

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Robin B. Stilwell, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ONTARIO STEFON PATRICK MAKINS,

APPELLANT

APPELLATE CASE NO 2016-002495

RECORD ON APPEAL

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:  
STATE'S EXHIBIT #2 (VIDEO RECORDING OF FORENSIC INTERVIEW)**



|                          |   |                               |
|--------------------------|---|-------------------------------|
| STATE OF SOUTH CAROLINA  | ) |                               |
|                          | ) | COURT OF GENERAL SESSIONS     |
| COUNTY OF GREENVILLE     | ) |                               |
| State of South Carolina, | ) |                               |
|                          | ) |                               |
| Plaintiff,               | ) |                               |
| v.                       | ) | Case No. 16-GS-23-04363 et al |
|                          | ) |                               |
| Ontario Makins,          | ) |                               |
|                          | ) |                               |
| Defendant.               | ) |                               |

## TRANSCRIPT OF JURY TRIAL

The within JURY TRIAL in the above-captioned matter was held December 5-8, 2016, before The Honorable Robin Stilwell in Courtroom 6 of the Greenville County Courthouse, 305 East North Street, Greenville, South Carolina; attended by counsel as follows:

### APPEARANCES:

Kate Patterson, Assistant Solicitor  
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... Appearing for State of South Carolina

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... Appearing for Defendant

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Jury Trial of December 5-8, 2016

Before The Honorable Robin Stilwell

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- None Entered -

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Jury Qualification &amp; Selection

1 (STATUTORY JURY QUALIFICATION)

2 (DEFENDANT PRESENT)

3 (JURY PANEL IN @ 11:33 A.M.)

4 THE COURT: Take your seats,  
5 ladies and gentlemen. It's good to see y'all  
6 up here. I told them to only send me the  
7 most exceptional jurors. So congratulations.

8 Ladies and gentlemen, we're going to  
9 select a jury for the specific case that's  
10 being called to bar.

11 The process and procedure is very  
12 similar to what we went through downstairs.  
13 That is, I'll ask you questions and you'll  
14 respond to the question that are posed. I  
15 remind you that continue under the oath that  
16 you took downstairs. The distinction is in  
17 jury selection is that I'm asking you  
18 questions that are specific to your  
19 qualifications or the appropriateness of your  
20 serving as a juror in this particular case.

21 So the process will be the same in  
22 that when I ask a question, if you'll stand  
23 up and state, please, your name and juror  
24 number. That's particularly important in  
25 this process because now we have a court

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Jury Trial of December 5-8, 2016

Jury Qualification &amp; Selection

1 reporter who is taking down everything that  
2 is said in the courtroom. So for purposes of  
3 the record, it's important for you to state  
4 name and juror number. Because even though I  
5 can see you and I may know your name and  
6 juror number because you just answered a  
7 question, the record can't see you. So  
8 please discipline yourself to do that if you  
9 will, please.

10 Ladies and gentlemen, I am going to  
11 read for you the indictments in the case that  
12 is being brought to bar this morning. Now,  
13 ladies and gentlemen, before we get started  
14 and before I read to you these indictments, I  
15 need to tell you something that's very  
16 important, that is a cornerstone of our  
17 justice system. That is that in any criminal  
18 proceeding in the United States of America,  
19 in the State of South Carolina or in the  
20 County of Greenville, a Defendant is presumed  
21 innocent until the State proves each and  
22 every element of the offense, of all  
23 offenses, beyond a reasonable doubt. So as  
24 we sit here right now, the Defendant in this  
25 case, Mr. Makins, is presumed innocent and he

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Jury Qualification &amp; Selection

1 retains that presumption of innocence until  
2 such time as twelve deliberating jurors  
3 determine that the State has met its burden  
4 of proving each and every element of each  
5 offense beyond a reasonable doubt.

6 Now, I tell you that because it's  
7 important and it's critical to your  
8 determination ultimately, but I also tell you  
9 that because I'm going to read the  
10 indictments to you, the substantive portions  
11 of the indictments. And what I want to make  
12 sure of is that you do not think that because  
13 I am reading these indictments, that I'm  
14 representing to you that these are the facts  
15 in this case. I am not. All I am doing is I  
16 am reading to you the allegations on the  
17 indictment. The indictment is the charging  
18 paper. It's the paper whereby the State  
19 initiates the prosecution. So these are the  
20 allegations from the State. I don't want you  
21 to take at face value that these are facts  
22 that I am representing to you. I'm not.

23 The reason that I read to you the  
24 allegations, just the summary allegations, is  
25 because it's important for you to know those

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Jury Qualification &amp; Selection

1 so that then you can intelligently answer the  
2 questions that are posed to you.

3 So, ladies and gentlemen, this case  
4 is the State of South Carolina versus Ontario  
5 Stefon Patrick Makins. There are three  
6 indictments and I'll read those to you:

7 The first one is indictment 2016-GS-  
8 23-04363, and that is criminal sexual conduct  
9 with a minor, first degree. Ladies and  
10 gentlemen, the State would allege that Mr.  
11 Makins did, in Greenville County, between the  
12 1<sup>st</sup> day of January 2012 and the 20<sup>th</sup> day of  
13 March 2015 commit a sexual battery on "BENCH  
14 WARRANT", who is less than eleven years of  
15 age.

16 Ladies and gentlemen, the second  
17 indictment that I have is case number 2016-  
18 GS-23-7512A, and that is lewd act upon a  
19 child. The State would allege that Mr.  
20 Makins did, in Greenville County, between 1st  
21 of January 2012 and 17 June 2012, being over  
22 the age of fourteen, did willfully and lewdly  
23 commit or attempt a lewd and lascivious act  
24 upon or with the body parts or its parts of  
25 BW, a child under the age of sixteen, with



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Pretrial Testimony of Christine Carlberg

1 CHRISTINE CARLBERG, having been  
2 duly sworn to tell the truth, and nothing but  
3 the truth, testified as follows:

4 DIRECT EXAMINATION

5 BY SOLICITOR PATTERSON:

6 Q. Ms. Carlberg, can you state your  
7 name for the record?

8 A. Christine Carlberg.

9 Q. Thank you. And where are you  
10 employed?

11 A. I'm employed the Greenville Depart-  
12 ment of Mental Health and I'm contracted to  
13 work at the Julie Valentine Center.

14 Q. And how long have you been with both  
15 of those agencies?

16 A. Since February 2007.

17 Q. And what are your duties with the  
18 Julie Valentine Center?

19 A. I'm a forensic interviewer.

20 Q. Can you briefly tell the Court what  
21 a forensic interview is?

22 A. A forensic interview is a non-  
23 leading, non-suggestive manner gathering  
24 information for investigation.

25 Q. And can you tell the Court about

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Pretrial Testimony of Christine Carlberg

1 your experience in forensic interviewing?

2 A. I have been a forensic interviewer  
3 since May of 2000 in Mississippi and in South  
4 Carolina. I've conducted two thousand nine  
5 hundred and forty-six (2,946) interviews over  
6 that timespan.

7 Q. Can you tell us a little bit about  
8 your educational background?

9 A. I have a Bachelor's of Science in  
10 rehabilitation education and a minor in  
11 psychology from the Pennsylvania State  
12 University. I have a Master's of Arts in  
13 marriage and family therapy from Reform  
14 Theological Center in Jackson, Mississippi.

15 Q. And you mentioned you've been a  
16 forensic interviewer since 2000. What  
17 special training have you had specific to  
18 forensic interviewing?

19 A. Specifically, I've been trained at  
20 CornerHouse, which is a nationally recognized  
21 facility for forensic interviewing, which is  
22 in Indianapolis. That is a forty-hour  
23 training -- a forty-hour, week-long training.

24 And I've also attended two other forty-  
25 hour, week-long trainings; Finding Words in

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Pretrial Testimony of Christine Carlberg

1 Mississippi and ChildFirst in South Carolina.

2 And just various other conferences  
3 throughout the years.

4 Q. Okay. And do you consult with other  
5 professionals in the field about children,  
6 about forensic interviewing, about the field  
7 in general?

8 A. Yes, ma'am.

9 Q. And how does that consultation work?

10 A. Not only do I consult with other  
11 forensic interviewers at the Julie Valentine  
12 Center, but I'm also part of a statewide peer  
13 review, plus a national peer review.

14 Q. And you mentioned in the last  
15 sixteen years you've conducted almost three  
16 thousand forensic interviews?

17 A. Yes, ma'am.

18 Q. And in the course of your work with  
19 the Julie Valentine Center, did you conduct  
20 an interview with the victim in this case

21 Minor [REDACTED] ?

22 A. Yes, ma'am.

23 Q. And what person or agency referred  
24 the child to you for the forensic interview?

25 A. The Greenville County Sheriff's

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Pretrial Testimony of Christine Carlberg

1 Office.

2 Q. And why was she referred?

3 A. For allegations of sexual abuse.

4 Q. Okay. And when you receive a  
5 referral -- and you can talk specifically  
6 about this case -- what information do you  
7 typically receive?

8 A. When we receive a referral, we  
9 usually receive just a brief history of the  
10 allegations. And then if law enforcement's  
11 involved, we will usually receive the  
12 incident report.

13 Q. And did you receive the incident  
14 report in this case?

15 A. Yes, ma'am.

16 Q. And how old was **Minor** when you  
17 interviewed her?

18 A. Eight.

19 Q. What model did you use in conducting  
20 **Minor** interview?

21 A. We used that ChildFirst of South  
22 Carolina protocol.

23 Q. And can you tell the Court a little  
24 bit about what that protocol is?

25 A. It's a semi-structured protocol,

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Pretrial Testimony of Christine Carlberg

1       which means you can move from stage to stage  
2       through. And it's comprised of rapport,  
3       transition, rapport, expiration and closure.

4       Q. And so how does that work? Do you  
5       take a child through each of those stages or  
6       ---

7       A. Yeah. And we can move in between  
8       them as needed or skip them as need, just  
9       based on how -- what the child needs and how  
10      it's going.

11      Q. Okay. And have you received  
12      specific training in ChildFrist South  
13      Carolina?

14      A. Yes, ma'am.

15      Q. Going back to the training program  
16      in general, what types of questions do you  
17      use in that protocol?

18      A. We would like -- we want to use non-  
19      leading, non-suggestive questions.

20      Q. And why is that?

21      A. We want the child or whoever you're  
22      asking the questions to, to be able to  
23      provide their information their way and using  
24      their terms and their story, basically.

25      Q. And is there a reason that you would

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Pretrial Testimony of Christine Carlberg

1 ever deviate from a non-leading question?

2 A. No, I would never ask them like a  
3 suggestive question. There's like a range in  
4 questions where you might ask a more focused  
5 question. But not -- no, I would not ask --  
6 I would not deviate from the non-leading  
7 question.

8 Q. And where did the interview of  
9 Minor take place?

10 A. At the Julie Valentine Center.

11 Q. And who was present in the room  
12 during the interview?

13 A. Just Minor and myself.

14 Q. And was the video or -- excuse me.  
15 Was the interview preserved using audio and  
16 video equipment?

17 A. Yes, ma'am.

18 SOLICITOR PATTERSON: Could I  
19 approach the witness, if I may, Your Honor?

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

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR PATTERSON:

23 Q. Ms. Carlberg, I'm showing -- I'm  
24 showing what has been -- will be marked as  
25 State's Exhibit 2. Do you recognize that?

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Pretrial Testimony of Christine Carlberg

1 A. Yes, ma'am.

2 Q. And what is it?

3 A. That is a copy of Minor  
4 interview from April 21<sup>st</sup>, 2015.

5 Q. And how do you know that it's that  
6 interview?

7 A. I initialed it and signed it the day  
8 I made a copy.

9 Q. Okay. And has that interview been  
10 changed or altered in any way from the date  
11 of that interview?

12 A. No, ma'am.

13 (SO MARKED AS STATE'S EXHIBIT 2)

14 DIRECT EXAMINATION CONTINUED

15 BY MS. PATTERSON:

16 Q. And Ms. Carlberg, during the inter-  
17 view with Minor did she disclose sexual  
18 abuse to you?

19 A. Yes, ma'am.

20 Q. And did she tell you when and where  
21 that abuse occurred?

22 A. She said it happened between the  
23 ages of five years old and eight years old  
24 and that it happened at her sister's, Toi's  
25 house.

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Pretrial Testimony of Christine Carlberg

1 Q. And was Minor statement coherent  
2 to you?

3 A. Yes, ma'am.

4 Q. Did you have any concerns as to her  
5 ability to understand you or respond to your  
6 questions?

7 A. No, ma'am.

8 Q. And did Minor give a detailed  
9 account of what happened?

10 A. Yes, ma'am.

11 Q. And how would you describe her  
12 demeanor during the interview?

13 A. She was, I would say reserved. She  
14 didn't want to answer some of the questions  
15 at first. But she did eventually.

16 Q. And, in your opinion, did she act in  
17 an appropriate manner?

18 A. Yes, ma'am.

19 SOLICITOR PATTERSON: Your Honor,  
20 just a moment if I may?

21 THE COURT: Okay.

22 SOLICITOR PATTERSON: Judge,  
23 nothing further from the State. We would, at  
24 this time we would -- that the forensic  
25 interview is compliant with Section 17-23-175



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1 and ask that the Court admit it into  
2 evidence.

3 THE COURT: Okay.

4 (SO ENTERED AS STATE'S EXHIBIT 1)

5 THE COURT: Mr. Quinn, any  
6 questions, sir?

7 MR. QUINN: Just a couple if I  
8 might.

9 CROSS-EXAMINATION

10 BY MR. QUINN:

11 Q. Do you still have your originals?

12 A. It's at my office.

13 Q. And is there any reason it was not  
14 brought to Court?

15 A. We don't let the original leave our  
16 office. We just run copies.

17 Q. And who produces those copies?

18 A. I did in -- I produced this one.

19 Q. And reviewed it?

20 A. Yes.

21 Q. And is it identical to the original?

22 A. Yes, sir.

23 Q. You matched them for length of time  
24 or how did you make certain it was identical?

25 A. I watched it looking at my report

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Pretrial Testimony of Christine Carlberg

1 and ---

2 Q. You watched what?

3 A. That video.

4 Q. The one that's here in court, the  
5 copy?

6 A. Yes, sir. I mean, yes, ma'am. I'm  
7 sorry. Yes, sir.

8 Q. I've been called worse.

9 A. I'm sorry.

10 Q. So did you ever match the original  
11 match the original to the copy to be certain  
12 that it's an identical copy?

13 A. I'm not sure to do that on a  
14 machine. I would just -- our machine does  
15 that, I think. Like we have a copy machine  
16 so the original goes in, and then the blank  
17 comes in, goes in. And then it copies it.

18 Q. And did you do that?

19 A. Yes, sir.

20 Q. And did you test to be certain it  
21 was the same length of time on each disk?

22 A. I watched it fully so I knew that it  
23 was -- at the beginning and then when I ended  
24 it.

25 Q. Okay. And you call this the

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Pretrial Testimony of Christine Carlberg

1 ChildFirst South Carolina protocol. Wasn't  
2 it previously called RATAAC, R-A-T-A-C?

3 A. It was, previously. Yes.

4 Q. And it's the same protocol with a  
5 different name; isn't that correct?

6 A. No, there's some changes to it.

7 Q. Substantive?

8 A. Not as far as questions but there's  
9 -- we go over some rules in the beginning  
10 that we did not do in RATAAC. And there's a  
11 promise to tell -- have a child tell what  
12 really happened that we did not do with  
13 RATAAC..

14 MR. QUINN: Those are all the --  
15 I'm sorry. One other.

16 CROSS-EXAMINATION CONTINUED

17 BY MR. QUINN:

18 Q. Ms. Carlberg, are you licensed in  
19 South Carolina?

20 A. No, I'm not.

21 MR. QUINN: I don't have any other  
22 questions.

23 THE COURT: Okay. Any additional  
24 direct examination? I'm not suggesting that  
25 you should.

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1 SOLICITOR PATTERSON: I understand,  
2 Your Honor. Does the Court have any concerns  
3 about the true and correct copy? I'm happy  
4 to follow up with that if you do?

5 THE COURT: No, what I would do is  
6 have a discussion with Mr. Quinn and if when  
7 she comes back to testify, if she has the  
8 original -- the original resident on a C-  
9 drive of a computer as opposed to on a disk.  
10 But if the original --

11 Is the original on a disk or is it  
12 on that C-drive?

13 WITNESS: It's on the disk, sir.

14 THE COURT: It's on a disk?

15 WITNESS: Yes.

16 THE COURT: Okay. Talk with Mr.  
17 Quinn. If he wants her to bring that  
18 original disk to determine whether it  
19 conforms, then please do that, okay?

20 SOLICITOR PATTERSON: We will, Your  
21 Honor.

22 THE COURT: Okay.

23 SOLICITOR PATTERSON: Thank you.  
24 Nothing further from the stand.

25 THE COURT: Okay. All right.

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1 Well, I will review the statement to  
2 determine, of course, whether there are  
3 particularized guarantees of trustworthiness  
4 as indicated by the five enumerated tests.

5 Thank you. I'd appreciate it.

6 Please step down.

7 (WITNESS STEPS DOWN)

8 MR. QUINN: And, Your Honor, if I  
9 might?

10 THE COURT: Yes, sir.

11 MR. QUINN: Your Honor, we had  
12 the interview that has now been discussed  
13 transcribed.

14 THE COURT: Yes, sir.

15 MR. QUINN: And have provided a  
16 copy of the transcription. I have the  
17 original here if the Court would like the  
18 original. It was sealed when I received it  
19 and it's still sealed.

20 THE COURT: Yeah, I'll take it.  
21 I think that for probably purposes of deter-  
22 mining whether it's coercive or not, I need  
23 to look at the actual video.

24 MR. QUINN: I agree.

25 THE COURT: But I thank you for

1 this because that may be helpful to me.

2 I'm presuming you do intend to  
3 introduce the disk and show the video to the  
4 jury; is that correct?

5 SOLICITOR PATTERSON: We do, Your  
6 Honor, Yes.

7 THE COURT: Okay. All right.  
8 Thank you for this. I appreciate it.  
9 All right. Anything further regarding that  
10 matter?

11 SOLICITOR PATTERSON: Nothing  
12 further but if you have any questions, I'll  
13 be happy to go through the specifics of the  
14 statue and we'll talk about the true copy.

15 Judge, at this time, the State would  
16 call Kristin Rich to do the expert qualifica-  
17 tion for the therapist.

18 THE COURT: Okay.

19 SOLICITOR PATTERSON: And, Judge,  
20 we're going to excuse Ms. Carlberg for today.

21 THE COURT: All right. Good  
22 enough. Have a great evening.

23 (WITNESS TAKES STAND)

24 THE COURT: Yes, ma'am.

25 SOLICITOR PATTERSON: Thank you,

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1           Your Honor.

2                     KRISTEN RICH, having been duly  
3       sworn to tell the truth, and nothing but the  
4       truth, testified as follows:

5                     DIRECT EXAMINATION

6       BY MS. PATTERSON:

7             Q.    Ms. Rich, can you tell us where you  
8       are currently employed?

9             A.    Sure. I work for Piedmont Mental  
10       Health out of the Greer Clinic for the  
11       Department of Mental Health of the State of  
12       South Carolina.

13            Q.    Okay. And what do you do for the  
14       Department of Mental Health?

15            A.    I'm a mental health therapist for  
16       children and adolescents.

17            Q.    Okay. And where -- are you  
18       currently resident in a particular place?

19            A.    Yes. I'm the school-based therapist  
20       and I work out of Greer High School, but  
21       prior to that I was in the out-patient clinic  
22       as a clinician at the Greer location.

23            Q.    And can you tell the Court a little  
24       bit about your educational background?

25            A.    Sure. I went to the University of

1 South Carolina and got my degree in clinical  
2 science and a cognate in social work and  
3 graduated in 2003.

4 Then following that, I did some  
5 humanitarian work overseas and then came back  
6 and did my Master's Degree in clinical  
7 counseling at Columbia International  
8 University and graduated in 2010.

9 Q. And after 2010, what is your  
10 employment history been?

11 A. After 2010 I worked for about a year  
12 with the South Carolina Autism Project and  
13 did in-home therapy with autistic children.

14 And then after that, I started work for  
15 the Department of Mental Health in Catawba,  
16 at Catawba Mental Health out of Rock Hill,  
17 South Carolina as a school-based therapist,  
18 what I do now.

19 Then I transferred then to Greer Mental  
20 Health in 2013.

21 Q. And how long have you been at Greer  
22 High School?

23 A. I've been at Greer High School since  
24 -- a little -- about a year and a month.

25 Q. But just to clarify, so you've been



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1 with Greer Mental Health for a total of three  
2 years, because you're still an employee of  
3 Greer Mental Health?

4 A. Yes.

5 Q. And can you tell a little bit about  
6 your jobs and your duties in your current  
7 position?

8 A. Sure. As a mental health clinician,  
9 I start off -- I can do assessments. So  
10 that's assessment of the mental health needs  
11 of a child that comes to see me, as far as  
12 what kind of symptoms they're presenting and  
13 their history and then provide a diagnosis  
14 for them and a treatment plan. And then from  
15 there, I go on to provide individual and  
16 family therapy as well as treatment plan  
17 development. My primary mode of therapy as  
18 far as my theory is cognitive behavioral  
19 therapy.

20 Q. And do you focus on any particular  
21 type of issues with children?

22 A. Really, it's based on what they  
23 present and what they have. Many, many of  
24 the children that I work with had a history  
25 of trauma and I do -- I am qualified to

1 provide trauma treatment for them.

2 Q. Okay. And can you talk a little bit  
3 about what trauma is?

4 A. Sure. Trauma is, you know,  
5 according to the diagnostic manual -- so it  
6 is an event that happens where someone thinks  
7 that they're going to be hurt very badly or  
8 killed or someone that they love is going to  
9 be hurt very badly or killed. And they can  
10 hear about that event as well and have just  
11 an intense reaction, a feeling of terror,  
12 horror or helpless. And so that constitutes  
13 what a trauma is.

14 Q. And can you give some examples of  
15 what may cause trauma?

16 A. Sure. Many time what I experience  
17 in my practice and what I see, is children  
18 who have gone through abuse, physical abuse,  
19 sexual abuse, witnessing domestic violence,  
20 car accidents, being at robberies, different  
21 things of that. House fires, different  
22 things of that nature, bad things that you  
23 would feel in these kinds of situations.

24 Q. And is there a particular method you  
25 use in dealing with children who have

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1 experienced trauma?

2 A. Yes. I'm trained in trauma focused  
3 cognitive behavioral therapy, which is an  
4 evidence-based treatment to treat childhood  
5 trauma. And from that, that model has a  
6 acronym that you use that has each step.  
7 It's PRACTICE. And each letter has a  
8 particular type of treatment that you give.

9 Q. And can you walk us through what  
10 those steps are?

11 A. Sure. So the P for PRACTICE stands  
12 for psychoeducation and parenting.

13 And so what you do at the beginning is  
14 give just a general view of what trauma is  
15 for the child and then for the parent(s) and  
16 what typical responses happen so that you can  
17 normalize that to reduce some of the  
18 symptoms. And what are typical symptoms as  
19 well.

20 Behaving -- behavior of a parent is  
21 very helpful because oftentimes children with  
22 trauma are going to respond with behavioral  
23 issues. And so there's a lot of time some  
24 parenting that needs to take place as well.

25 The next part is the R for relaxation.

1        So those are breathing techniques, different  
2        techniques in order to help the child relax  
3        when they're triggered by trauma.

4        Oftentimes, you know, that is going to be  
5        very helpful when a child is triggered or  
6        remembers things or has in an episode,  
7        remember that causes distress.

8        And then from there, we're going to do  
9        affect regulation or modulation. That's  
10       emotions. Basically helping the child  
11       understand what the different types of  
12       emotions are, what their intensity is and  
13       then helping them to be able to express their  
14       emotions about what happened with the trauma  
15       and identify those, as well as regulate them.  
16       Use those coping skills in order to reduce  
17       the distress when are triggered.

18       Then from there we're going to do  
19       cognitive coping. And that's helping them  
20       understand the relationship between the  
21       thoughts, the feelings and the actions of  
22       what happened and how we can change your --  
23       what you think or you can change what you do  
24       and it helps you change how you feel.

25       Then from there the most important that's

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1 next is the trauma narrative. And that is  
2 talking with the child, just asking questions  
3 for the child to go through what happened in  
4 the trauma, piece by piece, just try to talk  
5 about it and talk about it again in order to  
6 have the child have exposure to it, so that  
7 they no longer view that memory as if it  
8 happening all over again. So the more they  
9 talk about it the more that they are able to  
10 reduce the trauma stress from what happened.

11 And then from there we do cognitive  
12 restructuring. Sometimes from the "I" is in  
13 vivo exposure. If there's a particular smell  
14 or particular sound or a particular place  
15 that the child wants to avoid or the trauma  
16 is triggered by, we can use in-life exposure  
17 to help them. Sometimes that's needed,  
18 sometimes it's not. It depends on the child.

19 And then cognitive restructuring is the  
20 next part. And that's where throughout the  
21 trauma narrative we're asking the child, you  
22 know, 'What did you think?' 'How did you  
23 feel?' 'What did you do?' And their  
24 thoughts are very important because a lot of  
25 times they can be distorted or can be

1       distressing. 'It was my fault.' You know,  
2       different things that they can say. And so  
3       there, what we do is use questioning to help  
4       the child to understand or to change their  
5       thoughts so that they're not as distressing.

6               And then from there we also do a  
7       conjoined session with the caregiver that is  
8       supportive and believing of the child, safe  
9       for the child and the child is able to share  
10      the trauma narrative with the caregiver.

11             And then the last part is enhancing  
12      safety and so talking about what, you know,  
13      how to prevent the child from going through  
14      trauma again. Because children who've gone  
15      through trauma once are more likely to go  
16      through another one.

17             Q.   And are you currently licensed as a  
18      counselor?

19             A.   I am.

20             Q.   And is there a particular title for  
21      that?

22             A.   I'm a licensed professional  
23      counselor.

24             Q.   And what is the process to become a  
25      licensed professional counselor?

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1           A.    Sure. To become a licensed  
2 professional counselor you first have to do  
3 the educational requirement with a Master's  
4 in counseling.

5           And then from there you have to take an  
6 examination. It's the NCA, National  
7 Counselor's Exam. And you have to have a  
8 passing score on that.

9           At that time, then you can submit to the  
10 licensure board that you've met those pre-  
11 qualifications. Then what they do, after  
12 they've reviewed that and you have identified  
13 a supervisor, a licensed professional  
14 counselor supervisor, what they do is they  
15 license you as a licensed professional  
16 counselor intern. And then at that time you  
17 have two years to complete a particular  
18 number -- I believe it's two hundred fifty.  
19 I'm not a hundred percent sure -- hours of  
20 supervision, one-on-one supervision with that  
21 supervisor as you are completing direct  
22 client contact hours.

23           Then following that, your supervisor  
24 signs off that you've done the appropriate  
25 number of hours, and then that's submitted to

1 the board and then the board authorizes you  
2 to transition from a licensed professional  
3 counselor intern to licensed professional  
4 counselor.

5 Q. And as a licensed professional  
6 counselor, what are you able to do?

7 A. So I'm able to -- I'm able to  
8 diagnose and I'm able to treat mental  
9 illness.

10 And I'm also, you know, able to get on  
11 insurance panels, to bill insurance privately  
12 if I'd like; however, I don't do that. I  
13 just work for the State and I'm able to bill  
14 insurance underneath the State, the State  
15 now.

16 Q. Okay.

17 A. Uh-huh.

18 Q. You talked a little bit about your  
19 educational background and the internship.  
20 Can you talk a little bit about what other  
21 trainings you have gone through, continue to  
22 go through, for your work?

23 A. Sure. Part of -- a lot of my  
24 training, even with my education, I was a  
25 graduate assistant during my education. So I



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1       -- for two years I was a graduate assistant  
2       in my program. So that was very helpful as  
3       well.

4       The other things that I have done, the  
5       trauma focused cognitive behavioral therapy,  
6       that particular training was with Project  
7       BEST, which was a year-long training that  
8       encompassed some learning collaboratives,  
9       two-day learning collaboratives. I believe  
10      there are two or three of those.

11      And then from there, there was also  
12      consultation calls where we would have a case  
13      that we were completing the practice model --  
14      that I had talked to you about before -- with  
15      a client and they were presenting that on  
16      supervision calls with an expert in trauma  
17      focused cognitive behavior therapy. And I  
18      participated in twelve of those calls. And  
19      then was given a certificate that I had  
20      completed that training and was competent,  
21      and certified in delivering trauma focused  
22      cognitive behavioral therapy.

23      Prior to that, I've also done a trauma  
24      recovery model, which was the TREM training,  
25      that's the abbreviation for that. And that's

1 specifically regarding sexual abuse and  
2 treating that using an empowerment model.  
3 That was a two-day training.

4 The other training that I received in  
5 2015 was Darkness into Light Training. And  
6 that was -- let me look at the name of that  
7 one. The Stewards of Child Training, and  
8 that was strategies to prevent and to respond  
9 to sexual abuse.

10 Q. And can you talk to the Court a bit  
11 about whether your treatment model protocol  
12 is based on evidenced-based studies?

13 A. Yes. It's an evidenced-based model.  
14 There have been extensive -- there is  
15 extensive research. The National Center for  
16 Childhood Trauma recognizes trauma focused  
17 cognitive behavioral therapy as an evidenced-  
18 based model to treat -- to treat childhood  
19 trauma.

20 Q. And what does evidenced-based mean?

21 A. So evidence based means that it's  
22 not just a good idea or a style of the  
23 therapist, but it's been scientifically  
24 proven that this model, this protocol, has  
25 evidence to show that it helps and it has

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1 efficacy. It has truth in it, produces  
2 results in reducing symptoms. So it doesn't  
3 just come from your own thoughts. It comes  
4 from some scientific research.

5 Q. And along those lines, do you  
6 discuss or consult with other professionals  
7 in your area about the trainings you receive,  
8 the cases that your own?

9 A. Absolutely. Part of what I do every  
10 week in my job is we consult and have a  
11 clinical staffing. And at that clinical  
12 staffing, there are other fellow clinicians,  
13 as myself, supervisors, as well as a doctor  
14 and a nurse. And we staff cases, present  
15 cases, talk about diagnoses as well as  
16 treatment and any clinical issues that might  
17 arise that we need to work together as a team  
18 to solve.

19 Q. How many children do you estimate  
20 you've provided therapy to over the course of  
21 your career?

22 A. Probably around -- around five  
23 hundred I would say give or take. There's a  
24 lot.

25 Q. And how many children have

1 experienced trauma who you've treated as a  
2 result of sexual abuse?

3 A. There are many children -- I would  
4 say probably around -- like, between, like  
5 one twenty, one fifty.

6 Q. And have you been qualified to  
7 testify as an expert in either Circuit or  
8 Family Court before?

9 A. Yes, I have; two times.

10 THE COURT: Yes, ma'am.

11 SOLICITOR PATTERSON: Your Honor,  
12 at this point that completes the State's  
13 questions in terms of qualification. I don't  
14 know if you'd like to hear any proffer  
15 testimony as to what she will be talking  
16 about generally at trial. But for purposes  
17 of qualification, we would move at this time  
18 to qualify her as an expert in the areas of  
19 child trauma and child sexual abuse dynamics.

20 THE COURT: All right. Mr. Quinn,  
21 any questions for her related to qualifica-  
22 tions?

23 MR. QUINN: Yes, sir, if you'll  
24 give me a second, please?

25 THE COURT: Okay.

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1 MR. QUINN: Child trauma and child  
2 sexual abuse?

3 SOLICITOR PATTERSON: Dynamics.

4 MR. QUINN: Dynamics.

5 CROSS-EXAMINATION

6 BY MR. QUINN:

7 Q. Ms. Rich, have you had any specific  
8 training in child trauma?

9 A. Yes.

10 Q. And is that the training that's  
11 listed on your CV?

12 A. Yes.

13 Q. And so long was -- in terms of the  
14 training itself, how long was the Stewards of  
15 Children training?

16 A. The Stewards of Children training, I  
17 believe, was about an hour to two hours.

18 Q. And that was in October of 2015, you  
19 had one or two hours training then?

20 A. Yes.

21 Q. And that was to be an expert in  
22 child trauma or child sexual abuse dynamics  
23 or both?

24 A. That was specifically about child  
25 sexual abuse.

1           Q.   And you're apparently on the Project  
2           BEST Roster?

3           A.   Yes.

4           Q.   Have you gotten any cases through  
5           Project BEST?

6           A.   I've gotten cases through Project  
7           BEST through the Department of Mental Health.  
8           So I've had some people call but they have to  
9           go through the Department of Mental Health?

10          Q.   And so how many Project BEST cases  
11          have you had?

12          A.   As in they looked at the roster and  
13          I'm going to call you from Project BEST?

14          Q.   As I understand, the Project BEST  
15          screens cases and assigns them to therapists?

16          A.   No, that's not what they do.

17          Q.   Well then tell me how you can define  
18          a Project BEST case.

19          A.   Sure. So Project BEST is a learning  
20          collaborative that helps training clinicians  
21          in order to be able to provide the trauma  
22          focused cognitive behavioral therapy.

23          So during the time of Project BEST when I  
24          was in the learning collaborative, what I did  
25          was identify cases that I already had or that

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1       were being then referred to me, that were  
2       already within my agency that had trauma,  
3       sexual abuse, other types of trauma. And  
4       then from there, they would have to meet a  
5       certain qualification through Project BEST,  
6       through the diagnostic tools. And then that  
7       was submitted to Project BEST on a case-by-  
8       case basis. So I had to have a number of  
9       cases that were proved by them that said that  
10      this is a case that you can use for the  
11      project BEST as far as the requirements.  
12      Then what the Project BEST roster is, is it's  
13      a tool for the community to use or for  
14      caseworkers to use to say these clinicians  
15      are trauma informed, are also Project BEST  
16      certified as far as they have they trauma  
17      informed treatment. And they know how to do  
18      TFEBT. So there's not -- they don't take  
19      specific cases and then distribute them.

20               Q.   And so how many have you gotten  
21      through the second portion, being on the  
22      roster?

23               A.   Being on -- I'm not sure.

24               Q.   Do you know if you've gotten any?

25               A.   I'm not sure. I think there was one

1       that a foster mother looked up and I was in  
2       their catchment area. I'm limited as far as  
3       what I can do because my job says that I work  
4       with a certain amount -- certain demographic  
5       of people.

6               So for working for the Department of  
7       Mental Health, when I worked as an outpatient  
8       clinician, it's based off of the geographic  
9       area, so our catchment area. And then from  
10      that catchment area, then we would get  
11      referrals from Julie Valentine Center,  
12      referrals from DSS, referrals from different  
13      things, different people. And so sometimes  
14      they would say, 'hey, are you Project BEST  
15      certified?' Most of the time they would say  
16      do you -- 'are you qualified to provide  
17      trauma focused therapy?'

18             Q.   And at some point in your answer I  
19      thought you indicated that you were doing  
20      Project BEST cases; but no longer?

21             A.   The only time you do a Project BEST  
22      case is when you have been -- during the time  
23      of the training.

24             Q.   Okay. Well, your CV says that you  
25      did them from January 2014 to present. I'm



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1 assuming present means today.

2 A. So present means -- no. Present  
3 means that I'm on the roster, that I've been  
4 on the roster. So the roster is like -- is a  
5 list of clinicians that are -- that have gone  
6 through, completed Project BEST.

7 Q. Right.

8 A. But not -- there's not Project BEST  
9 cases. There are just trauma cases that are  
10 all over. You don't have to go through  
11 Project BEST to be able to given trauma-  
12 focused cognitive behavioral therapy.

13 Project BEST is a vehicle to train  
14 clinicians, not a -- not a gatekeeper for  
15 trauma-focused cognitive behavioral therapy

16 Q. So when did you finish you training  
17 with Project Best?

18 A. I finished my training in 2014.

19 Q. And how long was that training?

20 A. A year.

21 Q. And was it every day for a year?

22 A. No.

23 Q. So how many hours was it over a  
24 year?

25 A. Well, it was -- so the type of

1 training that it has, so there were learning  
2 collaboratives, which were two-day trainings  
3 that we all went to as clinicians and were  
4 trained by a certified instructor. And so  
5 those were -- there were two of those and  
6 then other one. Like -- so basically about  
7 -- basically, three, so three of those.

8 And then from there, while this is  
9 happening -- so there was one at a certain --  
10 at the beginning. And then we developed the  
11 case, found the cases.

12 Then there was one in the middle.

13 And then there was one, kind of towards  
14 the end.

15 And then all throughout that, all  
16 throughout those -- in between the learning  
17 collaborative times, what I was doing was  
18 actually doing the therapy with the children  
19 and identify cases that I had. And calling  
20 in every week, every other week, to talk with  
21 experts to get help with how I was providing  
22 it. So it was a learn and do model over the  
23 whole course of the year. We had to complete  
24 three cases in the course of the year.

25 Q. And those three cases, were they all

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1 involved with child trauma?

2 A. Yes.

3 Q. Were they also involved with child  
4 sexual abuse dynamics?

5 A. Yes.

6 Q. So all three involved a child that  
7 had been traumatized by sexual abuse?

8 A. Yes.

9 Q. That's your testimony?

10 A. I believe so, (affirmative nod) --  
11 yes.

12 Q. Okay. And you completed that in  
13 2014?

14 A. Yes.

15 Q. And then you also had the two days  
16 training in the TREM model in 2013?

17 A. Yes.

18 Q. And other than your education,  
19 that's the only additional training you've  
20 had listed on your CV?

21 A. Yes.

22 Q. Are you a member of any professional  
23 associations?

24 A. I'm a member of the American -- I  
25 just started it. And so the AACC, the

1 American Association of Christian Counselors.

2 Q. And you began that in August; isn't  
3 that right?

4 A. Yes.

5 Q. Because you've only been licensed in  
6 South Carolina from June 27<sup>th</sup>; isn't that  
7 right?

8 A. I've only been licensed as a  
9 licensed professional counselor.

10 I was licensed as a licensed professional  
11 counselor intern since 2000 and -- two years  
12 before, then 2013.

13 Q. I think it's June 11, 2014.

14 A. Oh, okay.

15 Q. And I just cheated. I have it in  
16 front of me.

17 A. Great. That's great because I'm  
18 very bad at math. I'm a therapist for a  
19 reason, not a mathematician

20 Q. And when you're an intern, you're  
21 studying under someone else; isn't that true?

22 A. When you're an intern, you still  
23 provide the therapy and you still provide the  
24 treatment that you would as I am now. But I  
25 had a supervisor that I discussed cases with

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1 and that I looked -- but I still signed my  
2 own documentation.

3 Q. But isn't the supervisor the one  
4 responsible for diagnosis and the treatment  
5 plan?

6 A. No.

7 Q. You diagnosed as an intern?

8 A. Yes.

9 Q. Okay.

10 A. The State Department of Mental  
11 Health allows me to do that.

12 Q. And you've not ever been in private  
13 practice so it's always been under DMH?

14 A. Yes.

15 MR. QUINN: I don't have any other  
16 questions. Thank you.

17 THE COURT: Okay. All right.  
18 I'm not necessarily concerned with the  
19 qualification. I'm more concerned with the  
20 opinion to be offered. So can you tell me  
21 and summarize what the opinion it is that the  
22 expert intends to offer to the jury?

23 SOLICITOR PATTERSON: Certainly,  
24 Judge. And we are -- we'll certainly stay  
25 far, far away from the Cromer (phonetic)

1 issues. Ms. Rich will not be testifying as  
2 to the victim's credibility. She will not be  
3 testifying as to whether or not she believes  
4 this victim, whether or not her symptoms were  
5 indicative, that she was, in fact, sexually  
6 abused.

7 What we will have her go through is a  
8 general, from an expert point of view, what  
9 some symptoms of trauma the child may  
10 experience be. If there are particular  
11 symptoms a child may experience as a result  
12 of sexual trauma, why those may be different.  
13 She will talk about delayed disclosure,  
14 piecemeal disclosure.

15 And then we will move into some details  
16 of her treatment of this victim. You know,  
17 was she diagnosed with anything? What was  
18 that diagnosis? What symptoms did Minor  
19 exhibit? What therapy model she exhibited.  
20 And then whether or not there was, in fact,  
21 a disclosure and time and place of that  
22 disclosure.

23 THE COURT: Okay. Mr. Quinn, do  
24 you to take exception to that evidence, sir;  
25 and the offering of that opinion?

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1 MR. QUINN: Well, -- and I'm not  
2 trying to be flippant. I swear, Judge.

3 THE COURT: I know.

4 MR. QUINN: It's very difficult to  
5 object when the Solicitor phrases in the way  
6 she does. If they stick specifically to  
7 those exact questions, those are great  
8 questions. I have no idea what the answers  
9 are going to be.

10 THE COURT: Uh-huh.

11 MR. QUINN: So I am at a loss to  
12 be able to say to you today standing here no,  
13 I'm not going to object to that. I am very  
14 likely going to object to most all of that.

15 I think that many of the questions  
16 including some that were asked today of  
17 Christine Carlsberg, go to believability of  
18 the child. And I think that's going to be an  
19 ongoing difficulty in this case.

20 So I certainly think that the scope of  
21 the questions as the Solicitor outlines it  
22 are appropriate things to ask, assuming Your  
23 Honor qualifies her as an expert. And  
24 depending on her answers, then we get through  
25 it with no difficulty. But I'm leery

1       promising at this point her answers are going  
2       to be acceptable to me.

3               THE COURT:     I didn't anticipate a  
4       promise from you.   What I'm trying to make  
5       sure of is that we all go forward on the same  
6       sheet of music and we all recognize what's  
7       admissible and what's not admissible.

8               This is my concern about this  
9       witness and why I'm somewhat circumspect.   We  
10      have a long line of cases which discuss  
11      expert witnesses buttressing the credibility  
12      of minor witnesses.   And although I think  
13      that most of what she talked about in a  
14      vacuum is okay, my concern is that she begins  
15      to talk about the specific treatment and  
16      discussions with this child and without  
17      saying 'that makes her believable', she is  
18      suggesting that that makes her believable.

19              And I want to make sure that what  
20      we're not doing is an end run around forensic  
21      interviewers being qualified as expert  
22      witnesses and thereby buttressing the  
23      credibility of witnesses.

24              So I don't have an issue with the  
25      qualification.   I think the qualification is



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1 fairly airtight. It's -- the question is,  
2 what opinion will be offered and how close  
3 are we going to get to her saying, 'I talked  
4 to her. I diagnosed her as being a victim of  
5 childhood sexual trauma and all of her  
6 answers were consistent with my diagnosis for  
7 childhood sexual trauma.'

8 SOLICITOR PATTERSON: If it sets  
9 your mind at-ease, Judge, we are -- Ms. Rich  
10 and I have already discussed that that  
11 specific diagnosis will not be discussed on  
12 the stand.

