

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County

Perry H. Gravely, Circuit Court Judge

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S.C. SUPREME COURT

FREDERICK R. CHAPPELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000283

APPENDIX

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE'S EXHIBIT # 1 (CD OF FORENSIC INTERVIEW)**

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS

2010-GS-23-07901

2010-GS-23-07902

STATE OF SOUTH CAROLINA,

vs.

FREDERICK ROBERT CHAPPELL,
DEFENDANT.

TRANSCRIPT OF RECORD

ORIGINAL

August 6 and 7, 2012
Greenville, South Carolina

B E F O R E:

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

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

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Assistant Solicitor

SUSANNAH C. ROSS, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

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

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MR. MOYER: Thank you, Your Honor.

THE COURT: Yes, sir.

THE COURT: Yes, ma'am.

May it please the Court.

I got an e-mail from Mr. Moyer, I believe, on July 16th, regarding another life without parole case that I

1 have. And then for Russell -- we were talking about
2 Russell. And then on the 18th, I was told, no, we're
3 going forward on Chappell, this case. I was served with
4 notice of intent to seek life without parole on July 23rd.
5 I will say that was during a week that I had planned to be
6 at the beach. I was at the beach that week. That took
7 out a week of preparation. So, essentially, I've had
8 about a week and a half of preparation for this trial.

9 While I did manage to subpoena one witness, another
10 witness, Jonathan Cooper, I could not locate in this time
11 period. And I did not have enough time to go meet
12 extensively with Mr. Chappell about this particular
13 charge. I will state we have written numerous letters
14 back and forth on that charge. So --

15 THE COURT: Do you mean you and Mr. Moyer?

16 MS. ROSS: No. Me and Mr. Chappell. I've not gone
17 to meet --

18 THE COURT: Oh, okay.

19 MS. ROSS: -- I mean, we have written about the
20 charges.

21 THE COURT: Oh, okay. Yes, ma'am.

22 MS. ROSS: But I was not able to go down to -- I
23 believe he's in Broad River -- to meet with him regarding
24 that.

25 THE COURT: Right.

1 MS. ROSS: So for that basis, good cause, and the
2 inability to prepare for the notice of life without
3 parole, and the -- my inability to get that witness, I'd
4 move for a continuance at this point.

5 THE COURT: Yes, sir, Mr. Moyer.

6 MR. MOYER: May it please the Court.

7 Yes, I would like to respond.

8 First of all, to give you a little bit of history
9 about the dates of this case. The Defendant was arrested
10 on August the 4th of 2010, so just, essentially, two years
11 ago. He was released on bond in November of 2010.

12 He was then rearrested on six counts of sexual
13 exploitation of a minor in January of 2011. He remained
14 incarcerated from that point. I took him to trial this
15 past March for the sexual exploitation of a minor charges.
16 He was found guilty of five counts. He was sentenced to
17 two consecutive ten-year sentences, which he is now
18 serving.

19 My plea offer, Your Honor, was sent on May the 23rd
20 of 2011. In that plea offer, I made clear that the guilty
21 plea due date was August 15th of 2011, which is,
22 essentially, one year ago now. So he's been on notice
23 that if he didn't -- that for a year that he had to have
24 pled guilty, or this case was subject to trial.

25 I went -- when I took him to trial back in March,

1 I -- after the Defendant was found guilty, I talked to
2 Ms. Ross, again, about seeing if we could work out a plea
3 so I wouldn't have to make the young child testify in
4 court. We were unable to do so at that time.

5 The Defendant was sent to the Department of
6 Corrections. We brought him back to plea court on April
7 the 17th of 2012. And I talked to Ms. Ross ahead of time.
8 I said, This is one last chance. Let's see if we can work
9 this out. If we can, great. We'll get the plea done
10 today. If not, then we're going to trial. I know
11 Ms. Ross spoke to the Defendant. He said that he's just
12 not going to plead guilty. I said, Well, okay, you know,
13 we're ready to go to trial.

