need to see it, I wrote him about three different  
6 times trying to get all my discovery and stuff, and he did  
7 that. And he gave me the warrants. I never did get none  
8 of the -- no other discovery. It consisted about probably  
9 six pages.

10 Q Did he ever explain to you why he did not provide  
11 discovery to you?

12 A He told me it would be against me, that somebody else  
13 might see it in the jail, that it would be against my  
14 benefit.

15 Q All right. When did you finally receive a copy of  
16 your discovery?

17 A I got it this past November from the appellate lawyer,  
18 Susan Hackett, where Thomas Hoskins mailed it to her when I  
19 requested again after I done been convicted of this crime.  
20 I wrote him a letter requesting all my materials so I could  
21 help my defense attorney bring up all of these issues on  
22 the appellate court, and instead he mailed it to the  
23 appellate court instead of mailing it to me.

24 Q Okay.

25 A And that didn't -- and that caused Susan Hackett to be

1       ineffective on the appeal because I didn't have all these  
2       records to go over. She didn't know she had them until I  
3       finally kept tracking her down, tracking her down, find out  
4       that Tom Hoskins sent them to her instead of sending them  
5       to me. And I always thought the Brady material belonged to  
6       the defendant.

7       Q     When you say "Brady material," you're talking about  
8       the discovery material?

9       A     Yes, ma'am. All the discovery.

10      Q     All right. Okay. And did you and Mr. Hoskinson talk  
11     about what witnesses you wanted him to subpoena?

12      A     On the letters I wrote him, it shows why I asked for  
13     to have expert testimony. She never refuted the State's  
14     and all and got other witnesses.

15      Q     Okay. All right. Did you and Mr. Hoskinson talk  
16     about hiring an expert?

17      A     He told me that he was not going to put up a defense,  
18     that the State had to prove me guilty.

19      Q     That's not my question. Listen to my question. Did  
20     you and Mr. Hoskinson talk about hiring an expert in the  
21     case?

22      A     I told him I needed for him to get an expert to have  
23     at trial.

24      Q     What kind of expert did you talk to him about?

25      A     Well, a medical expert and a psychiatrist.

1 Q A medical expert for what?

2 A About where the kids supposed to have been molested  
3 and stuff, where it showed on -- and where -- refute the  
4 State's -- Dr. Fran Cromwell, I think was her name.

5 Q Okay. Did Mr. Hoskinson, to your knowledge, ever hire  
6 an expert?

7 A No, ma'am. He never did.

8 Q Did an expert talk to you down at the jail?

9 A No, ma'am.

10 Q Did an expert testify on your behalf at the trial?

11 A No, ma'am. No one testified on my behalf at the  
12 trial.

13 Q How do you think the absence of an expert to testify  
14 on your behalf, how do you think that negatively impacted  
15 your defense?

16 A Well, it would have been a big help, and just like all  
17 of the DSS records where the -- about the drugs and all  
18 where I called on them. That would have been a big help,  
19 too.

20 Q Let's just focus on the expert now. How do you think  
21 the absence of an expert prejudiced or hurt your case?

22 A Well, it could have been about the suggestibility to  
23 the kids, the way the doctor kept asking the same questions  
24 a certain way. Kids believe anything about it, you talk to  
25 them long enough. I mean, you can make -- I wouldn't harm

1 a flea, period.

2 Q Did Mr. Hoskinson make the argument in closing that  
3 the children were suggestible and open to suggestion?

4 A No, ma'am.

5 Q Okay. All right. You also mentioned that you wanted  
6 Mr. Hoskinson to hire a psychiatrist in the case?

7 A Yes, ma'am.

8 Q Why was a psychiatrist relevant?

9 A Well, about the vulnerability of the kids' state of  
10 minds and all. They got a lot of mental issues and all,  
11 and health issues, too. And that school record and all,  
12 need to have been present and all, which I think **Minor 2**,  
13 she done real good in school. I got to helping her on her  
14 grades. In the evening I'd go down by there when you'd  
15 come in for school and help her with her homework, then I'd  
16 go back up to Terry Madelyn's.

17 Q Okay. All right. And, obviously, a psychiatrist  
18 never testified in your defense?

19 A No, ma'am.

20 Q All right. And how do you think that hurt your case?

21 A Well, it hurt about the capability of the kids'  
22 testimony and all and having it be -- suggest a different  
23 question -- questioning and all. A kid wants to -- they  
24 want to tell an adult what they want to hear. I mean,  
25 kid's mind ain't like a grown-up's mind is. You can tell

1       them -- people -- I have a daughter. She's 34 years old.  
2       A lot of people raise their kids that there's a Santa  
3       Claus, tooth fairies. I ain't -- I'm a realist. I believe  
4       tell them straight point blank. Don't plant no kind of  
5       seed lies in no kid, because if you plant a seed, it will  
6       grow.