13 THE COURT: Okay.

14 SOLICITOR PATTERSON: And she has  
15 testified in a post-criminal world. We have  
16 talked pretty extensively about walking this  
17 line. I understand your concerns. You know,  
18 I think the courts have been clear that this  
19 sort of expert testimony is very important in  
20 these kinds of cases where juries do not  
21 necessarily understand the dynamics of what  
22 has gone on or why a child may not disclose  
23 immediately, why it may come out in pieces.  
24 So from the State's perspective the case law  
25 is supportive of this type of expert

1 testimony, understanding that there have been  
2 directives given to us by the higher courts  
3 of a fine line that we need to walk.

4 THE COURT: And generally I agree  
5 with you. I've admitted any number of times,  
6 blind experts. The distinction here is that  
7 she is actually an attending expert. That's  
8 the one distinction that I've drawn. And I  
9 may be wrong, but I haven't seen a case which  
10 addresses that specifically. Blind experts,  
11 I've seen.

12 SOLICITOR PATTERSON: And there are  
13 cases that address blind experts, Judge.  
14 There has been no case to my knowledge where  
15 a treating therapist, separate from a  
16 forensic interviewer, has not been allowed  
17 because they were, in fact, a treating  
18 therapist.

19 And I believe Ms. Rich has testified  
20 actually in front of you as the treating  
21 therapist before. So it is -- we understand  
22 the concern that the Court has and we'll be  
23 sure that we walk that line.

24 THE COURT: All right. Mr. Quinn?

25 MR. QUINN: Well, my client is

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1 desperate to go to the restroom so I'll be  
2 very brief.

3 THE COURT: I am too, Mr. Makins.  
4 So we're on the same ---

5 MR. QUINN: The Solicitor, I  
6 think, is correct that there's no case saying  
7 the treating cannot also be the witness.  
8 That's because it's never gone up.

9 THE COURT: Yeah. Well, I was  
10 just asking ---

11 MR. QUINN: The question of  
12 suppression, it hasn't come up. So there's  
13 no case that says either side. I think it's  
14 much more difficult -- and apparently they  
15 aren't going to talk about diagnosis, because  
16 that would be the first objection because  
17 you're assuming they're telling the truth.  
18 So anyway, it'll be interesting, Judge. I  
19 don't know any other way to say it.

20 THE COURT: Yeah. I think -- I  
21 tend to agree with that. I haven't seen a  
22 case law that -- I haven't seen a case which  
23 has rejected that testimony. There's no  
24 question about that.

25 But on the other hand, I haven't

1       seen one where the court has accepted  
2       anything, other than the blind testimony.

3               So again we know the public policy  
4       and the theory behind not allowing forensic  
5       experts to be qualified and buttress the  
6       credibility. We just need to make sure,  
7       insofar as we -- or inasmuch as we're in  
8       uncharted waters here, that we're not doing  
9       an end run around that holding, okay?

10              So I don't think that her testimony,  
11       because she's an attending witness, would be  
12       automatically *ab initio* thrown out. I do  
13       think that there are things that she can say  
14       and that are admissible. But I think as  
15       well, there are things that should be  
16       excluded.

17              I haven't heard the testimony. And  
18       I'm really not inclined to listen to the  
19       testimony right now. I prefer contemporan-  
20       eous objections.

21              But you've obviously read the case  
22       law. You know -- you understand exactly what  
23       I'm saying.

24              SOLICITOR PATTERSON:     I do.

25              THE COURT:       It is a tight line.

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1 SOLICITOR PATTERSON: Uh-huh.

2 THE COURT: And you're going to  
3 have to walk that tight rope, okay?

4 SOLICITOR PATTERSON: Yes, sir.

5 THE COURT: And when and if she gets to  
6 the point that says anything that suggests --  
7 and I understand that she's not going to say  
8 it verbatim and she's not going to articulate  
9 it very, very clearly. But anything that  
10 suggest that 'I diagnosed this girl and  
11 because she shows all of these signs, she's  
12 telling the truth', that's where we can't go.

13 SOLICITOR PATTERSON: I understand.  
14 And just to be clear, Judge, she is not going  
15 to testify about a diagnosis of child sexual  
16 abuse. She will discuss a diagnosis of post-  
17 traumatic stress disorder. But we will not  
18 get into the diagnosis of child sexual abuse.

19 THE COURT: Okay. And so what I'm  
20 hearing you say is she's not going to say --  
21 basically what she's going to say is this  
22 young lady is suffering from trauma. But  
23 she's not going to get into any detail about  
24 what kind of trauma that is or the genesis of  
25 that trauma.

1                   So the way I'm conceiving of it  
2           right now, if she is more in the nature of a  
3           medical doctor at an emergency room and/or a  
4           medical doctor who analyzes a rape or  
5           administers a rape kit, where she just speaks  
6           to the facts: 'This is what was present. I  
7           can't tell you why it's present.'

8 SOLICITOR PATTERSON: She's going  
9 to speak to the facts. And the child has  
10 made multiple disclosures of sexual abuse to  
11 her. So we will, in keeping with the hearsay  
12 exception, ask her if [Minor] did, in fact,  
13 disclose sexual abuse and time and place.

14 THE COURT: Okay. Okay. And  
15 she's the one -- I presume she is testifying  
16 after the forensic interview?

17 SOLICITOR PATTERSON: Correct,  
18 Judge.

19 THE COURT: Okay. All right.

20 MR. QUINN: My one concern then is  
21 why is she being offered as an expert on  
22 child sexual abuse dynamics?

23 As soon as she gets into saying  
24 anything about this is what we see for child  
25 sexual abuse, 'these are the symptoms, I

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1 found them, they exist in this case', we're  
2 going to have trouble. And as soon as she  
3 gets qualified in front of the jury, that's  
4 an expert in that. It's the same as saying  
5 to the jury, 'She's an expert in it. Guess  
6 what? The reason we have her here she's an  
7 expert in child sexual abuse dynamics. So  
8 this child suffered sexual abuse.'

9 THE COURT: All right. Well, this  
10 is what I'm going to do -- we'll take it  
11 under consideration. You can make  
12 contemporaneous objections.

13 It may be, and I want you to just,  
14 Ms. Patterson, prepare testimony of a blind  
15 expert as opposed to a fact expert or an  
16 expert witness who attended to the child,  
17 okay?

18 SOLICITOR PATTERSON: Okay. So ---

19 THE COURT: So you -- so at some  
20 point you'll be able to go either way, okay?  
21 I'm going to let her testify because I'm  
22 convinced of her credentials. And you can  
23 ask her questions to put her credibility into  
24 dispute.

25 But with respect to the actual

1 factual testimony, again, I'm going to be  
2 veering pretty significantly toward the blind  
3 expert as opposed to the attending expert,  
4 okay? All right.

5 Again, if you get a conviction in  
6 this case, this is where you're going to lose  
7 it on appeal, okay? Okay. So I'll consider  
8 it. If you have any additional case law at  
9 all, you're welcome to e-mail it to me.

10 SOLICITOR PATTERSON: Okay.

11 THE COURT: Which discusses  
12 specifically this particular instance, I'd be  
13 happy to look at it, from this state or  
14 another. But we'll consider it tomorrow  
15 again. I'm more inclined to treat it as a  
16 blind expert as opposed to an attending  
17 expert, okay?

18 SOLICITOR PATTERSON: Judge, would  
19 you be inclined to allow the State to add a  
20 blind expert to our witness list?

21 THE COURT: I would not. I mean,  
22 you're welcome to do that.

23 SOLICITOR PATTERSON: Well, we --  
24 thank you.

25 THE COURT: Yeah. I don't mind



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1 and I'm not so certain that this witness,  
2 inasmuch as the broad qualifications that  
3 you've given her can't testify as to some of  
4 the blind information. Again, which is  
5 delayed disclosure or things of that sort.

6 Okay. All right.

7 SOLICITOR PATTERSON: Thank you,  
8 Judge.

9 THE COURT: Anything else for this  
10 witness?

11 SOLICITOR PATTERSON: Nothing for  
12 this witness, Your Honor.

13 THE COURT: Okay. Thank you.

14 WITNESS: Thank you.

15 THE COURT: We'll see you, maybe  
16 tomorrow. Have a good evening.

17 (WITNESS STEPS DOWN)

18 MR. QUINN: Judge, we need to take  
19 a short break just to let my client step out  
20 here and use the restroom. I think there's  
21 one back here in the jail cell.

22 THE COURT: Yes, that's fine.  
23 We'll do that. We'll come back in about five  
24 minutes then, okay?

25 (BRIEF RECESS)

1 (DEFENDANT PRESENT)

2 THE COURT: Are we ready to  
3 proceed? You may call your next witness.

4 JACKSON V. DENNO HEARING

5 SOLICITOR PATTERSON: David Picone.

6 (WITNESS TAKE STAND)

7 DAVID PICONE, having been duly  
8 sworn to tell the truth, and nothing but the  
9 truth, testified as follows:

10 DIRECT EXAMINATION

11 BY SOLICITOR PATTERSON:

12 Q. State your full name for the record,  
13 please?

14 A. David Daniel Picone.

15 Q. And where do you work?

16 A. Greenville County Sheriff's Office.

17 Q. And in what capacity do you work for  
18 the sheriff's office?

19 A. Currently, I'm assigned as an  
20 investigator with the violent crimes unit.

21 Q. Okay. And what unit were you in in  
22 March of 2015?

23 A. Crimes against children.

24 Q. Okay. And were you investigating a  
25 child sexual abuse case that began on March

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1           20<sup>th</sup> of 2015?

2           A.    Yes.

3           Q.    And did that case involve this  
4           defendant?

5           A.    It did.

6           Q.    Did you meet with this defendant at  
7           some point and talk to him about the case?

8           A.    March 23<sup>rd</sup>, 2015.

9           Q.    And why did you meet with him on  
10          that date?

11          A.    The initial investigation started on  
12          March 20th. After I got a basic understand-  
13          ing of what the case was about, after talking  
14          to the victim, I'd been doing some follow-up  
15          investigations and had gone out to the  
16          Defendant's house and talked with his girl-  
17          friend. And he wasn't home at the time. And  
18          after I talked with her, she said that she  
19          was going to bring him to my office later on  
20          in the afternoon, after he got home from  
21          work; which she eventually did later in the  
22          afternoon.

23          Q.    And at this point, the victim had  
24          made allegations against the Defendant?

25          A.    Yes.

1 Q. And you had met with the victim at  
2 this point?

3 A. Yes.

4 Q. All right. And were you the primary  
5 investigating officer on the case?

6 A. I was.

7 Q. Did Mr. Makins come in voluntarily  
8 to speak with you?

9 A. Yes. Like I said, he showed up at  
10 my office. At first when he showed up DSS  
11 was there. DSS had actually put a safety  
12 plan together. So he met with DSS to go over  
13 the safety plan.

14 After that, he said he would be willing  
15 to talk with me. So we went back to our  
16 interview room. At that time, I was under  
17 the assumption that when you enter the room,  
18 the recording system was supposed to come on.  
19 Later I found out that they had changed the  
20 system, previous days, weeks before and I  
21 hadn't been in there hadn't been an interview  
22 since then. And you're supposed to turn a  
23 switch on, so it wasn't recorded. But, yes,  
24 he voluntarily came.

25 Q. And was he free to say no that he

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1 did not wish to speak to you?

2 A. Yes. When we went in the room I,  
3 you know, told him he was not under arrest,  
4 that he didn't have to speak to me. That if  
5 he wanted to leave, he could just tell me and  
6 we'd end the interview. Told him that  
7 anytime he wanted to leave to use the  
8 bathroom just let me know. He also asked for  
9 a glass of water, which I provided to him.

10 Q. And was anyone with you during the  
11 course of the interview?

12 A. Yes. Investigator Robertson, Mike  
13 Robertson was in there as well.

14 Q. Was the defendant handcuffed at any  
15 time?

16 A. He was not.

17 Q. Was he free to leave at any time?

18 A. Yes.

19 Q. And how did the discussion with the  
20 defendant begin?

21 A. I explained to him that there was  
22 some allegations made against him of sexual  
23 abuse. He denied the allegations.

24 And I asked him to determine whether he  
25 was actually alone with the child or had an

1 opportunity to do so. He did disclose or  
2 tell me that he was alone with the child  
3 certain times when he was watching her.

4 Q. Did he express any reservations  
5 about speaking with you?

6 A. No.

7 Q. About how long did you speak with  
8 the Defendant?

9 A. It was about one hour.

10 Q. And he was free to leave at any  
11 point during that hour?

12 A. Yes.

13 Q. Did he ever ask for an attorney?

14 A. No, he did not.

15 Q. Did he ever ask to take a break?

16 A. No.

17 Q. Did he ask to have anyone with him?

18 A. No.

19 Q. Did he ask if he could come back  
20 later?

21 A. No.

22 Q. And did he, in fact, leave after he  
23 made the statement that you just mentioned?

24 A. Yes, he did leave.

25 Q. Thank you.

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1 SOLICITOR PATTERSON: No further  
2 questions from the State for this witness,  
3 Judge.

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. QUINN:

7 Q. I assume you didn't reduce any  
8 statement to writing because you thought it  
9 was being recorded; is that correct?

10 A. That's correct.

11 Q. Okay. Did you ask Detective  
12 Robertson to do a report in this matter?

13 A. I did not.

14 Q. Okay.

15 MR. QUINN: I don't have any other  
16 questions. Thank you.

17 SOLICITOR PATTERSON: Your Honor,  
18 at this point the State would put on the  
19 record and argue that the statement of the  
20 Defendant was freely and voluntarily given  
21 and that it is appropriate to be admitted at  
22 trial.

23 THE COURT: Okay. Mr. Quinn?

24 MR. QUINN: Well, I wouldn't agree  
25 that it's admissible. That's taking it one

1 step too far. But I'll agree that it was not  
2 taken in violation of any of the *Jackson v.*  
3 *Denno*.

4 THE COURT: Okay.

5 MR. QUINN: He was not even under  
6 arrest, so it was noncustodial.

7 THE COURT: Okay. Good enough.  
8 Okay. As a threshold finding, I do find that  
9 all of the particulars to *Jackson v. Denno*  
10 -- particularly *Jackson v. Denno*, obviously  
11 at trial I'll determine whether in fact it's  
12 admissible or not. However, the threshold, I  
13 find that it does meet the requirements of  
14 *Jackson v. Denno*.

15 I presume that any objections would  
16 be as to authentication and laying an  
17 appropriate foundation for the admissibility  
18 of the same.

19 MR. QUINN: Those would be the  
20 obvious ones; maybe relevance, although I  
21 suspect it's relevant.

22 THE COURT: Okay. Good enough.  
23 All right. Okay.

24 SOLICITOR PATTERSON: Your Honor,  
25 the State has nothing further for this



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1           afternoon until tomorrow.

2                   THE COURT:     I need to get the rape  
3 shield in writing but that's not an issue, I  
4 presume?

5                   SOLICITOR PATTERSON:   I don't think  
6 -- typically, Judge, as I understand the case  
7 law the courts are considering *Boiter* and  
8 rape shield as kind of simultaneous motions.

9                   THE COURT:     Right.

10                  SOLICITOR PATTERSON:   So I think  
11 that there is an appropriate discussion on  
12 that that can be had tomorrow. But I think  
13 that we will lean more toward the *Boiter* than  
14 the rape shield in this case with the child.

15                  THE COURT:     Okay.

16                  SOLICITOR PATTERSON:   Unless Mr.  
17 Quinn has a prior-knowledge-argument you'd  
18 like to make.

19                  MR. QUINN:     No. And I agree with  
20 her. Analysis of the situation would  
21 probably more in arguing under *Boiter*.

22                  THE COURT:     Sure.

23                  MR. QUINN:     And we'll need to put  
24 that record up tomorrow.

25                  THE COURT:     Good enough. Okay.

1 All right. Okay. We'll come back on the  
2 record tomorrow at 9:00. I think we  
3 indicated to the jury to come back at 1:00.  
4 So we'll start at 9:00 and try to get that  
5 hearing done as quickly as possible.

6 MR. QUINN: Yes, sir.

7 THE COURT: So as to afford all of  
8 the staff a lunch and we can come back at  
9 1:00 and begin opening statements, okay? All  
10 right. Thank you. Y'all have a great  
11 evening.

12 SOLICITOR PATTERSON: Thank you,  
13 Judge.

14 MR. QUINN: Thank you, Judge.

15 (COURT IN RECESS)

16 (TRANSCRIPT CONTINUED NEXT PAGE)

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25

9:00 A.M.

(DEFENDANT PRESENT)

THE COURT: I understand we have a Boiter hearing. And I'm ready to go when y'all are. If you're still corralling all the usual suspects, that's okay.

MR. QUINN: They were bringing a witness up before me and my client ran to the restroom.

THE COURT: Sure, that's fine.

While we are on the record, I do want to put on the record that I have had the opportunity to review the tape and have reviewed the same in accordance with Section 17-23-175 and do find that it possesses the particularized guarantees of trustworthiness articulated in the statute. And, therefore, find that it is admissible.

SOLICITOR PATTERSON: Thank you,  
Your Honor.

THE COURT: Yes, ma'am.

SOLICITOR PATTERSON: Judge, one thing that you had mentioned yesterday as we were talking about the therapist is if we

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1           have any case law that we'd like to  
2           present to the Court.

3                   THE COURT:     Sure.

4                   SOLICITOR PATTERSON:     There is one  
5           case and I have a copy for defense counsel as  
6           well, *State v. Henry*; which I'm happy to  
7           discuss it at the appropriate time. But I  
8           think it does address the issue and still is  
9           considered to be positive law in South  
10          Carolina.

11                  THE COURT:     Okay. We'll take it  
12          up at the appropriate time. I'll sit here  
13          quietly and read it while we wait for the  
14          witness.

15                  SOLICITOR PATTERSON:     Thank you,  
16          Judge.

17                               (COURT AT-EASE)

18                  MR. QUINN:     Is the Court ready?

19                  THE COURT:     Yes, sir.

20                  MR. QUINN:     I would call Minor  
21          to the stand.

22                  THE COURT:     Okay.

23                               (WITNESS TAKES STAND)

24                               Minor, having been duly  
25          sworn to tell the truth, and nothing but the

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1 truth, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. PATTERSON:

4 Q. Minor, I'm going to ask you some  
5 questions, okay? And I know you've got a  
6 microphone in front of you. You don't have  
7 to worry about speaking into it. It'll pick  
8 you up as long as you talk loud enough; okay.

9 A. (Nods head)

10 Q. And unfortunately, you have to  
11 answer out loud because this lady (court  
12 reporter) is taking down everything that's  
13 said and she can't take down a nod. She has  
14 to have you either say yes or no, okay?

15 A. (Nods head)

16 Q. So can you say yes or no for me, to  
17 the questions?

18 A. Yes.

19 Q. And your name is Minor; is  
20 that correct?

21 A. Yes.

22 Q. And Minor we don't know each  
23 other; is that right? We've never met  
24 before?

25 A. No.

1 Q. May I call you [Minor] or would you  
2 prefer I call you [Minor]?

3 A. [Minor].

4 Q. Okay. And [Minor], you understand  
5 you're here to talk about 'Tari; is that  
6 right?

7 A. Yes.

8 Q. Okay. And is the fellow you call  
9 'Tari, Ontario Makins?

10 A. Yes.

11 Q. Now, I want to talk to you about  
12 some other things besides 'Tari here these  
13 few minutes; okay?

14 A. (Affirmative nod). -- yes.

15 Q. Thank you. You also accused some  
16 other people of doing improper things or  
17 wrong things to you; isn't that right?

18 A. Yes.

19 Q. Okay. And did you accuse Malayah,  
20 M-A-L-A-Y-A-H ---

21 A. Yeah.

22 Q. --- of doing something to you?

23 A. Yes.

24 Q. Okay. And who is Malayah? Can you  
25 tell me her last name?

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1 A. Is it Smith, Mama?

2 Q. Okay. If you don't know,  
3 unfortunately nobody can help you answer,  
4 okay? If you don't know, you can say you  
5 don't know.

6 A. I don't know.

7 Q. Okay. And who is Malayah to you?  
8 What relationship do you have?

9 A. She's my cousin.

10 Q. And can -- do you know about how old  
11 she is?

12 A. (Negative gesture).

13 Q. You have to say it out loud for me.  
14 I'm sorry.

15 A. No.

16 Q. Thank you. And does she live near  
17 you or faraway; can you tell me that?

18 A. She lives in North Carolina now.

19 Q. And do you two visit very often?

20 A. No.

21 Q. All right. And so did you accuse  
22 Malayah of touching you inappropriately?

23 A. Yes.

24 Q. And tell me what you accused her of  
25 doing?

1 A. Touching me on my private part.

2 Q. Okay. And is that the words you  
3 used? Do you remember?

4 A. I'm not sure.

5 Q. And were you able to say how many  
6 times that happened?

7 A. Uh-uh, (negative gesture).

8 Q. Is that a no?

9 A. "No."

10 Q. Okay. And were you able to say  
11 where it happened?

12 A. I think Tiffany's house.

13 Q. Okay. And whose house is that?  
14 Please tell me the name again?

15 A. Tiffany.

16 Q. And who is Tiffany.

17 A. My sister.

18 Q. And how -- is your sister an adult?

19 A. Yes.

20 Q. And she lives in a separate house  
21 than you do?

22 A. Yes.

23 Q. And does she live in South Carolina  
24 or North Carolina?

25 A. North Carolina.



1 Q. And do you know, does she live close  
2 to Malayah?

3 A. Yes.

4 Q. How far, can you give me an idea?

5 A. Malayah is her child.

6 Q. Okay. So Malayah and Tiffany are  
7 mother and daughter?

8 A. Yes.

9 Q. Okay. So they live in the same  
10 house; is that right?

11 A. Yes.

12 Q. Okay. So you're saying Malayah did  
13 that in Malayah's house?

14 A. Yes.

15 Q. And did that happen or did that not  
16 happen?

17 A. It did.

18 Q. And when did you report that?

19 A. I'm not sure.

20 Q. Who did you tell?

21 A. I think my mom.

22 Q. And do you remember, did you tell  
23 any police officers about it?

24 A. I think.

25 Q. And do you remember which, if any

1 police officers?

2 A. Uh-uh. No.

3 Q. Thank you. Do you remember, did you  
4 tell any of your teachers about it?

5 A. Maybe Ms. Columbia.

6 Q. But do you remember if you did or  
7 not?

8 A. Ms. Columbia, (affirmative nod).

9 Q. You did tell Ms. Columbia, okay.

10 A. (Affirmative nod).

11 Q. And did you tell your counselor?

12 A. My mom did.

13 Q. Do you remember talking to Ms. Rich  
14 about this?

15 A. (No verbal response).

16 Q. About the accusations against  
17 Malayah, do you remember if you talked to Ms.  
18 Rich about it?

19 A. I don't know who that is.

20 Q. Kristin? Do you call her Ms.  
21 Kristin?

22 A. I call her Kristin.

23 Q. Okay. And do you know that Kristin  
24 is your therapist?

25 A. Yes.

1 Q. Okay. Did you talk to Kristin about  
2 it?

3 A. No, my mom did.

4 Q. Okay. But you didn't talk to  
5 Kristin about it?

6 A. No.

7 Q. And did you also accuse two other  
8 people of molesting you?

9 A. Yes...

10 Q. And who was that?

11 A. Messiah and Caesar.

12 Q. And can you tell the Judge what you  
13 say Messiah and Caesar did to you?

14 A. No.

15 Q. No, you can't?

16 A. (Negative gesture).

17 Q. And why is that?

18 A. I don't want to.

19 Q. Okay. What you accused Messiah and  
20 Caesar of, is it the truth; did it really  
21 happen?

22 A. Yes.

23 Q. When?

24 A. I can't remember.

25 Q. Where?

1 A. At Toi's house.

2 Q. At Toi's house.

3 A. (Affirmative nod).

4 Q. And who else lives at Toi's house?

5 A. 'Tari.

6 Q. Okay. And let's explain to the  
7 Judge who all these people are. How are Toi  
8 and 'Tari related?

9 A. They are boyfriend and girlfriend.

10 Q. And is Toi some relative of your  
11 mother's?

12 A. She's my sister.

13 Q. Toi is your sister?

14 A. Yes.

15 Q. Okay. And who are Messiah and  
16 Caesar to you, if anything? What relation-  
17 ship are they?

18 A. They are my nephews.

19 Q. Okay. Where does Toi live?

20 A. (No verbal response).

21 Q. In South Carolina or North Carolina?

22 A. Oh, South Carolina.

23 Q. Close to your house or faraway?

24 A. (No verbal response).

25 Q. Let's do it this way. Can you walk

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1 to her house from your house?

2 A. No.

3 Q. Okay. And so when you go to her  
4 house, how do you get there?

5 A. In a car.

6 Q. And who usually takes you?

7 A. My mom.

8 Q. Okay. And does your mom stay with  
9 you or leave you there?

10 A. She leaves me.

11 Q. And did you claim that Messiah and  
12 Caesar touched you inappropriately?

13 A. Yes.

14 Q. And had anal intercourse with you?

15 A. (No verbal response).

16 Q. Do you know what that is?

17 A. No.

18 Q. That they messed with your bottom?

19 A. I can't remember.

20 Q. Okay. You're saying that that's  
21 true, that that actually happened?

22 A. Yes, sir.

23 Q. Did anybody see it, that you're  
24 aware of?

25 A. No.

1 Q. And this accusation about Messiah  
2 and Caesar, did you tell the police about it?

3 A. I'm not sure.

4 Q. Do you remember, did you tell any of  
5 your teachers about it?

6 A. Miss -- no, I don't think so.

7 Q. Did you tell your mom about it?

8 A. Yes.

9 Q. Did you tell anybody else about it?

10 A. Maybe Kristin.

11 Q. Okay. That Kristin being your  
12 therapist; that Kristen?

13 A. (Affirmative nod).

14 Q. Okay. Anybody else?

15 A. No.

16 Q. And do you know, were Messiah or  
17 Caesar or Malayah ever arrested?

18 A. No.

19 Q. "No," or do you know? Were they  
20 arrested?

21 A. (Negative gesture).

22 Q. "No," they weren't?

23 A. I don't think so. I don't know.

24 Q. And do you understand that it's very  
25 important to tell the truth here today?

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1 A. Yes.

2 Q. And it's your testimony that all  
3 three of these -- well, let me ask you this.  
4 I'm sorry. How old is Messiah?

5 A. Nine.

6 Q. And how old is Caesar?

7 A. Three or six. I think he's six now.

8 Q. Okay. And when they were messing  
9 with you, did you bop either of them up the  
10 side of the head?

11 A. No.

12 Q. And you're older than both of them;  
13 aren't you?

14 A. I'm not sure if I was older than  
15 Messiah.

16 Q. Okay. So Messiah is about your age,  
17 about ten?

18 A. Yeah.

19 Q. Okay. But you're certainly older  
20 and bigger than Caesar; right?

21 A. Yes.

22 Q. So did you bop him up the side of  
23 the head?

24 A. No.

25 Q. Hit any of the people that tried to

1 hurt you?

2 A. (No verbal response).

3 Q. Did any of them leave any marks on  
4 you that you were able to show anybody?

5 A. No.

6 Q. Did you put any marks on them ---

7 A. No.

8 Q. --- defending yourself?

9 A. No.

10 Q. And as far as you know, did anybody  
11 see any of this?

12 A. No.

13 Q. Was anybody else in the house when  
14 Malayah was doing any of these things to you?

15 A. I think everyone was outside.

16 Q. And did you yell so that they might  
17 hear you?

18 A. No.

19 Q. What about when Caesar and Messiah  
20 were supposedly doing something to you. Was  
21 there anybody else in the house?

22 A. I don't know.

23 Q. Do you remember were they outside?  
24 Was there anybody outside?

25 A. I think Isis.



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1 Q. And who's Isis?

2 A. My sister.

3 Q. And how old is your sister?

4 A. Eighteen.

5 Q. And did you yell so Isis would come  
6 help you?

7 A. No.

8 Q. And when you say Toi's house, did  
9 they live in a house or an apartment or where  
10 do they live?

11 A. An apartment.

12 Q. And so were there people in the  
13 apartments next door?

14 A. Yes, I think so.

15 Q. Okay. You think people live there?

16 A. Yeah, because there was an upstairs  
17 and a downstairs.

18 Q. And did you yell to see if any  
19 people from either of those apartments would  
20 come help?

21 A. No.

22 Q. All right. What about where Malayah  
23 lives, is it an apartment or house or what?

24 A. Now, I think it's just a neighbor-  
25 hood but back then I think it was an

1 apartment.

2 Q. And the same thing, do you know if  
3 people lived in the apartments nearby?

4 A. I'm not sure.

5 Q. Did you yell or make any noise to  
6 try to get help from any of those people?

7 A. No.

8 MR. QUINN: I don't have any other  
9 questions at this time, Your Honor.

10 THE COURT: Ms. Patterson, any  
11 questions?

12 SOLICITOR PATTERSON: Just a few,  
13 Your Honor.

14 THE COURT: Okay.

15 CROSS-EXAMINATION

16 BY SOLICITOR PATTERSON:

17 Q. Minor, can you tell me again how  
18 old Caesar and Messiah are?

19 A. Caesar is six and I think Messiah's  
20 nine.

21 Q. And you said earlier that you didn't  
22 want to talk about what happened with them.

23 Why don't you want to talk about that?

24 A. Because I don't want to.

25 Q. Okay. Have you seen them since all

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1 of this happened, and since 'Tari was  
2 arrested? Have you seen Messiah and Caesar?

3 A. No.

4 Q. No?

5 A. (No verbal response).

6 Q. Do you miss seeing them?

7 A. Yes.

8 Q. Okay.

9 SOLICITOR PATTERSON: Judge, if I  
10 may have just a moment.

11 THE COURT: Sure.

12 CROSS-EXAMINATION CONTINUED

13 BY SOLICITOR PATTERSON:

14 Q. **Minor**, I know you said you didn't  
15 know exactly how old Malayah is. Is she an  
16 adult like your mom?

17 A. No.

18 Q. No. Is she a kid like you?

19 A. She's older than me.

20 Q. She's a little older than you.. Is  
21 she still in school; do you know?

22 A. I think middle school.

23 Q. You think middle school.

24 A. (Affirmative nod).

25 SOLICITOR PATTERSON: Thank you,

1 Judge. I have no further questions for this  
2 witness.

3 MR. QUINN: I don't have any  
4 further questions for this witness. Could  
5 I ask the Court to give me five minutes in  
6 recess and let me speak to my client?

7 THE COURT: Okay. Good enough.  
8 All right. Thank you, ma'am. I appreciate  
9 it. You may step down.

10 (WITNESS STEPS DOWN)

11 THE COURT: Okay. We'll be in  
12 recess for five minutes. Thank you.

13 (BRIEF RECESS)

14 (DEFENDANT PRESENT)

15 MR. QUINN: Judge, may we  
16 approach?

17 THE COURT: Sure.. Yes, sir. Yes,  
18 sir.

19 (OFF RECORD BENCH CONFERENCE)

20 THE COURT: Yes, sir. You may  
21 proceed.

22 MR. QUINN: Thank you, Your Honor.  
23 Your Honor, I believe that's all the  
24 testimony we will have on the *Boiter* issue.  
25 And if the Court will allow me to address the

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1 Court a bit further on it, particularly for  
2 the record. The case that we're discussing,  
3 of course, is *State v. Boiter*, B-O-I-T-E-R,  
4 the *State v. Sprouse*, S-P-R-O-U-S-E, that's  
5 also discussed in the case.

6 It appears that the burden is on the  
7 defense to first prove that the allegation  
8 made by the reported victim was false.

9 Then you go to other considerations  
10 about timeliness, the factual similarity to  
11 determine relevance.

12 As the Court has heard, Minor has  
13 testified these allegations did occur.  
14 Whether I believe that or no, it becomes an  
15 impossibility, even though I have the  
16 children here available to testify that --  
17 with denial of these allegations, I think it  
18 becomes a factual impossibility to prove the  
19 allegations false when there are no  
20 witnesses, there is no physical evidence,  
21 there are no reports that police -- there was  
22 no investigation. At best what I'm going to  
23 have is a swearing contest.

24 And even if -- and I agree there's a  
25 question about what the standard might be --

1 but even if the standard is preponderance of  
2 evidence, I don't know I get past fifty  
3 percent to fifty-one percent. Rather than  
4 putting three minor children witnesses up,  
5 when I do not believe that I can establish to  
6 the Court even to a preponderance of the  
7 evidence that the allegations are false --  
8 because it would be a straight swearing  
9 contest. One will say yes, they did it. And  
10 they'll say, 'no, I didn't.' That's all the  
11 testimony we will have.

12 I have discussed with my client, of  
13 course, that if we stop at this point the  
14 allegations, the other allegations made will  
15 not come out before the jury. They will not  
16 be aware of any of these allegations, whether  
17 they are true or false, that no testimony  
18 about that would be admissible. So my client  
19 understands that and that's all the testimony  
20 that I would have.

21 THE COURT: Okay. All right.  
22 Good enough. All right. I don't know if any  
23 response from the State is necessary or not.

24 SOLICITOR PATTERSON: Your Honor, I  
25 don't believe it's necessary so long as Mr.

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1 Quinn has conceded that these allegations  
2 would be absolutely inappropriate at trial.  
3 The State does -- position would be that the  
4 standard of *Boiter* has not been met -- the  
5 Defense has not proved these false.

6 And the State's position if we went  
7 forward would also be that these were not  
8 factually similar, so that the allegations  
9 against the other children are appropriately  
10 kept out of trial.

11 THE COURT: Okay. All right. I  
12 do find that based on the evidence that's  
13 been submitted on the record, I cannot  
14 determine under any standard of proof,  
15 whether it's preponderance of the evidence,  
16 clear and convincing or beyond a reasonable  
17 doubt, that the accusations made by the  
18 victim, prior accusations were false.

19 I recognize the Defense's position  
20 that is, that under the relevant standard  
21 articulated by the Supreme Court that it's a  
22 futile endeavor to try to prove the falsity  
23 of prior accusations. I don't know if that's  
24 precisely true. However, I would say that it  
25 is an unwieldy burden. And for the record,

1 I'm not so sure that it's a fair burden to  
2 impose upon a defendant either. I don't know  
3 if that issue has been waived by the Defense.

4 However, I will tell you from the  
5 trial court perspective, I would love to have  
6 additional guidance from the Supreme Court  
7 about the burden of proof required for  
8 proving the falsity of the accusation.

9 And I think that it should more  
10 particularly be that the -- the proof should  
11 be that the accusation was in question, not  
12 that it was absolutely false. Because I  
13 think that visits ultimately an unfairness  
14 upon a defendant in not being able to explore  
15 prior allegations of sexual abuse that may be  
16 questionable. That is, that had not been  
17 adjudicated but weren't proven specifically  
18 false in any tribunal or in any in-camera  
19 proceeding.

20 Okay. For that reason, I find that  
21 any cross-examination of prior allegations of  
22 sexual abuse or inadmissible in accordance  
23 with *Boiter*.

24 Yes, sir?

25 MR. QUINN: I apologize to the



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1 Court because I had originally had planned on  
2 putting all of the witnesses up. I do not  
3 have anything else for the Court this  
4 morning. I know the jury's coming back at  
5 1:00. I don't know if the State has  
6 anything.

7 SOLICITOR PATTERSON: Nothing from  
8 the State at this time, Judge.

9 THE COURT: Okay. With regard to  
10 the case that you had passed up, *State v.*  
11 *Henry* concerning the testimony of an expert  
12 witness, I think in reviewing that case that  
13 I agree with that finding entirely. And that  
14 goes to the qualification of the therapist or  
15 the expert witness to testify as to post-  
16 traumatic stress disorder. But in that case,  
17 they didn't specifically address our concern  
18 in this case.

19 And that is whether that -- in  
20 context of the recent case law concerning the  
21 testimony of expert witnesses vouching for  
22 the credibility of minor victims, this really  
23 doesn't touch upon that because that wasn't  
24 the objection that was made at the time. And  
25 it certainly wasn't made in context with our

1       current jurisprudence. So I still have the  
2       same concern about the expert witness  
3       vouching for the testimony of the minor  
4       victim.

5               I don't know what this expert  
6       witness is going to say. I don't have any  
7       issue with her qualification as an expert  
8       witness. I don't think -- and I haven't  
9       heard the testimony yet -- I don't think I  
10      have any issue with her saying that she  
11      talked to her, and that she exhibits symptoms  
12      of post-traumatic stress disorder.

13             Beyond that, I'm concerned that if  
14      she starts matching up her testimony with her  
15      symptoms, we are essentially establishing a  
16      circumstance where she is vouching for the  
17      credibility of the witness. If that happens,  
18      I don't think that I have any choice but to  
19      declare a mistrial and I don't want to get  
20      there..

21             You can put her in the -- on the  
22      stand to testify as a fact witness without  
23      any vouching for the credibility. And then  
24      use a blind witness if you want to. Or you  
25      can use a blind witness. But don't get to

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1 the point where she's vouching for the  
2 credibility, okay?

3 SOLICITOR PATTERSON: Your Honor,  
4 can I just be sure that I'm clear on your  
5 ruling on that?

6 THE COURT: Yes.

7 SOLICITOR PATTERSON: So if Ms.  
8 Rich gets up and testifies as an expert in  
9 the areas that we discussed yesterday, if she  
10 testifies as to piecemeal disclosure, delayed  
11 disclosure. And then from what I understand  
12 you to say, she can testify that she saw the  
13 child. That the child was diagnosed with  
14 PTSD and that these were the symptoms?

15 THE COURT: Everything up to "and  
16 these were the symptoms." Okay?

17 SOLICITOR PATTERSON: Okay.

18 THE COURT: Because I think when  
19 you start talking about symptoms, that is  
20 you're matching the expert opinion to her  
21 specific testimony, to her disclosures. I  
22 think that's where you start getting into the  
23 vouching part.

24 SOLICITOR PATTERSON: But can talk  
25 about the diagnosis of PTSD?

1 THE COURT: Yes, ma'am.

2 SOLICITOR PATTERSON: Okay.

3 THE COURT: And now we're talking  
4 about generally. I don't want ---

5 SOLICITOR PATTERSON: Understood.

6 THE COURT: Again, the problem is,  
7 I think, when she starts getting very  
8 specific in the diagnosis of PTSD as it  
9 relates to this client, then she begins to  
10 vouch. Now, she's also going to -- you  
11 intend to ask her about additional  
12 disclosures of sexual abuse; correct?

13 SOLICITOR PATTERSON: I do.  
14 Correct.

15 THE COURT: Okay. Do you have any  
16 objection to that, Mr. Quinn?

17 MR. QUINN: Additional concerning  
18 'Tari, is what we're talking about; right?

19 SOLICITOR PATTERSON: Correct.

20 THE COURT: Right.

21 MR. QUINN: No. I don't -- at  
22 this time, I don't have an objection.

23 THE COURT: Okay. All right.  
24 And, again, Ms. Patterson, I'm not telling  
25 you precisely how to examine your witness and

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1           what to bring out. I'm just telling you what  
2           to stay away from.

3                       SOLICITOR PATTERSON: I understand

4                       THE COURT: Okay. All right.

5           Because I'm very careful in these kind of  
6           cases, like we've talked about, these  
7           evidentiary rulings are very important  
8           because they have the effect of cutting the  
9           legs out from under one side or the other.  
10          So I'm trying to be as far as I possibly can  
11          to each side in allowing both of you to  
12          present that evidence, which is admissible  
13          and appropriate to represent your respective  
14          clients. But we've got to stay within those  
15          parameters, which have been loosely defined  
16          by the Supreme Court, okay?

17                      Okay. Anything else that we need to  
18          take up this morning?

19                      MR. QUINN: No, sir. Not that I'm  
20          aware of?

21                      THE COURT: Okay.

22                      SOLICITOR PATTERSON: Nothing from  
23          the State, Judge.

24                      THE COURT: Okay. All right.

25          Then I'll see y'all back at 1:00. If you

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Pretrial Testimony of Minor

1 need me just let me know, okay?

2 MR. QUINN: Thank you.

3 SOLICITOR PATTERSON: Thank you.

4 (COURT IN RECESS)

5 (DEFENDANT PRESENT)

6 THE COURT: Mr. Quinn, do you need  
7 this, the transcript back?

8 MR. QUINN: No, thank you.

9 THE COURT: All right. If you  
10 need it to refer to during the trial, just  
11 let me know.

12 MR. QUINN: I will. Thank you.

13 THE COURT: Okay. We're ready for  
14 the jury.

15 (JURY IN @ 1:10 P.M.)

16 THE COURT: All right. Welcome  
17 back, ladies and gentlemen. I hope you had a  
18 good evening. I hope you had a good morning.

19 We're going to start this afternoon  
20 with opening statements from attorneys. And  
21 I remind you, as I told you yesterday, that  
22 opening statements are not evidence to be  
23 considered by you. Opening statements are an  
24 opportunity for the parties to introduce  
25 themselves and their theory of the case, and

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Opening Statement by Solicitor Patterson

1           so they're fairly short.

2                   Before we get started with the  
3 opening statements, I'm going to get the  
4 clerk of court to swear you in. Now,  
5 yesterday morning you took the oath to tell  
6 the truth. This is a different oath. This  
7 is an oath to truly and verily try the case  
8 in accordance with the law and the evidence.  
9 So ladies and gentlemen, I'll defer to the  
10 clerk of court to administer the oath.

11                               (WHEREUPON JURY SWORN)

12                   THE COURT:     All right. Ms.  
13 Patterson?

14                   SOLICITOR PATTERSON:     Thank you,  
15 Your Honor.

16                   THE COURT:     Yes, ma'am.

17                   SOLICITOR PATTERSON:     May it please  
18 the Court.

19                   THE COURT:     Yes, ma'am.

20                               OPENING STATEMENT

21                   BY SOLICITOR PATTERSON:

22                               Ladies and gentlemen, when we think  
23 about childhood fears, we often think about  
24 think about things like being afraid of the  
25 dark or monsters under the bed.

1           But for some kids, including kids  
2           here in Greenville, those fears take on a  
3           very different and very real shape. They  
4           look like a regular person, a person who's  
5           part of their family, and who looks like  
6           their mom and their dad, but who, behind  
7           closed doors, is abusing that child.

8           That someone would abuse a child,  
9           much less sexually abuse a child, is not  
10          something you normally think about much less  
11          talk about. But it is a reality. It's a  
12          reality here in Greenville and it's what  
13          we're here to talk about today.

14          As the Judge told you during jury  
15          selection, my name is Kate Patterson. I'm  
16          one of the prosecutors on the case. That  
17          means I represent the State of South Carolina  
18          in the criminal charges against this  
19          defendant. It's my job to present evidence  
20          to prove to you beyond a reasonable doubt  
21          that the Defendant committed the crimes we're  
22          going to talk about today.

23          In other words, I must firmly  
24          convince you that the Defendant is guilty.  
25          And I want to talk to you very briefly about



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1       how I'm going to do that. As you heard  
2       yesterday when the Judge read the indictments  
3       and when the clerk of court swore you in, the  
4       defendant in this case has been charged with  
5       three crimes related to child sexual abuse:

6               Criminal sexual conduct with a minor  
7       first degree, lewd act, and criminal sexual  
8       conduct with a minor, third degree.