14 I never, at any point, gave any indication that I
15 wouldn't be trying this case just because I got a
16 conviction on the other ones. In fact, I said the exact
17 opposite. I said it could be handled at any time. So
18 we've been -- the Defense has been on notice for a good
19 year that the case could be tried at any time. The
20 Defense has known it's imminent since April.

21 Our trial docket -- we handle the trial docket the
22 same way every time. We publish it two weeks before
23 court, which is what we did in this case. Yes, I was
24 looking at another case before I scheduled this one. And
25 I found out some witnesses are not available in that case.

1 So I scheduled this case for trial.

2 I would like to further add that a continuance would
3 be -- I use the word "inconvenient." It's, actually, much
4 more so in the fact that we have a witness who traveled
5 with great expense and inconvenience from Florida to be
6 here today, whom we anticipate calling as a witness. And
7 so it's, obviously, more than an inconvenience for her.
8 And, also, the fact that trials of this nature when you're
9 dealing with young children and having to gear up for
10 trial, and be here, and be ready to go, just the added
11 trauma it would be to the child to have to now back away
12 and reschedule for another time.

13 So, Your Honor -- oh, and the final point about the
14 notice for life without parole. The statute says 10 days
15 notice is all that is required. There's no extra
16 preparation needed because it's life without parole. All
17 that does is go to sentencing. So I don't see the
18 argument for less time to prepare for life without parole.
19 If we had not served the Defendant with notice of life
20 without parole, he'd be looking at life without parole
21 anyway. Because the statute carries a minimum of 25, a
22 maximum of life. So it really did not affect the case or
23 the Defense preparation for the case.

24 So, for all those reasons, Your Honor, we
25 respectfully move that the case not be continued, and that

1 we go forward today.

2 THE COURT: Okay. Thank you, Mr. Moyer.

3 And, Ms. Ross, could you tell me, specifically, what
4 about the witness you're -- you referred to.

5 MS. ROSS: The witness is Jonathan Cooper.

6 THE COURT: Okay.

7 MS. ROSS: He lived in this home where the
8 accusations allegedly occurred. We do have a letter from
9 him that he wrote stating that he never saw anything. He
10 believed in Mr. Chappell. But, like I said, I'm on your
11 side. I feel bad that you were accused of this, and these
12 kinds of things.

13 I can pass a copy of that letter up for a Court's
14 Exhibit, if you would like.

15 THE COURT: And -- okay.

16 MS. ROSS: This is the victim's uncle.

17 THE COURT: So this gentleman did not live in the
18 victim's home, or did he?

19 MS. ROSS: No.

20 The occurrences that happened were in the victim's
21 grandmother's home. So this witness lived there with his
22 mother and Mr. Chappell when the victim and her siblings
23 would come over to visit.

24 THE COURT: And you've been unable to find him?

25 MS. ROSS: I've been unable to locate him. I met

1 with his mother early last week. As for contact
2 information, I provided that to Cam Jones, my
3 investigator. And she's been unable to locate him.

4 THE COURT: And what's the State's position as to the
5 witness, Mr. Cooper?

6 MR. MOYER: All this witness seems to say is, I don't
7 believe you would do this sort of thing. I don't see
8 anything in here that he could even testify to in the
9 trial. So I don't see how this really is any -- I don't
10 see how this gives an indication that he has a witness who
11 would be helpful to him in the trial.

12 And even if this person would be helpful, you know,
13 they've, certainly, had plenty of time to try to find him.
14 And they haven't been able to do so. He wouldn't testify
15 until tomorrow. So, I mean, they would have another day
16 where they could continue to try to find him. But I don't
17 see anything in that letter that leads me to think that he
18 has information that he would be able to testify to.