7       Q     Okay. Were there any plea bargains in this case?

8       A     Yes, ma'am.

9       Q     Tell me about that.

10      A     The first plea bargain was a 20-year. And I told  
11      Mr. Hoskins, I said, "I ain't -- I don't -- do not feel  
12      like pleading to something that I ain't done." I said, "If  
13      you do your job right, I cannot be convicted." I said,  
14      "All this is over drug charges." While I had them, I had  
15      called DSS on them to get them drug tested, and they  
16      failed. The 5-year-old kid failed, the 83-year-old grandma  
17      failed, the mother failed.

18      Q     All right. Well, the Court's already said that that  
19      issue is not relevant, okay? So let's talk about ---

20      A     Well, it would have been for my -- part of my defense.

21      Q     Let's just talk about the plea bargain because that's  
22      what I asked you about. What plea offers did the State  
23      make?

24      A     20 years. Then Mr. Hoskins come back. Last time I  
25      talked to him before I walked into trial, he wrote State

1 would recommended 12 years on the plea. Then he told me,  
2 he said, "I ain't going to put up no defense. The State  
3 just has to prove you guilty."

4 And I said, "Well," I said, "since you ain't going to  
5 put up no defense," I said, "I'll be like a deer standing  
6 out in the middle of the field with about 50 people with  
7 AK-47s shooting at me." I said, "There ain't no way I can  
8 win." I said, "If you'll get the 12-year plea bargain in  
9 writing," I said, "I'll sign it."

10 Q Okay. So day of trial, there was a plea offer for  
11 12 years?

12 A No, ma'am.

13 Q When was the 12-year plea offer?

14 A That was in -- they wrote that on a paper, which I got  
15 back there.

16 Q When was it?

17 A In July.

18 Q Okay. All right. And ---

19 A About July the 15th, I think.

20 Q All right. You didn't trust Mr. Hoskins when he said,  
21 "They'll offer you 12 years if you want to plead"?

22 A Well, I always -- I'd been told on plea bargains to  
23 get it in writing.

24 Q Okay. And it was not in writing?

25 A No, ma'am.

1 Q And as a result, what would you have done differently  
2 if there had been a 12-year plea offer in writing? Would  
3 you have plead?

4 A I'd have said, you know, if you told me you wasn't  
5 going to put up no defense. I mean, you can't win at trial  
6 if you ain't going to put up no kind of defense.

7 Q Okay. Did that 12-year plea offer expire?

8 A Well, I never did see it. I never did talk to him no  
9 more till I walked into the courtroom. So it --  
10 ineffective always ---

11 Q How far in advance of your trial did Mr. Hoskinson  
12 tell you about the 12-year offer?

13 A He didn't mention it at trial. I brought it up at  
14 trial in front of the judge and showed him the papers and  
15 all. And ---

16 Q Right. By that time, had that offer expired; do you  
17 know?

18 A I don't know if it expired or not. I mean, I -- I  
19 didn't get the chance to -- if I'd have seen it in writing  
20 typed out, I'd have signed it when he wasn't going to put  
21 up no defense and wasn't going to have no witnesses on my  
22 behalf.

23 Q All right. What else did you want Mr. Hoskinson to do  
24 that he failed to do? What other mistakes are you saying  
25 he made?

1       A     Well, he didn't come to talk to me before trial to set  
2       up any kind of trial strategy, and didn't have no kind of  
3       witnesses and all here, period.

4       Q     All right. What witnesses did you ask him to  
5       subpoena?

6       A     The expert witness and all to get them here and all,  
7       and Buddy Todd, Terry Madelyn, the people I was living  
8       with.

9       Q     Okay. And you said that none of those people were  
10      there.

11            Are there any other mistakes that you're saying  
12      Mr. Hoskinson made ---

13      A     Well ---

14      Q     --- that you haven't already been over?

15      A     He wasn't -- he wasn't -- questioned the witnesses the  
16      questions I tried to get him to ask them and all. And he  
17      failed to present paperwork where it's showing where they  
18      -- lying and stuff on the -- to DSS investigators and  
19      stuff, and all that stemmed from -- from drug usage. And  
20      then just like in Atlanta, Georgia, the teachers out there  
21      got fired for not -- cheating on the grades out there just  
22      recently. People retaliate against you if you try to do  
23      the right thing.