9               You also may have noticed when the  
10       Judge read the indictments yesterday that the  
11       victim related to these charges has the  
12       initials [Minor] You'll learn today that [Minor]  
13       [Minor], a little girl who turned ten  
14       years old yesterday.

15              The evidence in this case will show  
16       that from the time [Minor] was about five  
17       years old, the Defendant, Ontario Makins, her  
18       sister's boyfriend was chronically sexually  
19       abusing her.

20              Now, at the end of the trial, the  
21       Judge is going to tell you about the law in  
22       the case. The Judge is always right as to  
23       the law. So if I tell you something  
24       different, you should go with what the Judge  
25       says. But I want to tell you a little bit

1       about the law and the elements or parts of  
2       the crime so that you can listen for certain  
3       elements or parts of the crime(s) as we go  
4       through the testimony in the next couple of  
5       days.

6               First, criminal sexual conduct with  
7       a minor first degree. Criminal sexual  
8       conduct with a minor first degree is a sexual  
9       battery on a child under the age of eleven.  
10      A sexual battery is a penetration into the  
11      victim's body. That can be penile, vaginal,  
12      digital or oral penetration. In this case,  
13      the evidence will show that the Defendant  
14      would put his penis in **Minor** mouth.

15             Second, the defendant has been  
16      charged with a lewd act. To be guilty of a  
17      lewd act, a defendant must commit a lewd act  
18      on a child under the age of sixteen. And  
19      what is a lewd act? It sounds like kind of a  
20      strange word. A lewd act is touch, rubbing,  
21      or fondling the victim's body in a way that  
22      is meant to arouse either the defendant or  
23      the child.

24             Third, the defendant has been  
25      charged with criminal sexual conduct with a

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Opening Statement by Solicitor Patterson

1 minor third degree. You probably didn't  
2 notice yesterday but as the Judge read the  
3 indictment, the elements or parts of the  
4 crime for criminal sexual conduct with a  
5 minor third degree are the same as lewd act.  
6 That can get a little confusing.

7 Why are the crimes named something  
8 different? The South Carolina Legislature  
9 changed the name of the crime in June 2012.  
10 So the kind of touching, rubbing and fondling  
11 of a child that I've described that happened  
12 prior to the law change in June of 2012 is  
13 charged as a lewd act. Touching, rubbing or  
14 fondling of a child that occurred after June  
15 2012 when the law changed is charged as  
16 criminal sexual conduct with a minor third  
17 degree.

18 As I mentioned, the evidence in this  
19 case will show that the defendant was  
20 chronically sexually abusing **Minor**. He  
21 would put his hand on her vagina. He would  
22 put her hand on his penis. This touching  
23 went on from before the law changed and  
24 after. Hence, we have the two separate  
25 crimes with the two different names.

1                   Now, that we've talked a little bit  
2                   about the three crimes that we're going to be  
3                   talking about in the next couple of days, I  
4                   want to tell you what you can expect from the  
5                   State's case. You're going to hear from  
6                   several witnesses. You'll hear from **Minor**  
7                   herself. You're going to hear from her mom.  
8                   You'll hear from her second grade teacher,  
9                   who's the first person **Minor** told about  
10                  this abuse. You're going to hear how the  
11                  disclosure came about. You're going to hear  
12                  from the investigator, Investigator Picone  
13                  from the sheriff's department and from  
14                  **Minor** therapist.

15                  What I want you to keep in mind as  
16                  you listen to the evidence is that child  
17                  sexual abuse is a secret crime. It is not  
18                  done out in the open or with an accomplice.  
19                  It is done behind closed doors. There's not  
20                  a video like in a DUI. There aren't  
21                  fingerprints like in a burglary. There  
22                  aren't even visible injuries that you  
23                  sometimes have in a traditional assault.

24                  Because it is done behind closed  
25                  doors, **Minor** is the eyewitness to the crime

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Opening Statement by Solicitor Patterson

1 in this case and what she tells you is of the  
2 utmost importance. She is going to have to  
3 give you the details of what happened. Keep  
4 in mind as you listen to **Minor** tell her  
5 story that she has just turned ten. And when  
6 she first came forward with these  
7 allegations, she was eight years old.

8 Children often remember and recount things  
9 different than adults may. And she is going  
10 to have to come into this courtroom, a very  
11 adult setting, and talk about very difficult  
12 things.

13 Some of what you're going to hear  
14 her talk about is graphic. Some of what  
15 you'll hear me talk about afterwards in  
16 closing arguments may be graphic. This is  
17 not done to upset or offend you in any way  
18 but because the State is required to prove  
19 the elements of the crime in a certain way.

20 Again, the Judge will talk to you  
21 about the elements of the crime at the end of  
22 the trial. I'll also have a chance after the  
23 end of the trial to come back, talk to you  
24 about the case, the evidence and what it  
25 means. Until then, I thank you for your

1           time, for your patience and your  
2           attention to this very important case.

3           THE COURT:     Mr. Quinn.

4           MR. QUINN:     May it please the  
5           Court?

6           THE COURT:     Yes, sir.

7                         OPENING STATEMENT

8           BY MR. QUINN:

9                         Ladies and gentlemen of the jury, I  
10           want to start where the Judge started. He  
11           has spoken with you a couple of times and  
12           both times he's started with the presumption  
13           of innocence. And as he's told you that's  
14           just not words. It's not just a concept or  
15           an idea that you can put aside. It is the  
16           starting point, which is why the Judge began  
17           with it in his discussions with you. In any  
18           criminal case, it is that Mr. Makins, as he  
19           sits with me, is innocent. Not 'not guilty',  
20           not accused. He's innocent. There is no  
21           evidence of guilt just because he's in a  
22           courtroom.

23                         This will be the first time -- as  
24           the Judge said yesterday, he hasn't heard the  
25           evidence. I have access to the police

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Opening Statement by Mr. Quinn for Defense

1 reports I normally receive, but I've not seen  
2 anything this witness is testifying until  
3 this week. So this will be the first time  
4 that Mr. Makins and I have had the  
5 opportunity to see these witnesses. We're  
6 going to learn the evidence just as you do.  
7 That's one reason the opening statement's got  
8 to be pretty brief. There's not much to talk  
9 to you about. You haven't seen the evidence  
10 yet. I haven't, the Judge hasn't, so we're  
11 all going to get the opportunity in this next  
12 day or two to see it together.

13 But the presumption of innocence  
14 will be your starting point in all  
15 discussions in this case, just as it is for  
16 the Judge when he's discussing it with you.

17 That means if there comes a point  
18 where you're not sure whether something  
19 happened. If one person says one thing and  
20 one person says another and there's nothing  
21 really that balances one higher than the  
22 other -- and we'll talk about what the  
23 standard is. And it's much higher than that  
24 -- that the presumption of innocence says in  
25 other words, any benefit of the doubt goes to

1 Mr. Makins. If, at the end of this case  
2 you're not sure of what happened, if there's  
3 pause, if there's lots of questions, then Mr.  
4 Makins gets the benefit of that doubt.  
5 That's what the presumption of innocence  
6 means. And it is your starting point. In  
7 every discussion, every point, you start with  
8 the idea that Mr. Makins is innocent. Then  
9 'Did the State convince us by evidence beyond  
10 a reasonable doubt of his guilt?'

11 Let's talk about evidence. Proof is  
12 what evidence is. There's different kinds of  
13 evidence. There are things you can touch.  
14 There are witnesses that are not involved.  
15 The testimony of a witness may be sufficient  
16 for you to decide. If that testimony is  
17 clear and convincing and convinces you beyond  
18 a reasonable doubt, the testimony of a  
19 witness may be enough. In this case from  
20 what the prosecutor has told you so far, this  
21 was a chronic -- no, this was occurring  
22 chronically, I believe was her word. So  
23 we'll wait and see what witnesses there are,  
24 what people may have suspected that something  
25 was going on or actually found something was



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Opening Statement by Mr. Quinn for Defense

1 going on or collected evidence about  
2 something going on. We'll find out what  
3 proof there is, if any.

4 What medical testimony there is; if  
5 they had this child evaluated; if they had  
6 the child examined by a doctor and what  
7 evidence there might have been of any sexual  
8 assault or any injury to this child.

9 And that proof, this evidence, has  
10 to convince you beyond a reasonable doubt of  
11 the defendant's guilt. The judge is going to  
12 define reasonable doubt for you. A  
13 reasonable doubt is a doubt which causes you  
14 to hesitate to act. A question that makes  
15 you go, 'wait a second.' 'Wait a second.  
16 That doesn't make a lot of sense. I've got a  
17 problem with that.' That's what a reasonable  
18 doubt is. It's a doubt for which you can  
19 assign a reason. But a doubt that makes you  
20 say, 'Wait a minute. That's not right.  
21 There's something wrong here.' That is a  
22 reasonable doubt, a doubt which causes you to  
23 hesitate to act.

24 Mr. Makins does not have the burden  
25 of proving his innocence, which in some cases

1 would be impossible. The State has to prove  
2 him guilty and prove him guilty beyond a  
3 reasonable doubt.

4 The testimony's going to take a  
5 couple of days, ending tomorrow, I suspect.  
6 I don't know if we'll finish tomorrow or  
7 Thursday but at the end of the case I'll get  
8 an opportunity to speak with you again. I'll  
9 get an opportunity to speak with you again.  
10 And unfortunately, lawyers fall in love with  
11 the sound of their own voices. So the next  
12 time when I have the evidence to discuss,  
13 you'll get real tired of me. But for opening  
14 statement, you get a break because there's  
15 not to tell you except, I'd ask for your  
16 consideration, listen to all of the  
17 testimony, including that brought out on  
18 cross-examination. You'll see what questions  
19 that I have as we go and I'll discuss those  
20 with you again at the end.

21 I think that if you listen to the  
22 entirety of the case, listen to what the  
23 proof is, not the fluff, not what we're  
24 adding, not what we're trying to make the  
25 package look pretty when the present inside

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Testimony of Mary Kroske - Direct Examination

1 is really crummy, you're going to find  
2 that there's not evidence of proof beyond a  
3 reasonable doubt that Mr. Makins is guilty of  
4 anything, and your verdict should be Not  
5 Guilty on all of these charges.

6 THE COURT: All right. Ms.  
7 Patterson, you may call your first witness,  
8 ma'am.

9 SOLICITOR PATTERSON: Thank you,  
10 Your Honor. The State would call Mary Jill  
11 Kroske.

12 (WITNESS TAKES STAND)

13 MARY JILL KROSKE, having been duly  
14 sworn to tell the truth, and nothing but the  
15 truth, testified as follows:

16 DIRECT EXAMINATION

17 BY SOLICITOR PATTERSON:

18 Q. Ms. Kroske, where do you work?

19 A. Mitchell Road Elementary.

20 Q. And what do you do at Mitchell Road?

21 A. I teach school.

22 Q. And how long have you been a  
23 teacher?

24 A. About twelve years.

25 Q. And what did you do before you

1 taught?

2 A. Well, I've been teaching about  
3 thirty years, so that's all I've done.

4 Q. And do you know the victim in this  
5 case, Minor [REDACTED] ?

6 A. I do.

7 Q. How do you know her?

8 A. I taught her in second grade.

9 Q. And what year did you teach her  
10 second grade?

11 A. The 2014-'15 school year.

12 Q. So that was two years ago?

13 A. Yes.

14 Q. And during that 2014-2015 school  
15 year, did the Julie Valentine Center come to  
16 talk to your class?

17 A. They did.

18 Q. And what did they come to talk  
19 about?

20 A. They came to talk to the children  
21 about inappropriate touching.

22 Q. And were you at school on March 20<sup>th</sup>  
23 of 2015?

24 A. I was.

25 Q. Was Minor [REDACTED] in your class that day?

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Testimony of Mary Kroske - Direct Examination

1 A. Yes, she was.

2 Q. And what happened that day with

3 Minor ?

4 A. That day as we went out to recess,  
5 most of the children had went on ahead and

6 Minor kind of -- they ran out to the

7 playground all together. Minor kind of

8 hung back to talk to me a little bit. And

9 she said, 'Ms. Kroske, do you remember those

10 ladies that came to us?' I said yes. She

11 said, 'well that happened to me.'

12 Q. And so Minor disclosed that day  
13 that she had been sexually abused?

14 A. Yes.

15 MR. QUINN: Object to the leading  
16 nature of the question.

17 THE COURT: Overruled.

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR PATTERSON:

20 Q. And did she tell you when and where  
21 she had been abused?

22 A. No.

23 Q. After Minor disclosed sexual abuse  
24 to you, what did you do?

25 A. I went to the guidance counselor to

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1 report it.

2 Q. Okay. And is that standard  
3 protocol?

4 A. Yes.

5 Q. What is standard protocol if you had  
6 a student come forward with a disclosure such  
7 as this?

8 A. Depending on how and what they're  
9 disclosing, the guidance counselor kind of  
10 tells us the protocol as to whether we call  
11 law enforcement or whether we call DSS, or  
12 who we report it to. And so he kind of  
13 guides us through the process.

14 Q. And are you trained to deal with  
15 these types of situations?

16 A. Every year at the beginning of the  
17 school year we get training from the guidance  
18 counselor as to how to do that.

19 Q. Okay. Are you a mandatory reporter  
20 in these instances?

21 A. Yes.

22 Q. After **Minor** disclosed, how did she  
23 act?

24 A. I would not say that she acted very  
25 different. She's a serious kid sometimes

1           anyway, so it would be hard to say that  
2           she acted differently afterwards.

3           Q.   And you mentioned that you have been  
4           trained to deal with these situations. In  
5           these situations are you supposed to, as part  
6           of your training, follow up with additional  
7           questions to ---

8           A.   No. We're not supposed to ask any  
9           questions at all.

10          Q.   Thank you.

11                SOLICITOR PATTERSON:   No further  
12           questions for this witness, Judge.

13                       CROSS-EXAMINATION

14           BY MR. QUINN:

15           Q.   Did you ask any other questions?

16           A.   I did not.

17           Q.   Did she volunteer any more informa-  
18           tion, other than what you've testified to the  
19           jury about?

20           A.   No, she did not.

21           Q.   And this, I believe you said was  
22           March 20<sup>th</sup>; is that right?

23           A.   It was in March, yes.

24           Q.   And I assume this was a normal  
25           school year for you. So you began teaching

1 second grade that year in August/September?

2 A. Uh-huh.

3 Q. Do you remember when; was it August  
4 or September?

5 A. I would guess around the 22<sup>nd</sup>,  
6 somewhere around in there.

7 Q. Of which month?

8 A. Oh, that we started school?

9 Q. Yes, ma'am?

10 A. August, yes.

11 Q. So had you known **Minor** before she  
12 started in your class?

13 A. Yes.

14 Q. Just as a student at the elementary  
15 school?

16 A. Uh-huh.

17 Q. I assume that she had gone to first  
18 grade at the elementary school also?

19 A. Kindergarten, as well. Uh-huh,  
20 (affirmative nod).

21 Q. Okay. And you were there those two  
22 years?

23 A. Uh-huh, (affirmative nod).

24 Q. And had you ever spoken with her  
25 before then, just about anything?



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Testimony of Mary Kroske - Cross Examination

1 A. No.

2 Q. Okay. And so she was in your class  
3 from August 'til March; is that right?

4 A. Uh-huh.

5 Q. And had she approached you about  
6 this issue before ---

7 A. No.

8 Q. --- at any time?

9 A. No.

10 Q. And did you have anything else to do  
11 with this case after that?

12 A. No.

13 Q. All right. Thank you, Ms. Kroske.

14 MR. QUINN: I don't have any other  
15 questions.

16 THE COURT: Anything?

17 SOLICITOR PATTERSON: Your Honor,  
18 just one follow-up question.

19 REDIRECT EXAMINATION

20 BY SOLICITOR PATTERSON:

21 Q. Ms. Kroske, do you remember how soon  
22 prior to Minor disclosure the Julie  
23 Valentine Center came to speak to your class?

24 A. I'm thinking about two weeks before  
25 that.

1 Q. Thank you.

2 SOLICITOR PATTERSON: Judge,

3 nothing ---

4 THE COURT: Okay. Any recross,

5 Mr. Quinn?

6 MR. QUINN: No. Thank you.

7 THE COURT: Thank you, Ms. Kroske.

8 I appreciate it.

9 (WITNESS STEPS DOWN)

10 SOLICITOR PATTERSON: Your Honor,

11 we would ask that this witness be released

12 from her subpoena.

13 THE COURT: Any objections to

14 that, Mr. Quinn?

15 MR. QUINN: No, Your Honor. And I

16 don't have objection to any witness being

17 released once they've testified.

18 THE COURT: Okay. Good enough.

19 All right. And unless there's some exception

20 any witness who testifies may be excused.

21 SOLICITOR PATTERSON: Your Honor,

22 at this time, the State would call Jenna

23 Toney to the stand.

24 (WITNESS TAKES STAND)

25 JENNA TONEY, having been duly sworn

1 to tell the truth, and nothing but the truth,  
2 testified as follows:

3 DIRECT EXAMINATION

4 BY SOLICITOR PATTERSON:

5 Q. Ms. Toney, where are you currently  
6 employed?

7 A. The Julie Valentine Center.

8 Q. And how long have you been with the  
9 Julie Valentine Center?

10 A. Three years in January.

11 Q. And can you tell the jury what the  
12 Julie Valentine Center is?

13 A. We are a Greenville sexual assault  
14 and child abuse recovery center.

15 Q. And what is your job title at the  
16 Julie Valentine Center?

17 A. Education specialist.

18 Q. And what exactly does that mean?

19 A. My primary job is to go all over  
20 Greenville County schools and I talk to kids  
21 about personal safety. And specifically, we  
22 teach kids how to stay safe if anyone ever  
23 has given them a secret unsafe touch or what  
24 they can do if anybody ever does.

25 Q. And can you tell us a little bit

1 about your education and background?

2 A. Sure. I went to North Greenville  
3 University from 2010 to 2012. And I have a  
4 degree in interdisciplinary studies, that's  
5 English, History and Political Science.

6 Q. And you mentioned you've been with  
7 Julie Valentine since 2014. Have you been an  
8 education specialist since then?

9 A. Yes. 2013.

10 Q. Excuse me. 2013?

11 A. Uh-huh.

12 Q. And as part of being an education  
13 specialist, you mentioned you go into the  
14 schools?

15 A. Uh-huh.

16 Q. How, exactly -- what is your role  
17 when you go into those schools? What do you  
18 do for them?

19 A. So whenever I go into the schools, I  
20 go into primarily second-grade classrooms,  
21 but I also provide fourth grade and fifth-  
22 grade classrooms. And we teach kids about  
23 personal safety.

24 We start out with "stranger danger"  
25 scenarios.

1           We transition into tricky people. Tricky  
2 people can be strangers or they can be people  
3 that we know and trust. Those are people who  
4 try to get kids to do things that are not  
5 safe or things they're not normally going to  
6 do.

7           And then we teach kids about child  
8 molesters.

9           Q. And how often do you give these  
10 programs?

11          A. I'm at multiple schools throughout  
12 the week, so on a regular basis. I'm in a  
13 different school just about every week during  
14 the school year.

15          Q. And what's the purpose of the  
16 presentations?

17          A. The purpose of the presentation is  
18 to teach kids how to be safe. It's a  
19 personal safety presentation.

20          Q. Did you give a program to students  
21 at Mitchell Road Elementary on March 10<sup>th</sup> and  
22 March 11<sup>th</sup> of 2015?

23          A. Yes, I did.

24          Q. And what grade did you give that  
25 program to?

1 A. Just second grade.

2 Q. And the program, how long does it  
3 last?

4 A. About thirty to thirty-five minutes.  
5 And it's a two-day presentation.

6 Q. So the thirty to thirty-five minutes  
7 both days?

8 A. Yes, ma'am.

9 Q. I'm going to show you what has been  
10 marked for State's demonstrative purposes as  
11 Exhibit 3. Do you recognize that?

12 A. Yes.

13 Q. And how do you recognize it?

14 A. I put my PowerPoint presentation on  
15 a CD.

16 Q. Okay. And how do you know it's your  
17 PowerPoint presentation?

18 A. I dated it.

19 Q. Okay. And are your initials on the  
20 CD?

21 A. Yes.

22 Q. And is this the presentation you  
23 gave to the second grade class at Mitchell  
24 Road Elementary on March 10<sup>th</sup> and 11<sup>th</sup> of 2015?

25 A. Yes, it is.

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1 SOLICITOR PATTERSON: Your Honor,  
2 at this time I would ask permission to  
3 publish this to the jury for a demonstrative  
4 -- for Ms. Toney to be able to go through her  
5 presentation. Defense counsel has seen it.

6 THE COURT: Okay. Any objections  
7 to that Mr. Quinn?

8 MR. QUINN: No objection.

9 THE COURT: Okay. Without  
10 objection you may publish. And you're just  
11 asking it to be published as a demonstrative  
12 tool, not admitted as evidence?

13 MR. QUINN: Correct, Your Honor.

14 THE COURT: Okay. Good enough.

15 (SO MARKED AS STATE'S EXHIBIT 3 FOR ID)

16 DIRECT EXAMINATION CONTINUED

17 BY SOLICITOR PATTERSON:

18 Q. And Ms. Toney, if you would briefly  
19 go through the presentation and let me know  
20 when you need me to click it over. And  
21 summarize what presentation you gave to the  
22 second grade class at Mitchell Road that day?

23 A. Oh, sure.

24 Q. (PowerPoint displaying).

25 A. So I begin by introducing myself and

1       telling a little bit about the Julie  
2       Valentine Center. I just tell them it's a  
3       place where kids can go anytime they've been  
4       in a tricky or dangerous situation.

5               My job specifically at the Julie  
6       Valentine Center is to go all over Greenville  
7       County schools and talk to kids about  
8       personal safety.

9               I talk about personal safety as being  
10       ways that we practice -- or personal safety  
11       is practicing ways to keep ourselves safe.  
12       And I tell them that 'today we're going to go  
13       through some pretend, potentially dangerous  
14       situations so that we can figure out the best  
15       ways to stay safe.' So if you'd go to first  
16       slide.

17              Q.    (Displaying).

18              A.    So the first situation is a stranger  
19       danger situation. It's about being at a gas  
20       station. We say that mom asked us to wait in  
21       the car real quick while she goes and gets  
22       her gas. But shortly after mom goes into the  
23       store, a car pulls up next to mom's car and  
24       there's someone in this car that we don't  
25       know. So I ask them what that means. That



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1 means that person's a stranger. And then --  
2 so then that stranger rolls down his window  
3 or their window and says, 'hey, it's a lovely  
4 evening out.' And whenever he does this, it  
5 gives us a funny feeling in our tummies. We  
6 call it the butterflies or the willies. It's  
7 the nervous, uh-oh feeling we get sometimes.  
8 And I ask them if they know what I'm talking  
9 about and they say they do.

10 And then we say -- I say, you know, we  
11 get this feeling because mom, dad and grandma  
12 has told us not to, what? "Don't talk to  
13 strangers." So we turn away from him because  
14 we're not going to and he sees that. So he  
15 gets out of his car and he starts to walk  
16 towards the store. But then he changes his  
17 mind and he starts to walk back towards mom's  
18 car. So what can we do to stay safe in the  
19 situation? So we go through -- they give me  
20 a bunch of ideas on what they can do to stay  
21 safe in this situation. But ultimately what  
22 I tell them is they lock the doors, they roll  
23 up the windows, and they honk the horn. Now,  
24 we honk the horn to draw attention to  
25 ourselves, let mom or dad know that we're in

1       trouble and we need help, even though they're  
2       in the gas station. And it'll let other  
3       adults know in the parking lot that we need  
4       help.

5               And we say this part's really, really  
6       important because we call this person a  
7       tricky person. And tricky people don't want  
8       other adults to know what they're trying to  
9       do. So when you start to honk the horn and  
10      draw attention to ourselves, it would scare  
11      that tricky person away. So that's why we  
12      draw attention to ourselves.

13             So then 'you did a really good job' with  
14      that first one so I'm going to say go on to  
15      the next situation.

16             Now, this next situation has to do with  
17      us being at home. And as we get older, mom,  
18      dad or grandma, whoever we stay with, they  
19      may let us have a little bit more  
20      responsibility. And today mom says she's  
21      going to go down to a neighbor's house. And  
22      this neighbor lives just two doors down from  
23      us. So we ask if we could stay at home and  
24      watch our favorite TV show. And it's light  
25      out. So mom says okay. Whenever she leaves,

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1 she locks the door behind her.

2 After she's been gone for a few minutes,  
3 we hear a knock at the door. And we look out  
4 the window. We see there's a mailman stand-  
5 ing there holding some packages. I ask them  
6 how they should handle this situation. So we  
7 go through ignoring the door, call mom or dad  
8 if they have any questions. And if anybody's  
9 ever at our house and they start to do  
10 something they're not supposed to do, we  
11 teach them to call 9-1-1.

12 Then the next slide.

13 Q. (Displaying)

14 A. Some of them will help me read this  
15 word. It's kind of a hard word. Instinct.  
16 And our instinct, what I teach them, is our  
17 body's warning system. It lets us know  
18 anytime we get into a tricky or dangerous  
19 situation. I teach them it's kind of like an  
20 alarm that goes off in our bodies if somebody  
21 tries to do something unsafe or makes us feel  
22 comfortable.

23 And I have them go back to the gas  
24 station. I'll say 'hey, you guys remember  
25 being at the gas station? Remember that

1 feeling you got whenever that strange tried  
2 to talk to us?' And they'll say yeah. 'What  
3 did it feel like?' I want them to identify.  
4 Feels like the butterfly feeling that nervous  
5 uh-oh feeling in our tummies. And I'll say  
6 'well, that's our instinct.' That's what our  
7 instinct feels like sometimes.

8 So I'll say this next situation I want to  
9 see if we can use our instinct. And raise  
10 your hand if you see anything weird or  
11 strange about this picture. And so they'll  
12 point out there's a person in a car behind  
13 them that's trying to get the little girl's  
14 attention. And so I'll say 'yeah, that's  
15 exactly what I wanted you to see. If you had  
16 to tell me how you think this girl's feeling,  
17 how do you think she's feeling? And they say  
18 nervous or scared. And so I'll say let me  
19 tell you about this picture. So this girl,  
20 she's in her neighborhood. It's after school  
21 and she's on the sidewalk just like she's  
22 supposed to be and she's walking home from  
23 her friend's house. And this man is trying  
24 to get her attention. And he says to her,  
25 'hey, kid, I know you don't know me but I

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1        promise I'm safe. I just moved in down the  
2        street and I was hoping you could help me.  
3        I'm giving a fifty dollar reward for anyone  
4        helps me find my lost dog.' I made up all  
5        these questions.

6                You can go to the next slide.

7                Q.     (Displaying)

8                A.     He lost his puppy. He's really  
9        upset about it and he's hoping that she could  
10       pass these around and help him find him. And  
11       I ask them whether or not we should take the  
12       posters? The puppy's really cute, so lot of  
13       kids aren't really sure exactly how to handle  
14       the situation. But ultimately, they say no.  
15       And we'll say, 'why do you think we shouldn't  
16       take the posters from the stranger?' And we  
17       go through all these different scenarios.  
18       And I'll say, 'well, you really can't know  
19       whether a stranger is going to do something  
20       tricky or unsafe. So that's why we don't  
21       take the posters from him because we can't  
22       know if a stranger's going to do something  
23       good or bad. So we don't take the posters  
24       from a stranger. Strangers really shouldn't  
25       be asking kids for help anyway. They should

1 ask adults for help.' So then I teach them  
2 we ignore the man and try to get away.

3 And while we're trying to get away from  
4 him, you run to trusted adults. And while  
5 we're trying to run to trusted adults, we  
6 scream once again to draw attention to  
7 ourselves.

8 And then I'll say 'goodness, we've been  
9 talking a lot about strangers and tricky  
10 people today.' And I want you to know tricky  
11 people use three things to get kids to do  
12 things that are not safe or things they would  
13 not normally do.

14 And I'll say 'once again I need your help  
15 with some words.' So I'll go ahead and say  
16 what's this first word right here? "Bribes."  
17 Bribes are things that tricky people will use  
18 to get kids to do thing for them in exchange  
19 for a reward. Rewards can be money, candy,  
20 games, prizes or toys, things that kids like.

21 The next word is "tricks." Tricks can be  
22 like bribes. It can be somebody saying 'hey,  
23 kid, if you do what I'm asking you to do,  
24 there's a reward in it for you.' And then  
25 I'll say 'does the kid get the reward?' And

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1 I say no. So a trick is the same thing as a  
2 lie. Many times a tricky a person tries to  
3 lie to a kid.

4 And the last word is "threats." Now,  
5 threats can make us feel kind of scared  
6 sometimes. Threats are anything a tricky  
7 person says 'if you don't do what I'm asking  
8 you to do, there's going to be a terrible  
9 price to pay. I'm going to hurt you or I'm  
10 going to hurt someone or something you care  
11 about. So you better do it or else.'

12 And I say that's exactly what tricky  
13 people will use to get kids to do things that  
14 are not safe or things they would not  
15 normally do, bribes, tricks, and threats.

16 So then I say while I'm here today and  
17 I'll be back again tomorrow to talk some more  
18 about a certain type of tricky person, but I  
19 want you to know that tricky person is called  
20 a child molester. And those are people who  
21 try to touch kids on the private parts of  
22 their body. Or they'll try and get that kid  
23 to touch them on their private parts and they  
24 tell them to keep the touching a secret. And  
25 I'll say, 'You guys are big kids now. You're

1 not little kids anymore. You already know  
2 the private parts of your body are covered by  
3 your clothing and your bathing suits and no  
4 one should ever touch a kid on the private  
5 parts of their body, telling you to keep it a  
6 secret because it's against the law. And  
7 it's really unhealthy and unsafe for kids.'

8 So I'll say 'why do you think that person  
9 tells the kid the touching is secret?' And  
10 they'll say 'well, they don't want to get in  
11 trouble.' And I'll say, 'well, what do you  
12 think could happen to adults who get in  
13 trouble -- and get in trouble if something's  
14 against the law?' And they'll say 'well,  
15 they could go to jail.' And I'll say, 'yeah,  
16 that's right and child molesters do not want  
17 to go to jail. They do not want to get in  
18 trouble and they do not want other adults to  
19 know when they're trying -- they tell that  
20 kid to keep the touching a secret.'

21 So then I'll send them home with home-  
22 work. I'll say I've got some homework for  
23 you guys. Before I come back tomorrow, I  
24 want you to go home tonight and think about  
25 what a child molester might look like? What



1 kind of hair do you think they have? What  
2 kind of clothes do you think they'd wear and  
3 you can draw me a picture and just tell me  
4 about it tomorrow.

5 So then the next day we run through  
6 everything that you've seen so far. We do a  
7 little review on all of the stranger danger  
8 situations. And then I asked them, just like  
9 I went through a second ago, I'll ask them,  
10 'okay, what did you guys come up with?' And  
11 sometimes I'll get pictures and sometimes  
12 they'll just describe a person to me and what  
13 they think a child molester might look like.  
14 Ninety percent of the time or, you know, most  
15 of the time it's somebody who's wearing all  
16 black clothing or camouflage and they jump  
17 out of the bushes and grab kids. But  
18 sometimes, you'll have kids to say 'oh, well,  
19 they look like a normal person.' And I'll  
20 say okay. "Maybe."

21 I say maybe to all of that and then I go  
22 to this next part. You can show the next  
23 picture.

24 Q. (Displaying).

25 A. So I'll say, 'So this person right

1       here is stretching and he's stretching  
2       because he's on a track team and he runs  
3       miles and miles and miles every single day.  
4       He eats all his fruits, all his vegetables.  
5       He's a really heathy guy. So now that you  
6       know that about this person, raise your hand  
7       if you think this person could be a child molester,  
8       somebody who makes bad decisions about  
9       touching kids on the private parts of their  
10      body.' Then I'll ask them to put their hands  
11      down.

12           'Raise your hand if you think this person  
13      is probably not a child molester, someone who  
14      does not make bad decisions about touching  
15      kids on the private parts of their body.'

16           Then after they put their hands down I'll  
17      say, 'Okay, I've got another picture to show  
18      you. But this is one of a man who just lost  
19      his job and he doesn't take very good care of  
20      himself. He's got a really dirty room. He's  
21      wearing really dirty clothes and he's even  
22      smoking a cigarette.' So now that we know  
23      about this person, raise your hand if you  
24      think this person could be a child molester,  
25      someone who makes bad decisions about

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1 touching kids on the private parts of their  
2 body and tells them to keep a secret. And  
3 I'll ask them to put their hand down.

4 And then I'll ask them to raise their  
5 hand if they think this person is probably  
6 not a child molester, someone who does not  
7 make bad decisions about touching kinds.

8 Now, the first picture whenever I ask  
9 them to raise their hand if they think that  
10 person is a child molester, you may get one  
11 or two that'll raise their hand that they  
12 think he is. But most of them will say no,  
13 that person's not a child molester.

14 Whereas, most kids will raise their hand  
15 to say this person definitely is a child  
16 molester. You'll have a lot kids yell,  
17 'gross' or 'yeah, that guy definitely is.'  
18 And then -- if you'll go to the next slide.

19 Q. (Displaying).

20 A. So I'll say, 'So based on your  
21 responses, what I'm hearing you guys say,  
22 what I'm seeing you guys say is you think  
23 that this person right here is more likely to  
24 be a child molester than this person right  
25 here.' And they'll say yeah, yeah, yeah.

1 And I'll say okay, well, I'm just curious why  
2 do you guys think that? Why do you think  
3 this person is more likely to be a child  
4 molester than this person? So, of course,  
5 most of the time the kids will point out he's  
6 got a really dirty room. He's wearing really  
7 dirty clothes. He smokes a cigarette. Every  
8 time they state a response I say, 'okay, so  
9 that means that he would make bad decisions  
10 about touching kids? That means that he is a  
11 bad person?' And they'll say yeah.

12 And then they'll point out 'well, he's  
13 really, really healthy. He probably is a  
14 nice person. He probably has a nice house.  
15 He probably is a good person and he would not  
16 make bad decisions about touching kids.'

17 So I say, 'Okay, I've got a few questions  
18 for you guys. And just like we did a second  
19 ago, if you agree with what I'm saying, raise  
20 your hand. Nobody make any comments or  
21 anything like that. Just let me see by show  
22 of hands if you agree with what I'm saying.'

23 And I'll say, 'Okay, how many of you in  
24 here have ever had a dirty room before?'  
25 They all, for the most part, raise their

1 hand. I say okay. Put your hands down.

2 How many of you have ever worn dirty  
3 clothes, like when you play outside, play  
4 sports?' Okay. Most of them raise their  
5 hand for that.

6 And I'll say okay. 'Once again, I don't  
7 want to hear any comments. But how many of  
8 you know someone who smokes a cigarette by  
9 show of hands?' So most of them raise their  
10 hand for that.

11 I say, 'Okay, my point is boys and girls,  
12 just because someone has a dirty room or  
13 wears dirty clothes, that does not make them  
14 a bad person, doesn't make them a tricky  
15 person, doesn't make them a child molester.  
16 Just because someone smokes them a cigarette  
17 does not make them a bad person either.'

18 Now I'll say, 'I know you guys know, I  
19 know that smoking cigarettes is not good for  
20 us. It's not healthy. It's not good for our  
21 bodies, but it does not make someone a child  
22 molester.

23 And then I'll ask them, 'Just because  
24 someone is really healthy does that make them  
25 a good person?' And they'll say no. And

1 I'll say, you're right. The only way we can  
2 know whether someone's a good person, a bad  
3 person, a tricky person or even a child  
4 molester is by their actions, by their  
5 behavior and by the things that they do. By  
6 using one two or three things to get kids to  
7 do things that are not safe or things they  
8 would not normally do.

9 I'll ask them what those three words are  
10 again. And they'll say bribes, tricks and  
11 threats. I'll say, 'Exactly. That's what  
12 child molesters typically do to get kids to  
13 keep secrets they're not supposed to keep and  
14 get them to do things they're not supposed to  
15 do.'

16 So I'll say, 'Do you guys want to know  
17 what a child molester actually looks like?'  
18 And they'll say yeah. I say they look like a  
19 normal person. They have normal hair. They  
20 wear normal clothes. They can be anybody.  
21 They could be someone a kid knows and trust,  
22 even somebody that loves and cares about.

23 So then I'll say okay. 'Now that you  
24 guys know that, could a woman be a child  
25 molester?' And they'll say yeah.

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1           'What about an older person?' Yeah.

2           'What about a teenager?' Yeah.

3           'What about someone a kid knows and  
4 trusts like a neighbor?' Yeah.

5           'What about someone in a kids family,  
6 whether an uncle or an auntie or a cousin?'  
7 Yes.

8           And I'll say, 'Boys and girls, I've got a  
9 really hard question for you. Could a mom or  
10 a dad be a child molester?' And they'll say  
11 yes.

12           And then I'll say, 'Okay I need you guys  
13 -- I need all eyes on me because this part is  
14 really, really important. I don't want there  
15 to be any confusion. Because sometimes we  
16 sick and mom, dad and the doctor, well they  
17 do have to check us on the private parts of  
18 our body to make sure that we are healthy and  
19 make sure that we are safe. So as long as  
20 mom, dad and the doctor, they are not telling  
21 that kid to keep the touching a secret. And  
22 they are not trying to get that kid to touch  
23 something on their private parts, they're  
24 probably not doing anything wrong. They're  
25 just trying to make sure that you're healthy

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1 and make sure you're safe.'

2 Then I ask if they have any questions.

3 So before I leave them I want to make sure  
4 that they have three easy rules that they can  
5 use if anyone ever tries to do something  
6 unsafe, tries to give them a secret, unsafe  
7 touch or makes them feel uncomfortable or in  
8 danger.

9 The first one is to say to that person --  
10 I want them to know they have the right to  
11 say no to that person, a strong and firm no.

12 The second rule is we try to get away  
13 from that person. We do everything we can to  
14 get away from them. And if we can't, we  
15 scream and draw attention to ourselves. So  
16 safety rule number two is try to get away.

17 I tell them the last rule is the most  
18 important rule of all and that's to tell  
19 someone. And I say, 'Each of you in here has  
20 something that's called a support system. A  
21 support system is made up of the people in  
22 our lives who care about us the most. And I  
23 tell them you can tell somebody in your  
24 support system if anyone ever tries to give  
25 you a secret unsafe touch before or tries to



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1 do something tricky or dangerous.' And I'll  
2 say I want to know who are those people that  
3 care about you the most. And, of course,  
4 they'll identify family members. So first  
5 they say, usually, mom and dad. And I'll say  
6 okay, 'Awesome. Mom and dad care about you.  
7 Mom, dad, grandma, grandpa, aunts and uncles,  
8 brothers and sisters, cousins, absolutely,  
9 you can tell your family.'

10 But I say, 'Who else besides family could  
11 we tell?' Because I want to hear them  
12 identify, especially if it is a caregiver or  
13 somebody that is related to them, that they  
14 have other people besides just their family  
15 that they can tell. So I want to hear them  
16 say teachers, school counselors, principals,  
17 nurses, doctors. A lot of times they'll say  
18 police officers. I say absolutely, you can  
19 tell any of those people and they care a lot  
20 about your safety too.

21 But then I say I've got a really hard  
22 question for you guys. What do we do if we  
23 tell someone in our support system about a  
24 secret unsafe touch or a tricky or a  
25 dangerous situation and they say 'No, I don't

1 believe you. I don't think so and so would  
2 do that to you. You're lying. Stop lying to  
3 me. So what do you think we need to do then  
4 to keep ourselves safe?' What I want to hear  
5 them say is tell someone else. And we say  
6 right. We keep telling it until someone  
7 believes us because you guys deserve to be  
8 safe.

9 And then I say I want you to know that it  
10 is never ever under any circumstances is it  
11 ever a kid's fault. Secrets or unsafe  
12 touches always is always the child molester's  
13 fault. It is always the adult's fault. It  
14 is never ever the kid's fault. And I tell  
15 them it's never too late to tell someone  
16 about a secret unsafe touch. It doesn't  
17 matter if it happened a week ago, a month ago  
18 or even years ago. It's never too late to  
19 tell someone because like I said, "you guys  
20 deserve to be safe."

21 So that's a summation of my presentation.

22 Q. Okay. You use the word child  
23 molester a lot ---

24 A. Uh-huh.

25 Q. --- as you were talking to the jury

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1 today. Do you actually use that word with  
2 the children?

3 A. Yes, I do.

4 Q. And why is that?

5 A. I think it's really important that  
6 we identify that person for what they are.  
7 We identify child molesters as someone who  
8 touches kids on their private parts of their  
9 body.

10 Q. During your presentation do you ever  
11 talk specifically about penises or vaginas?

12 A. No.

13 Q. Do you talk about digital  
14 penetration or other different kinds of  
15 genital touching?

16 A. No.

17 Q. Do you talk at all about oral sex?

18 A. No.

19 SOLICITOR PATTERSON: Your Honor,  
20 if I may have just a moment.

21 THE COURT: Sure.

22 SOLICITOR PATTERSON: Judge, no  
23 further questions from the State for this  
24 witness.

25 THE COURT: Mr. Quinn?

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1 MR. QUINN: Just a few.

2 CROSS-EXAMINATION

3 BY MR. QUINN:

4 Q. Ms. Toney, do you remember teaching  
5 Ms. Kroske's class?

6 A. No, not specifically. I remember  
7 being at Mitchell Road but not specifically.

8 Q. Did you meet Minor [REDACTED] while you  
9 were at Mitchell Road; do you know?

10 A. No.

11 Q. You were not approached by her  
12 during this presentation either day?

13 A. No.

14 Q. Do you identify yourself -- well,  
15 let me ask you this. Do you present by  
16 yourself or does somebody else help you?

17 A. I present by myself.

18 Q. Okay. Do you identify yourself as  
19 someone that they could report it to?

20 A. Absolutely. I don't typically offer  
21 that because I'm only there with them for two  
22 days. But if somebody, if a child were to  
23 say, 'Well, Ms. Toney, you're a safe person  
24 that we could tell.' I'll say 'absolutely  
25 but unfortunately, I'm only here today.'

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1        'You guys probably won't see me again', so I  
2        make sure to tell them that 'there are people  
3        you see every day that you could tell.'

4        Q.    And do you teach them to report any  
5        difficulties immediately?

6        A.    I don't say any language like that,  
7        no.

8        Q.    Okay. Do you tell them to wait?

9        A.    No.

10       Q.    Okay. And is the whole point of  
11       your presentation that they should tell  
12       immediately or very quickly tell somebody  
13       about these difficulties?

14       A.    Not necessarily. I teach them if  
15       anything ever happens to them, that they  
16       could tell. I give them ways that they can  
17       stay safe. I teach them even if they weren't  
18       to follow any of those things, that it's  
19       still not their fault if something bad  
20       happens to them.

21       Q.    But you teach them to blow the horn  
22       if they're in the car?

23       A.    Uh-huh.

24       Q.    That would be an immediate response;  
25       is that right?

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1 A. Sure.