19 THE COURT: All right. I don't find there's good
20 cause for a continuance. I don't believe Mr. Cooper's
21 testimony, if it would be in line with this letter, is
22 material to any defense. And it may be collateral, but it
23 simply doesn't satisfy Rule 7(b). So I respectfully deny
24 the motion for a continuance.

25 MS. ROSS: Thank you, Your Honor.

1 THE COURT: Okay. Anything further before we -- I
2 don't know what the status of the jury panel is.

3 THE CLERK: Our computers are down. I can call them.

4 THE COURT: Okay.

5 MR. MOYER: It's my understanding that Ms. Ross wants
6 a few moments to talk to her client.

7 THE COURT: Okay.

8 MR. MOYER: After that, we'll -- we have some
9 pre-trial motions that we would be happy to address.

10 THE COURT: Okay.

11 MS. ROSS: Yes.

12 I would say we have a good bit of pre-trial motions
13 as well.

14 THE COURT: Well, let's see what the jury panel is
15 doing.

16 THE CLERK: Yes, sir.

17 Do you mind if I call?

18 THE COURT: Go ahead.

19 (Pause.)

20 THE COURT: Ms. Ross, are you ready to proceed?

21 MS. ROSS: Yes, Your Honor.

22 THE COURT: Okay. Are they ready, the jury panel?

23 THE CLERK: Yes.

24 MS. ROSS: Real quick, Judge, I've just got some
25 proposed voir dire.

1 (WHEREUPON, Court's Exhibit No. 1 was marked for
2 identification and admitted into evidence.)

3 (Pause.)

4 MR. MOYER: Judge, while we're waiting on the jury
5 panel, would you like to address Ms. Ross' request for
6 voir dire?

7 THE COURT: Yes.

8 MR. MOYER: I would definitely object to request #7
9 and #8. They're just statements of law. And Your Honor
10 will instruct the jury on those points throughout this
11 trial. And I would object to them.

12 As far as the other matters, I think those questions
13 are usually asked in some way, shape, or form. I don't
14 have an objection to a juror being asked about whether
15 they contribute to a victim's rights groups. But,
16 however, Your Honor wishes to handle it.

17 THE COURT: Okay. I don't plan to ask #7 and #8. I
18 think I'm going to instruct them on that, initially, and
19 repeatedly. And I'll ask pretty much the substance of
20 everything else, maybe not verbatim like you requested.

21 MS. ROSS: Thank you, Judge.

22 We just ask that you make it a Court's Exhibit.

23 THE COURT: Sure.

24 (WHEREUPON, Court's Exhibit No. 2 was marked for
25 identification and admitted into evidence.)

1 MS. ROSS: And, Judge, one other thing. I would ask
2 that you consider when you ask the questions, if someone
3 stands up in reply that they come forward so that the
4 whole jury pool doesn't hear about prior abuse or
5 anything.

6 THE COURT: Yes. I'm going to ask a group of
7 questions and tell them they can come up, if they need to
8 respond to any of them.

9 MS. ROSS: Thank you, Judge.

10 THE COURT: And some of them will be innocuous
11 questions, so it will be less intrusive to everybody.

12 MR. MOYER: Your Honor, while we're waiting, may I
13 pass up a written motion that I have?

14 THE COURT: Yes, sir, Mr. Moyer.

15 MR. MOYER: May it please the Court.

16 That is a motion to have admitted a videotape of a
17 forensic interview. I know we'll have to have a hearing
18 on that before we start the trial.

19 Just so the Court is aware, the videotape is about an
20 hour long. So it will be about 10 minutes of testimony.
21 And then if Your Honor wants to watch the whole interview
22 or -- I don't know how much of it you will feel necessary
23 to watch. But that's...