24      Q     Okay. All right. Any other issues?

25      A     Well, I think the attorney, he should have got -- been



1       competent and got that typed out, that plea deal. I mean,  
2       he was ineffective by not doing that, the way I look at it.  
3       I mean, I might have to go on to a higher court.

4       But my ancestors been here in America for quite a few  
5       centuries, and I'm Irish and Cherokee Indian and Irish.  
6       They believe in what's right. 90 percent of them, anyway.

7       MS. HORLBECK: Okay. All right. How about answer any  
8       questions that Ms. Ratigan may have for you.

9                               CROSS EXAMINATION

10      BY MS. RATIGAN:

11      Q     So your testimony today is Mr. Hoskinson never gave  
12      you any of your discovery?

13      A     He gave me just my warrants and stuff. I didn't -- I  
14      didn't get the whole discovery.

15      Q     What didn't you receive?

16      A     All the DSS copies, my phone records, any kind of -- I  
17      told him to get any DNA reports. I didn't receive none of  
18      them. I ain't seen none of them, like the pictures that he  
19      was supposed to have found in the drawer. Whose  
20      fingerprints showed on them? They was run on NCIC, and  
21      they wasn't -- and wasn't no hits on them. But there  
22      wasn't no DNA on nothing that's supposed to have them.

23      Q     Do you know that Mr. Hoskinson had this information or  
24      do you just think he did?

25      A     Well, the warrants and all this, they got all --

1 everything to run DNA and all on it, and Greenville County  
2 should have it somewhere.

3 Q That's not what I'm asking you. Do you know that he  
4 had phone records and fingerprint evidence? Do you know he  
5 had this or do you just think he did?

6 A Well, the search warrant's got -- got all the stuff to  
7 do it. I imagine on crime scenes they fingerprint and do  
8 DNA test on stuff. They should.

9 Q Do you recall Mr. Hoskinson telling the judge he gave  
10 you discovery on two separate occasions?

11 A They gave me just my warrants and just a few ---

12 Q That's not what I asked you. Do you remember him  
13 telling the judge on page 16 of the trial transcript, he  
14 said, "I've given him copies of discovery on two separate  
15 occasions. He's probably had one half for a couple of  
16 months and another section for about a month," and you  
17 said, "Three weeks"? Do you recall that?

18 A Yes, ma'am. I got the two letters where he sent them  
19 to -- saying -- like I'm saying, it's just the warrants.  
20 It wasn't the full discovery. You can't get a trial  
21 without having the whole discovery.

22 Q Did he tell you he had all these other records and  
23 just wasn't giving them to you?

24 A He didn't tell me he had them, period.

25 Q And you had two meetings with him at the courthouse

1 and one at the jail?

2 A One at the jail and two up here in ---

3 Q I'm sorry. Two at the jail and one at the courthouse?

4 A Yes, ma'am.

5 Q And did you discuss with him your version of what  
6 happened?

7 A Well, I tried. When I tried to, he said he didn't  
8 want to put up no defense. And then when I tried to get  
9 him to ask the questions to the defendants, he said he  
10 didn't want to badger the witnesses. He said it just makes  
11 it harder on ---

12 Q Okay. Slow down a second. What I'm asking you is,  
13 did you tell him your version of what happened, just your  
14 version from your point of view?

15 A Yes, ma'am.

16 Q Okay. And did he discuss with you the State's  
17 evidence against you?

18 A Early his lack of communication. Like I said on the  
19 record there, he didn't ---

20 Q All right.

21 A No. He did not discuss it with me.

22 Q Okay. Did you give him the names of witnesses you  
23 wanted him to contact?

24 A Yes, ma'am.

25 Q And what were those names that you -- the names that

1       you gave him? What names did you give him?

2       A       Well, I wanted -- I wanted that Ruby Kaluff. I wanted  
3       her on the stand. They didn't -- he wouldn't put her on  
4       the stand because she ---

5       Q       I just need to know the names of the people.

6       A       I wanted some of the State witnesses that they didn't  
7       want -- that they didn't put on the stand. I wanted them  
8       to be questioned.

9       Q       Give me the names of the witnesses that you told him,  
10       "Mr. Hoskinson, I want you to contact these people." What  
11       did you tell him?