2 Q. You teach them not to answer the  
3 door and to call their parents if the postal  
4 worker comes; right?

5 A. Uh-huh.

6 Q. So these are things you teach them  
7 to immediately react to?

8 A. Sure.

9 MR. QUINN: I don't have any other  
10 questions. Thank you.

11 THE COURT: Redirect, ma'am?

12 SOLICITOR PATTERSON: No redirect,  
13 Your Honor.

14 THE COURT: Okay. Thank you,  
15 ma'am. I appreciate your being here.

16 (WITNESS STEPS DOWN)

17 THE COURT: Yes, ma'am.

18 SOLICITOR PATTERSON: Your Honor,  
19 the State would call Portia Easterling.

20 (WITNESS TAKES STAND)

21 PORTIA EASTERLING JOHNSON, having  
22 been duly sworn to tell the truth, and  
23 nothing but the truth, testified as follows:

24 DIRECT EXAMINATION

25 BY SOLICITOR PATTERSON:

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1 Q. Excuse me. I called you Ms.  
2 Easterling, but Ms. Johnson.

3 A. That's fine.

4 Q. Do you know the victim in this case,  
5 Minor [REDACTED] ?

6 A. Yes.

7 Q. How do you know her?

8 A. She's my daughter.

9 Q. And how old Minor [REDACTED] ?

10 A. Ten years old.

11 Q. And do you have other children?

12 A. I do. Three other children.

13 Q. And what are their names and how old  
14 are they?

15 A. Tiffany Wilson, she is twenty-nine;  
16 Toi Tisdale, she will be twenty next Monday.  
17 Isis, which is eighteen, and Minor [REDACTED].

18 Q. You need, just need to speak up just  
19 a little bit. I'm not sure if people ---

20 A. Okay.

21 Q. Thank you so much. And do any of  
22 those children still live at home with you?

23 A. Two of them do.

24 Q. Which ones?

25 A. Isis and Minor [REDACTED].

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1 Q. And tell us a little bit about  
2 yourself. Where do you work?

3 A. National Health Care on Boiling  
4 Springs Road. I've been there twelve years  
5 and, uh, I enjoy it.

6 Q. And do you live here in Greenville?

7 A. I live in Taylors.

8 Q. How long have you been in Taylors?

9 A. About five years now.

10 Q. And how long have you been in the  
11 Greenville area?

12 A. Seventeen years.

13 Q. You mentioned that you have two  
14 older children who no longer live at home.  
15 Where do they live?

16 A. My oldest daughter Tiffany lives in  
17 North Carolina. And right now we are not  
18 sure where Toi stays.

19 Q. Prior to this, has Toi been in  
20 Greenville?

21 A. Uh-huh. Yeah.

22 Q. Do you know the defendant in this  
23 case?

24 A. I do.

25 Q. How do you know him?



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1           A.    It's Toi's boyfriend, the father to  
2 my grandchildren, my grandsons.

3           Q.    And when did you first meet the  
4 Defendant?

5           A.    At least fifteen, sixteen years ago.

6           Q.    So how long have he and Toi been  
7 together?

8           A.    Well, they were friends. Initially  
9 went to school together. And later they  
10 became boyfriend and girlfriend, maybe in  
11 middle school.

12          Q.    So have they been together since  
13 middle school?

14          A.    Yeah.

15          Q.    And what was your relationship like  
16 with the Defendant before **Minor**  
17 disclosure?

18          A.    I loved 'Tari. He was like a son to  
19 me. I never called him anything other than  
20 my son and my children's brother.

21          Q.    You mentioned that they have been  
22 together since middle school. Have you felt  
23 that way about him since then?

24          A.    When I met 'Tari, he was, you know,  
25 a young boy. I didn't feel bad or anything

1       about him. He was just a child, just a boy.  
2       And as he got older, Toi would say to me that  
3       I usually favored 'Tari's side a lot because  
4       I cared so much for him. And I never had any  
5       problems with 'Tari.

6               Q. Did he spend a lot of time with your  
7       family?

8               A. He did.

9               Q. Well, what would that look like?

10              A. 'Tari would come into the house, you  
11       know, sometimes and he -- as they got older  
12       and he had children, he would drop the kids  
13       off sometimes or Toi dropped them off.

14              Earlier on, 'Tari would come -- when Toi  
15       was living with me, 'Tari would come over and  
16       sometimes 'Tari stayed the night at my house.  
17       Family dinners, he was there. He needed  
18       something from me, he always got it. And  
19       whenever he needed something or Toi needed  
20       anything, I was always willing to give it to  
21       them.

22              Q. You mentioned grandchildren, do Toi  
23       and 'Tari have children?

24              A. Two boys.

25              Q. And those are your grandsons?

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1 A. (Affirmative nod).

2 Q. And how old are your grandsons?

3 A. Messiah's nine. And I think  
4 Caesar's six now.

5 Q. And prior to these disclosures  
6 coming out, were you all a close family?

7 A. Very close.

8 Q. How often during the week would you  
9 see them?

10 A. Multiple days during the week.  
11 Sometimes if one of them were working a hard  
12 schedule, they would call schedule for the  
13 other. Somebody would drop them off or I  
14 would pick them up from their after-school  
15 program where they lived. I mean, we were  
16 always together. Either they were with me or  
17 my girls were over there at Toi and 'Tari's  
18 house, but they always stayed together.

19 Q. You mentioned you don't know where  
20 they're living right now, but when Minor  
21 told about the abuse, do you know where they  
22 were living?

23 A. I believe they was staying on  
24 Woodruff Road, because they -- they stayed on  
25 Woodruff Road, then they moved to Mauldin and

1       then they moved back to Woodruff Road, to the  
2       same place. So I believe they were staying  
3       on Woodruff Road.

4               Q. Do you know what county in South  
5       Carolina that's in?

6               A. I believe it's Greenville County.  
7       I'm not sure.

8               Q. Let's talk a little bit more about  
9       the Defendant. At the time when these  
10      disclosures came out, where was the Defendant  
11      working?

12              A. I think 'Tari was working -- I  
13      believe he was working Mitsubishi. I'm not  
14      really sure where he was working because I'm  
15      not sure if it was Mitsubishi or his other  
16      job.

17              Q. That's fine. But he was working at  
18      the time?

19              A. Uh-huh, (affirmative nod).

20              Q. And was Toi working at the time?

21              A. Toi always worked.

22              Q. And do you know what shifts they  
23      would work? Were they always home at the  
24      same time?

25              A. No, they weren't always home at the

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1 same time. Toi, she would work 7:00 p.m. to  
2 7:00 a.m. sometimes. Sometimes she would  
3 pick up extra hours. She might go in and not  
4 work as many hours and -- she was always  
5 working. They weren't always home at the  
6 same time.

7 Q. And when Toi was working, who  
8 usually kept their children?

9 A. 'Tari would keep them or they would  
10 see if I could keep them. Toi sometimes  
11 would call me and see if I could keep them or  
12 'Tari would see if I could keep them. Or if  
13 Isis and Minor would go over to the house,  
14 they would stay at their house with Messiah  
15 and Caesar.

16 Q. And you also mentioned that you  
17 worked.

18 A Uh-huh, (affirmative nod).

19 Q. Were you a single mom for a part of  
20 this time?

21 A. Uh-huh.

22 Q. And so who would keep the children  
23 while you worked?

24 A. I work 7:00 to 3:00, 7:00 a.m. to  
25 3:00 p.m. They usually were in school and

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1       then in the summertime when school was out,  
2       it would be flexible. They would be a lot of  
3       times at Toi's house or -- well, they would  
4       come to my house. But a lot of times, you  
5       know, they were over there because it was a  
6       little more freedom at Toi's house.

7               Q. And did the Defendant end up baby-  
8       sitting **Minor** at times?

9               A. Uh-huh.

10              Q. And how often would that occur,  
11       would you say?

12              A. It wasn't really every three days.  
13       It would be different times. Sometimes it  
14       would only be him home. Other times it would  
15       be just Toi at home. Sometimes, both of them  
16       would be there. Sometimes, Isis would be  
17       there with the boys and with **Minor**.

18              Q. How often would you say that  
19       **Minor**, before the allegations of abuse came  
20       out, was over at Toi's and the defendant's  
21       house?

22              A. Out of seven days, they were at  
23       least five or six days sometimes, four or  
24       five days; different times. They were always  
25       together.

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1 Q. Did Minor disclose to you that she  
2 was sexually abused?

3 A. Not -- I wasn't the first one. When  
4 it came out she did disclose it to me, but  
5 once she had already told.

6 Q. Did she say when that abuse took  
7 place?

8 A. You mean when it took place as if  
9 she was there or at my house?

10 Q. No. Did she tell you when, as in  
11 how old she was when it took place?

12 A. She did.

13 Q. And how old was she?

14 A. She told me she was five.

15 Q. And did she say how long it went on?

16 A. She said until now, when she told  
17 me.

18 Q. And when did you find out about  
19 these allegations?

20 A. When the school called.

21 Q. And do you remember what day or what  
22 month that was?

23 A. I don't remember what day it was.  
24 I remember the time of day it was. It was  
25 close to the end of my workday. I was at

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1 work when they called me.

2 Q. And did they call the same day that  
3 she told Ms. Kroske?

4 A. Yeah.

5 Q. Did she say where the abuse took  
6 place?

7 A. She did.

8 Q. And where did she say?

9 A. Well, she told me it took place at  
10 Toi's house. And, uh, -- it was when 'Tari  
11 had stayed with me for a while and she told  
12 me that it also took place at my house.

13 Q. And tell the jury a little bit about  
14 -- you mentioned that you were at work and  
15 got a phone call. Tell me a little bit about  
16 how the disclosure came about and what you  
17 did after you got that call?

18 A. The school called me and told me  
19 that I needed to come to the school and -- it  
20 was Ms. Kroske that called me. She told me  
21 that Minor [REDACTED] had told her that she had been  
22 abused by her brother. And that she had to  
23 call the police and I told her, I said  
24 'that's fine, Ms. Kroske.' I went to the  
25 school.



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1           On my way to the school, I called Toi and  
2           I told Toi. I knew that this couldn't have  
3           happened because the only brother that she  
4           had was 'Tari. And we were close.

5           So I got to the school. Once I got to  
6           the school, I was sitting there in the  
7           waiting room. And it was a couple of people  
8           in there that started talking to me. It was  
9           an officer and -- it was another person,  
10          another office, a lady officer, I believe.

11          They had to get Minor from class. And  
12          when Minor came up upstairs, I looked at  
13          Minor and I told Minor I said "tell the  
14          truth." And she told me, she said "I am."  
15          That was it.

16          Q. I want to talk a little bit about  
17          Minor and what was going on during this  
18          time period when she's between five and  
19          eight. Was Minor showing any changes or  
20          any particular symptoms during this time  
21          period?

22          A. She was acting out a lot. I would  
23          go in her room sometimes at night just to  
24          check on her when she was in bed. And she  
25          would have her hand in her panties and I

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1 really didn't think much of it. I just  
2 thought, you know, that she discovered that  
3 she was a little girl. And she was just  
4 acting out at school and she just -- she just  
5 seemed like a busy little girl to me. But  
6 she was wetting the bed a lot and when it --  
7 it would be times that she and her sister  
8 Isis would have to go over to Toi's house and  
9 she was adamant about not going sometimes.  
10 And I would tell her, you know, 'mama got to  
11 work or', you know, 'Toi's got to work and  
12 you guys got to stay.' And she just --  
13 sometimes she just really didn't want to go.  
14 And I -- well, I just -- I didn't think much  
15 of it.

16 Q. What about after she told about the  
17 abuse?

18 A. Well, after she told about the abuse  
19 I took her to Julie Valentine and they talked  
20 to her and questioned her about it. I wanted  
21 her to feel free to tell me what she wanted  
22 me to know, what she wanted me to know. She  
23 went to counseling and she's still in  
24 counseling. She also really wasn't sleeping  
25 at night. She didn't want to sleep in her

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1 bed alone. She wouldn't let me close my  
2 bedroom door. She was scared for her bedroom  
3 door to be closed. She just, she just wanted  
4 to get in bed with me every night and sleep  
5 with me. She went to counseling and she had  
6 to take medicine to sleep. And she had to  
7 take medicine daily, Cymbacol (phonetic).  
8 She wasn't focusing in school. She was  
9 misbehaving quite a bit in school.

10 Q. I want to talk a little bit about --  
11 tell me about what's happened in your family  
12 since the abuse disclosures came out?

13 MR. QUINN: Your Honor, I'm going  
14 to object. This is not relevant.

15 THE COURT: Rephrase the question,  
16 please ma'am.

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR PATTERSON:

19 Q. Have you seen the Defendant since  
20 **Minor** disclosed before today?

21 MR. QUINN: Judge, I still don't  
22 know how it's relevant.

23 THE COURT: Okay. All right.  
24 I'll overrule.

25 I'll let you have some latitude in

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1 that regard.

2 You can restate your objection to  
3 the specific questions on the same basis.

4 But you can ask that question.

5 SOLICITOR PATTERSON: Thank you,  
6 Your Honor.

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR PATTERSON:

9 Q. Have you seen the Defendant before  
10 today since Minor made these disclosures?

11 A. I saw him one day. Well, I actually  
12 saw him twice. The one day he didn't see me,  
13 we were passing in cars. But I saw him one  
14 day in a store on Woodruff Road. But that  
15 was it.

16 Q. Have you had any interaction? Have  
17 you had family dinners? Have you all gotten  
18 together since this happened?

19 A. (Negative gesture).

20 Q. Have you seen your grandchildren?

21 A. Well, I saw them. Toi came by my  
22 house and, uh, -- when she came by my house,  
23 she was trying to ask me what ---

24 MR. QUINN: Objection. That's  
25 hearsay.

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1 THE COURT: Sustained.

2 WITNESS: Yes, I saw Toi.

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR PATTERSON:

5 Q. You have seen Toi?

6 A. Yes.

7 Q. Are you seeing her on a regular  
8 basis?

9 A. No.

10 Q. Are you seeing your grandsons on a  
11 regular basis?

12 A. No.

13 Q. Has this been difficult for you and  
14 your family?

15 A. Yes.

16 MR. QUINN: Objection. I don't  
17 know how this is relevant. I mean, I  
18 appreciate that it's emotional but it's got  
19 nothing to do with whether he is innocent or  
20 guilty.

21 THE COURT: I understand. I'll  
22 let you ask that one question. I overrule as  
23 to that question. But I agree you're getting  
24 -- don't go too far afield in that part, but  
25 you can ask that question.

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1 SOLICITOR PATTERSON: Thank you.

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR PATTERSON:

4 Q. Do you need me to repeat the  
5 question?

6 A. (Affirmative response).

7 Q. Has this been a difficult time for  
8 you and your family?

9 A. Yes.

10 SOLICITOR PATTERSON: Your Honor,  
11 if I may have just a moment?

12 THE COURT: Sure.

13 SOLICITOR PATTERSON: Judge,  
14 nothing further from this witness.

15 THE COURT: Mr. Quinn.

16 CROSS-EXAMINATION

17 BY MR. QUINN:

18 Q. Ms. Johnson, tell me if you would,  
19 please, about where Toi and 'Tari lived on  
20 Woodruff Road. Was it an apartment or  
21 trailer?

22 A. Yes.

23 Q. I'm sorry.

24 A. An apartment.

25 Q. It was an apartment?

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1 A. Yes.

2 Q. Were there apartments on either side  
3 it or above or below it or can you tell me  
4 how it was set up?

5 A. They lived on the third floor of the  
6 building. And I mean, I'm sure somebody was  
7 in front or behind.

8 Q. And do you know how many floors the  
9 building was? Was the third floor the top  
10 floor?

11 A. Uh-huh. The third was the top floor  
12 and that was all the floors in the building.

13 Q. And how big an apartment was it; two  
14 bedrooms, three bedrooms?

15 A. Their apartment was a two-bedroom.  
16 Yeah.

17 Q. And were there other kids in the  
18 neighborhood?

19 A. Yes. It was a community run  
20 complex.

21 Q. And were the windows very often open  
22 in the summer?

23 A. Toi's windows?

24 Q. Yes, ma'am?

25 A. No, not usually.

1 Q. Were the apartments air-conditioned?

2 A. Yeah.

3 Q. Okay. So did the kids play outside  
4 together?

5 A. My children and Toi's children?

6 Q. Yes, ma'am.

7 A. Sometimes, but Minor was in a car  
8 accident and so she had a cast on one leg in  
9 the summertime. So she couldn't go outside  
10 sometimes after she had her leg broken.

11 Before her leg was broken, she was outside to  
12 play with them.

13 Q. Okay. And after her leg was broken?

14 A. She couldn't go out.

15 Q. So did the kids come in and play  
16 with her?

17 A. Yeah. Sometimes, uh-huh.

18 Q. And so did the kids play together  
19 like kids normally would?

20 A. They did.

21 Q. All right. And do you remember how  
22 old Minor was when her leg was broken?

23 A. That was. I think Minor was  
24 seven. I don't remember. Wait a minute.  
25 I'm really not sure exactly. Minor was in



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1 third grade. It was the end of second grade.  
2 I think it was the end of second grade, the  
3 summer. But she had -- yeah.

4 Q. And she broke her leg in the summer?

5 A. It was right at the end of school.

6 Q. At the end of second grade?

7 A. Uh-huh.

8 Q. Did any of these other children ever  
9 say anything about a relationship between  
10 **Minor** and 'Tari?

11 A. Did Toi's children say anything ---

12 SOLICITOR PATTERSON: Objection,  
13 Judge. Hearsay.

14 THE COURT: I don't think he asked  
15 what they said but if they said anything.  
16 I'll allow that question but not the  
17 substance of what they said.

18 CROSS-EXAMINATION CONTINUED

19 BY MR. QUINN:

20 Q. You can answer the question if ---

21 A. Did Toi's children say anything  
22 about ---

23 Q. Or any of the children they played  
24 with?

25 A. Not to me.

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1 Q. Okay. As I understand your  
2 testimony they also lived in Mauldin for some  
3 time?

4 A. Uh-huh.

5 Q. And in Mauldin, can you tell me was  
6 it an apartment, a house, a trailer?

7 A. It was an apartment. They lived on  
8 the ground floor.

9 Q. And were there apartments above  
10 them?

11 A. I believe so, yeah.

12 Q. And were there other children in the  
13 neighborhood?

14 A. I'm sure.

15 Q. And did all of the children play  
16 together sometimes?

17 A. When I was there, I can't recall  
18 them being out with the kids in the  
19 neighborhood playing when they stayed in  
20 Mauldin.

21 Q. And how long did they live in  
22 Mauldin?

23 A. I believe it was a year.

24 Q. And the other kids, did you ever  
25 meet any of the other kids from the

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1 neighborhood inside the apartment?

2 A. No.

3 Q. Okay. Did you ever see any other  
4 children?

5 A. Maybe coming in. Where they stayed  
6 was at the end. So it wasn't a lot of kids  
7 at the end, but at the -- it was a couple  
8 kids at the swimming pool when they were at  
9 the pool but not like at where the apartment  
10 was.

11 Q. And when your girls -- you said your  
12 girls would go to Toi and 'Tari's sometime?

13 A. Uh-huh.

14 Q. Do you mean Isis and Minor, your  
15 two youngest?

16 A. Yes.

17 Q. Okay. And would they generally go  
18 together?

19 A. Yes.

20 Q. And do they play together and hang  
21 together or -- your girls?

22 A. Do my children hang together?

23 Q. Yes, ma'am. Do they tend to stay  
24 together?

25 A. They live together, so -- yeah,

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1       some.

2               Q.   Yeah. But I mean when they're out  
3 playing. Some siblings get along and you run  
4 with your brother and some others don't want  
5 to have anything to do with them.

6               A.   There's a nine-year age difference  
7 so many -- they play to a point, card games  
8 maybe. An occasional board game, but they  
9 don't play jump rope or anything like that  
10 together.

11              Q.   And would Isis be allowed to leave  
12 or did she have to stay around Toi and  
13 'Tari's apartment?

14              A.   Yes. She didn't drive so she  
15 stayed.

16              Q.   Okay. And Isis is nine years older  
17 than **Minor**

18              A.   She is.

19              Q.   So she was a teenager?

20              A.   Yes.

21              Q.   She was fourteen, I guess, when  
22 Billie was five?

23              A.   Okay.

24              Q.   And at one point you said that the  
25 girls had a little more freedom at Toi's

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1 house. Can you tell me what you meant by  
2 that?

3 A. I don't allow for them to watch TV  
4 so much. And just come and drink as much  
5 soda or juice that they want to. Toi would  
6 let them pretty much have whatever they want  
7 when they wanted it.

8 Q. And you and Minor have talked  
9 about her allegation; isn't that right?

10 A. Yes. Well, Minor told me what she  
11 felt as though she wanted me to know. I  
12 never questioned her about anything.

13 MR. QUINN: May we approach?

14 THE COURT: Sure.

15 (OFF RECORD BENCH CONFERENCE)

16 CROSS-EXAMINATION CONTINUED

17 BY MR. QUINN:

18 Q. Ms. Johnson, I don't have any other  
19 questions right now. Thank you.

20 THE COURT: Any redirect Ms.  
21 Patterson?

22 SOLICITOR PATTERSON: Just briefly,  
23 Your Honor.

24 REDIRECT EXAMINATION

25 BY MS. PATTERSON:

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Testimony of Portia Johnson - Redirect Examination

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1 Q. Ms. Johnson ---

2 A. Uh-huh.

3 Q. --- you mentioned that Minor broke  
4 her leg; is that correct?

5 A. Yeah.

6 Q. With a car accident?

7 A. Right.

8 Q. And you said -- remind me when you  
9 think that occurred?

10 A. I'm not sure of the exact time when  
11 she broke her leg. They were out of school  
12 that summer.

13 Q. Let me ask it a different way then..

14 A. Uh-huh.

15 Q. Did she break her leg before or  
16 after she disclosed the abuse?

17 A. She broke her leg before she  
18 disclosed.

19 Q. And so she broke her leg at the end  
20 of the school year prior to her disclosing?

21 MR. QUINN: I object to the  
22 leading nature of the question.

23 THE COURT: Okay. I overrule.

24 REDIRECT EXAMINATION CONTINUED

25 BY SOLICITOR PATTERSON:

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1 A. Did she -- ask the question again?

2 Q. You said that she disclosed after  
3 she broke her leg. So did she break her leg  
4 the school year before at the end of the  
5 year?

6 A. I'm not sure. When she broke her  
7 leg was during the summer. And when she did  
8 disclose it was after the leg was broken.  
9 I'm not quite following you.

10 Q. What I'm asking is did she disclose  
11 the abuse after she broke her leg?

12 A. Yeah.

13 Q. And was she in second grade when she  
14 disclosed the abuse?

15 A. Was she in second grade when she  
16 disclosed? She was in second grade when she  
17 disclosed it, yeah. She was in Ms. Kroske's  
18 class, yeah.

19 Q. Did Isis and Minor always go to  
20 Toi's and the defendant's house together?

21 A. Not every time.

22 Q. And you mentioned at the end of your  
23 testimony with Mr. Quinn that the children  
24 did not have as much access to TV and phone  
25 at your house. Did you limit their access to

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1 TV and to your phone and to the internet?

2 A. It wasn't really the internet. It  
3 was just snacks and the TV.

4 SOLICITOR PATTERSON: Nothing  
5 further, Your Honor.

6 THE COURT: Recross?

7 MR. QUINN: No, Your Honor. Thank  
8 you.

9 THE COURT: All right. Thank you,  
10 ma'am. Please step down. I appreciate it.

11 (WITNESS STEPS DOWN)

12 THE COURT: All right. Ladies and  
13 gentlemen, anybody need to take a break?  
14 We've done openings and we've done three  
15 witnesses. Everybody okay? Is there anybody  
16 who wants to take a break. Don't be shy.  
17 (No response). Okay. Call your next  
18 witness.

19 SOLICITOR PATTERSON: Your Honor,  
20 may we approach for just a moment?

21 THE COURT: Sure.

22 (OFF RECORD BENCH CONFERENCE)

23 THE COURT: All right. They say  
24 we are going to take a break. The next  
25 witness may be a long witness. And so the



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Testimony of Minor - Direct Examination

1 prosecution has advised me that this is  
2 probably a good time to take a break, because  
3 when we come back in we may be here for a  
4 while. So let's take a break. Return to  
5 your jury room. Please don't discuss the  
6 case.

7 (JURY OUT @ 2:35 P.M.)

8 THE COURT: Okay. When y'all have  
9 her over here and you're ready to go, just  
10 let me know, okay?

11 SOLICITOR PATTERSON: Thank you.

12 (BRIEF RECESS)

13 (DEFENDANT PRESENT)

14 THE COURT: Bring the jury in,  
15 please.

16 (JURY IN @ 2:50 P.M.)

17 THE COURT: Solicitor, you may  
18 call your next witness.

19 SOLICITOR PATTERSON: The State  
20 calls Minor .

21 (WITNESS TAKES STAND)

22 Minor , having been duly  
23 sworn to tell the truth, and nothing but the  
24 truth, testified as follows:

25 DIRECT EXAMINATION

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Testimony of [Minor] - Direct Examination

- 1 BY SOLICITOR PATTERSON:
- 2 Q. [Minor], how old are you?
- 3 A. Ten.
- 4 Q. And when's your birthday?
- 5 A. [REDACTED]
- 6 Q. So did you just turn ten?
- 7 A. Yesterday.
- 8 Q. And what grade are you in?
- 9 A. Fourth.
- 10 Q. Where do you go to school?
- 11 A. Mitchell Road Elementary.
- 12 Q. Who's your teacher at school?
- 13 A. Ms. McGaha.
- 14 Q. Tell me a little bit about your
- 15 family. Who do you live with?
- 16 A. My mom, Isis and Terrance.
- 17 Q. And who's Terrance?
- 18 A. My mother's husband.
- 19 Q. And where do you live right now?
- 20 A. I don't know.
- 21 Q. Do you live in Greenville?
- 22 A. Yes.
- 23 Q. Do you live close to your school?
- 24 A. I'm not sure.
- 25 Q. Who do you live with? I've already

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Testimony of [Minor] - Direct Examination

1 asked you that. I'm sorry. Tell me a little  
2 bit about -- do you have pets in the family?

3 A. (Affirmative nod).

4 Q. What kind of pets do you have?

5 A. I have two German Sheppards and a  
6 Pit Bull and a German Sheppard puppy.

7 Q. And you said you lived with Isis.  
8 Who's Isis?

9 A. My sister.

10 Q. And do you have other sisters  
11 besides Isis?

12 A. (Affirmative nod).

13 Q. Who are they?

14 A. Tiffany and Toi.

15 Q. And do you know where they live?

16 A. Toi live -- I mean, Tiffany lives in  
17 North Carolina. I don't know where Toi  
18 lives.

19 Q. Do you know where Toi used to live?

20 A. Same place.

21 Q. Same place as what?

22 A. I don't remember where she used to  
23 live at. Every time she moves, she usually  
24 going to a different place in that apartment.

25 Q. In that apartment. So do you know

- 1        what city she lived in?
- 2            A.    (Negative gesture).
- 3            Q.    Did she live close to you?
- 4            A.    Kind of.
- 5            Q.    Did you drive to her house?
- 6            A.    Yeah.
- 7            Q.    How long would it take you drive; do
- 8        you know?
- 9            A.    About five minutes.
- 10          Q.    Did you go over to Toi's house very
- 11        often?
- 12          A.    Yes.
- 13          Q.    And who did Toi live with?
- 14          A.    'Tari and Messiah and Caesar.
- 15          Q.    And who are they?
- 16          A.    Messiah and Caesar are my nephews.
- 17        Toi is my sister and 'Tari is her boyfriend.
- 18          Q.    And did you spend a lot of time at
- 19        Toi and 'Tari's house?
- 20          A.    Yeah.
- 21          Q.    How often would you go over there?
- 22          A.    Like the weekends.
- 23          Q.    Would you go every weekend?
- 24          A.    I don't think so.
- 25          Q.    Did you ever go during the week?

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Testimony of [Minor] - Direct Examination

1 A. Not that I'm aware of.

2 Q. And who was usually there when you  
3 went to Toi and 'Tari's house?

4 A. Usually, it's Toi. But half the  
5 time I go over there, my Isis would come  
6 because there was no one there to take care  
7 of Messiah and Caesar.

8 Q. Who else would be there when you  
9 went over there?

10 A. 'Tari sometimes, and Toi.

11 Q. And were there times when 'Tari was  
12 there and Toi wasn't there?

13 A. Yes.

14 Q. And where was Toi during those  
15 times?

16 A. The hospital.

17 Q. And why was she at the hospital?

18 A. She works there.

19 Q. Did you have fun times when you went  
20 over to Toi and Tari's house?

21 A. Yes.

22 Q. What would you do?

23 A. I played the Xbox with Messiah and  
24 Caesar.

25 Q. And would you do other things with

1       Messiah and Caesar?

2               A.    We had a water fight in the bath-  
3       room.

4               Q.    When you were over there, did 'Tari  
5       ever do things to you that you didn't like?

6               A.    Yes.

7               Q.    Can you tell me the first time he  
8       did something to you that you didn't like and  
9       what it was?

10              A.    Like when, when was the first time?

11              Q.    Can you tell me when and then what  
12       happened?

13              A.    I do not remember when.

14              Q.    Do you remember how old you were?

15              A.    No.

16              Q.    Can you tell me what happened?

17              A.    I can't remember.

18              Q.    You said that there were times 'Tari  
19       did things you didn't like. Can you tell me  
20       about one of the times 'Tari did that?

21              A.    Yes.

22              Q.    Can you tell me about it?

23              A.    No.

24              Q.    Do you need a second? Maybe we'll  
25       get some water?

1 (WITNESS PROVIDED WATER)

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR PATTERSON:

4 Q. [Minor], you said one time that you  
5 and Messiah and Caesar had a water fight?

6 A. Yes.

7 Q. Tell me what happened that day?

8 A. We were bored and we went in the  
9 room, so we went into the bathroom, filled  
10 the cups up the water and threw it on each  
11 other.

12 Q. What happened after that?

13 A. I got in trouble.

14 Q. Who did you get in trouble with?

15 A. 'Tari.

16 Q. And what happened when you got in  
17 trouble?

18 A. He called us all, one by one, into  
19 the living room.

20 Q. And what happened then?

21 A. When I went in there, he wanted me  
22 to suck his penis.

23 Q. And when that happened, [Minor],  
24 were your clothes on or off?

25 A. On.

1 Q. And can you tell me, did he say  
2 anything when that happened?

3 A. I can't remember.

4 Q. Is that the only time that that  
5 happened with 'Tari?

6 A. Like, what do you mean?

7 Q. You just said that 'Tari made you  
8 suck his penis. Is that the only time that  
9 that happened?

10 A. No.

11 Q. Did it happen other times?

12 A. Yes.

13 Q. Can you tell me about another time?

14 A. Yes. We were on the bed and Messiah  
15 and Caesar were playing the Xbox, and he put  
16 a blanket over me.

17 Q. Tell me what happened then?

18 A. He wanted me to go under the blanket  
19 and suck his penis.

20 Q. How many times did 'Tari make you  
21 suck his penis?

22 A. More than I can remember.

23 Q. Would it happen every time you went  
24 over to Toi and 'Tari's house?

25 A. No.



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1 Q. Did it happen most times you went  
2 over there?

3 A. Yes.

4 Q. Do you remember the last time it  
5 happened with 'Tari?

6 A. No.

7 Q. Did 'Tari touch you in other places?

8 A. Yes.

9 Q. Tell me about that. Where would he  
10 touch you?

11 A. My butt.

12 Q. Where else?

13 A. That's it.

14 SOLICITOR PATTERSON: Your Honor,  
15 may I approach?

16 THE COURT: Sure.

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR PATTERSON:

19 Q. [Minor], I'm going to show you a  
20 drawing. Can you circle on there for me  
21 where a butt is?

22 A. (Witness complies)

23 Q. Can you circle on there for me, is  
24 there anywhere else 'Tari would touch you?

25 A. Not that I remember.

1 SOLICITOR PATTERSON: Your Honor,  
2 may I publish this to the jury.

3 MR. QUINN: If I could see it?

4 SOLICITOR PATTERSON: Excuse me.  
5 I'm sorry -- (tenders to Mr. Quinn).

6 MR. QUINN: (Upon review), I have  
7 no objection.

8 THE COURT: All right. You may.

9 COURT REPORTER: That's State's  
10 Exhibit Number 5 for identification.

11 (SO ENTERED AS STATE'S EXHIBIT 5)

12 SOLICITOR PATTERSON: Your Honor,  
13 if I may in my technologically un-savvy way  
14 simply publish this to the jury by passing it  
15 ---

16 THE COURT: You may.

17 (STATE'S EXHIBIT 5 CIRCULATED AMONG JURY)

18 DIRECT EXAMINATION CONTINUED

19 BY MS. PATTERSON:

20 Q. [Minor] did 'Tari ever make you  
21 touch him on his body?

22 A. Yes.

23 Q. Where did he make you touch him?

24 A. His penis.

25 Q. And what did he make you touch him

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1 with?

2 A. My hand.

3 Q. Did 'Tari ever show you anything on  
4 his phone or on the TV?

5 A. Yes.

6 Q. And what was that?

7 A. He showed this like website on his  
8 phone.

9 Q. And what was the website?

10 A. I don't know the name of it.

11 Q. Can you tell me what you saw on it?

12 A. It was like how to suck a penis.

13 Q. I'm going to go back to the water  
14 fight that you talked about earlier. Do you  
15 know what time of year that was?

16 A. No.

17 Q. Was it hot outside?

18 A. Yes.

19 Q. And how old were you when the water  
20 fight happened?

21 A. I don't know.

22 Q. Was there a time that you broke your  
23 leg?

24 A. Yes.

25 Q. Do you remember how old you were

1 when that happened?

2 A. No.

3 Q. How old are you now?

4 A. Ten.

5 Q. And how old were you when you told

6 Ms. Kroske what was happening with 'Tari?

7 A. Eight or nine.

8 Q. And did the water fight happen

9 before that?

10 A. Yes.

11 Q. Were you older than five?

12 A. Yes.

13 Q. Did 'Tari ever give you anything?

14 A. A dollar.

15 Q. A dollar. And when did he give you

16 the dollar?

17 A. What do you mean?

18 Q. When did he give it to you? Did he

19 give it to you after something happened?

20 A. Yes.

21 Q. Did he say anything when he gave you

22 the dollar?

23 A. Not that I remember.

24 Q. Did he ever give you anything else?

25 A. No.

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1 Q. Did he give you more money?

2 A. I think that was only once.

3 Q. And did that happen right after he  
4 touched you or you touched him?

5 A. Yes.

6 Q. When this was going on, where were  
7 Messiah and Caesar?

8 A. Outside.

9 Q. Were they playing outside?

10 A. Yes.

11 Q. And why weren't you playing outside  
12 with them?

13 A. Because I did not like the heat.

14 Q. So sometimes when this was happening  
15 it was summer?

16 A. Yes.

17 Q. What about other times. You said  
18 this happened more than you can count. Do  
19 you know where they were other times?

20 A. Other times?

21 Q. Do you know -- you said that this  
22 happened with 'Tari more times than you can  
23 count. Do you know where Messiah and Caesar  
24 were? Were they always outside?

25 A. No.

- 1 Q. Where were they other times?
- 2 A. Inside.
- 3 Q. And what were they doing?
- 4 A. Playing the game.
- 5 Q. And were you in another room?
- 6 A. No.
- 7 Q. Were you in the same room?
- 8 A. Yes.
- 9 Q. Would 'Tari touch you when you were
- 10 in the same room with them?
- 11 A. Yes.
- 12 Q. And where was Toi when this was
- 13 happening?
- 14 A. The hospital.
- 15 Q. And how about Isis?
- 16 A. 'Tari was there and we went to
- 17 babysit.
- 18 Q. Did you like 'Tari?
- 19 A. Yes.
- 20 Q. How come?
- 21 A. I don't know.
- 22 Q. Have you known him for a long time?
- 23 A. Yes.
- 24 Q. How long have you known him?
- 25 A. I don't remember.

1 Q. Do you ever remember a time when he  
2 wasn't there?

3 A. Yes. When Toi was there and he was  
4 at work.

5 Q. I want to talk a little bit about  
6 your nephews. How old are they?

7 A. Six and nine.

8 Q. And is 'Tari their dad?

9 A. Yes.

10 Q. Did you play a lot with your  
11 nephews?

12 A. Yes.

13 Q. Were you all good friends?

14 A. We all are good friends.

15 Q. And did you usually want to go over  
16 to Toi and 'Tari's house?

17 A. No.

18 Q. How come?

19 A. Well, I would but when I'd get there  
20 I'd call my mom and say I want to go home.

21 Q. Why did you want to go home?

22 A. I don't know. I just kept wanting  
23 to go home every time I got there.

24 Q. Did you sometimes have good times at  
25 Toi and 'Tari's house?

1 A. Yes.

2 Q. [Minor], did you ever tell anyone  
3 when that was going on?

4 A. Ms. Kroske.

5 Q. Did you tell anyone -- how long --  
6 do you know how long it had been going on  
7 before you told Ms. Kroske?

8 A. No.

9 Q. Had it been going on for a long  
10 time?

11 A. (No verbal response).

12 Q. What made you tell Ms. Kroske?

13 A. When we were at the thing at school.

14 Q. And why did you tell Ms. Kroske?

15 A. Because 'Tari is a child molester.

16 Q. And did you know that word before  
17 the presentation at school?

18 A. No.

19 Q. Did you know that what was going on  
20 was wrong?

21 A. No. Not until the presentation.

22 Q. [Minor], have you seen 'Tari since  
23 you told about what was happening?

24 A. No.

25 Q. Have you seen your nephews since you



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Testimony of [Minor] - Direct Examination

1 told about what was happening?

2 A. Yes.

3 Q. And how often have you seen them?

4 A. It was like a couple weeks and then  
5 I couldn't anymore.

6 Q. You couldn't anymore. And how do  
7 you feel about not being able to see them?

8 A. I'm sad.

9 Q. Do you miss them?

10 A. Yes.

11 Q. Do you see Toi as often as you used  
12 to?

13 A. No.

14 Q. Do you miss Toi?

15 A. Yes.

16 Q. Now, [Minor], is this sometimes hard  
17 for you to talk about?

18 A. Yes.

19 Q. Are there times when it is -- there  
20 is another way that you are able to talk  
21 about it or express yourself?

22 A. I don't know.

23 Q. Let me ask you a different way.  
24 Have you been going to therapy?

25 A. Yes.

1 Q. And who do you see in therapy?

2 A. Kristin.

3 Q. And do you talk to Kristin about  
4 what's happened?

5 A. No.

6 Q. Have you ever talked to Kristin  
7 about what's happened?

8 A. Yes.

9 Q. When it's hard for you to talk to  
10 Kristin about what has happened, do you ever  
11 draw what happened?

12 A. Yes.

13 Q. [Minor] I'm going to show you  
14 what's been marked for identification  
15 purposes only as State's Exhibit 4.

16 A. Yeah. This is something -- (pause).

17 Q. Do you know what it is?

18 A. A picture.

19 Q. And who drew the picture?

20 A. Me.

21 Q. And what's it a picture of?

22 A. 'Tari and me.

23 Q. And what is he doing?

24 A. Making me suck his penis.

25 Q. Thank you. [Minor] one thing you

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Testimony of [Minor] - Direct Examination

1 just said is that 'Tari is a child molester?

2 A. Yes.

3 Q. Do you know what a child molester  
4 means?

5 A. A person who touches kids.

6 Q. And where do they touch kids?

7 A. In their private parts.

8 Q. And has 'Tari touched you in your  
9 private parts?

10 A. Yeah, my butt.

11 Q. And has 'Tari had you touch his  
12 private parts?

13 A. Yes.

14 Q. [Minor], I just have a few more  
15 questions. You said that you broke your leg?

16 A. Yes.

17 Q. How did you break your leg?

18 A. I got hit by a car riding my bike.

19 Q. And do you remember when that was,  
20 what time of year it was?

21 A. No.

22 Q. Was it hot outside?

23 A. Yes. Oh, it was summer.

24 Q. Do you remember how old you were  
25 that summer?

1 A. No.

2 Q. Did anything happen with 'Tari while  
3 you had a cast on your leg?

4 A. I'm not sure.

5 SOLICITOR PATTERSON: Your Honor,  
6 if I may have just a moment.

7 THE COURT: Sure.

8 SOLICITOR PATTERSON: Your Honor,  
9 nothing further from the State.

10 THE COURT: All right. Mr. Quinn.

11 CROSS-EXAMINATION

12 BY MR. QUINN:

13 Q. [Minor], did you have any other  
14 friends in the neighborhood around Toi and  
15 'Tari's house?

16 A. Yes, but I can't remember his name.

17 Q. Okay. And it was just one, a  
18 fellow?

19 A. Yes.

20 Q. Did you play with him occasionally?

21 A. I played with him when Messiah and  
22 Caesar was playing with him.

23 Q. Okay. And so sometimes it was more  
24 than just Messiah and Caesar that played with  
25 you?

1 A. Yes.

2 Q. Okay. And did Isis, your sister, go  
3 with you sometimes?

4 A. Sometimes.

5 Q. Okay. And ---

6 A. Wait. Do you mean like to his  
7 house?

8 Q. Yes?

9 A. No.

10 Q. So Isis never went to Toi and  
11 'Tari's house?

12 A. Oh, yes. I thought you were talking  
13 about the dude's house.

14 Q. You're right. I'm sorry. Did Isis  
15 go with you sometime to Toi and 'Tari's  
16 house?

17 A. Yes.

18 Q. Most times or half the time or can  
19 you give me an idea how often?

20 A. About half the time.

21 Q. And the other half the time, was she  
22 left at home by herself?

23 A. Yeah. No, because my mom was there.  
24 The car was there.

25 Q. So sometimes you'd go to Toi and

1 'Tari's even though your mom was at the  
2 house?

3 A. Yes.

4 Q. And your mom and Isis would stay  
5 home and you'd go to Toi and 'Tari's?

6 A. Yes, because my mom would be busy.  
7 She has to do stuff.

8 Q. And she'd take Isis to do the stuff  
9 but not take you?

10 A. Yes.

11 Q. And you said that you were shown a  
12 website. And I believe you say that 'he  
13 showed us the website.' Did he show it to  
14 other people?

15 A. No.

16 Q. Okay. Just to you?

17 A. (Affirmative nod).

18 Q. Okay. And did you tell the police  
19 about that?

20 A. I don't think so.

21 Q. Okay. When you talked to Ms.  
22 Kroske, then the next people that came to  
23 talk to you were the police; isn't that  
24 right?

25 A. Yes.

1 Q. And then your mom. If you need to  
2 take a drink, go ahead.

3 A. (Drinks water).

4 Q. Okay. And did you tell the police  
5 about what had happened to you?

6 A. Like what do you mean?

7 Q. I mean did the police come and talk  
8 with you at the school. Did they come talk  
9 to you at school?

10 A. Yes.

11 Q. And did they say 'we need you to  
12 tell us about what's happened to you' or  
13 words to that effect?

14 A. Not that way. They didn't say it  
15 like that.

16 Q. Okay. Did they try to get you to  
17 just tell them what you ---

18 A. Yes.

19 Q. --- what had happened to you?

20 A. Yes.

21 Q. Okay. And did you? Did you tell  
22 the police about it?

23 A. Yes.

24 Q. And you say you think it was a man  
25 and a woman police officer. So two of them

1           were there; right?