24 THE COURT: Have you got a copy I can --

25 MR. MOYER: A copy of the video?

1 THE COURT: Yes.

2 MR. MOYER: I have my copy, yes, sir.

3 THE COURT: Well, I don't want to take that, I mean.

4 MS. ROSS: I've got a copy, too.

5 MR. MOYER: We may have an extra copy.

6 Would you mind if we let the Judge use yours?

7 MS. ROSS: No.

8 MR. MOYER: May it please the Court.

9 Your Honor, Ms. Ross has a copy that we supplied her
10 that she said she'd be willing to let you have. I'll pass
11 it up to the Court.

12 THE COURT: Yes, sir.

13 MS. ROSS: And I might need it back tonight, if it
14 comes to that, to review. But, otherwise, I'm sure I can
15 find another copy.

16 And just, I have a brief response to his motion.

17 THE COURT: Okay.

18 MS. ROSS: My understanding of Jesse's Law, this
19 section, 17-23-175, is there still must be particularized
20 guarantees of trustworthiness in that tape to comply with
21 the confrontation clause and due process. Here, this is a
22 person -- an interrogation made by a person who knew the
23 charges, knew what she was looking to hear to make a case.
24 And I believe Christine Carlberg admitted that that was
25 the case.

1 I'd point to Idaho v. Wright, which is a Supreme
2 Court case, 110 Supreme Court 3139. And that could be
3 from where this quote is from 1990, where it does say that
4 when an interrogation is performed by someone with
5 preconceived ideas of what the child should be disclosing,
6 that can lead to a lack of trustworthiness. And it notes
7 that expert testimony and child psychology tests indicate
8 that children are susceptible to suggestion and,
9 therefore, likely to be mislead by leading questions.

10 THE COURT: All right. Thank you, Ms. Ross.

11 Is the position of the Defense on these factors under
12 17-23-175(b), or is the actual interview itself was there
13 a trained interviewer, and was it non-leading questions,
14 and did it have an internal appearance, and contain a
15 detailed account?

16 MS. ROSS: Judge, I'm sort of in between there.

17 This interviewer has been trained. I, certainly,
18 would challenge to some degree that training in that she's
19 trained to prosecute cases. She's part of the Prosecution
20 team.

21 And while there, generally, again, are non-leading
22 questions, she often will grasp on when she hears
23 something she wants to hear, and then engage in looping a
24 whole lot. Once she hears something that's powerful, she
25 continues to repeat that to the child. I think that is a

1 form of leading, and is improper. And it influenced that
2 video. And, therefore, it created a misleading video that
3 lacks the degree of trustworthiness, I think, that's
4 required by the law.

5 THE COURT: All right. I'll review the recording.

6 Mr. Moyer, this is going to be your -- one of your
7 first pieces of evidence? Is that what you're telling me?

8 MR. MOYER: No. It would not be the first piece of
9 evidence, Your Honor. It would be -- she would not be the
10 first witness in the trial.

11 THE COURT: Okay.

12 MR. MOYER: The victim herself will be. However, I
13 was -- I thought I would introduce it for purposes of a
14 pre-trial hearing for Your Honor to view.

15 Am I being led to believe that Your Honor is going to
16 view that on your own, rather than in court?

17 THE COURT: Well, I don't see that -- I mean --

18 MR. MOYER: I don't have a problem either way. I was
19 just trying to decide about the witness and --

20 THE COURT: Right.

21 I don't know if there's any reason for the entire
22 courtroom to see it during the in-camera review. But
23 you're going to -- you would probably -- you're going to
24 need a ruling on it before this afternoon; right?

25 MR. MOYER: I'm so sorry. I didn't hear you.

1 THE COURT: You're going to need a ruling on it
2 before this afternoon?

3 MR. MOYER: I think before we have the jury sworn.

4 THE COURT: Oh, okay.

5 MR. MOYER: I believe that would be my request to the
6 Court.

7 THE COURT: All right.

8 (Pause.)

9 THE BAILIFF: Your Honor, are you ready for the
10 panel?

11 THE COURT: Yes, sir.

12 (WHEREUPON, the jury panel entered the courtroom.)