12       A       I told him Janey [phonetic] Valentine, Terry Madelyn  
13       and Buddy Todd.

14               And I told him to get -- get my blood test and all  
15       where -- over here on Stone Avenue before I got the  
16       hepatitis B. He didn't do that neither.

17       Q       And did you ask him to get those DSS records?

18       A       Yes, ma'am. But I never did receive none of them from  
19       him till 2014, four years after I got convicted.

20       Q       Did you tell Mr. Hoskinson you were not living at that  
21       house?

22       A       Yes, sir. I mean yes, ma'am.

23       Q       But all of your things were there; is that correct?

24       A       Well, if you look at the photos, you can see what --  
25       it's packed up. I was fixing to leave to go back to

1 Virginia.

2 Q So that's yes, your things were there?

3 A Yes. Because I didn't have -- I didn't have no  
4 vehicle, and I couldn't took [sic] them back. I was  
5 leaving that Monday morning on a Trailways bus to go back  
6 to Norfolk, Virginia.

7 Q And you were actually in that room when the officers  
8 came; is that correct?

9 A I went down there that Sunday morning. Rebecca called  
10 me that Friday -- Thursday or Friday and wanted me to take  
11 her to church.

12 Q Okay. But my question -- my question is, were you in  
13 that room when the officers came?

14 A Yeah. I went down there. She called me and wanted me  
15 to take -- come ---

16 Q Yes or no, were you in the room when the officers  
17 came?

18 A Yes. But ---

19 Q Okay.

20 A --- that ain't the whole answer.

21 Q That's all the answer that I need.

22 And you testified that you were staying there in that  
23 room? The playroom with the washer and dryer, you  
24 testified at trial you were staying there, correct?

25 A A few -- a couple days, I was.

1 Q But you didn't say that at trial you were there for a  
2 couple of days. You just said you were staying there.

3 A I said that I was there for four days in July, and I  
4 was there in -- that Sunday morning I went back there. I  
5 -- well, let's say it was that Sunday. Then the Monday, it  
6 was on July -- let's see. August the 9th. That's when the  
7 dog collar incident was supposed to happen. **Minor 2**

8 **Minor 2** was fixing to walk the dog.

9 MS. HORLBECK: I'm going to object to the relevance of  
10 that because that never came in the trial, and we're glad.  
11 Let's don't get into that.

12 BY MS. RATIGAN:

13 Q So your basic argument ---

14 THE WITNESS: My own lawyer objecting to me?

15 MS. HORLBECK: Yes. That case was never pursued. You  
16 don't need to get into it here. You're hurting yourself.

17 THE WITNESS: That was going to be part of my defense,  
18 too.

19 MS. HORLBECK: All right. I think you're hurting  
20 yourself, but if you want to go into it, that's fine. I'm  
21 advising you not to.

22 BY MS. RATIGAN:

23 Q Well, I'm going to move along.

24 So your basic argument is you called DSS on these  
25 adults and that they cooked this up as revenge against you?

1 A Yes, ma'am.

2 Q And Mr. Hoskinson, during his closing argument, what  
3 he argued was that they were trying to evict you, and  
4 that's when these allegations came up; is that correct?

5 A Well, the big sister was trying to beat me. She was  
6 mad because DSS was involved with them.

7 Q Okay. But, again, my question is, he argued that this  
8 was revenge. He argued that in closing arguments, did he  
9 not?

10 A I don't -- I don't remember, ma'am.

11 MS. RATIGAN: Okay. That's fine. That's all I have,  
12 Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. HORLBECK:

15 Q Just briefly, you mentioned something about pictures.  
16 What were these -- tell me about the pictures. What were  
17 they of? Where were they found?

18 A Sammy Coursey, he's the kids' father, he's a sex --  
19 sex offender. I was -- I was -- I was raising Cain with  
20 Becky and Ruby and them about sending the kid down on  
21 weekends and their father a sex offender.

22 Q Okay. What were the ---

23 A And they wrote a statement saying that he would come  
24 into the bedroom, and he saw several pictures of kids took  
25 from behind.

1 Q Okay. Where -- came into whose bedroom? Your  
2 bedroom?

3 A Well, they're in the ---

4 Q Where were the pictures found?

5 A They're in the empty drawers. Almost -- the clothes,  
6 I'd packed up. On July the 9th is when I come in when that  
7 dog collar was mentioned, that that's when I packed up my  
8 stuff. And I told Becky, I said, "I'm leaving." I said,  
9 "You need -- if you" -- I said, "You know this ain't  
10 happened." I said -- I said, "You can call DSS." I said,  
11 "You're going to get -- you're going to get yourself more  
12 problems." I said, "I done help you save the kids one time  
13 when you got all these drug charges on you back in March  
14 when you went to court."