2           A.    Yes.

3           Q.    Okay. And did you tell them the  
4           truth?

5           A.    Yes.

6           Q.    Okay. Tell them everything you knew  
7           about it? Did they keep asking you just tell  
8           us about it?

9           A.    No.

10          Q.    Did you tell them everything you  
11          knew about it?

12          A.    No.

13          Q.    Okay. And so there were things you  
14          didn't tell the police?

15          A.    Yes.

16          Q.    Okay. And did you tell the police  
17          that you didn't report this sooner because  
18          'Tari had threatened you?

19          A.    No.

20          Q.    Who did you tell that to?

21          A.    It might have been the police. I'm  
22          not sure.

23          Q.    Did you tell your therapist about  
24          that?

25          A.    I think so.



1 Q. Did you tell the woman who talked to  
2 you at the Julie Valentine Center about that?

3 A. No.

4 Q. So you didn't tell her that 'Tari  
5 had threatened you and that's why you didn't  
6 say anything?

7 A. Yes.

8 Q. And that, in fact, is not true;  
9 isn't that right?

10 A. Right.

11 Q. You have since then told the  
12 prosecutors and your mom that you were never  
13 threatened by 'Tari not to say anything;  
14 isn't that right?

15 A. Right.

16 Q. So do you agree, Minor, that  
17 that's a lie?

18 A. Yes.

19 Q. Okay. And have you changed your  
20 description of what happened since you  
21 initially told the police that first day?

22 A. No.

23 Q. So what you told the police the  
24 first day is everything that happened to you?

25 A. I didn't tell them everything.

1 Q. That's not what I'm asking you?

2 A. Oh, -- no.

3 Q. Haven't you changed or added to, if  
4 you want to say it that way ---

5 A. Yes.

6 Q. --- what you told the police  
7 originally? The story has grown; isn't that  
8 right?

9 A. Yes.

10 Q. And you told Ms. Kroske in March of  
11 2015. You were in second grade, I think. Is  
12 that right?

13 A. Yes.

14 Q. So that was a year and a half ago,  
15 longer than that?

16 A. I don't know.

17 Q. Okay. You went through all of third  
18 grade; right?

19 A. I'm in the fourth grade.

20 Q. So you did all of third grade.  
21 That's one year; is that right?

22 A. Yeah.

23 Q. And now you're in fourth grade.  
24 You've been in fourth grade several months  
25 now; is that right?

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1 A. Yeah.

2 Q. So does a year and a half sound  
3 fair, that it's been a year and a half?

4 A. I guess.

5 Q. Okay. And isn't it true that only  
6 about two months ago that you told the  
7 prosecutors and your mom that it was a lie  
8 about 'Tari threatening you?

9 A. Yes.

10 Q. So you kept that secret for a long  
11 time; isn't that right?

12 A. Right.

13 Q. And you told other people during  
14 that time that that was the truth, even  
15 though it wasn't; isn't that right?

16 A. Right.

17 MR. QUINN: I don't have any other  
18 questions. Thank you.

19 THE COURT: Ms. Patterson on  
20 redirect, ma'am?

21 SOLICITOR PATTERSON: Yes, Your  
22 Honor, just briefly.

23 REDIRECT EXAMINATION

24 BY SOLICITOR PATTERSON:

25 Q. Minor, why did you make up the

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1 part about 'Tari threatening you and your  
2 mom?

3 A. Because I didn't want to tell  
4 anyone.

5 Q. You didn't want to tell anyone what?

6 A. About the things he's done to me.

7 Q. And so why did you say that he  
8 threatened you?

9 A. (No verbal response).

10 Q. Were you afraid to tell?

11 A. Yes.

12 MR. QUINN: Object to the leading  
13 nature of the question.

14 THE COURT: All right. I'll  
15 sustain that.

16 REDIRECT EXAMINATION CONTINUED

17 BY SOLICITOR PATTERSON:

18 Q. And [Minor] -- so you said that that  
19 part about him threatening you is not true.  
20 And you said that you didn't want to tell.  
21 Is the part about 'Tari making you suck his  
22 penis a lie?

23 A. No.

24 Q. Is the part about 'Tari touching  
25 your butt a lie?

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1 A. No.

2 Q. Is the part about 'Tari making you  
3 touch his penis a lie?

4 A. No.

5 Q. Is the part about him showing you  
6 websites about sucking penises on his phone a  
7 lie?

8 A. No.

9 Q. [Minor], do you see 'Tari in the  
10 courtroom today?

11 A. Yes.

12 Q. Can you point to him?

13 A. (Witness points to area of defense  
14 table).

15 SOLICITOR PATTERSON: Judge, we'd  
16 ask that the record reflect that the witness  
17 pointed to the Defendant.

18 THE COURT: All right.

19 SOLICITOR PATTERSON: Nothing  
20 further from the State.

21 THE COURT: Any recross, sir?

22 MR. QUINN: Just one.

23 RECROSS-EXAMINATION

24 BY MR. QUINN:

25 Q. [Minor], if I had asked you last

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1 year if 'Tari had threatened you, would you  
2 have told me that was the truth?

3 A. Yes.

4 MR. QUINN: Thank you, Your Honor.

5 THE COURT: All right. Minor ,  
6 thank you. I appreciate your being here.  
7 You can step down.

8 (WITNESS STEPS DOWN)

9 THE COURT: Okay. You may call  
10 your next witness.

11 SOLICITOR PATTERSON: Thank you,  
12 Your Honor. The State calls Investigator  
13 David Picone.

14 (WITNESS TAKES STAND)

15 DAVID PICONE, having been duly  
16 sworn to tell the truth, and nothing but the  
17 truth, testified as follows:

18 DIRECT EXAMINATION

19 BY SOLICITOR PATTERSON:

20 Q. Investigator Picone, where do you  
21 work?

22 A. Greenville County Sheriff's Office.

23 Q. And what do you do for the sheriff's  
24 office?

25 A. Currently, I am assigned to the

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1 violent crime unit, but previously I was with  
2 the crimes against children unit.

3 Q. And how long have you been with the  
4 sheriff's office?

5 A. It'll be ten years in February.

6 Q. And tell us a little bit about what  
7 you've done during that entire period?

8 A. I graduated from college. Once I  
9 got out of college I was hired by Greenville  
10 County.

11 I went to the Academy for nine weeks.  
12 From the academy, I was assigned to uniform  
13 patrol. I was on uniform patrol for five  
14 years roughly.

15 From there, I went to property crimes as  
16 an investigator.

17 And after property crimes for two years,  
18 I went to crimes against children. While at  
19 crimes against children, I was promoted to a  
20 master deputy; which to be promoted to master  
21 deputy, you have to take an examination, oral  
22 examination board and -- they choose people  
23 to do that.

24 And then after ten years, well, roughly  
25 ten years in crimes against children, I am

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1 now assigned to violent crimes where I  
2 investigate robberies, gang violence and  
3 homicide.

4 Q. And were you on duty on March 20<sup>th</sup> of  
5 2015?

6 A. I was.

7 Q. And what unit were you in at that  
8 time?

9 A. I was in the crimes against children  
10 unit.

11 Q. And in that capacity as an  
12 investigator in crimes against children, did  
13 you respond to a call at Mitchell Road  
14 Elementary?

15 A. I did.

16 Q. What time was that call?

17 A. Maybe a little bit after noon, mid-  
18 afternoon, a little bit after lunchtime.

19 Q. And what type of call was it?

20 A. I received a phone call from uniform  
21 patrol -- I don't remember if I was on call  
22 this day or how I ended up getting the phone  
23 call, but somebody called me and advised me  
24 that they were out at Mitchell Road  
25 Elementary and that there was a juvenile at



1 school that had disclosed some sexual abuse  
2 and asked me to respond to help with the  
3 investigation.

4 Q. And was it typical for you to get  
5 that kind of a call?

6 A. Yeah. Since we're -- obviously we  
7 work Monday through Friday. So usually if  
8 something happens at a school, a lot of times  
9 they'll call us since we handle these kind of  
10 cases most of the time. So that way, I can  
11 just start the investigation from the  
12 beginning.

13 Q. And so at that point, you went out  
14 to the school?

15 A. I did.

16 Q. And who did you meet first on scene?

17 A. When I first arrived, I met with the  
18 uniform patrol deputy that was out there and  
19 his sergeant. They informed me that the  
20 victim was in another room. They had not  
21 talked to her yet.

22 From there, I went and talked with the  
23 mother of the victim, as well as her teacher.  
24 Her teacher disclosed that the victim,  
25 **Minor**, had disclosed she'd been, you know,

1 sexually assaulted.

2 So then I informed the mother that I  
3 would need to talk with her. And as her  
4 mother stated earlier, she wasn't quite sure  
5 about this. Wasn't quite sure it happened.  
6 And then when her daughter came in there,  
7 once she said she did make that statement and  
8 now she believed her.

9 Q. Were you the primary investigator on  
10 the case?

11 A. I was.

12 Q. And did you remain the primary  
13 investigator throughout the investigation?

14 A. I did.

15 Q. Did you meet with the victim in this  
16 case, Minor [REDACTED]

17 A. Yes.

18 Q. And who was with you when you met  
19 with her?

20 A. I brought a victim advocate with me  
21 on this day, Dianna Tapp. Sometimes we bring  
22 them a female, or male, and it makes the  
23 children sometimes feel a little more at-  
24 ease; especially since in this case she's a  
25 female.

1           Q.   And did the -- tell me a little bit  
2           about when you got in the room with **Minor**  
3           What her demeanor was like?

4           A.   I believe she was playing with some  
5           Legos. I introduced myself to her. I always  
6           introduce myself to children as, you know,  
7           Dave, try to keep it informal with them so  
8           they feel a little more comfortable.

9           At first I explained to her that I needed  
10          her to tell me what she had told her teacher.  
11          I didn't want to get in too much detail and I  
12          never do starting off, because children we're  
13          going to send to the Julie Valentine Center  
14          for a forensic interview. So we kind of just  
15          get a baseline of what's going on so we can  
16          document this and give them something to  
17          interview her about.

18          So at first she said she didn't want to  
19          talk about it. I kind of joked with her a  
20          little bit, made her feel a little more  
21          comfortable, built some rapport, talked about  
22          family life, who she lives with. And then, I  
23          think the advocate that was with me actually  
24          stood up and, you know, we told her that she  
25          had told somebody that she had been touched

1       and she pointed at her breast, her vagina and  
2       her butt. And she asked 'did he touch you  
3       here, touch you here or touch you here'? And  
4       when she pointed to the vagina, she said  
5       "There."

6               Q.    So the victim did disclose sexual  
7       abuse to you?

8               A.    Yes, at that time she did. I didn't  
9       get into any more details at that time. Like  
10      I said, that was the baseline. I knew that  
11      there was allegations being made. So for the  
12      investigation to go further on, I documented  
13      that and then I would send that information  
14      to the Julie Valentine Center.

15              Q.    Did the victim tell you when this  
16      abuse occurred?

17              A.    Yes. She told me that it started  
18      when she was five and at that time had ended  
19      when she was eight. And she said that the  
20      reason why she told this was there was a  
21      class the Julie Valentine Center had put on  
22      and that's what made her come forward.

23              Q.    And what did you do after the victim  
24      reported the abuse to you?

25              A.    I took a statement from the teacher

1 to document what she told the teacher. And  
2 then explained to the mom the next step,  
3 process; that we would be referring her to  
4 the Julie Valentine Center for a forensic  
5 interview.

6 I asked the mother not to really question  
7 her about this because I wanted her, when she  
8 came into the forensic interview to be able  
9 to tell what happened and not so much as  
10 coached or having told anything to say or not  
11 to say. And the mother said she would do  
12 that.

13 From there, I documented the case and  
14 sent the referral in to the Julie Valentine  
15 Center, I believe the next morning.

16 Q. And at some point during the  
17 investigation did you learn where **Minor**  
18 said the abuse occurs?

19 A. Yes. Throughout the investigation  
20 -- like I said first I document this,  
21 interviewed some witnesses in the case and  
22 was able to identify ---

23 MR. QUINN: Objection. I'm going  
24 to object that it's hearsay since I don't  
25 know who it came from.

1 THE COURT: Okay.

2 MR. QUINN: If he's going to say  
3 what somebody told him. I don't know who  
4 that person is.

5 THE COURT: All right. I don't  
6 know that there's been any hearsay entered  
7 yet. But I should give a general admonition  
8 against hearsay. I haven't heard it yet.  
9 But rephrase the question and let's start it  
10 over, okay? Being sensitive to that issue.

11 DIRECT EXAMINATION CONTINUED  
12 BY SOLICITOR PATTERSON:

13 Q. Did Minor tell you where this  
14 abuse took place?

15 A. Yes.

16 Q. And where did it take place?

17 A. Toi's house.

18 Q. And were you able to determine where  
19 Toi's house was?

20 A. I was.

21 Q. And is that house in Greenville  
22 County?

23 A. Yes. It's at [REDACTED],  
24 which is Rocky Creek Apartments.

25 Q. And you mentioned you took a

1 statement from the teacher and then sent it  
2 to the Julie Valentine Center. Can you tell  
3 the jury a little bit about the typical  
4 process when you are investigating one of  
5 these cases?

6 A. Yeah. So like I said we initially  
7 go out to the school on something like this,  
8 get briefed, brief information from the child  
9 about what's going on, who the perpetrator  
10 is.

11 If the perpetrator lives with the child,  
12 usually we put safety plans together where  
13 the perpetrator won't be allowed to be around  
14 the child until the investigation is  
15 complete, whether or not they did it.

16 DSS is always contacted. DSS will --  
17 they'll put the safety plan together. So  
18 they're usually working hand-in-hand with us.

19 From there, if the child is under twelve  
20 years old, then we will refer them to Julie  
21 Valentine Center where they will have a  
22 forensic interview, where there will be a  
23 one-on-one interview between the forensic  
24 interviewer and the child. Law enforcement  
25 is usually present but we're not within the

1 room. We're actually watching the interview  
2 in another room from a monitor. So we're  
3 able to see what the child's saying.

4 From there, that's pretty much where we  
5 go to at that point.

6 Q. And so you mentioned that the -- did  
7 the victim in this case in fact have an  
8 interview at the Julie Valentine Center?

9 A. She did. Yes.

10 Q. And were you present for that  
11 interview?

12 A. I did observe it, yes.

13 Q. At some point, did you interview the  
14 Defendant in this case?

15 A. I did.

16 Q. And how did that interview come  
17 about?

18 A. March 23<sup>rd</sup>, three days after the  
19 initial report was taken, I was conducting  
20 my investigation and I went over to the  
21 apartment complex where they were living,  
22 made contact with his girlfriend, Toi, who is  
23 the sister of Minor [REDACTED]. I explained to her  
24 what was going on. She said she already knew  
25 about it. She had talked to her mom. She



1 said that 'Tari was at work and that she was  
2 going to bring him to my office when he got  
3 off work. So I said okay. So I went back to  
4 my office. Later on in the afternoon, they  
5 did show up at my office.

6 Q. And so the interview took place at  
7 your office; is that correct?

8 A. It did.

9 Q. And what did you tell the Defendant,  
10 if anything, at the beginning of the  
11 interview?

12 A. Well, first when we arrived they  
13 actually met with DSS first to go over the  
14 safety plan.

15 After that was completed, I brought him  
16 back to an interview room to have an  
17 interview with myself and another  
18 investigator being in there. I explained to  
19 him that, you know, there was allegations  
20 made against him of touching **Minor** and I  
21 wanted to talk to him about it.

22 Q. Did you inform the Defendant that he  
23 was free to leave at any time?

24 A. I did.

25 Q. Did you Mirandize the Defendant?

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1 A. I did not.

2 Q. Why not?

3 A. He was not under arrest or in  
4 custody.

5 Q. Did the Defendant volunteer to give  
6 a statement?

7 A. He did.

8 Q. And what was the substance of that  
9 statement?

10 A. Basically that, you know, he denied  
11 touching the children or touching **Minor**.  
12 Excuse me. But he did state that he had been  
13 alone with her at times but he was very  
14 adamant as to not touching her at all.

15 Q. But he did admit to being alone with  
16 **Minor** at certain times?

17 A. Yes.

18 Q. Was the interview recorded?

19 A. Well, the room I took him to was  
20 actually -- it's audio and video recorded.  
21 Prior to this interview, the interview room  
22 used to be where you would walk in there, if  
23 you walked in the light switch flipped on  
24 would automatically trigger the system and it  
25 would cut on. They had been in the process

1 of changing that system out and had changed  
2 it. I wasn't on duty. I wasn't aware at the  
3 time that the new system was activated and I  
4 was told you could still walk in and it would  
5 motion. What they had done was they had put  
6 a toggle switch in there where you turn it  
7 off and on and it lights up and recording  
8 starts. I didn't activate the system, so it  
9 was not recorded.

10 Q. Did you understand that it was being  
11 recorded?

12 A. At that time I was under the under-  
13 standing that it was, until I went to go  
14 retrieve it.

15 Q. So did you have the Defendant write  
16 a statement in this case?

17 A. I did not.

18 Q. You mentioned -- was there another  
19 investigator with you at the time of this  
20 interview?

21 A. Yes. Mike Robertson.

22 Q. At any point in this investigation,  
23 did you request a medical exam be done on  
24 **Minor** ?

25 A. Well, when we send stuff over to

1 Julie Valentine Center with the referral,  
2 usually we mark forensic interview. They'll  
3 call us and ask us a lot of times if we want  
4 a forensic -- if they believe there's a  
5 forensic interview needed, they'll ask us.  
6 And we'll say yes.

7 You know, a lot of times with cases like  
8 this, you know, we're talking about five  
9 years -- you know, a three-year time span.  
10 There's no physical injuries. She's not  
11 going to have bruises on her. She's not  
12 going to have a black eye. She's not going  
13 to have broken bones. So there's not going  
14 to be anything on the x-rays where usually --  
15 and the doctors tell us a lot of times  
16 there's things they can't see. Things heal  
17 over time.

18 Q. What did you do at the conclusion of  
19 your investigation?

20 A. Once I observed the forensic  
21 interview and determined that the probable  
22 cause was there to seek a warrant, I obtained  
23 the arrest warrants for Mr. Makins.

24 SOLICITOR PATTERSON: Nothing  
25 further from the State, Judge.

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. QUINN:

4 Q. So Detective Picone, Ms. Patterson  
5 asked you if you took Minor to a doctor for  
6 an examination?

7 A. Yes.

8 Q. I believe that's a yes or no  
9 question. I'd like a yes or no answer?

10 A. No.

11 Q. And so you decided -- and I'm sorry  
12 -- you don't have a medical degree; do you?

13 A. No.

14 Q. So you decided it wasn't worth the  
15 effort to make sure that she was seen by a  
16 doctor in case any of this evidence was  
17 available?

18 A. No. Uh-uh.

19 Q. Did you examine either the phone,  
20 tablet or computer of Mr. Makins to find this  
21 video that's been mentioned by Minor?

22 A. No. I was not aware of it.

23 Q. Did you interview the neighbors at  
24 Rocky Creek Apartments?

25 A. No.

1 Q. Did you interview any neighbors of  
2 Toi or 'Tari?

3 A. No.

4 Q. Did you interview Caesar and  
5 Messiah?

6 A. Yes.

7 Q. And did either Caesar or Messiah  
8 make any statement that was helpful to you?

9 A. No.

10 Q. And 'Tari came in voluntarily,  
11 brought by Toi; is that correct?

12 A. That is correct.

13 Q. And did he, at that point know what  
14 the allegations were? Had he already heard  
15 through the family?

16 A. I can't say whether or not he did.

17 Q. But I believe according to your  
18 report he was consistent in saying he didn't  
19 touch **Minor**?

20 A. That's right.

21 Q. He did state that there were times  
22 -- and I'm reading from your report. So if I  
23 misread it, please correct me. He did state  
24 that there were times that Toi was at work  
25 and he was home alone with the children?

1 A. Yes, sir.

2 Q. He even stated one time he was home  
3 alone with [Minor] and no other persons were  
4 in the apartment; is that correct?

5 A. That's correct. Yes, sir.

6 Q. Now, when Ms. Patterson asked you,  
7 you said that he said there were times. Do  
8 you know if there was more than the one time  
9 that he admitted to you?

10 A. If I put one time, that's what he  
11 told me.

12 Q. And do you need to see your report?

13 A. No.

14 Q. Did you speak with Isis to determine  
15 that she went over to Toi and 'Tari's with  
16 her sister?

17 A. I did speak with Isis.

18 Q. And did you determine if Isis did go  
19 to Toi and 'Tari's when [Minor] would go?

20 A. Yes.

21 Q. As I understand when you met [Minor]  
22 the first time, that Ms. Tapp was with you  
23 and pointed at parts, the essential parts of  
24 her body; is that fair description?

25 A. That's right. Yes.

1 Q. And that Minor stated that she was  
2 touched on her vaginal area?

3 A. Yes, sir.

4 Q. When Ms. Tapp pointed at that area?

5 A. That's right.

6 Q. And, in fact, that Minor said it  
7 was both over and under her clothes that she  
8 was touched in that area; is that correct?

9 A. That's right.

10 Q. And finally Minor also stated --  
11 and again, I'm reading from your report. If  
12 you need to see it, I'll gladly let you  
13 review it. Minor also stated that 'Tari  
14 told her he would kill her if she told  
15 anybody?

16 A. That's right.

17 Q. And that was told to you the very  
18 first time you ever met Minor?

19 A. If that's what I wrote.

20 Q. Have you taken any subsequent  
21 statements from Minor?

22 A. No.

23 Q. Okay. So there was no mention of  
24 oral sex in the initial report to you?

25 A. No.



1 MR. QUINN: I don't have any other  
2 questions. Thank you.

3 THE COURT: Redirect?

4 SOLICITOR PATTERSON: Nothing from  
5 the State, Judge.

6 THE COURT: Thank you, sir. You  
7 can step down.

8 (WITNESS STEPS DOWN)

9 THE COURT: Just to get a sense,  
10 Ms. Patterson of where we stand. I know you  
11 have at least two more witnesses. How many  
12 do you expect the total you will call?

13 SOLICITOR PATTERSON: Your Honor, I  
14 anticipate at this time that we will just  
15 call two more witnesses. That may change and  
16 go to three. But I expect there'll be two  
17 more.

18 THE COURT: Okay. Do you have  
19 them all here this afternoon?

20 SOLICITOR PATTERSON: The forensic  
21 interviewer, Judge, is late. She is not here  
22 yet. She is on standby and will be prepared  
23 to be here. It will then be -- we'll need to  
24 play the forensic interview.

25 THE COURT: Yes, ma'am. Your

1 forensic interviewer is probably going to  
2 take close to an hour, I suspect; maybe as  
3 much as an hour and a half with cross-  
4 examination?

5 SOLICITOR PATTERSON: Correct.

6 THE COURT: Okay. All right.

7 Just getting of an idea of where you stand.

8 SOLICITOR PATTERSON: I understand.

9 THE COURT: Ladies and gentlemen,  
10 we are going to move forward with the  
11 introduction of at least one more witness,  
12 maybe two. Does anybody need to take a break  
13 at this point? Anybody? Don't be bashful.  
14 (No response). Okay.

15 SOLICITOR PATTERSON: Your Honor,  
16 we will need to take a break to get our  
17 witness, who is on standby here.

18 THE COURT: Okay. All right.  
19 Well, both of your witness right now are on  
20 standby? Do you have one that you can call?

21 SOLICITOR PATTERSON: They are,  
22 Judge. I'm sorry if that was unclear. They  
23 are both on standby.

24 THE COURT: Okay. Go ahead and  
25 call them and get them here. How long do you

1 anticipate it would take for them to get  
2 here?

3 SOLICITOR PATTERSON: Your Honor,  
4 she is at the Julie Valentine Center  
5 downtown, so I would anticipate fifteen  
6 minutes, maybe half an hour.

7 THE COURT: Okay. Both of them or  
8 just one of them?

9 SOLICITOR PATTERSON: Just one.

10 THE COURT: You don't have one  
11 here that you can call?

12 SOLICITOR PATTERSON: I do not,  
13 Judge.

14 THE COURT: Okay.

15 SOLICITOR PATTERSON: We went a  
16 little faster this afternoon than I  
17 anticipated.

18 THE COURT: That's okay.

19 SOLICITOR PATTERSON: But we will  
20 get the forensic interviewer here as soon as  
21 we can.

22 THE COURT: Okay. So this is what  
23 we'll do. I have not indicated to the jury  
24 that I intend to keep them past a normal  
25 business time; that is 5:00 to 5:30.

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1           And generally speaking, ladies and  
2 gentlemen, if I'm going to keep you past 6:00  
3 or 6:30 then I want to tell you early in the  
4 day so that you can make plans because you've  
5 got other things going on in your lives.

6           So what we'll do is call your witness and  
7 we'll go until about 5:30.

8           That may mean that she puts up her direct  
9 examination today and we do cross-examination  
10 tomorrow morning.

11           SOLICITOR PATTERSON:    I understand.

12           THE COURT:       So if you're  
13 comfortable with that, we can proceed in that  
14 fashion.

15           SOLICITOR PATTERSON:    Thank you.

16           THE COURT:       Okay. All right. You  
17 comfortable with that, Mr. Quinn?

18           MR. QUINN:       No, sir.

19           THE COURT:       No?

20           MR. QUINN:       I do not like  
21 splitting a witness where the jury has heard  
22 part of the witness. They go home and think  
23 about it all night. Then the next morning I  
24 get to ask questions.

25           THE COURT:       Okay.

1 SOLICITOR PATTERSON: And I know  
2 it's early but we will easily finish this  
3 case tomorrow.

4 THE COURT: I mean -- and I'm not  
5 going to hold you to this. But as you stand  
6 here right now, do you think you're going to  
7 put evidence into the record?

8 MR. QUINN: I don't.

9 THE COURT: Okay. All right. So  
10 given that, then we anticipate that we may  
11 have two witnesses left, maybe as much as  
12 three?

13 MR. QUINN: If there's a third  
14 one, it's got to be a short one. I know  
15 who's on the list.

16 THE COURT: Okay.

17 MR. QUINN: So you've got two  
18 witnesses coming, Judge.

19 THE COURT: Okay. All right.  
20 Okay. So if I'm hearing you correctly, it's  
21 going to take fifteen to thirty minutes for  
22 your witness to get here?

23 SOLICITOR PATTERSON: Correct.

24 THE COURT: And you don't want to  
25 split witnesses?

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1 MR. QUINN: (Negative response)

2 THE COURT: And you have another  
3 witness, I presume. Can you call the other  
4 witness this afternoon?

5 SOLICITOR PATTERSON: Your Honor,  
6 we may run into the same issue. It is -- the  
7 State will be presenting an expert witness,  
8 subject to the Court's qualifications. So  
9 that witness may also go for some length of  
10 time including cross-examination.

11 THE COURT: Okay.

12 MR. QUINN: She'll be even farther  
13 away.

14 THE COURT: Okay. All right.  
15 Well, let's do this. Ladies and gentlemen,  
16 you've heard. And the reason I ask them on  
17 the record is because I want y'all to know  
18 what I know. There are no secrets. And I  
19 want you to know that, you know, if we stop  
20 or early or if we go late, why we're stopping  
21 early or going late, okay? You know,  
22 ordinarily I like to start at 9:00 and end at  
23 about 5:00 or 5:30 and get as much into the  
24 record as we possibly can. But you heard  
25 that. You've heard our conversation.

1           And I largely defer to lawyers when  
2           they're trying their cases because they're  
3           representing clients. And they have a stake  
4           in it. You and I don't necessarily, except  
5           for our time. So I'm going to defer to them  
6           in this instance. And we're going to go  
7           ahead and break for the day.

8           Come back tomorrow morning at 9:00.  
9           You've heard what I've heard. So what I'm  
10          hoping is that we can get all of the evidence  
11          into the record before lunchtime, take a  
12          break for lunch, come back and argue and  
13          charge. I don't know. Now, I don't know  
14          that it'll work out precisely like that. But  
15          based on what I've heard in the last five  
16          minutes, I think there's a better than even  
17          chance that we can make that happen.

18          So ladies and gentlemen, we'll adjourn  
19          for the afternoon. Please don't discuss the  
20          case this evening. Be back tomorrow at 9:00  
21          and we'll start with our next witness. Thank  
22          you very much. Y'all have a great evening.

23                               (JURY OUT @ 3:45 P.M.)

24                   THE COURT: All right. I'm not  
25                   ready to discuss charges yet. And I don't

1 expect you to have requests for charge, but  
2 if you do, if you'll hand it up now I can  
3 start looking at it and thinking about.

4 MR. QUINN: I have no specific  
5 requests, Judge.

6 THE COURT: Okay.

7 SOLICITOR PATTERSON: Nothing  
8 specific, Judge. If we do, we'll e-mail you  
9 and cc Defense counsel.

10 THE COURT: Okay. Good enough.  
11 That'll work. And what we'll do is I'll work  
12 with the indictments and prepare a standard  
13 charge. And if we get -- or after we  
14 introduce all of the evidence, all that gets  
15 into the record, then we'll just have a short  
16 charge conference in chambers. And talk it  
17 through so that y'all will know what I'm  
18 charging so you can fashion your closing  
19 arguments appropriately.

20 MR. QUINN: Thank you.

21 THE COURT: Okay. All right.  
22 Good enough. Y'all have a great evening and  
23 I'll see y'all tomorrow.

24 (COURT IN RECESS)

25 (TRANSCRIPT CONTINUED NEXT PAGE)



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DECEMBER 7, 2016 9:00 A.M.

(DEFENDANT PRESENT)

THE COURT: Okay. I have been  
advised that all of our jurors are here. Are  
we ready for them?

SOLICITOR PATTERSON: Your Honor,  
if we may have just a moment. We have the  
original of the forensic interview ---

THE COURT: Okay.

SOLICITOR PATTERSON: --- based on  
what happened pre-trial. So we had tested  
the other one. We're just going to throw it  
in and be sure that it works.

THE COURT: Okay. No worries.

SOLICITOR PATTERSON: Thank you.

(COURT AT-EASE)

SOLICITOR PATTERSON: Your Honor, I  
think we're ready.

THE COURT: Okay. Get our jury.

MR. QUINN: If I may, Judge,  
before you bring the jury?

THE COURT: Sure.

MR. QUINN: Your Honor, it appears

1       that the next witness from the State is going  
2       to be Christine Carlberg, and that through  
3       Ms. Carlberg they will attempt to introduce a  
4       videotaped interview at the Julie Valentine  
5       Center.

6                   THE COURT:       Yes, sir.

7                   MR. QUINN:       I understand that the  
8       Court has earlier found that the video is  
9       appropriate under Code Section 17-23-175. I  
10      would object to the admission of the  
11      videotape. I believe it's self-serving,  
12      allowing the State to bolster the child's  
13      testimony, by a prior inconsistent statement,  
14      which I do not believe is admissible under  
15      most rules of the Court. And I believe that  
16      the testimony is duplicative as she is going  
17      to testify to the jury and, therefore,  
18      unnecessary. So I object, even though I  
19      recognize there's a statute that you've  
20      already found it's appropriate under. I  
21      object to the admission of the video.

22                   THE COURT:       Okay. All right.  
23      You're protected on the record in that  
24      regard. I think that the law specifically  
25      contemplates the admission of the forensic

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1 interview. So far as those particularized  
2 guarantees of trustworthiness are met and I  
3 understand your concern about bolstering.  
4 And I think that the Supreme Court has issued  
5 -- published several opinions bearing upon  
6 that issue and I trust the State's going to  
7 be very careful not to use this witness's  
8 testimony an attempt to bolster but merely as  
9 a vehicle for introducing the forensic  
10 interview established in the context in which  
11 it was taken. So you're protected on the  
12 record.

13 MR. QUINN: Okay. Thank you.

14 SOLICITOR PATTERSON: Thank you,  
15 Your Honor.

16 THE COURT: You ready?

17 SOLICITOR PATTERSON: We're ready.

18 THE COURT: You can bring them in,  
19 please?

20 (JURY IN @ 9:10 A.M.)

21 THE COURT: All right. Good  
22 morning everybody. I hope you had a good  
23 evening.

24 JURY: Good morning.

25 THE COURT: Let's go ahead and get

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1           started. Ms. Patterson, you may call  
2           your first witness, ma'am.

3           SOLICITOR PATTERSON: Thank you,  
4           Your Honor. The State would call Christine  
5           Carlberg.

6                               (WITNESS TAKES STAND)

7           CHRISTINE CARLBERG, having been  
8           duly sworn to tell the truth, and nothing but  
9           the truth, testified as follows:

10                           DIRECT EXAMINATION

11           BY SOLICITOR PATTERSON:

12           Q. Ms. Carlberg, can you tell the jury  
13           where you work?

14           A. I am employed by the Greenville  
15           Department of Mental Health and I'm  
16           contracted to work at the Julie Valentine  
17           Center.

18           Q. And what is the Julie Valentine  
19           Center?

20           A. The Julie Valentine Center is a  
21           local organization that deals with sexual  
22           abuse in children and sexual assault of  
23           adults.

24           Q. And tell us a little bit about  
25           yourself, what's your educational background?

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1           A.    I have a bachelor's of science  
2           degree in rehabilitation services education  
3           with a minor in psychology from the  
4           Pennsylvania State University. And I have a  
5           master's of arts in marriage and family  
6           therapy from Reformed Theological Seminary in  
7           Jackson, Mississippi.

8           Q.    And what's your job title at the  
9           Julie Valentine Center?

10          A.    I'm a forensic interviewer.

11          Q.    And what do your duties involve with  
12          that?

13          A.    I conduct forensic interviews.  
14          That's my only job there.

15          Q.    Okay. And let's take a step back  
16          first and tell the jury how a child is  
17          referred to the Julie Valentine Center?

18          A.    A child is normally referred by  
19          either law enforcement or the Department of  
20          Social Services.

21          Q.    And you mentioned that you do  
22          forensic interviews. What is a forensic  
23          interview?

24          A.    A forensic interviewer, a forensic  
25          interview is non-leading, non-suggestive

1 manner of gathering information for purposes  
2 of an investigation.

3 Q. And are you specifically trained in  
4 conducting forensic interviews?

5 A. Yes, ma'am.

6 Q. And do you have a particular model  
7 that you use in conducting forensic  
8 interviews with children?

9 A. We use the South Carolina ChildFirst  
10 protocol for conducting interviews for  
11 children.

12 Q. And what is that protocol, stated  
13 just very briefly?

14 A. It's a semi-structured protocol that  
15 has several steps including rapport, and then  
16 you transition into talking about the alleged  
17 allegations. And then you do a rapport  
18 exploration, which is where you're talking  
19 about what happened, and then a closure,  
20 which is where you end the interview.

21 Q. And do you use any sort of diagrams  
22 or dolls during these interviews?

23 A. We can, yes.

24 Q. And why would you use those?

25 A. We use those mostly for clarifica-

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1           tion purposes. Like if a child names a body  
2           part, I can have them identify that on the  
3           drawing so I know exactly what they're  
4           talking about. And we might use dolls to  
5           have them demonstrate what happened.

6           Q.   What kinds of questions do you use  
7           when doing a forensic interview?

8           A.   We ask open-ended questions, non-  
9           leading, non-suggestive questions.

10          Q.   Did you conduct a forensic interview  
11          with the victim in this case, **Minor** ?

12          A.   Yes, ma'am.

13          Q.   How old was she when the interview  
14          took place?

15          A.   She was eight.

16          Q.   Was the interview recorded?

17          A.   Yes, ma'am.

18          Q.   Ms. Carlberg, I'm going to show you  
19          what has been marked as State's Exhibit 2.  
20          Can you tell the jury what that is?

21          A.   That's the original copy of her  
22          interview that I conducted on April 21<sup>st</sup>,  
23          2015.

24          Q.   And how do you know that?

25          A.   I marked it as original and then I

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1 reviewed it also.

2 Q. And when did you review it?

3 A. Yesterday.

4 Q. And has this, the interview been  
5 altered or tampered in any way from when it  
6 was originally recorded?

7 A. No, ma'am.

8 SOLICITOR PATTERSON: Your Honor,  
9 at this time the State would move State's 2  
10 into evidence.

11 THE COURT: Yes, sir.

12 MR. QUINN: Subject to my earlier  
13 objection.

14 THE COURT: Okay. Same ruling. I  
15 overrule the objection, noting the same, it's  
16 entered as State's Exhibit ---

17 COURT REPORTER: State's Exhibit 2.

18 THE COURT: --- 2. Okay.

19 (SO ENTERED AS STATE'S EXHIBIT 2)

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR PATTERSON:

22 Q. And Ms. Carlberg, did **Minor**  
23 disclose sexual abuse to you during your  
24 forensic interview?

25 A. Yes, ma'am.



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1 Q. And when did she say the abuse  
2 occurred?

3 A. She said that it occurred between  
4 the ages of five and eight-years-old.

5 Q. And where did she say it occurred?

6 A. She said that it happened at her  
7 sister, Toi's, house.

8 MR. QUINN: Your Honor, if I may  
9 have just a moment.

10 THE COURT: Yes, ma'am.

11 MR. QUINN: Your Honor, nothing  
12 further from the State from this witness.

13 THE COURT: Okay. Yes, sir.

14 MR. QUINN: Well, if you can  
15 assist me with the technology so we can show  
16 the tape to the jury.

17 (OFF RECORD DISCUSSION BETWEEN COUNSEL)

18 SOLICITOR PATTERSON: Your Honor,  
19 may we go ahead and publish the forensic to  
20 the jury?

21 THE COURT: Sure. Absolutely.

22 SOLICITOR PATTERSON: Can we have  
23 the witness step down since this is a  
24 somewhat lengthy video?

25 THE COURT: Sure.

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1 WITNESS: Thank you, Judge.

2 (WITNESS STEPS DOWN)

3 MR. QUINN: Your Honor, will you  
4 advise the witness that as she's been sworn  
5 and at this point as a witness that she's not  
6 to discuss her testimony or talk to anybody  
7 during the showing of the video.

8 THE COURT: She's not, unless  
9 there are questions that are posed.

10 MR. QUINN: Oh, I understand if  
11 she was still on the stand. I'm concerned  
12 about while she's off the stand who she might  
13 speak with.

14 THE COURT: Oh, okay. Is she  
15 leaving the courtroom or is she going to stay  
16 right there?

17 MR. QUINN: I assume she will  
18 remain in the courtroom.

19 THE COURT: So, Ms. Carlberg,  
20 you're still a witness. So even though  
21 you've stepped down, you can't discuss the  
22 substance of your testimony with anyone,  
23 okay?

24 WITNESS: Yes, sir.

25 THE COURT: You're just down as a

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1 matter of convenience so you won't have  
2 that bright light shining in your eyes.

3 WITNESS: Yes, sir.

4 THE COURT: Okay. Thank you.

5 (STATE'S EXHIBIT 2 PUBLISHED)

6 THE COURT: All right. Ms.  
7 Carlberg, come back up and take the stand,  
8 please, ma'am.

9 (WITNESS RESUMES STAND)

10 THE COURT: And I believe Mr.  
11 Quinn, you were ---

12 MR. QUINN: Yes, sir. Thank you.

13 CROSS-EXAMINATION

14 BY MR. QUINN:

15 Q. Ms. Carlberg, I believe you told  
16 this jury you ask non-leading and non-  
17 suggestive questions; is that correct?

18 A. Yes, sir.

19 Q. Isn't it also true that you ask some  
20 questions over and over and over again,  
21 hoping for a different response?

22 A. I wasn't hoping for a different  
23 response.

24 Q. Then why would you ask the question  
25 again if you were satisfied with the response

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1 that you received?

2 A. Some children don't answer things  
3 right away and they need time or they will  
4 feel comfortable later on in the interview.

5 Q. So when Minor told you that he did  
6 not touch inside of her the first three  
7 times, you felt you had to ask yet again, a  
8 fourth time?

9 A. I did ask with the dolls again.

10 Q. Okay. And the police officer was  
11 there during this interview? Not in the  
12 room, but he was at the Julie Valentine  
13 Center; is that right?

14 A. Yes, sir.

15 Q. And he observed this interview?

16 A. Yes, sir.

17 Q. And when you stepped out, is he one  
18 of the people you talked to, to determine  
19 whether you should ask additional questions?

20 A. He was in the room with other  
21 observers.

22 Q. And didn't you ask several times  
23 what did he make his hand do, even though  
24 Minor had already answered "nothing"? Did  
25 you ask that question several times?

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1           A. I might have, yeah. I don't  
2 remember.

3           Q. And is it fair to say that Minor  
4 statement to you was that she was touched on  
5 her vaginal area more than one time?

6           A. Yes, sir.

7           Q. She, in fact, specifically denied  
8 again on several occasions, that there was  
9 any other kind of touches or any touches with  
10 her mouth; isn't that correct?

11          A. Yes, sir.

12          Q. She denied seeing anything like this  
13 in TV or on a movie; isn't that correct?

14          A. Yes, sir.

15          Q. She told you several times that she  
16 thought 'Tari was scary and evil and that he  
17 told her "I'll kill you" or "I'll kill you  
18 and your family"?

19          A. Yes, sir.

20          Q. She said this happened at Toi's  
21 house; is that correct?

22          A. Yes, sir.

23          Q. And that nobody else was at the  
24 house when it happened?

25          A. Yes, sir.

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1 Q. And I believe you specifically asked  
2 about Caesar and she said Caesar was outside?

3 A. I do not know.

4 Q. I think she said he was out playing.

5 SOLICITOR PATTERSON: Your Honor,  
6 at this point I'm going to object. This is  
7 all in the video for the jury to be able to  
8 see and observe for themselves.

9 THE COURT: Okay. I overrule.

10 CROSS-EXAMINATION CONTINUED

11 BY MR. QUINN:

12 Q. She said he was outside?

13 A. She just said he wasn't there. I  
14 don't know if she said he was outside or not.

15 Q. And did you inquire as to how old  
16 Caesar was?

17 A. I think she said he was five.

18 Q. And did you ask if he had a brother  
19 or a sister or any other relatives?

20 A. No, I didn't.

21 Q. So in your description for your job  
22 as a forensic interviewer, you said forensic  
23 simply means that this interview may later be  
24 used in court; isn't that right?