13 THE COURT: Ladies and gentlemen, good afternoon. My
14 name is Gary Hill. I'm one of the circuit judges here in
15 Greenville and Pickens County. I'm glad to be home
16 serving with you this week.

17 We are going to select the jury in a criminal case.
18 And it's the State v. Frederick Robert Chappell. And this
19 case involves two indictments that I'm going to read to
20 you in just a moment.

21 Before I read to you the indictments, I want to go
22 over with you some principles that apply to criminal
23 cases. And these are fundamental tenants of our law, and
24 our system of justice.

25 The first thing I want to say is that these

1 indictments don't constitute evidence of anything. The
2 indictments are simply the formal way a case begins, and
3 the way a case starts, and the way a citizen is notified
4 of what he's charged with. So these indictments don't
5 create any kind of inference of guilt, or even a suspicion
6 of guilt. They're simply the formal way the case begins.

7 Mr. Chappell has pled not guilty to these
8 indictments. And that puts the burden of proof entirely
9 on the State. Mr. Chappell does not have to prove himself
10 innocent, or prove himself not guilty. Instead, he is
11 presumed innocent at this stage, and will be presumed
12 innocent throughout the trial. And that presumption of
13 innocence may only be removed if, and only if, you, the
14 jury, unanimously find the State has proven each and every
15 element of the crime beyond a reasonable doubt.

16 Mr. Chappell, again, has no burden of proof. And that
17 burden to prove guilt is entirely on the State.

18 Now, these indictments allege as follows, in case
19 2010-GS-23-7901, the indictment alleges that Frederick
20 Robert Chappell did in Greenville County between the days
21 of January 1, 2006, and March 10, 2010, being over the age
22 of 14 years, willfully and lewdly commit, or attempt a
23 lewd and lascivious act upon or with the body or its parts
24 of initials KCK, a child under the age of 16 years, with
25 the intent of arousing, appealing to, or gratifying the

1 lusts, passions, or sexual desires of himself or such
2 child. This is in violation of Section 16-15-140 of the
3 South Carolina Code of Laws as amended.

4 The second indictment alleges that Frederick Robert
5 Chappell did in Greenville County between the dates of
6 January 1, 2006, and March 10, 2010, commit a sexual
7 battery on initials KCK, who was less than 11 years of
8 age. This is in violation of Section 16-3-6551 of the
9 South Carolina Code of Laws as amended.

10 Now, again, these allegations are simply that. They
11 don't constitute evidence of anything. And Mr. Chappell
12 has pled not guilty. And he's presumed innocent.

13 Now, before we can begin the case, we have to, of
14 course, select a jury that can be fair and impartial. So
15 I'm going to go through a number of questions to determine
16 whether you can be fair and impartial. If you need to
17 respond to the questions, just stand up and tell me your
18 name and juror number, if you know it.

19 First of all, Mr. Chappell, if you would, just stand
20 up so the jurors can see you.

21 Thank you, sir.

22 JURY QUALIFICATION

23 THE COURT: Is anyone related by blood or marriage,
24 or kin to in anyway Frederick Robert Chappell? If so,
25 please, stand.

1 (WHEREUPON, there was no response.)

2 THE COURT: Does anyone have any personal, social, or
3 business relationship with him? If so, please, stand.

4 (WHEREUPON, there was no response.)

5 THE COURT: The people who may testify in this case
6 include the following: Tasha Carter; **MINOR** [REDACTED], and
7 that's **MINOR**; Candace Beck-Anderson; Melissa
8 Epting-Smythe; Nancy Henderson, who is a doctor; Christine
9 Carlberg; Shauna Galloway-Williams; Roger Frady,
10 F-R-A-D-Y; Cheryl Cromartie; Michael Robertson; Jim Perry;
11 and Mike Rainey.

12 Is anyone related by blood or marriage, or kin to any
13 of those witnesses I just mentioned? If so, please,
14 stand.