15 And she said -- and she told me, she said, "Well, I'll  
16 -- I'll -- I'll get even with you. I'll put you away for  
17 the rest of your life."

18 Q Okay. And your contention is that Mr. Coursey planted  
19 those pictures?

20 A Yes, ma'am.

21 Q And you wanted Mr. Hoskinson to have the pictures  
22 tested for the presence of fingerprints?

23 A Yes, ma'am.

24 Q Was that ever done?

25 A Not that I know of.



1 Q Did those pictures even come into evidence?

2 A No, ma'am.

3 MS. HORLBECK: Okay. All right. No further  
4 questions.

5 THE COURT: Well, Mr. McGaha, I think I remember you  
6 saying when we were having a discussion, you claimed that  
7 your lawyer only saw you once at the jail and twice at  
8 court. Did you say that?

9 THE WITNESS: Well, he might have come twice at the  
10 jail. I know one time when he come to see -- the videos  
11 was down -- down in the new section they'd built.

12 THE COURT: No. Let me explain something to you.

13 THE WITNESS: First time I ---

14 THE COURT: Let me explain something to you. I asked  
15 that question. It's either a "yes" or a "no," and then you  
16 can explain it.

17 Did you tell me earlier in this proceeding that you  
18 only saw your lawyer once at the jail and twice at court?  
19 Did you tell me that?

20 THE WITNESS: Yes, sir.

21 THE COURT: Okay. That is not true, is it?

22 THE WITNESS: Well, he come ---

23 THE COURT: "Yes" or "no"?

24 THE WITNESS: No, sir.

25 THE COURT: Okay. And I just would note for the

1 record that the judge on page 17 wisely verbalized what  
2 Mr. Hoskinson described as the State's discovery, which was  
3 provided to you, as an inch to an inch and a quarter of  
4 paper. So the discovery was about an inch and a quarter,  
5 an inch to an inch and a quarter.

6 I think that's all I've got. Thank you. You can step  
7 down. Unless y'all have any more questions.

8 MS. HORLBECK: I don't.

9 MS. RATIGAN: No.

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

11 MS. HORLBECK: I don't have anything further, Judge.  
12 I don't have any further witnesses, Judge.

13 THE COURT: Okay. All right. Anything from the  
14 State?

15 MS. RATIGAN: I think I need to briefly call the  
16 solicitor just to put the plea offer issue on the record.  
17 Let me -- I have her on standby. Let me pop out and call  
18 her.

19 THE COURT: We'll just take a five-minute, ten-minute  
20 break.

21 (WHEREUPON, a recess was taken.)

22 THE COURT: Okay.

23 MS. RATIGAN: Your Honor, we call Ms. Seay.

24 ///

25 ///

1 WHEREUPON,

2 BRYNA SEAY,

3 After first having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. RATIGAN:

6 Q Ms. Seay, do you recall prosecuting Mr. McGaha in this  
7 case?

8 A Yes, I do.

9 Q And prior to this hearing, did I ask you to retrieve  
10 your file from storage?

11 A Yes.

12 Q And do you have it with you today?

13 A Yes, I do.

14 Q And I'm just going to cut right to it.

15 Mr. McGaha, there's been some testimony about a 12-year  
16 plea offer in this case. Did you ever make a 12-year plea  
17 offer?

18 A Yes, I did.

19 Q And do you recall, was that an oral, e-mailed or a  
20 written offer; do you remember?

21 A My cursory review just now indicates that we did have  
22 some e-mail correspondence about a cap of 15 years, but  
23 then we did have further talk about a recommendation of  
24 12 years. And I did have that written on my summary sheet.

25 Q Did you ever have any indication from Mr. Hoskinson

1       that Mr. McGaha was going to take that 12 years?

2       A     No. He indicated that the defendant wanted a trial.

3       Q     Was this case ever set to plead guilty; do you  
4       remember?

5       A     I do not believe that it was.

6       Q     So there was a 20-year offer, then a 15-year offer,  
7       then a 12-year offer?

8       A     That's correct.

9       Q     And did you ever receive any -- did you ever receive  
10      any information from Mr. Hoskinson that Mr. McGaha was  
11      interested in accepting any of these pleas?