25 A. Yes, sir.

1 Q. You're not an investigator. You  
2 don't go out and look into this case?

3 A. No, sir.

4 Q. And this interview was conducted in  
5 April of 2015; is that correct?

6 A. Yes, sir.

7 Q. Have you done another interview with  
8 **Minor** about this incident since that date?

9 A. No, sir.

10 MR. QUINN: I don't have any other  
11 questions. Thank you.

12 THE COURT: Redirect, ma'am?

13 SOLICITOR PATTERSON: Nothing  
14 further from the State, Your Honor.

15 THE COURT: Okay. Thank you, Ms.  
16 Caldwell. I appreciate it. You may step  
17 down.

18 (WITNESS STEPS DOWN)

19 THE COURT: All right. Anybody  
20 need a break? (No response). Everybody's  
21 good?

22 Okay. You can call your next  
23 witness, Ms. Patterson.

24 SOLICITOR PATTERSON: Thank you,  
25 Your Honor. The State would call Kristin

1 Mallick. Excuse me. Kristin Mallick  
2 Rich. She's recently gotten married.

3 (WITNESS TAKES STAND)

4 KRISTIN RICH, having been duly  
5 sworn to tell the truth, and nothing but the  
6 truth, testified as follows:

7 DIRECT EXAMINATION

8 BY SOLICITOR PATTERSON:

9 Q. Ms. Rich, can you tell the jury  
10 where you're currently employed?

11 A. Sure. I work for the Department of  
12 Mental Health and I work at the Piedmont  
13 office in the Greer Clinic.

14 Q. And what do you do for Mental  
15 Health?

16 A. I am a clinical counselor. I'm a  
17 therapist for children and adolescents. And  
18 I currently work in a school at Greer High  
19 School. And prior to that I was in the out-  
20 patient office at the Greer Clinic.

21 Q. Do you see children of all ages?

22 A. I did when I was at the outpatient  
23 office. But now mostly teenagers, but I kept  
24 some clients from when I was in outpatient,  
25 just so that they could have consistency of



1       care.

2               Q.    Tell us a little bit about your  
3       educational background?

4               A.    Yes.. I am a graduate of the  
5       University of South Carolina and I got my  
6       degree in clinical science and cognate in  
7       social work in 2003.

8               And then in -- let's see. I went  
9       overseas for a while. I did some  
10      humanitarian work.

11              And then after that, I went to Columbia  
12      International University and got my master's  
13      in clinical counseling.

14              Q.    And what about your employment  
15      history? Where have you worked since you've  
16      been out of school?

17              A.    Okay. I worked for a humanitarian  
18      organization and was overseas in between  
19      undergrad and graduate school, teaching  
20      English and critical thinking and debate in  
21      universities.

22              And then after that, I was a graduate  
23      assistant, so I helped teach the classes that  
24      I'd already gone through.

25              And then after that, I worked for about a

1 year with the South Carolina Autism Project  
2 and did in-home therapy with autistic  
3 children.

4 And then in 2011, started working for the  
5 Department of Mental Health in Rock Hill,  
6 South Carolina doing the same thing that I do  
7 now.

8 And then in -- was it 2013, I transferred  
9 back here to Greer because it's my hometown.

10 Q. And tell the jury a little bit about  
11 your job and your current duties?

12 A. Sure. So what I basically do is I  
13 get to meet with children and teenagers and  
14 their parents. And see kind of what's going  
15 on, do an evaluation and assessment of any  
16 difficulties that they might have, any  
17 symptomology that they might be having or  
18 issues and then do an assessment, a diagnosis  
19 and then provide a treatment plan to help  
20 them to feel better and do better.

21 And I also work with doctors and nurses  
22 and other therapists, if we do a consultation  
23 and staffing as well.

24 So I do individual therapy and family  
25 therapy and occasionally group therapy, but

1 mostly individual and family therapy.

2 Q. Do you specialize in any particular  
3 type of therapy for children?

4 A. I have different types. I am  
5 certified as a Project BEST-certified  
6 clinician to do trauma-focused cognitive  
7 behavioral therapy, which is particularly  
8 related to childhood trauma.

9 Q. Tell the jury a little bit about  
10 what trauma is?

11 A. Okay. So trauma is a very bad event  
12 where somebody feels like they might be hurt  
13 or killed or something very bad might happen  
14 to them. And generally, it's shocking in  
15 nature where somebody feels helpless or  
16 terrorized or horrified, and if that occurs  
17 to them. So something out of the ordinary  
18 that's bad. It's worse than falling down and  
19 skinning your knee. It's something that  
20 tragically shifts your life.

21 Q. Can you give some examples of  
22 trauma?

23 A. Uh-huh. So a lot of the children  
24 that I work with, different types of trauma  
25 that they've gone through: car accidents;

1       witnessing domestic violence; physical abuse;  
2       sexual abuse; the witnessing the death of a  
3       loved one that's traumatic or violent;  
4       robberies; kidnappings; house fires; things  
5       of that nature.

6               Q.   And what therapy model do you  
7       generally use with children?

8               A.   So for children with trauma, the  
9       evidence-based model that I've been trained  
10      in is called trauma-focused cognitive  
11      behavioral therapy. So it focuses on the  
12      trauma.

13              And basically what that model is, is  
14      first you provide information about trauma,  
15      so that they know what's going on. A lot of  
16      times they just feel like they are having  
17      these symptoms but they don't know why. So  
18      we talk about that.

19              Then some tools that they can use to kind  
20      of relax, understand their emotions, under-  
21      stand their thoughts.

22              And then the most important part of the  
23      trauma is to talk about what happened. When  
24      something bad happens, we generally like to  
25      avoid and not talk to anybody about it. The

1       problem is, is that we're reminded of it  
2       often. So the more we can talk about it and  
3       they know that they're safe now, the better  
4       that they can feel and do better after a  
5       trauma.

6               Q. And are you currently licensed as a  
7       counselor?

8               A. I am. I'm a licensed professional  
9       counselor for the State of South Carolina.

10              Q. And what's the process to become a  
11       licensed professional?

12              A. So the first part is to meet the  
13       educational requirements and standards, which  
14       I did with my master's degree.

15              Then the next part is to take a national  
16       exam, called a national counselor's  
17       examination. And after you sit through the  
18       exam and pass the exam then you go into --  
19       you can apply to be licensed as a licensed  
20       professional counselor intern; where, for two  
21       years, you work -- and you do basically what  
22       you would do as any other therapist. And you  
23       meet with a supervisor and they talk to you  
24       about your cases and provide more, further  
25       direction.

1           And then after you've met those  
2           requirements with meeting with clients, as  
3           well as with your supervisor, then you apply  
4           to transition your license from licensed  
5           professional counselor intern to licensed  
6           professional counselor.

7           Q.   And what are you able to do as a  
8           licensed professional counselor?

9           A.   So you're able to asses, diagnosis  
10          -- diagnose and to treat.

11          Q.   Can you talk a little bit about what  
12          training you have received, particularly with  
13          focus on trauma?

14          A.   Yes. I've participated in the  
15          Project BEST learning collaborative. It was  
16          a year-long training. And throughout the  
17          training there were some learning sessions,  
18          which are three sessions, two days apiece,  
19          getting training in the model.

20          And then as you're going throughout the  
21          year-long process, you are actively  
22          participating. You have a client that you've  
23          identified that has trauma. And you're  
24          providing the treatment as you go along. And  
25          then there's consultation calls with experts

1 every other week, an hour apiece, that you  
2 participate in as well. And you have to  
3 complete three cases in order to be put on  
4 their roster saying that you have completed  
5 the training and you've got a certificate,  
6 that you are trained and competent in  
7 providing TFCBT, which is the trauma-focused  
8 therapy but just for short.

9 Q. And what about other trainings that  
10 you've been through?

11 A. I've also done a TREM training,  
12 which is Trauma Focused Empowerment Model.  
13 That is specifically regarding sexual abuse  
14 and it's talking about empowering children  
15 and women to be safe and feel space. It's  
16 specifically geared towards female. And so  
17 that was a two-year training.

18 And then I've also done a Stewardships of  
19 Children training, which are strategies and  
20 responses for children who have disclosed  
21 sexual abuse.

22 Q. And are your treatment models and  
23 protocols based on evidence-based studies?

24 A. Yes. So evidence-based means that  
25 what I'm providing for a client is based on

1 scientific evidence, not just kind of a 'feel  
2 good, oh, I think this might help.' But it's  
3 based on a model to say this is how you  
4 approach this. And that it has been studied  
5 to say that it produces results and that  
6 there's scientific evidence for that. And so  
7 the TFCBT is a scientific evidence based  
8 model that you use with children who have  
9 undergone a type of trauma.

10 Q. And in addition to those evidence-  
11 based models, do you consult with other  
12 therapists, doctors?

13 A. Yes.

14 Q. Can you tell us a little bit about  
15 that?

16 A. Yes. Weekly, we have a staffing  
17 with our doctor, our nurse and other  
18 clinicians like myself. We consult. We talk  
19 about cases. How clients are doing. What's  
20 the best for them. How they're progressing  
21 in their therapy and in their functioning.

22 Q. How many children would you estimate  
23 you've provided therapy to over the course of  
24 your career?

25 A. About five hundred.



1 Q. And how many children who've  
2 experienced trauma as a result of sexual  
3 abuse have you provided treatment to?

4 A. Between a hundred and twenty to a  
5 hundred and fifty.

6 Q. And have you been qualified as an  
7 expert to testify in court before?

8 A. Yes. Two times.

9 SOLICITOR PATTERSON: Your Honor,  
10 at this time, the State would move to qualify  
11 Ms. Rich as an expert in the treatment of  
12 child trauma and child sexual abuse dynamics.

13 THE COURT: Okay. Do you have any  
14 *voir dire*, sir?

15 MR. QUINN: Not at this time.  
16 Subject to my previous ---

17 THE COURT: Okay. Good enough.  
18 Ladies and gentlemen, when a party attempts  
19 to introduce a witness as an expert witness,  
20 they do so because of the witness's  
21 particular education, experience, and  
22 expertise in a given field. The reason  
23 someone may offer an expert witness as a  
24 witness is to further explain the evidence  
25 that's been entered. Now, also, the reason a

1 expert witness would be offered is because an  
2 expert witness can testify to things that a  
3 lay witness can't testify to, such as offer  
4 opinion evidence that a lay witness couldn't  
5 otherwise offer into the record.

6 Now, I want you to understand that  
7 when a witness is qualified as an expert  
8 witness, it does not mean that they have any  
9 preferred status in court. And it doesn't  
10 mean that their testimony has any preferred  
11 status or greater weight.

12 Just because somebody is qualified  
13 as an expert witness, you, in your capacity  
14 as finders of the facts, you look at that  
15 testimony. You determine whether it's  
16 credible. You determine whether it has  
17 weight. And you determine what value it has  
18 in your analysis of the evidence. In other  
19 words, you consider it just like you consider  
20 any other piece of evidence and any other  
21 witness's testimony in a case.

22 In this instance, also qualify the  
23 witness as an expert witness in the field  
24 which you have articulated. You may proceed.

25 SOLICITOR PATTERSON: Thank you,

1 Your Honor.

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR PATTERSON:

4 Q. So what are some symptoms a child  
5 may show after experiencing trauma?

6 A. So after experiencing trauma, a  
7 child often is going to show some avoidance,  
8 not wanting to talk about it, not wanting to  
9 go around someplace that reminds them of the  
10 trauma or a person that reminds them of the  
11 trauma.

12 They also oftentimes are going to have  
13 some, what we call, hypervigilance or watch  
14 out for danger, being more aware, fear that  
15 it'll happen again.

16 They also have difficulty -- sleep  
17 difficulties, either not wanting to go to  
18 sleep, trying to avoid sleep, nightmares,  
19 waking up in the middle of the night,  
20 different things of that nature.

21 They also have some difficulties with  
22 emotions, behavior disturbances. A lot of  
23 time with younger children, you'll see them  
24 acting out, you know, at school or at home,  
25 more behavior disturbances.

1           There's also some somatic symptoms  
2           meaning stomach aches, you know, throwing up,  
3           not feeling good, things of that nature.  
4           That's very common in children that are  
5           younger versus children that are older.

6           You also have some intrusive thoughts  
7           thinking about the trauma over and over  
8           again. When you don't want to, it pops in  
9           your head, flashbacks; difficulty controlling  
10          memories, just thinking about things when  
11          they don't want to. And, you know, mood  
12          disturbances, feeling upset, having  
13          difficulty controlling their emotions.

14          Q. Are there symptoms a child may  
15          experience that are particular to sexual  
16          abuse trauma?

17          A. So sexual abuse trauma is strongly  
18          correlated with that. It's sometimes, you  
19          know, bedwetting, pulling out hair, wanting  
20          to avoid particular situations, being  
21          frightened of being in certain situations.

22          Sometimes children who have been abused  
23          by a particular type of perpetrator, they  
24          want to avoid that. So avoid -- some  
25          children want to avoid men. Some children

1 want to avoid certain situations.

2 Q. And why are the symptoms of trauma  
3 and sexual abuse trauma different?

4 A. Well, I think, you know, it tends to  
5 be kind of more just situational. You know,  
6 with the situation, you know, a lot of times  
7 sexual abuse happens very seductively. And  
8 so the children -- children -- it's very  
9 different than a car accident is -- that's  
10 very scary and the car, you know, they'll  
11 want to avoid the car. But a lot of times  
12 children who have undergone sexual abuse have  
13 done that. It's happened in the context of a  
14 relationship. And so when a relationship is  
15 violated in that way, a lot of times the  
16 child can feel a lot of shame, fear,  
17 insecurity and display a lot of symptoms of  
18 shame, or guilt or secrecy or not understand-  
19 ing things. So it's different because it's  
20 that relationship in a lot of ways.

21 Q. Is it fair to say that there can be  
22 some overlap between the symptoms?

23 A. Yes.

24 Q. Talking specifically about sexual  
25 abuse, do all children who have been sexually

1       abused typically tell immediately?

2               A.   No.   Most children will delay a  
3       disclosure.   A lot of times that happens due  
4       to many different circumstances.

5               Sometimes it's because the abuser has  
6       threatened them and they're afraid,  
7       threatened them or threatened family members  
8       and so they will delay disclosure.

9               Some people are sure -- whether they're  
10      told to keep a secret and adults tell them to  
11      keep a secret so they shouldn't -- or they  
12      fear that they're going to get somebody that  
13      they love in trouble.   So oftentimes they  
14      will delay that disclosure.

15              Studies show that delayed disclosure  
16      happens more often when the child or the  
17      perpetrator is a family member of the child  
18      as well.

19              And, also, the younger the child then the  
20      more common it is for the disclosure to be  
21      delayed.   Oftentimes, they'll also wait until  
22      they feel safe.

23              Q.   And once a child has told, does a  
24      child typically tell everything that happened  
25      all at once?

1           A. Well, disclosure is really not an  
2 event, it's a process. So it doesn't just  
3 happen one time. It happens over the course  
4 of time, especially for someone, a child who  
5 has had repeated instances of sexual abuse or  
6 trauma. They're going to disclose over time.

7           Sometimes they'll tell the thing that's  
8 bothering them the most at the moment, the  
9 memory that they have at the moment.

10           Sometimes they will say a little bit and  
11 see if the parent or whoever they're  
12 disclosing to can handle it because they're  
13 worried that they're going to make the adults  
14 in their life cry or they're going to make  
15 them upset. So oftentimes, they'll kind of  
16 do a little bit and then a little bit more  
17 and then a little bit more, especially as  
18 they feel safe or feel comfortable.

19           Q. And does that piecemeal disclosure,  
20 can it be situation dependent?

21           A. As in like what happened?

22           Q. Or what situation the child's in?

23           A. Sure. Sure. Some children are  
24 going to feel more comfortable talking, you  
25 know, to a safe adult, a teacher. Other

1 children are going to be more comfortable  
2 talking to their parent. It just depends on  
3 the child.

4 Sometimes they're afraid that they're  
5 going to get people in trouble again. So  
6 they're going to try to talk to somebody that  
7 maybe they deem as safe.

8 And it does matter when they disclose if  
9 they're believed. You know, a lot of times  
10 children will stop saying something if they  
11 feel like the adult that they tell doesn't  
12 believe them or doesn't want it to be true or  
13 doesn't -- kind of denies it or pushes it  
14 aside.

15 So a child will kind of close up because  
16 they don't want to hurt the adults in their  
17 life.

18 Q. If a child closes up, are there ways  
19 that you use in therapy to try and get them  
20 to express themselves?

21 A. A lot of times what we do is we  
22 normalize that, say that that's kind of  
23 normal, you know, and that they're safe and  
24 that they can share what they need and want  
25 to share. Oftentimes, with younger children



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1        what we do, they have a hard time talking  
2        about things so we allow them to draw or just  
3        introduce that to a way -- can you draw what  
4        happened. And they're much more likely to  
5        draw rather than just to talk.

6                Q.    I want to move a little more  
7        specifically. Have you provided therapy to  
8        the victim in this case, Minor [REDACTED] ?

9                A.    Yes.

10               MR. QUINN:    Your Honor, I have a  
11        Motion I need to take up outside the presence  
12        of the jury.

13               THE COURT:    Okay. All right.  
14        Ladies and gentlemen, we're going to take up  
15        a motion. I'm going to have to ask you exit  
16        the courtroom. It's in regard to evidence  
17        and the introduction of evidence and whether  
18        it's admissible or not.

19               I hope it doesn't take us too long,  
20        but while you're out I want you to do  
21        something. I'm going to give you some  
22        homework, okay? One of you needs to serve as  
23        foreperson of the jury, okay? And I want you  
24        to decide who should be the foreperson of the  
25        jury, among the first twelve, okay? The

1           foreperson of the jury has responsibility  
2           to ensure that in your deliberations everyone  
3           has the opportunity to be heard. In a group  
4           of twelve people who don't know each other,  
5           there are going to be people who are louder  
6           than others and people who are more subdued  
7           and more quiet than others. The foreperson  
8           needs to be sensitive to that and make sure  
9           that everyone in the jury room has the  
10          opportunity to be heard and that everyone has  
11          a voice. Also, the jury foreperson, if  
12          collectively the jury has a question you need  
13          to pose to me, you can write that down and  
14          give it to the bailiff and he can present  
15          that question to me. I'm hopeful that after  
16          we have given the charge and we've done  
17          arguments, that you won't have any questions.  
18          But from time to time, it happens, okay?

19                So I'll ask you, having given you  
20          that homework to return to your jury room and  
21          we'll try to return as soon as possible.

22                       (JURY OUT @ 10:25 A.M.)

23                   THE COURT:     Okay. Yes, sir.

24                   MR. QUINN:     Your Honor, at this  
25          time I'd move for a mistrial.

1           There are two -- well, there are  
2           several ways to vouch for the credibility of  
3           a witness. One being obvious if somebody is  
4           on the stand and says I believe them.

5           The other is the situation we've got  
6           here where Ms. Rich has testified -- and I've  
7           waited to make the objection until it was  
8           clear that she was the counselor for the  
9           child in this case -- where Ms. Rich has  
10          testified that she works with a group of  
11          people that have suffered trauma. The trauma  
12          may come from several possibilities: car  
13          accidents, physical abuse, sexual abuse, and  
14          I believe there were others. I couldn't  
15          write them all down. But clearly the case  
16          here, it is a sex abuse case, highlighted by  
17          the Solicitor who says:

18                 'Well, how many cases have you dealt  
19                 with?'

20                 'About five hundred.'

21                 'How many were sex abuse cases?'

22                 'A hundred and twenty to a hundred  
23                 and fifty.'

24                 She then delineates the symptoms of  
25                 the sex abuse and symptoms of trauma and

1 talks about how this is a scientific  
2 evidence-based model that they work from.

3 Well, once Ms. Rich says 'I only  
4 work with people who have been traumatized,  
5 who have suffered...' -- I believe that her  
6 description was "a very bad event, one that  
7 they can feel that they can be hurt or  
8 killed, that was shocking and would leave  
9 them horrified", she is saying that, 'Every  
10 child I work with or every person I work with  
11 has suffered some trauma. That's why I  
12 provide counseling to them, is they are my  
13 clientele.'

14 By definition then, she is saying  
15 **Minor** suffered a trauma. In this case, the  
16 trauma was from sexual abuse. And she's not  
17 said those words yet.

18 But that is clear that the evidence  
19 the State's trying to put forward. So she is  
20 vouching for the credibility of the witness  
21 by saying in essence, 'if she didn't suffer  
22 trauma, I wouldn't be working with her. I  
23 only work with people who have suffered a  
24 trauma. And that is why **Minor** is my  
25 client.' So she is saying, 'I believe

1       Minor [REDACTED] has suffered a trauma.'

2               The trauma in this case is alleged  
3       to be sexual abuse which is the allegations  
4       against my client. And so she's vouching for  
5       the credibility of the witness.

6               THE COURT:     Okay. Ms. Patterson?

7               SOLICITOR PATTERSON:     Your Honor,  
8       I would say first of all these are the same  
9       questions, at least up to this point in the  
10      qualification, in terms of we talked about  
11      how many children Ms. Rich has seen where she  
12      focuses. Ms. Rich's testimony thus far has  
13      been completely contained to blind expert  
14      testimony.

15              She certainly has not gone anywhere  
16      near where Mr. Quinn is insinuating, that  
17      every child she has ever treated has  
18      absolutely experienced X,Y, or Z type of  
19      trauma. She has not articulated that she  
20      believes the victim. We have not gone into  
21      that at all. We talked about this pretrial.  
22      The State is going to contain its questions  
23      that will be particular to Minor [REDACTED] to what  
24      the Court allowed pretrial. We are not going  
25      to get into what Minor [REDACTED] symptoms are. We

1 are not going to get into whether or not  
2 obviously she believes or thinks that those  
3 symptoms are consistent with sexual abuse at  
4 all.

5 If we went with Mr. Quinn's  
6 argument, I think that would almost  
7 eviscerate the State's ability to use an  
8 expert in this context, which the court has  
9 said it is extremely important to allow the  
10 jury to understand the dynamics of what go on  
11 in these cases.

12 THE COURT: Yes, sir.

13 MR. QUINN: I'm always impressed I  
14 have such ability to control every case  
15 that's going to ever come before the court by  
16 my arguments.

17 The symptoms have been laid by other  
18 witnesses and all they're doing is echoing  
19 them through their expert. So to say, 'well,  
20 I'm not going to ask this witness was she, in  
21 fact, wetting her bed.' It has come out  
22 through another witness. And she lists as  
23 one of the symptoms, that symptom. 'Is she  
24 avoidant?' Well, you can see how she was in  
25 the tape with the Julie Valentine Center.

1                   So just because this witness doesn't  
2           list those symptoms and say they match  
3           Minor           that wouldn't stop the Solicitor, if  
4           this evidence was allowed, from in closing  
5           argument getting up and saying, 'you heard an  
6           expert talk about how these symptoms are  
7           indicative of sexual trauma' and 'didn't you  
8           see that those symptoms had been spelled out  
9           by other witnesses?'

10                   So once you cross that line to say  
11           'I only deal with traumatized people or  
12           traumatized children', that's vouching for  
13           the credibility of the witnesses.

14                   THE COURT:    Do you care to  
15           respond?

16                   SOLICITOR PATTERSON:    Your Honor,  
17           it's the State's burden to prove the  
18           defendant's guilt beyond a reasonable doubt  
19           having other lay witnesses come up and  
20           describe the victim's symptoms and then have  
21           the expert discuss those symptoms.

22                   Again, we're not going to have her  
23           get into the specifics. But the State is  
24           certainly entitled to tie its evidence  
25           together and argue to the jury that with the

1 evidence that's before them, the State has  
2 proven its case beyond a reasonable doubt.

3 I also do not believe that Ms. Rich  
4 testified that every single child she has  
5 treated has trauma. She -- I don't think  
6 we're getting far afield. She has stayed  
7 very carefully within the bounds of what the  
8 Court has laid out and what prior case law  
9 was laid out.

10 THE COURT: Yes, sir?

11 MR. QUINN: And I'm sorry to  
12 belabor it, but this is obviously crucial to  
13 this trial. I believe she testified that  
14 either the kids or 'the children. I work with  
15 have suffered trauma.' I believe that was  
16 her exact words. I'm sorry I don't know if  
17 it was kids or children. And what the  
18 Solicitor is saying is 'yeah, that's exactly  
19 what I'm doing. I'm going to get up and  
20 match up the symptoms she's testified to.'  
21 This is the whole reason to use a blind  
22 expert because now I'm in a terrible  
23 position. I can't get up and say, 'well, Ms.  
24 Rich, the only way your model works is if you  
25 believe **Minor** isn't it?' Then I am the



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1 one who has opened the door. So I am going  
2 to be prevented from being able to cross-  
3 examine about the dynamics when she's  
4 supposed to be the blind expert is treating  
5 [Minor] and questions about [Minor] Because  
6 as soon as I get up and say 'well, but in  
7 this case, she did' the solicitor's going to  
8 argue it whether it comes out of this witness  
9 or somebody else.

10 THE COURT: Well, what are the  
11 additional questions that you intend to ask  
12 her?

13 SOLICITOR PATTERSON: Your Honor, I  
14 intend to ask whether she provided therapy to  
15 [Minor] when she began her therapy.

16 If she was diagnosed with any  
17 disorder?

18 And as we discussed, that will be  
19 limited to the diagnosis of PTSD and ADHD.  
20 We're not going to into the diagnosis of  
21 child abuse -- child sexual abuse.

22 Ask her what PTSD is. We will not  
23 be going into the symptoms of that.

24 Did [Minor] disclose sexual abuse?  
25 How did she tell you about it? At that

1 point, Your Honor, the State will be moving,  
2 based on the foundation that Ms. Rich lays to  
3 move the drawing that Minor did into  
4 evidence.

5 When did she say this occurred?

6 Where did she say this occurred?

7 And we're done.

8 THE COURT: Okay. Let's take a  
9 short break. I'm going to think about it for  
10 a while, okay? You do realize that we're  
11 precariously close. And what I'm trying to  
12 do is preserve the record. This is --  
13 there's no question but that this could be  
14 construed as an end run around the  
15 established case law. And, again, this is  
16 definitely an issue on appeal. So I want to  
17 think about it and we'll get it as close to  
18 right as we can, okay?

19 SOLICITOR PATTERSON: And I would  
20 just say, Judge, too, I point -- I  
21 understand. I think the case law has been  
22 very clear. The *Brown* case, for instance,  
23 which I'm happy to find the cite, focuses on  
24 the difference between forensic interviewers  
25 and therapists. And I know we've gone

1 through that. But we will be very careful.  
2 She will certainly never be asked whether she  
3 believes this child. And we have taken out  
4 any symptoms that she would discuss.

5 THE COURT: Well, you know, we  
6 collectively as professionals are less  
7 concerned about what case law says and more  
8 concerned about what it means.

9 And what we're talking about is an  
10 expert witness, adult vouching for the  
11 veracity of a minor victim. And I'm not  
12 certain how we distinguish the therapist from  
13 a forensic interviewer. I know how we do it  
14 semantically. I'm not certain how we do it  
15 substantively. So we need to be very careful  
16 with that.

17 I do have some concerns. And I've  
18 been thinking about this for the last two  
19 days because it's -- and I told you that it's  
20 concerning to me. How does the defendant  
21 then conduct a complete and full cross-  
22 examination without opening the door? I  
23 mean, that's certainly difficult.

24 Now, let me ask you a question, Mr.  
25 Quinn. With regard to the disclosure, I

1 think you said yesterday you didn't have any  
2 issue with her discussing the disclosure.

3 MR. QUINN: What the child told  
4 her?

5 THE COURT: Right.

6 MR. QUINN: Right. In the best of  
7 all possible worlds, I wouldn't. Now that  
8 she's laid out that symptoms of sexual abuse  
9 are that -- and I'm sorry. I can't find the  
10 language, but that she wants her to discuss  
11 it and she wants her to bring it out. Now  
12 I'm not so sure that that's not going to be  
13 vouching also. But if the witness had gotten  
14 up and said 'look, the child told me this.'  
15 Yeah, I wouldn't have had any problems. But  
16 now, as I understand what the Solicitor's  
17 going to do, assuming that is what she is  
18 going to do, I don't think she can.

19 She's going to ask her what PTSD  
20 means.

21 And 'oh, by the way, is sex abuse  
22 one of the ways you can get post-traumatic  
23 stress disorder?' Well, yeah, it is.

24 And, 'Hey, was Minor [REDACTED] a  
25 victim of sexual abuse? Did she tell you she

1           was sexually abused?' Well, 'yes, she did.'

2                       If that's not vouching for the  
3           credibility of the witness and tying it all  
4           in a nice bow, I don't know what is.

5                       And I think the point we're at now,  
6           she's got -- it's a mistrial. I think all  
7           we're going to do is dig that hole deeper.  
8           And I, obviously, I don't know what the  
9           Court's going to rule. But if the Court does  
10          not rule in my favor at this point, we are  
11          going to be in a situation of asking a  
12          question, I object, the jury goes out and we  
13          argue it. Ask a question. I can't imagine  
14          there's any question past this point that is  
15          not vouching for the credibility of a witness  
16          when she has put her in the 'group that I  
17          treat is traumatized.'

18                      THE COURT:    Yeah, I'm not  
19          necessarily certain that I agree with that  
20          proposition. I think essentially at this  
21          point she has testified as a blind witness  
22          for all intents and purposes.

23                      Now, if she testifies about the  
24          disclosure, then obviously she represents to  
25          the jury that she has a relationship, a

1 professional relationship with this child.  
2 But if she doesn't talk about the diagnosis  
3 and all of those other things, then I don't  
4 think you get to the point of vouching.

5 Now, whether that testimony is  
6 prejudicial to the defendant's case is  
7 another matter. Perhaps it is. Certainly if  
8 it weren't prejudicial to some extent, the  
9 State wouldn't want it admitted. But just  
10 like any blind expert would get up and talk  
11 about the dynamics of child sexual abuse and  
12 delayed reporting and symptomology, things of  
13 that sort. You know, that's -- that has been  
14 consistently determined to be admissible and  
15 fair game.

16 I don't think -- I don't think she's  
17 gotten to the point of vouching yet, okay?

18 And I will tell you that with regard  
19 to -- when we finish this testimony, if you  
20 think that there is a curative instruction,  
21 perhaps that should be entered, then I'll  
22 consider that. I'm not saying that I think  
23 that's appropriate. I would say that I would  
24 consider that. But at this point I'm going  
25 to deny a mistrial because I don't think

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1 she's vouched yet, but I think she's getting  
2 precariously close, precariously close, okay?

3 So let's take a short break and  
4 we'll come back in in about five or ten  
5 minutes, okay?

6 SOLICITOR PATTERSON: Thank you,  
7 Judge.

8 (BRIEF RECESS)

9 (DEFENDANT PRESENT)

10 THE COURT: After having heard the  
11 testimony and heard what she has said about  
12 the admissibility of the expert's testimony  
13 regarding her personal attending diagnosis  
14 and treatment of the victim. I know  
15 initially I'd said that you could go to a  
16 certain point. Well, I think I'm going to  
17 retract that, and I think I was wrong. I  
18 think, after having heard the testimony and  
19 heard what she said, I think that once she  
20 starts to say that 'I was the attending  
21 physician and I diagnosed this and I treated  
22 this', then we are right back where the  
23 Supreme Court told us not to go and that's  
24 vouching for the credibility of the witness.

25 Now, I recognize that she wouldn't

1 expressly say that she's truthful. But I  
2 think it ultimately serves the same end.

3 I also think that from the State's  
4 perspective, the testimony that has already  
5 been elicited has served its purpose, which  
6 is there has been a recitation of symptoms  
7 and circumstances, which are in keeping with  
8 the minor victim's.

9 So I think, again, that any  
10 additional testimony regarding her specific  
11 treatment and diagnosis and individual would,  
12 first of all, violate the rule against  
13 vouching. And secondly, would be gratuitous  
14 and superfluous.

15 So moving forward what you can ask  
16 her about is -- you can ask her if she had  
17 the opportunity to discuss this and if she  
18 treated for purposes of introducing the  
19 disclosure, okay?

20 SOLICITOR PATTERSON: Okay.

21 THE COURT: And then, Mr. Quinn,  
22 you can certainly cross-examine her. I would  
23 caution you, though. You're right. There is  
24 a potential that you could open the door. I  
25 would suggest to you that you should be very



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1 careful in that regard, okay?

2 SOLICITOR PATTERSON: Your Honor, I  
3 just want to be sure I'm crystal clear on  
4 your ruling?

5 THE COURT: Yes, ma'am.

6 SOLICITOR PATTERSON: We will --  
7 the questions that I will ask will be did you  
8 treat the victim?

9 Did she disclose sexual abuse?

10 How did she tell you about it?

11 At that point, the State will move  
12 to admit the drawing that was done at the  
13 time.

14 When did occur?

15 Where did it occur?

16 THE COURT: Okay. Yes, ma'am.

17 SOLICITOR PATTERSON: Thank you.

18 THE COURT: Okay. All right.

19 Anything else we need to put on the record  
20 before I bring the jury back in?

21 SOLICITOR PATTERSON: Nothing from  
22 the State, Judge.

23 MR. QUINN: Nothing at this time.

24 THE COURT: Bring the jury. And  
25 put the foreman in the box. And let me know

1 before they come in who it is, okay?

2 BAILIFF: Your Honor?

3 THE COURT: Yes, sir.

4 BAILIFF: Here's the foreman.

5 THE COURT: Perfect. Thank you  
6 very much.

7 BAILIFF: Yes, sir.

8 SOLICITOR PATTERSON: Your Honor,  
9 may I ask the witness a quick question in  
10 front of everyone? I presumed she was in the  
11 courtroom and heard the ruling. I just  
12 wanted to be sure.

13 THE COURT: All right. Good  
14 enough. Thank you.

15 (WITNESS TAKES STAND)

16 THE COURT: Yeah. You can bring  
17 them.

18 (JURY IN @ 10:55 A.M.)

19 THE COURT: Okay. Is it  
20 Bonarrigo? Is that how you pronounce it?

21 FOREMAN: Yes.

22 THE COURT: Congratulations, Mr.  
23 Bonarrigo. You can put that on your resume  
24 as you move forward in your life, that you  
25 were a foreman of the jury.

1                   Okay. All right. Having said that,  
2                   Ms. Patterson, your witness, ma'am. You may  
3                   proceed.

4                   SOLICITOR PATTERSON:     Thank you,  
5                   Your Honor.

6                   DIRECT EXAMINATION CONTINUED

7                   BY MS. PATTERSON:

8                   Q.    Ms. Rich, did you provide treatment  
9                   to the victim in this case, [Minor] ?

10                  A.    Yes.

11                  Q.    And did [Minor] disclose sexual  
12                  abuse to you?

13                  A.    Yes.

14                  Q.    And how did she tell you about this?

15                  A.    She told me in the context of a  
16                  therapy session.

17                  Q.    And did she talk about it? Did she  
18                  do anything else?

19                  A.    She drew a picture.

20                  Q.    Ms. Rich, I'm showing you what's  
21                  been marked as State's Exhibit 4.

22                  A.    All right.

23                  Q.    Do you recognize that?

24                  A.    Yes, that's the picture that she  
25                  drew.

1 Q. And in what context did she draw  
2 that?

3 A. So I asked her to talk about or to  
4 share, draw a picture about the worst time of  
5 the sexual abuse that she reports that  
6 happened.

7 Q. And was this drawing part of the  
8 therapy?

9 A. Yes. Uh-huh.

10 Q. Is this the original drawing?

11 A. It is.

12 Q. And just to confirm, you're saying  
13 that Minor [REDACTED] drew that picture?

14 A. Yes. She drew this part. There are  
15 some things that I wrote in when I asked her  
16 questions.

17 Q. Has it been altered in any way since  
18 it was drawn?

19 A. No.

20 SOLICITOR PATTERSON: Your Honor,  
21 at this time the State would move to admit  
22 State's Exhibit 4.

23 THE COURT: Any objection, sir.

24 MR. QUINN: No. No objection.

25 THE COURT: Okay. All right.

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1 Without objection the same is admitted as  
2 State's Number 4.

3 (SO ENTERED AS STATE'S EXHIBIT 4)

4 MR. QUINN: And permission to  
5 publish it to the jury?

6 THE COURT: Yes, ma'am.

7 (STATE'S EXHIBIT 4 PUBLISHED)

8 DIRECT EXMAINATION CONTINUED

9 BY SOLICITOR PATTERSON:

10 Q. Ms. Rich, can you tell us a little  
11 bit about this picture?

12 A. Sure. I'm figuring out the laser  
13 pointer. Okay. So, I asked Minor to talk  
14 about the worst time -- she didn't want to  
15 talk about it. I asked her to draw. And  
16 this is what she drew right here. I -- this  
17 was over the course of two different  
18 sessions. So we added -- that's part of the  
19 model that you start with what you have and  
20 then you continue to ask her questions. So  
21 the open-ended -- she drew just this at the  
22 beginning. I asked her who those people were  
23 and she said 'Tari Makins. And then she  
24 said, "you know me, Minor And I -- those  
25 are mine, my notations there that I added. I

1 asked her -- the typical part of the model is  
2 to ask open-ended questions.

3 Where was this?

4 What happened before?

5 And then what you see?

6 What did you see?

7 What you hear?

8 What you touch?

9 What you think?

10 So basically just an open, open-ended in  
11 how you feel.

12 So I asked her where she was and she said  
13 she was in Toi's house, which is, I believe  
14 also the Defendant's house in the afternoon  
15 and -- it's hard for me to see.

16 And "two summers ago", I asked her when  
17 it happened.

18 And she said that she was playing with  
19 her cousins. "They wanted to play outside  
20 but I didn't want to. It was hot and I  
21 didn't want to walk with crutches." She had  
22 crutches at the time and so that's what had  
23 happened before.

24 I asked her what she heard? And she said  
25 he said -- she actually wrote that. When I

1       asked her what she heard she wrote "the  
2       buckles."

3               And it says "suck my dick."

4               And then it asked her what she said and  
5       she said "hummm", that was the bubble that she  
6       wrote there.

7               I asked her what she saw. And she would  
8       just point to the picture, to this part of  
9       the picture.

10              It wasn't until the second session that  
11       she would say it because part of the therapy  
12       is to be able to say the things that you're  
13       scared of. And then the second session she  
14       wrote this -- she wrote "dick" and she wrote  
15       "dick" again. When I asked her what she  
16       touched, she pointed to the picture again and  
17       would not write anything else down.

18              Then what she thought. She thought  
19       "maybe he'll give me a dollar" and "maybe  
20       he'll give me twenty dollars."

21              And she felt scared.

22              She then got angry and upset and started  
23       writing the "suck" and then he touched -- and  
24       then she said "he touched me in my pussy" and  
25       I wrote that down.

1 Q. And when Minor told you that she  
2 was sexually abused, when did she say that  
3 abuse occurred?

4 A. In a different context than this  
5 picture, she had said before that the abuse  
6 started when she was five and it ended around  
7 seven or eight. She was unclear about that.

8 Q. And where did she say the abuse  
9 occurred?

10 A. That it always happened in Toi's  
11 house and that sometimes on the porch,  
12 sometimes in the living room and sometimes in  
13 her nephew's room.

14 SOLICITOR PATTERSON: Your Honor,  
15 we have no further questions for this  
16 witness.

17 THE COURT: All right. Mr. Quinn.  
18 Would you like to keep that up or do you want  
19 it to be taken down?

20 MR. QUINN: She may need it.

21 CROSS-EXAMINATION

22 BY MR. QUINN:

23 Q. The words pussy, dick and suck, are  
24 those words that you provided or were  
25 provided by Minor?



1 A. They were provided by Minor .

2 Q. And when was this sketch drawn?

3 A. I'll have to look back at my notes.  
4 I have that date. This is the second drawing  
5 that she drew. She drew another one prior to  
6 this. But I don't have that one. Okay. On  
7 July the 6<sup>th</sup>, 2016 is when this was drawn.

8 Q. And did you determine why she was  
9 scared?

10 A. Why she was scared? She reported  
11 that she was scared because she said that  
12 'Tari Makins had threatened to kill her  
13 mother.

14 Q. And it was your understanding that  
15 she alleges this happened on a porch as well  
16 as other places?

17 A. She had said when she reported about  
18 the sexual abuse, she had said that  
19 originally that it happened so many times  
20 that she couldn't count. That it was ---

21 Q. Ms. Rich, I'm sorry to interrupt you  
22 and I know you've been qualified as an  
23 expert. I was asking you where it happened  
24 not how often. Let me repeat the question so  
25 you'll understand what I'm asking.

1 A. Okay.

2 Q. Did [Minor] report to you that it  
3 happened on the porch as well as other  
4 places?

5 A. Are you talking about this  
6 particular incident or other incidents?

7 Q. Let's start with this incident.

8 A. This incident she reported that it  
9 happened in the living room.

10 Q. Did she report that other incidents  
11 happened on the porch?

12 A. She reported another incident on the  
13 porch and she reported another incident in  
14 the -- when I asked where these -- where the  
15 abuse had occurred, she reported multiple  
16 places and reported multiple times that it  
17 happened.

18 Q. And she reported these multiple  
19 places, as I understand it, as a porch; is  
20 that correct?

21 A. One of them was a porch with an  
22 orange chair.

23 Q. And did you determine where that  
24 porch was, what physical location?

25 A. Like an address?

1 Q. Yes, ma'am?

2 A. I don't believe so. I'm not sure.

3 Q. And the nephew's room. Did you  
4 determine which nephew this might have been?

5 A. I believe she said Messiah and  
6 Caesar.

7 Q. Okay. And do you know that those  
8 boys live in the same room? Are they two  
9 separate ---

10 A. I don't know. That wasn't part of  
11 the focus of this session.

12 Q. And you didn't speak with any other  
13 people in this case except her mother; isn't  
14 that correct?

15 A. About? Yes, I've only had contact  
16 with Minor [REDACTED] and her mother.

17 Q. You didn't speak with Ms. Carlsberg  
18 about this case?

19 A. Who is Ms. Carlsberg?

20 Q. Okay. That answers my question.  
21 And you have been a licensed professional  
22 counselor for not even six months here in  
23 South Carolina; is that correct?

24 A. I'm considered a licensed  
25 professional counselor, yes, for the six

1 months. But prior to that for two years I  
2 was a licensed professional counselor intern.

3 Q. Which I assume made you work under  
4 somebody else's supervision?

5 A. Yes.

6 Q. So you've been able to practice on  
7 your own for less than six months?

8 A. I would guess -- I was able to  
9 practice prior to -- in the State of South  
10 Carolina at the Department of Mental Health,  
11 I work under the guise of the mental health  
12 system as well as the doctors in the agency.  
13 And so I've been allowed to practice, to  
14 treat, to diagnose and to provide therapy  
15 since 2011.

16 If I wanted to do private, go out on my  
17 own off the umbrella of the Department of  
18 Mental Health, then in order to do that, I  
19 would have to be independently licensed and  
20 licensed by the State of South Carolina.

21 So for a long time -- I guess since 2013  
22 -- from 2011 to 2013, I didn't pursue any  
23 licensure at all. I just worked under the  
24 guise of the mental health. And then I  
25 believe it was 2013 -- I'm really bad with

1        dates sometimes. In 2013 I submitted all  
2        of my information to become a licensed  
3        professional counselor intern, which is  
4        considered a license to work underneath the  
5        super--, to work with a supervisor. So now  
6        currently I can do that independently if I  
7        wanted to leave the Department of Mental  
8        Health.

9            Q. So since June of 2016, you have been  
10        licensed where you could practice by  
11        yourself?

12           A. Yes.

13           Q. Okay. Before that, you were allowed  
14        to practice just because you were working for  
15        DMH?

16           A. Correct.

17           Q. And in addition to your masters of  
18        Arts from Columbia International University  
19        in Columbia, South Carolina, you've been to  
20        three seminars; is that correct?

21           Well, two seminars and the Project BEST;  
22        is that right?

23           A. Yes.

24           Q. One seminar in October of 2015 had  
25        one or two hours on sexual abuse; is that

1 correct?