15 JUROR #158, JAKE PERRY: I might be, sir. I don't
16 know what the -- the Jim Perry -- my biological father,
17 that's his name. So I don't know.

18 THE COURT: Is he with the Sheriff's Office?

19 JUROR #158, JAKE PERRY: No, sir.

20 THE COURT: What was your name?

21 JUROR #158, JAKE PERRY: Jake Perry.

22 THE COURT: Thank you, Mr. Perry.

23 JUROR #158, JAKE PERRY: Yes, sir.

24 THE COURT: Does anyone have any business, social, or
25 personal relationship with any of these potential

1 witnesses? If so, please, stand.

2 (WHEREUPON, there was no response.)

3 THE COURT: All right. I'm going to ask the lawyers
4 who are going to be involved in this case to introduce
5 themselves and the people at their table.

6 Mr. Moyer.

7 MR. MOYER: Thank you, Your Honor.

8 May it please the Court.

9 My name is Mark Moyer. I'm an Assistant Solicitor.
10 I will be representing the State in this trial. Seated
11 next to me is my assistant, my legal investigator, Martha
12 Lynch.

13 MS. ROSS: Hi. My name is Susannah Ross. And I
14 represent Frederick Robert Chappell.

15 Thank you.

16 THE COURT: All right. Is anyone related by blood or
17 marriage, or kin to in any way Mr. Moyer, or Ms. Lynch, or
18 Ms. Ross? If so, please, stand.

19 (WHEREUPON, there was no response.)

20 THE COURT: Does anyone have any personal, social, or
21 business relationship with either Mr. Moyer, Ms. Lynch, or
22 Ms. Ross? If so, please, stand.

23 (WHEREUPON, there was no response.)

24 THE COURT: Has anyone ever been employed by the
25 Solicitor's Office for the Thirteenth Circuit? If so,

1 please, stand.

2 (WHEREUPON, there was no response.)

3 THE COURT: Has anyone had any member of their
4 immediate family be employed by the Solicitor's Office, or
5 Ms. Ross' office? If so, please, stand.

6 (WHEREUPON, there was no response.)

7 THE COURT: Does anyone know anything about this
8 case, other than what you've heard from me here this
9 morning -- or this afternoon, rather? If so, please,
10 stand.

11 (WHEREUPON, there was no response.)

12 THE COURT: All right. I'm going to ask a number of
13 questions. And these questions ask for some personal
14 information. And the last thing we want to do is
15 embarrass anybody, or make you feel uncomfortable. But it
16 is necessary that I ask these questions.

17 So if you need to respond to these questions that I'm
18 about to ask, instead of standing up, I'll let you come
19 down and talk to me one at a time up here with the court
20 reporter in a little more private setting. But these are
21 the questions.

22 First of all, is there any member of the jury panel
23 who has been charged with, accused of, convicted of, or
24 arrested for an offense alleging sexual abuse or of a
25 sexual nature?

1 Is there anyone who's ever been a victim of or had an
2 immediate family member be a victim of sexual abuse or a
3 sexual assault? And by immediate family member, I'm
4 talking about a spouse, or a child, or a parent.

5 Is there anyone who works for or volunteers or
6 contributes to any type of organization whose primary
7 purpose is to promote victim's rights or more aggressive
8 law enforcement? And I would include Mother's Against
9 Drunk Driving, rape crisis centers, any kind of victim's
10 advocacy group is in that question.

11 Is there anyone who is related by blood or marriage,
12 or kin to anybody involved with law enforcement, whether
13 it be a police officer --

14 JUROR #120, SARAH LAW: I'm kin to a member of law
15 enforcement.

16 THE COURT: All right. I'm -- just come down one at
17 a time right now.

18 And -- or is there anyone who is employed by a law
19 enforcement officer?

20 Ma'am, we're going to make a line here in just a
21 minute after all of these questions.

22 JUROR #120, SARAH LAW: I'm sorry.

23 THE COURT: And, finally, this case alleges offenses
24 that involve young -- a young child and alleged sexual
25 acts. Is there any member of the jury panel who, because

1 of the nature of this case, would not be able to fairly
2 and impartially decide the verdict, or who could not
3 otherwise put their emotions aside if they were selected
4 as a juror?