12      A     No. It was communicated to me that he wanted to go to  
13      trial and that is what we ended up doing.

14            MS. RATIGAN: That's all I have, Your Honor.

15                    CROSS EXAMINATION

16      BY MS. HORLBECK:

17      Q     Just briefly, Ms. Seay, when did you make the offer  
18      for 12 years; do you recall?

19      A     The negotiations concerning the cap of 15 years were  
20      in June of 2011, and this trial, I believe, was in August  
21      of 2011. So the note that I have here indicates that the  
22      12 years was discussed in August.

23      Q     Okay. Do you know if it was right before trial? Do  
24      you know when in August at all?

25      A     I don't know specifically.

1 Q Okay. Then the 12-year offer, was that a verbal  
2 offer?

3 A That's what I believe, yes.

4 Q Okay. It was never memorialized in a -- I guess a  
5 written plea offer; is that correct to say?

6 A No. I think once my written plea offer was rejected,  
7 then the rest of our correspondence was done by e-mail and  
8 verbally.

9 Q Okay. If Mr. McGaha had wanted a letter reflecting  
10 the 12-year offer, is that something that you would have  
11 entertained? Do you think you would have done that if  
12 Mr. Hoskinson had come to you and said, "Look, he wants to  
13 see it in writing"?

14 A Yes.

15 Q Okay. All right. Did Mr. Hoskinson ever say, "Look,  
16 he's considering 12. We just need it in writing"?

17 A We had -- we had e-mail correspondence back and forth  
18 that, you know, his client didn't want to accept what I was  
19 offering, and he counter-offered, and we continued with the  
20 negotiations that way.

21 Q Okay. And so did Mr. Hoskinson ever specifically --  
22 do you remember him saying, "Please put the 12 years on a  
23 formal plea offer"?

24 A I do not recall that, no.

25 Q Okay. And tell me, you said that your understanding

1 was that Mr. McGaha rejected the 12-year offer. Do you  
2 remember how Mr. Hoskinson told you about that rejection?

3 A I don't remember how he told me, but he obviously told  
4 me because we then proceeded to trial.

5 Q Okay. Do you have an e-mail saying Mr. McGaha  
6 rejected the 12-year offer?

7 A Would you give me just a moment?

8 Q Sure. Thank you for looking.

9 A (Reviews document) What I can tell you is that July  
10 5th of two thousand ---

11 THE COURT: '11.

12 A --- '11 is approximately when I sent an e-mail telling  
13 him that I was scheduling the trial for August the 8th of  
14 2011 in order to give him as much notice as possible, and  
15 subsequent to that, the 12 years was discussed. That's  
16 written on my factual summary that would have been  
17 presented had he decided to accept the offer and plead  
18 guilty, which I think -- based on this, I think we -- you  
19 know, we were willing to do pretty late in the game to save  
20 these girls from having to go through a trial.

21 MS. HORLBECK: Okay. All right. Thank you so much.

22 MS. RATIGAN: I have nothing further, Your Honor.

23 THE COURT: Okay. Thank you.

24 THE WITNESS: Thank you.

25 MS. RATIGAN: And the State would rest at this time,

1 Judge.

2 THE COURT: Okay. Anything in reply?

3 MS. HORLBECK: Just briefly, Judge.

4 THE COURT: Limited to a reply of the presentation  
5 from the State.

6 MS. HORLBECK: Yes, sir.

7 THE COURT: You're still under oath.

8 WHEREUPON,

9 MARSHALL DEWITT MCGAHA,  
10 After having been previously duly sworn, testified as  
11 follows:

12 REDIRECT EXAMINATION

13 BY MS. HORLBECK:

14 Q Mr. McGaha, were you made aware of the 15-year offer?

15 A No, ma'am. That was never even brought up to me by  
16 Mr. Hoskins.

17 Q All right. Do you recall rejecting the 12-year offer?

18 A I did not reject it. I -- I talked to him here in  
19 July back here in the back. He come, he said, "The State"  
20 -- he wrote down on that paper, "The State recommends  
21 12 years."

22 I said, "Go get it in writing, Mr. Hoskins. Since you  
23 already told me you ain't going to put up no defense," I  
24 said, "I'll accept it."

25 MS. HORLBECK: Okay. That's all I have. Thank you.

1           THE COURT: You just told me or testified you wouldn't  
2 plead to something you didn't do.

3           THE WITNESS: Well, after he told me he wasn't going  
4 to put up no defense, I didn't have much choice. I mean,  
5 12 years is better than two life sentences 30 -- 2 -- 15  
6 more years.