2 A. Yes.

3 Q. A seminar in 2013 you went to,  
4 that's the TREM Seminar?

5 A. Yes.

6 Q. And then you went through this  
7 Project BEST, which was apparently six days  
8 over the course of a year?

9 A. It was six days of training over the  
10 course of a year, but the program was a year-  
11 long working with, kind of hands-on  
12 experience by providing the treatment to two  
13 children over the course of the year with  
14 additional supervision.

15 Q. With supervision?

16 A. Right. And supervision means that I  
17 consult, not that I don't have -- like, I'm  
18 still doing the therapy solely,  
19 independently, and then I'm consulting to  
20 make sure that we're following the protocol.

21 MR. QUINN: I don't have any other  
22 questions. Thank you.

23 THE COURT: Redirect?

24 SOLICITOR PATTERSON: Very briefly,  
25 Your Honor.

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1 THE COURT: Yes, ma'am.

2 REDIRECT EXAMINATION

3 BY SOLICITOR PATTERSON:

4 Q: Ms. Rich, just to be clear, you have  
5 been practicing and treating children since  
6 2011?

7 A. Yes.

8 Q. And to be clear, when Mr. Quinn was  
9 asking you about the different location, is  
10 it your understanding that all of that was at  
11 Toi's house?

12 A.: That's my understanding.

13 Q. Thank you.

14 SOLICITOR PATTERSON: Nothing  
15 further from the State, Judge.

16 THE COURT: Mr. Quinn, any  
17 recross?

18 MR. QUINN: No, sir. Thank you.

19 THE COURT: Thank you. I  
20 appreciate your being here. You can step  
21 down.

22 (WITNESS STEPS DOWN)

23 THE COURT: Okay. Anything  
24 further from the State?

25 SOLICITOR PATTERSON: Your Honor,

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1 at this time, the State rests.

2 THE COURT: Okay. Does the  
3 Defense intend to introduce any evidence?

4 MR. QUINN: No, Your Honor.

5 THE COURT: All right. Ladies and  
6 gentlemen, we have reached the point in the  
7 case where I must necessarily hear some  
8 Motions from the attorney. And also we must  
9 get ready for closing arguments and the  
10 charge on the law. Therefore, it's going to  
11 take us a little bit of time to make that  
12 happen. So I'm going to give you all a long  
13 lunch break, okay?

14 I'm going to ask you to be back at  
15 1:00. And at 1:00, we'll begin our closing  
16 arguments and then we'll go to the closing  
17 charge on the law.

18 So, please, during your lunch hour  
19 don't discuss the case and we'll come back at  
20 1:00 and begin promptly. Thank you very much  
21 and I appreciate it.

22 (JURY OUT @ 11:10 A.M.)

23 THE COURT: Okay. Motions?

24 MR. QUINN: Your Honor, I renew my  
25 motion for directed -- I'm sorry. I renew my



1 motion for a mistrial -- I'm sorry -- based  
2 on the witness vouching of the credibility of  
3 **Minor**

4 Additionally, I would move for a  
5 directed verdict based on the general  
6 insufficiency of the State's evidence.

7 THE COURT: Okay. All right.  
8 Anything from the State?

9 SOLICITOR PATTERSON: Your Honor,  
10 if you'd like to hear from the State on the  
11 mistrial motion, I'm happy to go through  
12 that. You've heard arguments on both sides.

13 The State's position on the directed  
14 verdict motion would be that there is  
15 certainly sufficient evidence in the record  
16 when considered in the light most favorable  
17 to the State to take this to the jury.

18 THE COURT: Okay. All right.  
19 With regard to the mistrial, I think I've  
20 already addressed.

21 Again, if you want a curative  
22 instruction, you may present that to me.  
23 And, you know, what I'm thinking is if you  
24 wanted to have a curative instruction that an  
25 expert witness cannot vouch for the veracity

1 State for closing argument.

2 SOLICITOR PATTERSON: Thank you,  
3 Your Honor. May it please the Court?

4 THE COURT: Yes, ma'am.

5 CLOSING STATEMENT

6 BY SOLICITOR PATTERSON:

7 Ladies and gentlemen, I told you at  
8 the beginning of this case that some children  
9 have reason to fear. Not the fear of the  
10 dark or monsters under the bed, but of real  
11 people doing terrible things behind closed  
12 doors. [Minor] is one of those  
13 children.

14 The Defendant in this case, Ontario  
15 Makins, who she loved and trusted as a  
16 brother, preyed on her and used his access to  
17 her as an opportunity to chronically abuse  
18 her.

19 We also talked about at the  
20 beginning of the case that this is a secret  
21 crime. That, like I said, it's done behind  
22 closed doors; that there are going to be  
23 people around, people like [Minor] mother  
24 who love and protect her and don't have any  
25 idea of what's going on. It's done in

1       secret.

2                   And until **Minor** was able to under-  
3       stand, articulate and tell what was going on,  
4       no one knew. Does that mean that it didn't  
5       happen? Absolutely not. She just needed the  
6       words and the knowledge to be able to express  
7       what was going on behind those closed doors.

8                   As the Judge mentioned, in a few  
9       minutes after we finish closing arguments, he  
10      is going to give you the charge on the law.  
11      If anything I or Mr. Quinn say disagrees with  
12      the Judge, the Judge always wins that battle.  
13      He is in charge of the law.

14                  But you, ladies and gentlemen, are  
15      the finders of fact. And that is why your  
16      role in this proceeding is so important. It  
17      is you who will decide in this case what is  
18      true and what happened in this case to

19      **Minor**.

20                  I want to focus on a few things that  
21      the Judge is going to talk about with regard  
22      to the law, then we're going to talk a little  
23      bit about the evidence. The Judge is going  
24      to explain to you in a few minutes that the  
25      State bears the burden of proof in this case.

1       You've heard that throughout the case. The  
2       State bears the burden of proving the  
3       defendant guilty beyond a reasonable doubt.  
4       That is not something that anyone in this  
5       courtroom, myself included, wants you to take  
6       lightly. That is foundational to our  
7       criminal justice system.

8               But what I want you to keep in mind  
9       is that "reasonable doubt", and "beyond a  
10      reasonable doubt", is not an unattainable  
11      standard like the Defense wants you to  
12      believe. It is that you are firmly convinced  
13      that the Defendant is guilty.

14             The Judge is going to tell you that  
15      evidence, that testimony -- and the testimony  
16      that you've heard from this stand is evidence  
17      just like any other evidence that you would  
18      get in a criminal case. So what you're going  
19      to do is you're going to take the evidence  
20      that you've heard and also the evidence that  
21      you've seen in this case, the drawing that  
22      Minor made, the forensic interview. You  
23      are going to take that back to your jury  
24      room. You are going to discuss it. You are  
25      going to weigh it. Talk about the witnesses,

1        what they said. You should discuss in a way  
2        -- and go back and forth, this is a big  
3        decision and this is something that everyone  
4        in this courtroom wants you to take seriously  
5        and that you should discuss and deliberate  
6        on. But that discussion and deliberation and  
7        debate back and forth is not reasonable  
8        doubt. That's your job. That's what you're  
9        supposed to do.

10                But if, at the end of that  
11        discussion, if after talking about all of the  
12        witnesses:

13                Mary Jill Kroske, the second grade  
14        teacher who [Minor] first told about the  
15        abuse;

16                Investigator Picone;

17                [Minor] mom;

18                [Minor] herself.

19                If, after weighing all of that  
20        evidence, if after looking at the evidence  
21        you are firmly convinced that the Defendant  
22        committed these crimes, then you must find  
23        the Defendant guilty.

24                The second thing I want to talk  
25        about that the Judge will address in his

1        legal instructions to you is witness  
2        credibility. You decide how much credibility  
3        to give to different witnesses. One thing I  
4        want you to think about as you're thinking  
5        about these different witnesses is why  
6        they're telling you what they're telling you  
7        and how they acted on the stand.

8                    I want to talk for a minute about  
9        how **Minor**, our victim in this case, was on  
10       the stand. It was clear she did not want to  
11       be here. It was clear she did not want to  
12       talk about the abuse we're here to talk about  
13       today. The same was true in her forensic  
14       interview. She did not want to talk about  
15       it.

16                   She did not want to be here. That  
17       ten-year-old little girl, who just turned ten  
18       on Monday, had to walk into this courtroom,  
19       get up on that witness stand and talk about  
20       things that adults never talk about in public  
21       or talk about with strangers. Talk about  
22       things that embarrass her and clearly cause  
23       her to put up barriers. Not only did she  
24       have to do that in this courtroom, she had to  
25       do that to police. She had to do that to

1 forensic interviewers, she had to do that to  
2 therapists. She has had had to talk about  
3 this, something she wants to avoid  
4 desperately, over and over. And so I would  
5 ask you what does she have to gain by making  
6 this up, as the Defense is going to want you  
7 to believe that she has just made this up.

8 Not only has she been forced to talk  
9 about things that we don't talk about in  
10 public in this forum, she also talked to you  
11 about the loss that she has experienced as a  
12 result of this disclosure. She talked to you  
13 about how much she misses her nephews, the  
14 defendant. How they were her playmates. Her  
15 sister, Isis, is nine years older than she  
16 is. And while she loves her sister  
17 obviously, her nephews were her peers, her  
18 same age. They played Xbox together. They  
19 played constantly together during the summer.  
20 She's lost that. She's lost her sister.

21 You heard **Minor** mother, Ms.  
22 Johnson get up on the stand and talk about  
23 how she's lost her daughter, how she no  
24 longer sees her grandsons.

25 The effect of the disclosure on this

1 family has not been positive. The only  
2 positive that has come out of this, is that  
3 the abuse has stopped because that Defendant  
4 no longer has access to Minor . Otherwise,  
5 it has caused trauma, and loss. It has  
6 caused Minor embarrassment and difficulty.  
7 So I ask that you keep that in mind.

8 Why would she lie about this? She  
9 has absolutely no reason to do so. The only  
10 reason she has to say that this happened is  
11 because it actually happened.

12 The last thing I want to talk about  
13 that the Judge is going to talk to you about  
14 are the charges that this Defendant is  
15 facing. I talked to you a little bit about  
16 this in opening, but just to briefly remind  
17 you, the Defendant in this case has been  
18 charged with three different things.

19 The first thing is criminal sexual  
20 conduct with a minor, first degree. That is  
21 a sexual battery on a child under the age of  
22 eleven, talked about how a sexual battery is  
23 a penetration into the victim's body in some  
24 way. You heard that Minor was and, in  
25 fact, is still under the age of eleven when



1       this abuse occurred. And you heard Minor  
2       yesterday on the stand say over and over that  
3       the Defendant would make her suck his penis.  
4       That, ladies and gentlemen, constitutes a  
5       sexual battery.

6               The second thing this Defendant has  
7       been charged with is lewd act. To be guilty  
8       of a lewd act, a defendant has to commit a  
9       lewd act on a child under sixteen. Again, as  
10      we all know, Minor is under the age of  
11      sixteen years old. A lewd act is touching,  
12      rubbing or fondling of a child that is done  
13      in a way that's meant to arouse the defendant  
14      or the child.

15             The third thing he has been charged  
16      with is criminal sexual conduct with a minor,  
17      third degree, which, as we discussed, means  
18      the same thing as a lewd act. But the  
19      legislature changed the name such that  
20      touching that happened before the law changed  
21      in June of 2012 is a lewd act. Touching that  
22      occurred after the year 2012 constitutes  
23      criminal sexual conduct with a minor, third  
24      degree.

25             You heard in this case from Minor

1 on the stand and in her forensic interview,  
2 that the Defendant was touching her  
3 inappropriately. You heard in the video how  
4 she talked he touched her vagina. You also  
5 heard different witnesses talk about that.  
6 Then you heard Minor up on the stand  
7 talking about how the Defendant would touch  
8 her bottom and how he would make her touch  
9 his penis. You saw from Minor's own hand  
10 what was going on. Both in terms of the  
11 criminal sexual conduct with a minor first  
12 degree, the oral sex, the fact that he was  
13 making her suck his penis. The fact that "he  
14 touched me in the pussy." The fact that he  
15 was having her touch his penis. You also  
16 heard from different witnesses, including  
17 Minor and the tape, that the abuse started  
18 when she was five years old, which is before  
19 the law changed, hence is the lewd act. And  
20 continued through the time that she was eight  
21 years old.

22 Ladies and gentlemen, now that we've  
23 talked a little bit about the law, I want to  
24 talk to you about the evidence that you've  
25 heard over the last couple of days. I want

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1 to talk to you about why that evidence should  
2 firmly convince you of the Defendant's guilt.

3 As I mentioned, testimony is  
4 evidence. So I want to talk first about the  
5 testimony that you heard.

6 You heard from Mary Jill Kroske,  
7 **Minor** second grade teacher. She told you  
8 how there was one day **Minor** hung back from  
9 a recess and all the other kids ran out, and  
10 told her that she was being touched like that  
11 lady from the Julie Valentine Center had  
12 talked about. That happened just nine days  
13 after the Julie Valentine Center came in and  
14 gave **Minor** the words to express what was  
15 going on with her. You heard from Jenna  
16 Toney, who was the Julie Valentine Center  
17 educator. She came in and actually did the  
18 presentation that she does for these second  
19 graders. She talked about the purpose of the  
20 presentation, to keep children safe.

21 One other effect of her presentation  
22 in this case was that she gave **Minor** the  
23 knowledge that this was wrong and the words  
24 to use to tell about it. You heard **Minor**  
25 say she didn't know it was wrong before that

1 lady from the JVC came. She didn't know that  
2 the Defendant making her suck his penis was  
3 wrong. She didn't know that that's something  
4 she was supposed to tell about. Once she  
5 did, after she had the time to process, nine  
6 days later, she comes forward and she uses  
7 the words that Jenna Toney gave her and was  
8 able to say 'Tari is a child molester. You  
9 heard on that video. And you heard a ten-  
10 year-old say -- it was an eight-year-old on  
11 the video and a ten-year-old on the stand say  
12 he is a child molester. No child should have  
13 to get up and say that, but she was able to  
14 do so.

15 Another important thing that I want  
16 you to keep in mind was Jenna Toney's  
17 presentation are the words that she didn't  
18 use. She told you she did not use the words  
19 vagina or penis. She doesn't talk about oral  
20 sex or other kinds of touching. She simply  
21 tells kids what good touch and bad touch is,  
22 without those details. Those details, the  
23 words that Minor later used to describe  
24 things that were going on, penis and dick,  
25 those did not come from Jenna Toney. Those

1       came from what the Defendant was doing to  
2       this eight-year-old child.

3               After Ms. Toney, you had an  
4       opportunity to hear from Investigator Picone.  
5       He's the investigator from the sheriff's  
6       department who was called out to the school  
7       once [Minor] made her disclosure. He talked  
8       to you about how [Minor] also disclosed  
9       sexual abuse to him. On cross-examination he  
10      was asked if he said that when Ms. Tapp  
11      pointed to her vagina, that [Minor] said that  
12      she had been touched there.

13              He also talked to you about how the  
14      Defendant came in and made a voluntary  
15      statement to him. The Defendant, not  
16      surprisingly, denied that this was going on,  
17      but very shortly admitted that he had been  
18      alone with this child and had the opportunity  
19      to do what he was being accused of doing.

20              Investigator Picone also gave you  
21      some information about why we don't have a  
22      medical exam in this case. He said that  
23      often in these cases with delayed disclosure  
24      -- which Kristin Rich also talked to you  
25      about, how in these cases children often

1 don't tell immediately after something has  
2 happened -- that we don't request a medical  
3 exam. I want you to use your common sense  
4 too when you're thinking about that. What  
5 we're talking about in this case is oral sex  
6 and outside touching. Using your common  
7 sense, are those things that typically cause  
8 injury? No. So, knowing that this abuse had  
9 gone on for a substantial period of time,  
10 that significant time had passed since at  
11 least it started, and we don't know how long  
12 it had been since the last event, and knowing  
13 from your common sense that these types of  
14 allegations would not cause injury, why would  
15 we put a child through an intrusive exam.

16 We heard from Minor mom in this  
17 case, Ms. Johnson. You heard the emotion in  
18 her voice as she talked about her child.

19 You heard Minor disclosure that  
20 was also made to her, how Minor has  
21 disclosed sexual abuse to her. You heard  
22 Investigator Picone testify on cross-  
23 examination that at first she couldn't  
24 believe that this was going on, but once she  
25 saw her child, she knew.

1           You heard from Minor mom how  
2           this Defendant had the opportunity to abuse  
3           this child, how often Minor was over at Toi  
4           and 'Tari's house. How often Toi would be at  
5           work and so the Defendant would be alone with  
6           these children, as he acknowledged to  
7           Investigator Picone. I don't mean he'd been  
8           alone with the children, including his own  
9           children, but on at least one occasion he'd  
10          been alone with this victim.

11           She talked to you about what a close  
12          family they had and how difficult this has  
13          been, as it has torn them apart. And very  
14          importantly, mom told you about the symptoms  
15          that Minor has experienced prior to and  
16          since the disclosure while this abuse was  
17          going on. She talked to you about Minor  
18          had been wetting the bed, how she hasn't been  
19          sleeping, how she avoided -- not only avoided  
20          wanting to go over to 'Tari and Toi's house,  
21          but in a sense avoiding talking about what's  
22          gone on. She talked to you about how  
23          sometimes she would find Minor with her  
24          hands in her panties and how Minor was  
25          acting out in school, how this trauma was

1 manifesting itself inside this young child.  
2 And once she was able to know the signs to  
3 look for, she was able to see it.

4 Most importantly, ladies and  
5 gentlemen, the evidence in the case is the  
6 eyewitness to what happened. I want to talk  
7 to you about **Minor**. Part of what the Judge  
8 is going to tell you about is -- and instruct  
9 you on will be children as witnesses and how  
10 that can be different, how you weigh that  
11 witness' credibility. But what I would ask,  
12 and ask you to keep in mind, using your  
13 common sense, knowing other children who you  
14 may know in your life, think about how  
15 children speak, how they remember things, how  
16 they are able to articulate things and how  
17 different that can be from adults. But they  
18 come in and they tell us what is going on in  
19 the way that they are able.

20 First, I want to talk about eight-  
21 year-old **Minor** and the forensic inter-  
22 viewer. Again, she was clearly uncomfortable  
23 while she was talking about this. She was  
24 clearly avoidant, but she was able to say in  
25 response to Christine Carlberg's open-ended



1 questions that 'Tari, who she called her  
2 brother, had touched her private parts. She  
3 talked about how he made her touch his  
4 private part, which she identified as his  
5 penis. She talked about how she was scared.

6 And you may have noticed at the end  
7 of the video, she'd drawn a picture of a  
8 devil. When she was by herself in that room,  
9 no one else is watching, she draws a picture  
10 of a devil and talks about it being 'Tari.

11 Not only does she talk about that,  
12 but like I told you with Jenna Toney, she's  
13 able to use the word that she has learned and  
14 call her brother, the man she considers her  
15 brother, a child molester.

16 Now, we have a ten-year-old, just  
17 barely a ten-year-old, she just turned ten,  
18 **Minor** on the stand. She was the same way.  
19 She was clearly uncomfortable. She clearly  
20 avoided talking about this as much as she  
21 could. But she said over and over to you  
22 from the stand, "he made me suck his penis."  
23 She told you about how he showed her  
24 websites, about how to suck penises.

25 Not only do you have that, ladies

1 and gentlemen, you have what **Minor** drew.  
2 And I would like for you when you go back to  
3 your jury room, to look at this drawing  
4 closely. To look at this drawing and how  
5 there is, in fact, a penis on here, drawn  
6 with a stick figure, with a small child  
7 beside them. Ask yourself how an eight --  
8 she was eight at the time she disclosed. She  
9 just turned ten. How would she know this if  
10 this didn't happen?

11 She also told you on the stand that  
12 this abuse happened more times than she could  
13 count. She was able to tell you in the  
14 forensic interview, which was two years ago,  
15 much closer to the time when this actually  
16 happened, that she was about five when it  
17 started and eight when it ended.

18 She've said consistently that this  
19 happened by the Defendant, that it happened  
20 at Toi and 'Tari's house. He would touch her  
21 and make her touch and perform oral sex on  
22 him.

23 She also told you that she didn't  
24 know it was wrong until the Julie Valentine  
25 Center came in and told her. Then nine days

1 later, she made that disclosure.

2 Ladies and gentlemen, I want to talk  
3 a little bit about something that Minor  
4 said on the stand, which I think is important  
5 and I'm sure you're going to hear from  
6 Defense counsel about, which is the fact that  
7 she admitted that she made up the fact that  
8 'Tari threatened to kill her and her family.  
9 She got up on that stand and she owned that.  
10 She didn't make any qualms about it. She  
11 didn't hesitate. She acknowledged that she  
12 -- that that was not true and that she had  
13 made it up. And when asked why, she  
14 explained to you why that happened; that she  
15 was scared and that she needed a reason for  
16 why she didn't tell. I want you to think  
17 about that for second. This child who has  
18 had no idea that this is wrong all of a  
19 sudden is faced with the knowledge once the  
20 Julie Valentine Center comes in, that "this  
21 is wrong, this shouldn't be happening to  
22 you."

23 Kristin Rich, as we'll talk about in  
24 a few minutes, talks about the guilt and the  
25 shame that sexual abuse victims often feel,

1       that they themselves have done something  
2       wrong. And she needed a reason in her eight-  
3       year-old mind to explain why she hadn't told.  
4       She was then brave enough to admit that that  
5       wasn't true, both to other people and then on  
6       the stand when she came here.

7               But she was very clear when I asked  
8       her,

9               "Is it true he made you suck his  
10       penis?

11              Yes.

12              Is it true that he touched you?

13              Yes.

14              Is it true he made you touch him?

15              Yes."

16              Ladies and gentlemen, the last  
17       witness you heard from Kristin Rich, who the  
18       Judge qualified as an expert. She told you  
19       that she has been treating children and  
20       trauma victims since 2011. She's treated  
21       over five hundred children, including between  
22       a hundred and twenty and a hundred and fifty  
23       for sexual abuse. Kristin talked to you  
24       about trauma, what trauma means and the  
25       symptoms that children who have experienced

1 trauma often experience: bedwetting,  
2 nightmares, avoidance, trouble sleeping,  
3 guilt, shame and acting out.

4 Ladies and gentlemen, those are the  
5 exact same symptoms that Minor mother  
6 described to you that her child has  
7 experienced.

8 Kristin also talked to you about  
9 delayed disclosure, why children -- and it's  
10 sometimes hard to understand. If this is  
11 going on, why don't they tell? She explained  
12 that delayed disclosure is extremely common  
13 in sexual abuse cases. It is particularly  
14 common with a young victim like we have here.  
15 And particularly common when the perpetrator  
16 is a close family member, exactly like we  
17 have here. The child wants to protect that  
18 family member. They are afraid of what is  
19 going to happen to their family if they tell,  
20 even afraid of what might happen to that  
21 person if they tell. Often, they love that  
22 person and there are conflicting feelings  
23 about telling. Just as Minor had  
24 potentially feared, this has had a great  
25 impact on her family.

1                   Another reason for [Minor] delayed  
2 disclosure, is as she told you, because she  
3 was so young, eight years old when this was  
4 going on, that she didn't know it was wrong  
5 until somebody told her.

6                   Kristin also talked to you about  
7 piecemeal disclosure. She said that  
8 disclosure is not an event. It's a process.  
9 Particularly, as we've talked about when you  
10 have a child who is trying to process what  
11 has happened to them, we may see what we call  
12 piecemeal disclosure. And Ms. Rich explained  
13 to you why that may happen. Children often  
14 talk about the memory that's at the forefront  
15 of their mind. So if the oral sex is what is  
16 at the top of her head at that time, that may  
17 be what that child is talking about in  
18 disclosing. Children will often tell a  
19 little bit, see if they're safe, see if they  
20 are believed before they are comfortable  
21 telling anything else. They also often feel  
22 shame and guilt.

23                   And ladies and gentlemen, I want to  
24 give you a brief example where, even as a  
25 adults -- let's say you have gone on vacation

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1 to the Caribbean. And you come back and a  
2 week after you're back your neighbor asked  
3 you what you did, what your favorite part  
4 was? And you say 'we went snorkeling.' Two  
5 weeks pass, you're talking to a coworker and  
6 they ask you about your vacation. You say,  
7 'I ate at this amazing restaurant.' Five  
8 weeks after that, you're talking to your  
9 mother and you say to her 'my favorite thing  
10 was lying on the beach.' Now, you have told  
11 three different stories about your vacation.  
12 Does that mean you're lying about any of it?  
13 No. What you are telling may depend on the  
14 context in which you're talking to another  
15 person. The same is true here.

16 The Defense wants you to believe,  
17 and is going to talk about, that her story  
18 has changed. Her story is not changing. It  
19 is evolving because as Kristin said, this is  
20 a process. As she has felt more comfortable,  
21 she has been able to tell more and more about  
22 what happened to her.

23 Ladies and gentlemen, I'm going to  
24 wrap up and going to sit down.. We've talked  
25 several times how child abuse is a secret

1 crime. This case shows that well. No one  
2 knew what was going -- other people were at  
3 work, children were in other rooms playing  
4 Xbox -- until Minor was able to put it into  
5 words.

6 Minor was an eight-year-old  
7 little girl in the second grade when she  
8 told. She was a nine-year-old little girl  
9 when she drew this picture. She was brave  
10 enough to get up on that stand and tell you  
11 what happened to her. She's the eyewitness  
12 in this case. The other witness in this case  
13 can talk to you about how she has disclosed  
14 to them, how that corroborates it. You've  
15 heard the symptoms that she had but she is  
16 the child who experienced this. She got up  
17 on the stand. She told you that he touched  
18 her. Made him touch her, made her touch him  
19 and made her suck his penis.

20 I ask that you go back to your jury  
21 room and you think about the witnesses, that  
22 you look at the evidence and you consider the  
23 evidence, consider what has happened to this  
24 eight-year-old child, review the forensic  
25 video, look at the pictures, talk about what



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1       you've heard. Then I would ask that you  
2       return a verdict that speaks the truth that  
3       finds the Defendant guilty of criminal sexual  
4       conduct with a minor first degree, third  
5       degree and lewd act. Make the Defendant  
6       accountable for what he has done to this  
7       child. Thank you.

8               THE COURT:     Yes, sir, Mr. Quinn.

9               MR. QUINN:     May it please the  
10       Court.

11                               CLOSING STATEMENT

12               BY MR. QUINN:

13               Mr. Foreman, ladies and gentlemen of  
14       the jury, the state attempts to fill the  
15       holes in their case and to explain those  
16       things which are not explained to you by  
17       saying "use your common sense." 'Just use  
18       your common sense. Don't look for the  
19       evidence now because we didn't give you any  
20       evidence about that.' Otherwise I'd say,  
21       look at the evidence that speaks to that.  
22       No, she says "use your common sense."

23               Well, let's use our common sense.  
24       They say now after 'Tari Makins gets arrested  
25       because he has supposedly threatened to kill

1 her and her family, a story which gets told  
2 for almost a year and a half until Minor  
3 admits to the prosecutors that it is not  
4 true. 'I made that part up.' So the State's  
5 got to have it one way or the other. Either  
6 there was a threat, because that would  
7 justify somebody keeping a secret,  
8 particularly a child. If I said I was going  
9 to hurt you or hurt your family, you might  
10 keep that secret. And now they're saying  
11 that didn't happen. Well, then why did  
12 Minor tell you? In three years -- and this  
13 isn't supposed to be a secret. Why wouldn't  
14 she have said to her sisters or to her mama  
15 or to anybody else that while you were  
16 outside, 'Tari and I did this. We played  
17 this game, if that's how she was going to  
18 phrase it. We did this physical thing, if  
19 that's how she was going to phrase it. He  
20 took his clothes off or took my clothes off.  
21 Because if it's not a secret, if she's not  
22 being told to hide it or threatened to keep  
23 it secret, is your common sense that a five,  
24 six, seven, eight-year-old, is going to keep  
25 something like that to themselves for three

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1        years and not mention it to other people in  
2        and around the house? Is that the common  
3        sense the State wants you to adopt? They  
4        want you to believe that for three years this  
5        was ongoing, that this child just -- she just  
6        didn't tell anybody because she didn't know  
7        it was wrong. Well, that's not what kids  
8        say. They just tell you about their day.  
9        They tell you what they did. Their whole  
10       world revolves around them. But that's  
11       supposed to be your common sense just to fill  
12       those blanks in?

13                    And we're going to talk about that  
14       "this case is evolving." That's a phrase  
15       we're going to keep coming back to. Because  
16       evolving means when you look at the evidence,  
17       look at the proof, look at the witnesses,  
18       that this story has consistently changed,  
19       that where we're at today is not where we  
20       started when this fellow gets arrested. And  
21       if it's evolving, I have no idea where it'll  
22       be like two months from now. Because two  
23       months ago, the story was still he had  
24       threatened to kill her and threatened to kill  
25       the family.

1           The JVC -- I will try to stay a  
2           little bit on structure. JVC comes in --  
3           that stands for Julie Valentine Center. In  
4           early March 2015, the JVC goes to the school  
5           and does this presentation. And I talked in  
6           opening statement, just as an aside, about  
7           you might see some fluff in this case.  
8           Because the case is really **Minor**; there is  
9           no other evidence. And so they put up this  
10          woman who showed you a presentation and tells  
11          us how they scare these kids about 'don't go  
12          near anybody in the entire world.' 'If the  
13          postman comes to the front door, go hide and  
14          call your mama.' It seems like my kids  
15          didn't get this presentation, to be honest  
16          with you; but that's the presentation.

17                 Did that woman ever meet **Minor**?  
18          No, she doesn't remember and doesn't remember  
19          teaching that class, but that was one of  
20          their witnesses. 'Don't you teach them to go  
21          ahead and make disclosure, to tell someone?'  
22          'Yes, there's no reason to wait.'

23                 But two weeks go by. I believe it  
24          was March 10<sup>th</sup> and March 11<sup>th</sup> of 2015. It is  
25          reported to Ms. Kroske, the teacher and then

1 the police, on March 23<sup>rd</sup>. Not quite two  
2 weeks go by. The report is, as I'm sure you  
3 remember, and as Officer Picone testified,  
4 that he went with another officer, Officer  
5 Tapp of the sheriff's office, a female  
6 officer, who hasn't testified but we heard  
7 what happened with Officer Tapp. That  
8 Officer Tapp pointed to various parts of her  
9 body and said, 'is there where you were  
10 touched?' And that Minor said, when  
11 Officer Tapp pointed to her vaginal area  
12 that, yes, she was touched there, over and  
13 under her clothing.

14 Minor also stated 'Tari told her  
15 he would kill her if she told anybody. So  
16 the first allegation is this allegation about  
17 touching of the vaginal area was over and  
18 under her clothing.

19 The police then begin an investiga-  
20 tion. The officer talks with 'Tari, who  
21 comes down voluntarily and meets with the  
22 officer. That apparently gets him no credit  
23 from the State, that he voluntarily comes.  
24 No lawyer, no nothing. He goes down and says  
25 'I understand you want to talk to me.' He

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1 even tells them 'yeah, I was alone with  
2 Minor sometimes. I mean, she's over at the  
3 house all the time. They're kids. You know,  
4 sometimes the kids are in the house,  
5 sometimes they're outside the house. Yeah, I  
6 was alone with her one time.' One time.  
7 Anybody pin down a date? Anybody pin down  
8 multiple times? No.

9 Okay. Now, let's get serious.  
10 Where's the investigation? Where is Caesar?  
11 Why wasn't he put up to testify? Now, the  
12 officer says he spoke with him and he didn't  
13 say he saw anything. But why weren't they  
14 offered as witnesses? Why wasn't Messiah  
15 offered as a witness? Because keep in mind  
16 that Minor story now -- we're going to  
17 jump back and forth today -- she testified  
18 was that one specific instance she could tell  
19 us about occurred on a bed with a blanket  
20 thrown over her and 'Tari, not a little  
21 fellow, while Caesar and Messiah were in the  
22 room playing a game. I think she said Xbox,  
23 but at least in the room playing a game. And  
24 that 'Tari had her perform sex on him with  
25 the boys in the room. Did anybody see that?

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1        Apparently not because the officers spoke  
2        with both of them and said they never saw  
3        anything like this.

4                Now, how likely is that? If you've  
5        got three kids, one kid is suddenly under a  
6        blanket with an adult and the other two kids  
7        are just ignoring it? Really? A nine-year-  
8        old, six-year-old, seven-year-old whatever  
9        they were, they're just ignoring that the  
10       adult and this child are wrestling around and  
11       having sex on the bed with them, but they  
12       don't see that.

13               Where's Toi, the adult sister? Why  
14       didn't anybody call Toi and say, 'What did  
15       you see? What did you suspect? Did the girl  
16       act differently around you? Did **Minor** act  
17       like she was unhappy? Did she act scared?  
18       Did she want you to be with her the whole  
19       time? Did you have any trouble with her  
20       wetting the bed or showing any of these  
21       symptoms that supposedly we have?' She  
22       wasn't called.

23               Where's Isis her sister who  
24       apparently, according to the mother, is nine  
25       or ten years older. So now we're not talking

1       about a child. We're talking about a young  
2       adult, an eighteen, nineteen-year-old or  
3       sixteen, I guess, maybe when it started.  
4       Where is that witness? Why didn't Isis, who  
5       everybody agrees, including Minor went  
6       over there with her. I think Minor says  
7       half the time. Mama made it sound like it  
8       was a whole lot more often than that. Why  
9       doesn't she testify? Why doesn't she tell  
10      you if she saw anything? Again, the officer  
11      said yeah, we talked to them. There was  
12      nothing to add to the investigation. In  
13      other words, they didn't see anything.

14               So with all the people that are  
15      around, even if you think my questions about  
16      asking other people in the apartment  
17      building, because you may or may not be aware  
18      of what these apartments are like, but most  
19      apartments are fairly close together.  
20      They're fairly large and there's other kids  
21      around and other people out and about.  
22      Nobody's seen anything. No witnesses come  
23      forward to testify that they saw anything,  
24      suspected anything, believed anything, not  
25      even her mama. Nobody comes forward to say



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1 anything. There are no witnesses. The case  
2 revolves around [Minor] and what [Minor]  
3 said. Well, the State wants you to ignore  
4 what she said because her first statement is  
5 that she was touched on the vaginal area and  
6 that 'Tari threatened to kill her.

7 The next statement is at the Julie  
8 Valentine Center. That's about a month  
9 later, April 21<sup>st</sup> of 2015. And you've had the  
10 opportunity to see the video. I have the  
11 opportunity to have a transcript. I cheated.  
12 But it's clear from the questioning that I  
13 had with Ms. Carlberg, and from the tape that  
14 [Minor] does not allege any oral sex, none.  
15 There is no allegation of oral sex ongoing in  
16 this case. She asked her numerous times,  
17 'Were you touched in any other way? Were  
18 there any other kind of touches? Was his  
19 mouth used in any way? Was your mouth used  
20 in any way?' No, no, no, no, no, no. None  
21 of those things.

22 Touching is supposed to be of the  
23 vaginal area. That's it. 'Have you seen  
24 anything like this on the TV or the movies?  
25 No.'

1                   So the officer -- because that came  
2 out yesterday -- 'did you look for this video  
3 that [Minor] now says she watched showing how  
4 to perform oral sex?' And I don't know if it  
5 was a phone or a tablet or a computer, 'so  
6 did you look on all of those that he had  
7 available to him?' 'Well, no, I didn't  
8 because it's the first time I'd heard it.'  
9 The first time he heard it was the first time  
10 we heard it in court. So the officer didn't  
11 even know to go look for those things. So he  
12 could not have investigated that because the  
13 story is, as we are told, "evolving." The  
14 story is changing.

15                   And yet you are supposed to decide  
16       that factually, without any question, beyond  
17       reasonable doubt, a hundred percent, that  
18       he's guilty.

19 So the Julie Valentine Center gives  
20 no support to the story that is now being  
21 told in court by Minor [REDACTED]

22                   The next statement is to Ms. Rich.  
23           That's on July 6<sup>th</sup> of 2016. So now we jump a  
24           year. And you have noticed, I'm certain,  
25           that lots of things have changed in that

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1        year. First of all, the allegations changed.  
2        The allegation now becomes after 'Tari has  
3        been arrested, put in jail, gotten released,  
4        been indicted, been before the grand jury,  
5        accused of touching inappropriately, now the  
6        allegation is oral sex.

7                    Now we've got this sketch.

8                    Now the words that she didn't know  
9        at the beginning, that **Minor** was not aware  
10       of. She didn't know how to name the parts,  
11       right? She called it a "private" and "rear  
12       end", "raisins for nipples", suddenly she's  
13       using words my mother would wash your mouth  
14       out with soap for using as a ten-year-old.  
15       But she suddenly knows those words. She  
16       knows how to describe those acts, which have  
17       never come up before, with Christine  
18       Carlberg, the forensic interviewer; with the  
19       police officer, who they were told in this  
20       training is a safe person, somebody to go to,  
21       somebody if you were afraid you should go to  
22       and tell them what happened. She's had every  
23       opportunity to do that and has not said any  
24       of this. But now in July, all of a sudden,  
25       we are changing to an oral sex charge.

1 That's now what the allegation is. Even the  
2 Solicitor says that. She says it several  
3 times in her closing that [Minor] talked all  
4 about oral sex, all about oral sex. There is  
5 no statement given by [Minor] to the  
6 authorities indicating anything like that  
7 happened.

8 [Minor] then, three month later in  
9 October, admits that a story she's been  
10 telling for a year and a half, 'that's a  
11 lie.' Not a little lie. We're not talking  
12 about an exaggeration. We're not talking  
13 about events that happened twice, that might  
14 have happened three times or even four times.  
15 We're talking about the only piece that  
16 remains from her original allegation of  
17 touching and "that he threatened to kill us",  
18 the piece that remains a year and a half  
19 later, because now we change to oral sex, is  
20 that he, 'Tari Makins said, he was going to  
21 "kill me and kill my family and that's why I  
22 kept it quiet." And she says that wasn't  
23 true. 'I made it up.'

24 The Solicitor says why would kids  
25 make things up? Mr. Quinn's going to get up

1 and say this and say that. I have no idea.  
2 Why did she tell that story? So. Does that  
3 mean it's not a lie? Of course, it's a lie.  
4 She admits it's a lie.

5 'Minor [REDACTED], don't you agree that you  
6 lied about that?'

7 'Yes, I lied about that.'

8 The Solicitor gets up, interesting  
9 way of doing it, gets up and says 'Let me  
10 tell you, ladies and gentlemen, because we  
11 know she lied, you should trust everything  
12 she said even more. Because she got up and  
13 said that part, that part's a lie. But, hey,  
14 you can trust me about everything else.'

15 The Judge is going to tell you when  
16 you figure credibility, you are holding in  
17 your hands individually and as a twelve-  
18 member jury, 'Tari Makins' future. We hear  
19 all this talk about 'oh, it's torn up the  
20 family. It's done this.' He's the one going  
21 to be going to jail. He's the one ---

22 MS. HODGE: Your Honor, objection.  
23 There should be nothing regarding sentence  
24 nor punishment.

25 THE COURT: I sustain. We'll

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1 strike that. You can proceed, Mr. Quinn.

2 CLOSING STATEMENT CONTINUED

3 BY MR. QUINN:

4 He's the one looking at being  
5 branded a child molester. He's the one  
6 facing the difficulties here in Court.

7 Minor and -- well, the prosecutor  
8 wants you to take the lie -- and I don't know  
9 any other way to say it because it's not an  
10 exaggeration. It's not a half-truth. She  
11 admits it's a lie -- and use that to bolster  
12 her credibility.

13 You twelve have somebody's future,  
14 somebody's -- the result of this matter in  
15 your hands. I'm going to say it that way.  
16 And you are being told -- 'Okay, here's what  
17 we're giving you. Okay. We're going to  
18 change that part. That part's not going to  
19 be true anymore and this part's a lie. But  
20 you should find that what you still remain in  
21 your hands is the truth. And because I tell  
22 you I'm a liar, you should give me greater  
23 credibility.'

24 In your day-to-day life, and the  
25 Judge is going to charge you about

1     credibility, would you do that? In making  
2     the most serious decisions of your lives as  
3     reasonable people, would you -- if somebody  
4     came to you and said, 'Look, I'm going to lie  
5     to you. I'm going to add to that lie for a  
6     year and a half. Then I'm going to change my  
7     lie so, therefore, you ought to believe it.'

8             Would you go, 'Hey, no problem.  
9     Anything you want, I'll believe it. Anything  
10    important to me, absolutely I'll believe it.'  
11    Or would you say, 'I'm sorry you can't do  
12    that. You can't lie to me and then say hey,  
13    you ought to trust me even more.'

14            And it would be different perhaps  
15    if there was any support for this story. If  
16    Toi or Isis or Caesar or Messiah had gotten  
17    on the stand and said, 'Yeah, look, I saw  
18    these things. I suspected this and I suspect  
19    that.'

20            Instead, what do we get? We get  
21    Kristin Rich, who until six months ago, had  
22    her "learner's permit." She was able to  
23    practice under somebody else's supervision.  
24    So for the last six months, she's had her own  
25    driver's license. The last six months she's

1. been able to practice by herself without  
2. somebody looking over her shoulder. And  
3. she's been doing it now for three years or  
4. four years. And so you should trust her  
5. completely. Did she ever say, 'Tari Makins  
6. has this personality disorder, which makes it  
7. more likely he did it.'

8. Did she ever say 'these symptoms  
9. that children perhaps suffer actually, in  
10. fact, were suffered by this girl?' Now,  
11. let's talk about that. Her mom gets up and  
12. says, 'you know, now that you mention it...' --  
13. and I'm sorry, I've going to have to put a  
14. cough drop in my mouth.

15. 'Now that you mention it, I did  
16. notice these things. I did notice that she  
17. was wetting the bed more. She was having  
18. some trouble in school.'

19. Not for three years. The trauma  
20. supposedly occurs when she's five. Nobody  
21. testified that at five years old she had any  
22. of these difficulties. And in fact the  
23. symptoms that Kristin Rich talks about, some  
24. of them, the difficulty with sleeping and  
25. stuff, did arise until after the report.



1       There's no allegation about that. And  
2       there's nothing to tie this case to those  
3       symptoms. In other words, nobody has said  
4       Minor [REDACTED] suffered this symptom or had  
5       this symptom because of this. Nobody did.  
6       Kristin Rich didn't even talk about 'well,  
7       yeah, it might change my opinion because  
8       she's changed her story. It might change my  
9       opinion because the manner in which it was  
10      told to me.'

11                   And do you remember she had gotten  
12      her leg broken in a car accident? I don't  
13      even know if that's the trauma that she was  
14      seeing her for. That didn't come out, as to  
15      why Kristin Rich was seeing her.

16                   Christine Carlberg says, you know,  
17      'I interviewed. You could see Christine was  
18      trying to give her all the room she could.  
19      You know, it was a long tape. 'Take your  
20      time, can you tell me, blah, blah, blah.'  
21      Has never gone back and talked to her again  
22      even though the allegation has changed, not  
23      another word.