5 So those are all the questions. So if you need to
6 respond to any of those questions, we're just going to
7 form, hopefully, a short line here in the center aisle.

8 (WHEREUPON, a sidebar was held with the Court, the
9 attorneys, and the Clerk.)

10 (WHEREUPON, Juror #120, Sarah Law, came forward.)

11 THE COURT: Okay. Yes, ma'am.

12 JUROR #120, SARAH LAW: My brother --

13 THE COURT: Wait just one second. We've got to get
14 the lawyers up here.

15 JUROR #120, SARAH LAW: Okay.

16 THE COURT: And, first of all, you are Ms. --

17 JUROR #120, SARAH LAW: I'm Sarah Law.

18 THE COURT: Okay. Ms. Law, she's got to be able to
19 hear what you're saying.

20 JUROR #120, SARAH LAW: My brother is a dispatcher
21 for law enforcement.

22 THE COURT: Okay. Would that affect your ability to
23 be fair and impartial in this case?

24 JUROR #120, SARAH LAW: I don't believe so.

25 THE COURT: What agency does he work for?

1 JUROR #120, SARAH LAW: Greenville County.

2 THE COURT: For the Sheriff's Office?

3 JUROR #120, SARAH LAW: Yes.

4 THE COURT: Okay. So there will be witnesses from
5 the Sheriff's Office here. Do you think that would affect
6 your ability to judge their credibility?

7 JUROR #120, SARAH LAW: I don't think so. I don't
8 know anybody from there.

9 THE COURT: You could decide the case on the evidence
10 and the law?

11 JUROR #120, SARAH LAW: Yes, sir.

12 THE COURT: All right. Thank you.

13 (WHEREUPON, Juror #120, Sarah Law, was seated.)

14 (WHEREUPON, Juror #60, Dorothy Evans, came forward.)

15 THE COURT: Yes, ma'am, Ms. Evans.

16 JUROR #60, DOROTHY EVANS: I'm Dorothy Evans.

17 My cousin is chief of police of Fountain Inn.

18 THE COURT: Okay. Would that affect your ability to
19 be fair and impartial in this case?

20 JUROR #60, DOROTHY EVANS: No.

21 THE COURT: Okay. Thank you.

22 (WHEREUPON, Juror #120, Dorothy Evans, was seated.)

23 (WHEREUPON, Juror #160, Allison Pilgrim, came
24 forward.)

25 THE COURT: Good morning.

1 JUROR #160, ALLISON PILGRIM: I'm Allison Pilgrim.

2 THE COURT: Okay.

3 JUROR #160, ALLISON PILGRIM: I was sexually molested
4 when I was a child. And I was a child abuse prosecutor
5 when I lived in Albuquerque, New Mexico.

6 THE COURT: Were you with the district attorney's
7 office there?

8 JUROR #160, ALLISON PILGRIM: I was.

9 THE COURT: And do you believe you can be fair and
10 impartial in this case?

11 JUROR #160, ALLISON PILGRIM: I really don't think I
12 could.

13 THE COURT: Okay. Thanks for your candor.

14 (WHEREUPON, Juror #160, Allison Pilgrim, was seated.)

15 THE COURT: She's excused.

16 (WHEREUPON, Juror #23, Jean Bryan, came forward.)

17 THE COURT: Yes, ma'am, Ms. Bryan.

18 JUROR #23, JEAN BRYAN: My ex-husband, whom I was
19 married to for 19 years, was abused by his church music
20 minister. And we were married for 19 years. And I saw
21 the effects of it through drug abuse and just mental
22 hardship.