7           THE COURT: Your darn right it is.

8           THE WITNESS: If I'd have gotten it in writing, yes, I  
9 would have took it.

10          THE COURT: So you're telling me now you did this?

11          THE WITNESS: Yes. I'd have been glad to took it if  
12 he'd have got it in writing.

13          THE COURT: No. I'm talking about the crime. You  
14 said you wouldn't plea to something you didn't do. So  
15 now ---

16          THE WITNESS: No, I did not do it.

17          THE COURT: Uh-huh.

18          THE WITNESS: But I'd have took 12 years from risking  
19 getting life sentences.

20          THE COURT: Oh, well, you didn't know you'd get a life  
21 sentence if you went to trial.

22          I'm sorry. I took your -- anything?

23          MS. RATIGAN: I was just going to ask Mr. McGaha.

24          ///

25          ///



RECROSS EXAMINATION

BY MS. RATIGAN:

Q You made this argument in front of the judge, though, didn't you, the 12 years and Mr. Hoskinson writing it out for you?

A I showed the Honorable Garrison Hill the 12 years.

Q Right. But you put all this before the judge. He knew about it.

A He glanced at it and handed it right back to me.

MS. RATIGAN: That's all I have.

And for Your Honor's information, that's pages 6 and 7.

THE COURT: Yeah. I remember seeing that.

Okay. That's all. Anything else?

MS. HORLBECK: Nothing, Judge.

THE COURT: Well, I'm going to deny his application. I don't find his testimony to be credible. By his own admission he -- it's acknowledged that he told me an untruth.

So I find that he has failed to show that the lawyer's conduct fell below an objective standard of reasonableness, and I see nothing that would show that the jury's decision could have been changed.

Okay. Thank you.

MS. RATIGAN: Thank you, Your Honor.

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MS. HORLBECK: Thank you, Judge.

\*\*\*\*\*END OF TRANSCRIPT OF RECORD\*\*\*\*\*

## 1 CERTIFICATE OF REPORTER

2  
3 STATE OF SOUTH CAROLINA )4 COUNTY OF GREENVILLE )  
5  
6

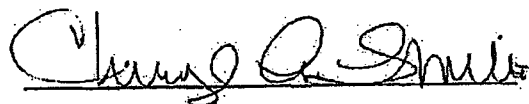
7 I, CHERYL A. SMITH, Official Court Reporter for the  
8 Thirteenth Judicial Circuit of the State of South Carolina,  
9 do hereby certify that the foregoing is a true, accurate  
10 and complete Transcript of Record of the proceedings had  
11 and evidence introduced in the trial of the captioned case,  
12 relative to appeal, in the Court of General Sessions for  
13 Greenville County, South Carolina, on the 21st day of  
14 April, 2015.

15 I do further certify that I am neither of kin,  
16 counsel, nor interest to any party hereto.

17

18 September 16, 2015

19

20  
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22 Cheryl A. Smith, CVR-M

23 Court Reporter  
24  
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3 CERTIFICATE OF REPORTER

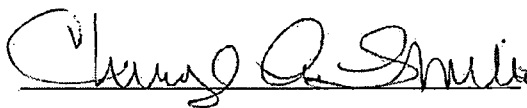
4 STATE OF SOUTH CAROLINA )

5 COUNTY OF GREENVILLE )  
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18 September 16, 2015  
19  
20

21   
22

23 Cheryl A. Smith, CVR-M

24 Court Reporter  
25

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE )

C.A. No. 2014-CP-23-2476

Marshall Dewitt McGaha,  
S.C.D.C. No. 250923, )

Applicant, )

ORDER OF DISMISSAL

v. )

State of South Carolina, )

Respondent. )

ENTERED COMPUTER

FILED - CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. MOOREHEAD  
2015 JUN 8 PM 2:15

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 2, 2014. The Respondent made its return on October 30, 2014. An evidentiary hearing was held on April 21, 2015 at the Greenville County Courthouse. The Applicant was present and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was assistant solicitor, Bryna Seay. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, and the appellate records.

#### PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the March 2011 term of the Greenville County Grand Jury for two counts each of lewd act upon a child (2010-GS-23-7403, -7405) and first-degree criminal sexual conduct (CSC) with a

minor (2010-GS-23-7404, -7406). He was represented by Thomas Hoskinson, Esquire.<sup>1</sup>

After the State called the case to trial, the Applicant was found guilty. On August 10, 2011, the Honorable D. Garrison Hill sentenced the Applicant to concurrent terms of life imprisonment for each count of first-degree CSC with a minor and 15 years for one count of lewd act upon a child (2010-GS-23-7403). Judge Hill levied a consecutive 15-year sentence for the second count of lewd act upon a child.