24                   The case really turns, I believe,  
25      and I would ask y'all to consider completely

1 on Minor .

2 (JUROR COUGHING)

3 THE COURT: Need some water?

4 JUROR: No, I'm fine.

5 THE COURT: There is some right in  
6 front of you if you'd like some.

7 MR. QUINN: There is no  
8 evidentiary support for this story by the  
9 witnesses that we have talked about or this  
10 video that existed, or whether anybody even  
11 knew about it.

12 Did you hear when 'Tari came in and  
13 gave a statement that DSS was there, did a  
14 safety plan, that his kids are home with him?  
15 We didn't hear from anybody from DSS as to  
16 why the boys were still home with him.

17 The witnesses we didn't see -- this  
18 interview that supposed was going to be taped  
19 but wasn't. Apparently, it took an hour and  
20 there's like a paragraph. The officer agreed  
21 that he came in, admitted that the kids were  
22 in the home alone with him at times, but he  
23 said he didn't do anything. Admitted Minor  
24 is probably alone with him sometimes, but  
25 denied he did it. The Solicitor just as

1 well, 'that's not a big surprise, of course  
2 he's going to deny it.' Well, yeah, if you  
3 didn't do it, you might deny it. And if you  
4 actually did something, maybe you'd try to  
5 explain it or you'd get a lawyer. Or you'd  
6 have enough sense to go 'no, I was never  
7 alone with her, not once, not ever' and tell  
8 that story, but he hasn't. Comes in  
9 voluntarily. Stays as long as the officer  
10 wants. He thinks it's being video recorded.

11 We don't hear from Detective  
12 Robertson who's also there, but I'd assume  
13 his testimony would have been the same.

14 And the Solicitor wants you to say  
15 well, 'I guess he's guilty because of that,  
16 because he came in and talked to the police.'

17 Minor [REDACTED] story has changed from the  
18 beginning of this case. Minor [REDACTED] admits on  
19 the witness stand that if we had tried this  
20 case three months ago, she would have said  
21 that she had been threatened to be killed.  
22 The Solicitor wants you to say, 'Hey, it's  
23 okay. It's all right. The case is evolving.  
24 Her testimony is evolving.'

25 Well, the truth doesn't evolve.

1 The truth is consistent. If you know  
2 anything about the truth it is that what is  
3 true today will be the same truth tomorrow  
4 and the same truth the day after that. There  
5 are not Ten Commandments on Monday, twelve on  
6 Tuesday, eleven on Wednesday. They are the  
7 same the same number. The truth doesn't  
8 change.

9 If the allegation was what she told  
10 somebody on the streets, 'well, no.' She met  
11 with the teacher. She met with the police  
12 officer. She met with the expert at the  
13 Julie Valentine Center. She met with this  
14 therapist, Ms. Rich and the story is not the  
15 same. And it is not a little bit of  
16 difference where I call it red and you call  
17 it some other color, okay? It's completely  
18 different. And when she comes forward and  
19 says -- very crucial -- that she lied. She  
20 lied. She made up the story. How can you  
21 say beyond any reasonable doubt she [sic]  
22 must be guilty?

23 And that leads to the law. The  
24 Judge is going to tell you the law. I hope  
25 he's going to tell you exactly as I do. I'm

1       certainly not trying to misstate it. I  
2       believe he's going to tell you half of --  
3       well, twice what the Solicitor did. The  
4       Solicitor told you about to find him guilty  
5       that you have to be firmly convinced that  
6       he's guilty. Well, that's half of what the  
7       standard is. The rest of the standard, as  
8       the Judge is going to tell you is, if you  
9       think there's a real possibility that Mr.  
10      Makins is innocent -- he'll say not guilty  
11      rather than innocent. Sorry. Presumption of  
12      innocence. That Mr. Makins is not guilty,  
13      then you must give him the benefit of that  
14      doubt and find him not guilty. He doesn't  
15      have to prove he's innocent because very  
16      often, like in a case like this, it might be  
17      impossible.

18               So the question is can the State  
19      convince you beyond any reasonable doubt that  
20      he is guilty. Reasonable doubt generally is  
21      considered to be a hundred percent. In civil  
22      court, we talk about the preponderance of  
23      evidence. It's zero proof to fifty percent  
24      -- fifty-one percent is preponderance of  
25      evidence. In a civil case, that's all you've

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1 got to make. In a criminal case, it's a  
2 hundred percent. There is no question.  
3 There is no reason to hesitate to act. There  
4 is no reason to go in back and go, 'wait a  
5 second. Wait a second. We need to think  
6 about this real, real hard because that is  
7 the reasonable doubt.' Not can you overcome  
8 it, not can you talk it through and figure it  
9 out without the evidence, because the  
10 evidence doesn't exist..

11 So the Judge is going to tell you  
12 you look to see if there is a real  
13 possibility that he is not guilty. And if  
14 so, then you find him not guilty. That goes  
15 back to the presumption of innocence that the  
16 Judge told you about to start with. And then  
17 he may tell you about it again starting with  
18 in his jury charge. But that's your starting  
19 point is that Mr. Makins even now is innocent  
20 as he sits here. There is no hint that he is  
21 guilty as far as the law is concerned. And  
22 that has to be your starting point. Your  
23 staring point has to be can the State  
24 convince me by evidence, by proof, by  
25 something that I would rely on in the most

1       serious matters of my own life, beyond a  
2       reasonable doubt. And only then can someone  
3       be found guilty. In this case, I don't  
4       believe that the evidence will allow you to  
5       do that.

6                       And I believe, and I think that if  
7       you look at the evidence, a reasonable doubt  
8       can arise from the evidence, that is from  
9       what you hear or see, and from a lack of  
10      evidence; that is, what's missing. Because  
11      you could say well, you know, in a case like  
12      this there ought to be this or there ought to  
13      be that. If this is supposed to be ongoing  
14      for three years, how come these other kids  
15      didn't see it even once? Or an adult suspect  
16      it or her older sister come in on them or  
17      suspect it. How come somebody didn't say  
18      their relationship, 'Tari's and hers is  
19      different, there's something wrong about it.  
20      Nobody does that for three years, that you've  
21      heard. There's no testimony about that. And  
22      so reasonable doubt can come from that.  
23      Reasonable doubt can arise from the lack of  
24      evidence. Just like it can from -- okay, we  
25      saw that person testify but we don't believe

1       that they're credible. We would not rely on  
2       them if it was my family. If that was  
3       another reasonable person over there, another  
4       person that I cared about, would I rely on  
5       what I've heard said? No question.

6       Question, guilty. Because that's what you're  
7       being ask to do. You should not do that in  
8       this case.

9               There are problems with the law  
10       that I'm only going to mention for a second.  
11       I mentioned to Christine Carlberg, 'didn't  
12       you keep asking the question about did his  
13       hand go inside -- and isn't that a terrible  
14       question -- into you rather than on your  
15       vagina.' Yes, I asked her that several times  
16       because that makes it whether it's criminal  
17       sexual conduct first or not. If there is no  
18       intrusion, it is not criminal sexual conduct  
19       in the first degree in South Carolina.

20              Lewd and lascivious act, there are  
21       -- definitions are there. The Judge is going  
22       to give you that the question becomes can the  
23       State make all of the elements of the  
24       offenses. And the Judge is going to give you  
25       that. And if you want to listen carefully



1 and note that, I think you'll find that the  
2 evidence doesn't satisfy all of the elements  
3 of the case. And that means that you've got  
4 to get past the difficulty, you've got to get  
5 past your only witness admitted that she  
6 misled people for a year and a half, people  
7 she had no reason to mislead, people she is  
8 told she should trust, a crucial part of the  
9 case. And it means that you ignore that the  
10 case has changed. That the allegation  
11 originally was vaginal touching over and  
12 under clothing. And now we're up to an oral  
13 sex case, that came up in July apparently.  
14 And the change that came up in October about  
15 the truthfulness. I'd ask that you give this  
16 due consideration.

17 We don't get to talk to you again.  
18 I'm sure I've forgotten something. You're  
19 not bound by what the lawyers argue to you.  
20 That's what this is, is argument. I want you  
21 to look at the case from our particular  
22 perspective. I'd love to tell you what to  
23 do, but I don't think I should do that. But  
24 I want you to at least consider the case from  
25 a perspective of the person who is sitting

1 over there accused. I want you to consider  
2 the case from a perspective that's about a  
3 juror taking their duty seriously, who is  
4 trying to find is this person guilty beyond  
5 a reasonable doubt or is there a real  
6 possibility he's innocent. So I'm asking you  
7 to look at it from that perspective.

8 Start with presumption of innocence,  
9 finish with Not Guilty. That will be the  
10 correct verdict in this case.

11 This is a court of law. This is  
12 not a court of you go out and do what's right  
13 because this is an emotional matter. There  
14 are always emotional matters when there are  
15 kids and parents involved. It doesn't mean  
16 you bring a child in and the person is  
17 automatically guilty because it's a child  
18 testifying. Don't fall into that trap. Your  
19 verdict should be Not Guilty.

20 SOLICITOR PATTERSON: Your Honor,  
21 may we approach for just a moment?

22 THE COURT: Yeah. I was going to  
23 ask you to come up for two seconds.

24 (OFF RECORD BENCH CONFERENCE)

25 THE COURT: Now, when you took

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1        your oath you swore to accept the law as I  
2        give it to you. So if you've come into this  
3        courtroom with any prior opinions or previous  
4        positions about what the law is or what the  
5        law should be, I charge you at this point to  
6        disregard that. You must accept the law as I  
7        give it to you under your oath.

8                Now, as I've told you any number of  
9        times, your role is to be judges of the  
10       facts. And as the judges of the facts,  
11       you'll analyze the evidence that has been  
12       presented and you will determine whether the  
13       State has met its burden of proof.

14               Now, ladies and gentlemen, when we  
15       first started I told you that the Defendant,  
16       Mr. Makins, is presumed innocent until the  
17       State proves each and every element of each  
18       offense beyond a reasonable doubt. Now,  
19       until such time as the twelve deliberating of  
20       you determine that the State has met its  
21       burden, Mr. Makins retains that presumption  
22       of innocence. And just imagine that he's  
23       wearing a cloak, just like I am, and he  
24       retains it until twelve jurors take it off of  
25       him by finding that the State has met its

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1       burden of proof.

2               Now, ladies and gentlemen, there are  
3       three separate indictments in this case, as  
4       you know:

5               Criminal sexual conduct with a minor  
6       in the first degree;

7               Lewd act upon a minor; and

8               Criminal sexual conduct with a minor  
9       in the third degree.

10              Now, those are three separate and  
11       distinct charges and you must consider each  
12       and every one of those charges separately and  
13       distinctly. You will analyze the evidence  
14       and the law specific to each charge. And I'm  
15       going to give you three separate verdict  
16       forms so that you will know demonstrably that  
17       you should consider them all separately and  
18       distinctly. And you will determine on each  
19       charge whether the State has met its burden  
20       of proving each and every element of the  
21       offense beyond a reasonable doubt.

22              So just by way of example, ladies  
23       and gentlemen, if you find that the State has  
24       met its burden of proof with respect to one  
25       of the charges, it does not mean that you

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1 have to likewise find in favor of the State  
2 and find the Defendant guilty on the other  
3 two. If you find that the State has not met  
4 its burden, it doesn't mean that you have to  
5 find not guilty for the other two as well.  
6 It is entirely up to you. You will consider  
7 each one distinct from one another and  
8 consider them each separately and  
9 independently.

10 Now, ladies and gentlemen, I'll also  
11 tell you that in this case I'll point out  
12 something to you that you already know. And  
13 that is that the Defendant elected not to  
14 testify in this case. Now, it is his right  
15 not to testify as guaranteed under our  
16 Constitution. Therefore, you cannot hold it  
17 against him that he elected to exercise a  
18 constitutional right. Therefore, when you go  
19 into your jury room, you can't consider that  
20 as a matter of fact because it is an  
21 important constitutional right that we all  
22 enjoy. You can't even discuss it as part of  
23 your deliberations in your jury room.

24 Ladies and gentlemen, we've been  
25 bandying about the term "reasonable doubt."

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1       So I think it begs a definition. You know  
2       and you may have heard of other types of  
3       trials that come before the court, either in  
4       your personal experience or on TV. And there  
5       are different standards and burdens of proof.  
6       In a civil case, ordinarily you're going to  
7       have a burden of proof called a preponderance  
8       of the evidence, which is a greater weight of  
9       the evidence, greater than fifty percent.  
10       Sometimes in a civil trial when we requests  
11       for punitive damages or certain causes of  
12       action, you'll have a standard of clear and  
13       convincing evidence, which is a greater  
14       standard of proof. But in all criminal  
15       trials, the standard of proof is beyond a  
16       reasonable doubt.

17               Proof beyond a reasonable doubt is a  
18       doubt that would cause a reasonable person to  
19       hesitate to act. Stated otherwise, proof  
20       beyond a reasonable doubt is -- proof beyond  
21       a reasonable doubt leaves you firmly  
22       convinced of the Defendant's guilt.

23               Now, ladies and gentlemen, there are  
24       very few things in the world that you can  
25       know with absolute certainty. And the law

1 does not require that the State prove its  
2 case with absolutely certainty.

3 After your review of the evidence if  
4 you are firmly convinced of the Defendant's  
5 guilt, then you would find him guilty.

6 However, after your review of the  
7 evidence if you feel that there is a real  
8 possibility that the Defendant is not guilty,  
9 then you must afford him the benefit of that  
10 doubt and under your oath find him not guilty  
11 of the offense.

12 Now, ladies and gentlemen, you'll  
13 determine whether the State has met its  
14 burden of proof by reviewing the evidence.  
15 And in doing that, in part, what you're going  
16 to do is weigh the credibility of the  
17 witnesses who took the stand. Now, you'll  
18 determine in your own discretion whether the  
19 witness was believable or not.

20 Now, from your own common sense, you  
21 know whether someone is believable or not.  
22 You know by the way someone expresses  
23 themselves, by what they say, how they say  
24 it, their body language, facial expressions,  
25 whether or not they are believable or not.

1           You may also consider whether that  
2       witness had something to gain or something to  
3       lose as a consequence of his or her  
4       testimony.

5           Ladies and gentlemen, you can take a  
6       part of someone's testimony and find that it  
7       was believable and discount the rest. Or you  
8       may take all of it or you may take none of  
9       it. That is entirely in your discretion what  
10      to believe.

11          Also understand that no witness,  
12      even an expert witness can vouch for the  
13      credibility of another witness' testimony.  
14      Now, ladies and gentlemen with witnesses'  
15      testimony and other evidence, you'll  
16      determine what weight and value any piece of  
17      evidence has. You may determine that it's  
18      very valuable or not valuable. And you  
19      assign its weight and you assign its value.  
20      From that, you determine what the facts are.

21          Now, ladies and gentlemen, I will  
22      restate for you very, very briefly. You saw  
23      testimony from an expert witness. I just  
24      remind you that an expert witness's testimony  
25      is considered in the same fashion as any



1 other piece of evidence that you receive in a  
2 case, meaning you decide it was believable  
3 and you decide what weight and what value an  
4 expert witness's testimony may have.

5 Also, ladies and gentlemen, during  
6 this trial you heard the testimony of a  
7 child. Now, a child can testify in a case.  
8 In deciding believability you can consider  
9 the age of that child. You can consider the  
10 child's ability to observe and remember  
11 facts. You can consider the child's ability  
12 to understand and answer questions. Because  
13 children may not fully understand what's  
14 happening, it's up to you to decide whether  
15 the child understood the seriousness of  
16 appearing as a witness at a criminal trial,  
17 whether the child understood the questions,  
18 whether the child has a good memory and  
19 whether the child understands the difference  
20 between lying and the truth. In addition,  
21 young children may be influenced by the way  
22 the questions are asked. It's up to you to  
23 decide whether the child understood those  
24 questions asked.

25 Now, ladies and gentlemen, in this

1 trial and in any trial, ordinarily evidence  
2 is going to take one of two forms. It's  
3 either going to be direct evidence or  
4 circumstantial evidence.

5 Now, direct evidence is evidence  
6 which immediately establishes a fact to be  
7 proven.

8 Circumstantial evidence is proof of  
9 collateral facts or a chain of facts that,  
10 which taken together, prove the main fact to  
11 be proven.

12 Now, the law doesn't prefer direct  
13 evidence over circumstantial evidence or  
14 circumstantial evidence over direct evidence.  
15 You decide what has weight and what has  
16 value, regardless of whether it's direct or  
17 circumstantial.

18 Now I'm going to give you an  
19 example of direct and circumstantial evidence  
20 to help you to conceptualize it a little bit  
21 better. I know it's always helpful for me as  
22 opposed to just a standard, dry definition.  
23 So let's imagine in January you are in your  
24 house or your apartment and you walk past  
25 your front window or front door going to bed

1 one evening and you look out on your front  
2 lawn in front of your house or apartment and  
3 you see there's no precipitation on the  
4 ground. You go to bed, you wake up. The  
5 next morning you walk past that very same  
6 window or door and you look out and there is  
7 a blanket of snow in the yard or in the  
8 parking lot. And in that snow you see  
9 footprints which lead to your door and lead  
10 away. Now, under that set of circumstances  
11 you've got direct evidence that it snowed  
12 last night because that snow is right there.  
13 You can touch it. You can feel it. You can  
14 pick it up. It's there. It's immediately  
15 established by its presence. But you've got  
16 circumstantial evidence that somebody, either  
17 early that morning or that night walked to  
18 your door and walked away. You don't see  
19 that person. You can't touch them. You  
20 can't feel them. You can't have a  
21 conversation with them. But you know as a  
22 consequence of the timing of that snowfall  
23 and the existence of the footprints in the  
24 snow, that someone must have come to your  
25 door and walked away. That's circumstantial

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1 evidence.

2 Now, ladies and gentlemen, again,  
3 the law doesn't prefer direct or  
4 circumstantial evidence. You decide what has  
5 weight. However, understand that to the  
6 extent that the State relies upon  
7 circumstantial evidence, all of those  
8 circumstances, when taken together, must  
9 point conclusively to the guilt of the  
10 confused and not create a mere suspicion.

11 Ladies and gentlemen, at this point  
12 I'm going to go over with you the charges  
13 that have been brought before the Court. And  
14 I'm going to read it for you because it's  
15 important that I get precise definitions  
16 precisely right. I don't like to read  
17 because it suggests to you that perhaps I  
18 don't understand or know the law. But I  
19 think in a case like this, and most cases,  
20 it's important, again, that I get these  
21 precise definitions precisely right. So if  
22 you'll please humor me, I'm going to read  
23 them for you, okay?

24 The first case that we have is first  
25 degree criminal sexual conduct with a minor.

1       The State must prove beyond a reasonable  
2       doubt that the Defendant engaged in a sexual  
3       battery with the victim. A sexual battery is  
4       sexual intercourse, cunnilingus, fellatio,  
5       anal intercourse or any intrusion, however  
6       slight, of any part of a person's body or of  
7       any object into the genital or anal opening  
8       of another person's body. The State must  
9       prove beyond a reasonable doubt that the  
10      victim was less than eleven years old at the  
11      time of the sexual battery. Consent,  
12      willingness, indifference or ignorance on the  
13      part of a minor, if any, as to what was  
14      taking place does not, in any way, affect the  
15      charge of criminal sexual conduct with a  
16      minor because an unmarried woman under the  
17      age of fourteen cannot legally consent to  
18      sexual intercourse.

19               Ladies and gentlemen, the next  
20      charge that you have to consider is lewd act  
21      on a minor. A minor is a person under the  
22      age of eighteen. The State must first prove  
23      beyond a reasonable doubt that the Defendant  
24      was over the age of fourteen. Next, the  
25      State must prove that the Defendant willfully

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1 and lewdly committed or attempted a lewd or  
2 lascivious act on or with the body parts of a  
3 child under the age of sixteen years, with  
4 the intent to arouse, appeal to or gratify  
5 the lust, passions or sexual desires of the  
6 Defendant or the child.

7 "Willfully" means voluntarily and  
8 intentionally with the specific intent to do  
9 something the law forbids.

10 "Lewd" means obscene, lustful,  
11 indecent or lecherous.

12 "Lascivious" means tending to incite  
13 lust, lewd, indecent, obscene or tending to  
14 deprave the morals in respect to sexual  
15 relations.

16 Ladies and gentlemen with regard to  
17 the allegation of lewd conduct, the State  
18 alleges that this happened between 1 January  
19 2012 and 17 June and 2012. On the verdict  
20 forms, I have those dates for you so it'll be  
21 easily identified.

22 Ladies and gentlemen the third  
23 charge for your consideration is criminal  
24 sexual conduct with a minor in the third  
25 degree. And a person is guilty of criminal

1 sexual conduct with a minor in the third  
2 degree if the actor is over fourteen years of  
3 age and the actor willfully and lewdly  
4 commits or attempts to commit a lewd or  
5 lascivious act upon or with the body or its  
6 parts of a child under sixteen years of age  
7 with the intent of arousing, appealing to or  
8 gratifying the lust, passions or sexual  
9 desires of the actor or the child.

10 Ladies and gentlemen, I have for you  
11 three verdict forms, as I had already  
12 suggested to you. Now, these verdict forms  
13 are very simple and they have the caption and  
14 then they'll have the charge to which the  
15 verdict form applies.

16 With regard to the criminal sexual  
17 conduct with a minor in the third degree, it  
18 has the date that I've written in, and I hope  
19 you can read that, of 18 June 2012 through 20  
20 March 2012. And with respect to lewd act it  
21 has the relevant dates of 1 June 2012 through  
22 17 June 2012. Now, ladies and gentlemen, you  
23 will read on this verdict form it says,  
24 (reading): "We, the jury, by unanimous  
25 agreement find the Defendant..." -- all right,

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1 before we go any further, understand that  
2 your verdict must be unanimous. You must all  
3 agree on the verdict. It can't be a  
4 combination of eleven to one or ten to two.  
5 You must all agree on the verdict, it must be  
6 unanimous. Also understand that your verdict  
7 must be based on the law and on the evidence  
8 as it has been presented to you in this case.  
9 It can't be based on anything outside of this  
10 courtroom. It can't be based on passion or  
11 prejudice or bias or caprice or sympathy. It  
12 has to be based on the law and the evidence  
13 as it was presented at trial.

14 Now, ladies and gentlemen, all of  
15 the verdict forms are alike from here. That  
16 is, you're going to have two choices, either  
17 Not Guilty or Guilty. Now, look, I prepared  
18 these, so don't think that I am trying to  
19 send you a signal by putting them in any  
20 particular order. If there are only two  
21 choices one's going to come first and one's  
22 going to come second. So don't think that  
23 I'm trying to tell you anything. I am  
24 certainly not. So what you will do is you  
25 will look at each case and determine has the



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1 State met its burden of proof with respect to  
2 this charge and have they proven all of the  
3 elements of the offense beyond a reasonable  
4 doubt. If you determine that that is the  
5 case, then you would check accordingly. If  
6 not, you would check accordingly.

7 And, Mr. Foreman, after the jury has  
8 reached a unanimous verdict you would simply  
9 sign as foreperson of the jury.

10 After you have made a unanimous  
11 decision in each of the cases, then you would  
12 let the bailiff know. And then he'll let me  
13 know and we'll come out to receive the  
14 verdict.

15 Now, I'm going to send you back to  
16 your verdict room, but I don't want you to  
17 start considering the case yet because I'm  
18 going to give the attorneys the opportunity  
19 to correct anything that I may have  
20 misstated. This is the opportunity for them  
21 to tell me that I've either missed something  
22 and I left it out and it needs to be included  
23 or that I have made a misstatement of the law  
24 and it needs to be corrected.

25 And ladies and gentlemen, I want to

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1 tell you something before you go as well,  
2 that the attorneys have asked me to tell you  
3 something and I failed to tell you. And that  
4 is the sentence in any criminal case is not  
5 relevant to your determination. The sentence  
6 in the case is up to the Court. Therefore,  
7 you're not to consider the possible  
8 consequences of a guilty or not guilty  
9 verdict. You are simply deciding whether the  
10 State has met its burden of proof.

11 All right. Having said that, ladies  
12 and gentlemen, I ask you to return to your  
13 jury room. I will send you these verdict  
14 forms. And when you receive these verdict  
15 forms the bailiff, then you can begin your  
16 deliberations.

17 (JURY OUT @ 2:20 P.M.)

18 THE COURT: All right. Exceptions  
19 to charge?

20 MR. QUINN: No exceptions nor  
21 additions.

22 SOLICITOR PATTERSON: Nothing from  
23 the State, Your Honor.

24 THE COURT: Okay. All right.  
25 Thank y'all very much. Y'all can do an

1 inventory of the exhibits. What I'm going to  
2 do is I'm going to send these verdict forms  
3 back to the jury and I'm going to excuse the  
4 two alternates from chambers. I want to  
5 thank y'all for trying an excellent case.  
6 You were each very professional and did an  
7 excellent job. Calculated any all motions or  
8 objections to affect a substantive end and  
9 you were certainly well prepared and I  
10 appreciate it.

11 And all the parties and everyone in  
12 the courtroom, I appreciate each of you  
13 having been civil and professional. It  
14 certainly makes it easier. I don't know what  
15 will happen in this case. I'm sorry that  
16 we've all arrived here at this point because  
17 I know it's hard on everybody. But I wish  
18 you all good luck, okay? We'll be in recess.

19 (COUNSEL APPROVAL OF EXHIBITS)

20 (ALTERNATES EXCUSED FROM CHAMBERS)

21 (JURY IN DELIBERATION @ 2:30 P.M.)

22 (COURT IN RECESS)

23 (NOTIFIED OF JURY QUESTION @ 5:15)

24 (DEFENDANT PRESENT)

25 THE COURT: I had the opportunity

1 to discuss with all counsel a note that I  
2 received from the foreman. It says, "We have  
3 not come up with a verdict. Are we allowed  
4 to leave for the night and restart our  
5 discussion tomorrow?"

6 We had the bailiff inquire further  
7 of the jury as to where they stood and how  
8 much longer they may anticipate that they  
9 need to continue deliberating. They  
10 indicated that probably as much as four  
11 hours. So with the consent and leave all  
12 counsel, we have elected to bring them in and  
13 let them go for the night.

14 I do intend to give them an  
15 admonition against discussing the case and to  
16 make it very, very clear to them that they  
17 must all return tomorrow morning for further  
18 deliberations. So I will make this note,  
19 Court's Exhibit Number 1.

20 COURT REPORTER: Court's Exhibit  
21 Number 1.

22 (SO MARKED AS COURT'S EXHIBIT 1)

23 THE COURT: Mr. Frazier, if you'd  
24 bring the jury?

25 (JURY IN @ 5:20 P.M.)

1                   THE COURT:     All right.  Ladies and  
2                   gentlemen, I got your note.  And I understand  
3                   that you want to take a break for the night.  
4                   Now, I'm going to honor your request.  I've  
5                   had a discussion with the attorneys and we've  
6                   decided that we're comfortable with that.

7                   But I do want you to know that I,  
8                   generally speaking, am very reluctant to let  
9                   a jury leave while a jury is conducting  
10                  deliberations.  I've been at the courthouse  
11                  as late as midnight and beyond with juries  
12                  who were out deliberating.  But I recognize  
13                  that you're conscientious and we'd have more  
14                  time tomorrow.  But the reason why I'm always  
15                  reluctant, and most judges are reluctant, to  
16                  let juries go home is because once you begin  
17                  your deliberations, it's rife with peril when  
18                  you leave the courthouse.  So I need to  
19                  stress upon you the importance of not  
20                  discussing the case with anyone.  You'll go  
21                  home and I'm sure that, again, someone may  
22                  invite you to discuss it.  And you may even  
23                  want to discuss it to try to get something  
24                  off your chest.  Don't do it, okay?  Don't  
25                  discuss the case with anyone.  Don't conduct

1       any self-help. No, you know, flow charts in  
2       the basement on the wall or algorithms as you  
3       think it out. When you go home, you have to  
4       change gears and do something entirely  
5       different. Don't think about it. Don't talk  
6       about it. When you get back, you can resume  
7       your deliberations.

8               Also, let me stress upon you the  
9       importance of everyone coming back. Again,  
10       that's a reason why we're reluctant to do it  
11       because I've got to have twelve jurors. If  
12       eleven of you shows up and one of you has  
13       gotten sick or for whatever reason elects not  
14       to show up, then I have to declare a mistrial  
15       and have to start all over. So that is --  
16       that's problematic as you can imagine because  
17       the parties have invested a lot of time and  
18       effort into the case. And the resources of  
19       the State and of the community have been  
20       brought to bear to bring this to trial. So  
21       we need to make sure that we don't trip up at  
22       the eleventh hour. So, you've heard me.  
23       Don't discuss the case. And by all means, be  
24       back, okay? 9:00 tomorrow morning.

25               When I get a report that y'all are

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1 all here, I'll either bring you back in and  
2 tell you good morning and give you further  
3 instruction, or I'll just give the bailiff  
4 instructions to tell you to resume your  
5 deliberations, okay? Y'all have a great  
6 evening and I'll see you tomorrow morning.

7 (JURY OUT @ 5:23 P.M.)

8 THE COURT: All right. Counsel,  
9 before we adjourn I need to put one thing on  
10 the record that's entirely administrative. I  
11 just forgot to put it on before, before we  
12 argued and charged.. I know we were all  
13 concerned with what we were doing. But I did  
14 want to put on the record that by consent the  
15 curative charge of no witness, including an  
16 expert witness is allowed to vouch for the  
17 credibility of another witness' testimony.  
18 And that was the curative charge that we had  
19 discussed pursuant to an incident to the  
20 motion for mistrial before and the concern  
21 over expert witnesses vouching for  
22 credibility. I just wanted to make sure that  
23 that was on the record. I think that was a  
24 discussion that we had in chambers and it's  
25 important that we get in the clear, okay?

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1 Anything else we need to put on the record  
2 this evening?

3 SOLICITOR PATTERSON: Nothing from  
4 the State, Judge.

5 MR. QUINN: Only that while I  
6 agree to the curative instruction and, in  
7 fact, asked the Court to give it, I do not  
8 think it resolves the issue of whether a  
9 mistrial should have been granted.

10 THE COURT: I understand.

11 MR. QUINN: Thank you, Judge.

12 THE COURT: Okay. Good enough.  
13 I'll see y'all tomorrow. If y'all need me  
14 between now and then, e-mail me or call me.

15 MR. QUINN: Thank you, Judge.

16 (COURT IN RECESS)

17 (TRANSCRIPT CONTINUED NEXT PAGE)

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1       conduct with a minor in the first degree and  
2       criminal sexual conduct with a minor in the  
3       third degree, as it addresses a specific  
4       question that they posed.

5               All right. And with that, if you'd  
6       bring them in, please, sir?

7               Oh, and would you ask them to bring  
8       in, please, their verdict forms. I want to  
9       see them to make sure that I indicated on  
10      those correctly, the time frames. Okay?

11              BAILIFF:       Yes, sir.

12                              (COURT AT EASE)

13              BAILIFF:       Sir, (tenders verdict  
14      form to the bench).

15              THE COURT:     Thank you.

16              BAILIFF:       Yes, sir.

17                              (JURY IN @ 9:25 A.M.)

18              THE COURT:     Good morning, ladies  
19      and gentlemen. I hope y'all are doing well.  
20      I've gotten your notes and I brought you back  
21      in to address them.

22                      On the first one, "We have a DVD as  
23      evidence. Are we allowed to watch it again?  
24      And if so, can we get a DVD player?"

25                      Yes, we're going to give you a

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1 computer and you can plug it in and watch the  
2 DVD. Please don't use the computer to access  
3 the internet and do any research or anything  
4 of that sort. Just use it for its intended  
5 purpose and I trust that you will.

6 Next question, "Is there any  
7 timeline of the sequence of events that we  
8 can review?"

9 I can't do that because that is  
10 evidence that was presented at trial. The  
11 only way that I could possibly do that is  
12 give you a recitation of a timeline or have  
13 the witnesses get back up and testify once  
14 again. We're not allowed to do that. The  
15 law and the procedure doesn't allow for it.  
16 One of the reasons why there are twelve  
17 jurors in a jury is because collectively  
18 among you, you have the capacity and the  
19 ability to recount the evidence that was  
20 presented in trial. We can't go back and  
21 review or -- excuse me. We can't go back and  
22 reintroduce evidence. And I, because I've  
23 told you, I'm not allowed to have an opinion  
24 on the evidence or the facts of the case,  
25 which means I can't give you a timeline of

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1 events because I'm not allowed to under the  
2 law because that would be commenting on the  
3 evidence and I'm not in a position to do it.  
4 So what you'll have to do is rely upon your  
5 collective recollection of the testimony, the  
6 evidence that was admitted during trial.

7 Second one, "For lewd act upon a  
8 child, can we get a clarification on where  
9 June 1<sup>st</sup>, 2012 came from. We understand the  
10 June 17<sup>th</sup>."

11 Okay. Clarification: I screwed that  
12 up. I meant to put 1 January, 2012 to 17  
13 June 2012. And I put June -- it was just a  
14 scrivener's error and I apologize for that.  
15 You understand that there is a time  
16 difference and it butts up is because the  
17 Legislature changed the law. So it's  
18 incumbent upon y'all to look at the first  
19 timeframe and determine whether the State met  
20 its burden of proof, specifically with regard  
21 to that timeframe and the charge for lewd act  
22 and for criminal sexual conduct with a minor  
23 in the third, okay? So I've changed that and  
24 I initialed it. So for the lewd act it's 1  
25 January 2012 to 17 June 2012. And I

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1 apologize for that. I recognize that I may  
2 have confused you with that.

3 Okay. With regard to the fourth  
4 question: "Now that we have had time to  
5 discuss the evidence, can we get a brief  
6 recap on the difference between the first  
7 degree and the third degree?"

8 I'm just going to read to you the  
9 definitions that I read to you before, okay?  
10 (Reading): "With regard to criminal sexual  
11 conduct with a minor in the first degree, the  
12 State must prove beyond a reasonable doubt  
13 that the defendant engaged in a sexual  
14 battery with the victim.

15 A "sexual battery" is sexual  
16 intercourse, cunnilingus, fellatio, anal  
17 intercourse or any intrusion, however slight,  
18 of any part of a person's body or of any  
19 object into the genital or anal openings of  
20 another person's body.

21 The State must prove beyond a  
22 reasonable doubt that the victim was less  
23 than eleven years old at the time of the  
24 sexual battery.

25 With regard to criminal sexual

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1       conduct with a minor in the third degree, a  
2       person is guilty of criminal sexual conduct  
3       with a minor in the third degree if the actor  
4       is over fourteen years of age and the actor  
5       willfully and lewdly commits or attempts to  
6       commit a lewd or lascivious act upon or with  
7       the body or its parts of a child under  
8       sixteen years of age, with the intent of  
9       arousing, appealing to or gratifying lust,  
10      passions or sexual desires of the actor or  
11      the child.

12                Okay? That's the distinction  
13      between the two. So ladies and gentlemen,  
14      I'm going to ask you to return to your jury  
15      room. I'm going to pass these verdict forms  
16      back to you. And we'll send a computer that  
17      you can use -- we'll send it back with the  
18      bailiffs and y'all can tee it up and watch  
19      the video. Thank you very much. I'd  
20      appreciate it. Y'all can return to your jury  
21      room.

22                       (JURY OUT @ 9:35 A.M.)

23               THE COURT:     Okay. All right.  
24      We'll be in recess until we hear from the  
25      jury.

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1 SOLICITOR PATTERSON: Thank you.

2 (COURT IN RECESS)

3 (DEFENDANT PRESENT)

4 (JURY NOTIFICATION @ 2:55 P.M.)

5 THE COURT: All right. Ladies and  
6 gentlemen, I've been advised that the jury  
7 has received a unanimous verdict. Is the  
8 State prepared to receive the verdicts?

9 SOLICITOR PATTERSON: We are, Your  
10 Honor.

11 THE COURT: Is the Defendant  
12 prepared to receive the verdict?

13 MR. QUINN: Yes, sir. Do you  
14 prefer to stand when the verdict is read?

15 THE COURT: I don't have a  
16 preference. Whatever you're comfortable  
17 with.

18 MR. QUINN: Okay. Thank you.

19 THE COURT: Okay. If you'll bring  
20 them in, please, sir.

21 (JURY IN @ 3:00 P.M.)

22 THE COURT: All right. Mr.  
23 Bonarrigo, has the jury reached a unanimous  
24 verdict, sir?

25 FOREMAN: Yes, sir, we have --

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Verdicts &amp; Sentence

1 (tenders verdict forms).

2 BAILIFF: (Tenders verdict forms  
3 to the judge)

4 THE COURT: (Upon review), the  
5 Clerk will publish the verdicts.

6 CLERK: Your Honor, in the case of  
7 2016-GS-23-04363, State of South Carolina  
8 versus Ontario Stefon Patrick Makins,  
9 (reading): "We, the jury, by unanimous  
10 agreement, find the Defendant not guilty."

11 In the case of 2016-GS-23-7512A,  
12 (reading): "We, the jury, by unanimous  
13 agreement, find the Defendant not guilty."

14 In the case of 2016-GS-23-4363,  
15 (reading): "We, the jury, by unanimous  
16 agreement, find the Defendant guilty."

17 They're signed by Mr. Bonarrigo, our  
18 Foreperson.

19 Ladies and gentlemen, if you agree  
20 these are the verdicts you reached in your  
21 deliberation room, would you please raise  
22 your right hand?

23 (ALL JURORS' HANDS WERE RAISED)

24 CLERK: Thank you.

25 THE COURT: Counsel, anything



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Verdicts &amp; Sentence

1 have stated since the beginning, I'm  
2 innocent. I have two kids with Toi. And  
3 like she (Ms. Johnson) say. it's already done  
4 tore the family apart. Ever since I was  
5 brought up about fourteen years old, I spent  
6 every holiday over Ms. Johnson's house. And  
7 that was my family. And ever since this done  
8 happen, I feel like I already been treated  
9 like a criminal. Like, I was denied jobs,  
10 places to stay. And I'm just asking please  
11 don't take me away from my kids.

12 MR. QUINN: And the other thing  
13 the Court is aware of is DSS was involved in  
14 this case from the beginning. The children  
15 were returned to he and Toi, but DSS  
16 continues to be involved in monitoring the  
17 case.

18 DEFENDANT MAKINS: Can I say I'm  
19 sorry to Ms. Johnson all this happened. I'm  
20 sorry that it's -- that we even made it this  
21 far but I'm just saying please don't take me  
22 away from my kids.

23 THE COURT: Okay. Mr. Makins, I  
24 don't feel the need and I think would be  
25 gratuitous for me to pontificate in any way,

1       shape or form. And so I'm simply going to  
2       hand down the sentence.

3               The sentence based on the verdict  
4       that's been handed down by the jury. The  
5       sentence of the Court is you be committed to  
6       the Department of Corrections for a period of  
7       ten (10) years, credit for any time you may  
8       have served. Good luck to you, sir.

9               MR. QUINN: Thank you, Your Honor.

10              SOLICITOR PATTERSON: Thank you,  
11       Judge.

12                               (TRANSCRIPT CONCLUDED)

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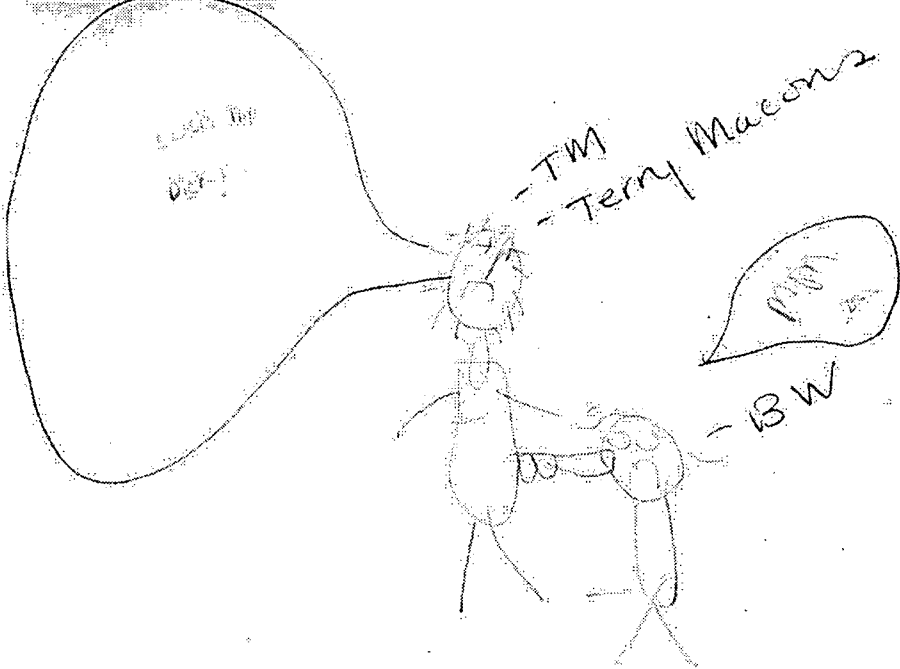
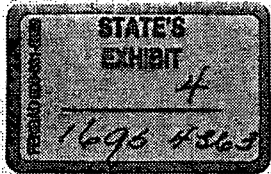
22

23

24

### Certificate of Court Reporter

January 4, 2017



Tom's house in living room  
in the afternoon, two summers  
ago.  
Before - playing with my friends  
and they wanted to play  
outside, but I didn't cause  
it was hot and I didn't  
want to walk ~~all~~ crutches.  
Heard - He said, "Suck my dick."  
I said, "mmm"  
See - ~~pointed to picture~~

Touch - ~~pointed to picture~~

Think - Maybe he'll give me  
a dollar.  
He gave me \$20.

Feel - scared

SUCK!

373  
D Picone

WITNESSES

(60)

Greenville County Sheriffs Office

4/22/2015

ARREST WARRANT NUMBER  
2015A2330203335

ACTION OF GRAND JURY

**TRUE BILL**

*Thomas J. Picone*

**FOREMAN GRAND JURY**

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury  
Date:

AMENDED INDICTMENT  
DOCKET NO. 2016-GS-23-004363

KWP

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August

TERM 2016

**GUILTY** STATE  
vs.

ONTARIO STEFON PATRICK MAKINS

3661 Amended Indictment for

**ENTERED**  
**ACCT.** *JP*

CRIMINAL SEXUAL CONDUCT WITH A MINOR  
3RD DEGREE

VIOLATION § 16-03-0655(C)

STATE OF SOUTH CAROLINA     )  
                                          )  
COUNTY OF GREENVILLE     )

AMENDED INDICTMENT FOR  
CRIMINAL SEXUAL CONDUCT WITH A MINOR 3RD DEGREE

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

**AUG 23 2016**

County present upon their oath:

That ONTARIO STEFON PATRICK MAKINS did in Greenville County, between the 18th day of June, 2012, and the 20th day of March, 2015, 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 B. W., 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 §16-03-0655(C) 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.



SOLICITOR

BAR # 8245-101073

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Taylor D Gilliam  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 21st day of February, 2018.

**RECEIVED**

FEB 21 2018

SC Court of Appeals