A notice of appeal was filed at the South Carolina Court of Appeals. Susan B. Hackett, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences on June 26, 2013. State v. McGaha, 404 S.C. 289, 744 S.E.2d 602 (Ct. App. 2013). The Remittitur was sent on July 17, 2013.

### **ALLEGATIONS**

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. "I am innocence of said alleged crimes."
3. "Charges was brought for revenge for me having DSS drug test family (Chastain's) Califf."

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant

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<sup>1</sup> Counsel for Respondent informed the Court at the start of the PCR hearing that trial counsel was unavailable as a witness because he now lives in Brazil.

findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

**Ineffective Assistance of Counsel**

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence," Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he never reviewed discovery materials with trial counsel and never saw the video. The Applicant stated trial counsel would not give him discovery materials because he did not want that information in the jail. The Applicant stated trial counsel did not discuss trial strategy with him. The Applicant stated he asked trial counsel to obtain a medical expert and a psychiatrist in order to address children's suggestibility. The Applicant stated plea counsel conveyed a 20-year plea offer (which he rejected) and a 12-year plea offer and that he would have accepted the 12-year plea offer if he had seen it in writing. The Applicant stated trial counsel should have contacted several witnesses (Buddy Todd, Terry Medlin, Ruby Califf,

James Valentine).

Assistant solicitor Bryna Seay testified she was the prosecutor in this case. Seay testified there were plea offers in this case for 20, 15, and, 12 years. Seay testified they were in negotiations in June 2011 regarding the 15-year offer. Seay testified that, once the 15-year offer was rejected, the negotiations were verbal and resulted in a 12-year offer. Seay testified she had a note in her file on July 5, 2011 about the 12-year plea offer. Seay testified a plea hearing was never set in this case and that trial counsel said the Applicant wanted a trial.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not adequately meet with him and review discovery materials. This Court finds the Applicant's testimony on this matter is not credible. This Court notes that, prior to the Applicant's trial, trial counsel told the trial judge that he had provided the bulk of the discovery materials to the Applicant prior to trial and the trial judge commented it was "an inch to an inch and a quarter of paper." (Trial transcript, pp.16-17). Further, the Applicant failed to articulate what further discussion about the discovery materials could have had upon his case. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly convey the 12-year plea offer. By the Applicant's own admission – both at the start of trial and at the PCR hearing – trial counsel conveyed a 12-year plea offer. (Trial transcript, pp.6-8). While the 12-year offer was not reduced to writing, the assistant solicitor confirmed this was an offer that she made (and that she would have made a written offer if it had been requested).

This Court finds trial counsel fulfilled his responsibilities regarding the conveyance of the plea



offer. See Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance). However, it is axiomatic that an attorney cannot force his client to accept a plea offer and that the decision whether to accept or reject such an offer rests solely with the client. See Rule 1.2(a), RPC, Rule 407, SCACR. This Court finds the Applicant was aware of the 12-year plea offer and chose to reject it. While the Applicant states he would have accepted this offer if it had been written, this Court does not find this testimony is credible based upon the Applicant's testimony that he rejected the 20-year plea offer because he would not plead guilty to something he did not do.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have contacted witnesses to use at trial. As these witnesses did not testify at the PCR hearing, however, this Court cannot speculate as to what impact their testimony would have had upon the Applicant's trial. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original). Similarly, this Court finds the Applicant failed to meet his burden of proving trial counsel should have retained expert witnesses. As the Applicant did not present any expert witness testimony at the PCR hearing, this Court cannot speculate as to whether such testimony would have resulted in a different outcome at trial. See Lorenzen v. State, 376 S.C. 521, 530, 657 S.E.2d 771, 777 (2008) (finding that, as the applicant failed to present any expert testimony at the PCR hearing, "it is merely speculative that these allegedly favorable expert witnesses would have aided in his defense"); Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary

hearing, "any finding of prejudice is merely speculative").

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

#### All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

#### CONCLUSION

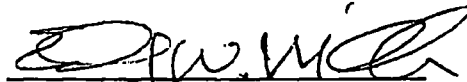
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 4 day of June, 2015.



Edward W. Miller  
Presiding Judge  
Thirteenth Judicial Circuit

Giville, South Carolina.