23 And I am a school teacher. I could try to be
24 objective, but I do get quite emotional when I think about
25 a child being abused this way.

1 THE COURT: Okay. So do you believe you could be
2 fair and impartial?

3 JUROR #23, JEAN BRYAN: I could say that I would try
4 to be objective, but I'm swinging -- I'm going to be for
5 the child.

6 THE COURT: So if you are selected as a juror, you
7 have to take an oath that says --

8 JUROR #23, JEAN BRYAN: I know. I'll be impartial.

9 THE COURT: And the oath says you can decide the case
10 on the evidence and the law.

11 JUROR #23, JEAN BRYAN: True.

12 THE COURT: Do you think you could do that and not
13 let your experiences interfere with your impartiality?

14 JUROR #23, JEAN BRYAN: I want to do the right thing.

15 THE COURT: Right.

16 JUROR #23, JEAN BRYAN: I -- if I think that this
17 person who's sitting behind me is truly innocent, after I
18 hear the facts, then I would say, okay, you're innocent.
19 But I sure would have to -- I would have to be dead level
20 shown that.

21 THE COURT: Okay.

22 MS. ROSS: I'd move to strike for cause. If she's
23 leaning towards one side --

24 THE COURT: All right. We don't want to put you in
25 an awkward spot. I'm going to excuse you from this case

1 because of the experiences you've described. And I
2 appreciate your candor.

3 Thank you.

4 JUROR #23, JEAN BRYAN: Thank you.

5 (WHEREUPON, Juror #23, Jean Bryan, was seated.)

6 (WHEREUPON, Juror #145, Janet Mullinax, came
7 forward.)

8 JUROR #145, JANET MULLINAX: I'm Janet Mullinax.

9 THE COURT: Good morning -- or afternoon. Where did
10 the morning go?

11 JUROR #145, JANET MULLINAX: I know.

12 I was a victim of child abuse.

13 THE COURT: Yes, ma'am.

14 JUROR #145, JANET MULLINAX: So I'm not sure if I
15 could -- I don't know if I could do this or not.

16 THE COURT: Well --

17 JUROR #145, JANET MULLINAX: It was between the ages
18 of five and eight.

19 THE COURT: I'm going to excuse you from the case.

20 Thank you.

21 (WHEREUPON, Juror #145, Janet Mullinax, was seated.)

22 (WHEREUPON, Juror 200, Latasha Vernon, came forward.)

23 THE COURT: Yes, ma'am, Ms. Vernon.

24 JUROR #200, LATASHA VERNON: My cousin's wife is a
25 police officer.

1 THE COURT: Okay. Do you believe you could be fair
2 and impartial in this case?

3 JUROR #200, LATASHA VERNON: Yes. It doesn't affect
4 me.

5 THE COURT: Okay. Thank you.

6 (WHEREUPON, Juror #200, Latasha Vernon, was seated.)

7 (WHEREUPON, Juror #158 Jake Perry, came forward.)

8 THE COURT: Yes, sir.

9 JUROR #158, JAKE PERRY: My biological grandfather
10 molested me and my brothers. And he was charged and put
11 in jail for sexual assault.

12 THE COURT: Do you think you could be fair and
13 impartial in this case?

14 JUROR #158, JAKE PERRY: No.

15 THE COURT: Okay. We'll excuse you.

16 (WHEREUPON, Juror #158, Jake Perry, was seated.)

17 (WHEREUPON, Juror #210, Sarah Wells, came forward.)

18 JUROR #210, SARAH WELLS: I just want to let you know
19 I have three small children, two boys and a little girl.
20 So I'm going to be very honest. I don't know if I could
21 be totally unbiased. I want to serve, but I just wanted
22 to let you know that.

23 THE COURT: Do you -- I mean, if -- essentially, the
24 question is, could you be fair and impartial to both the
25 State and the Defense? Can you decide the case on the

1 evidence and the law?

2 JUROR #210, SARAH WELLS: Sure. Yes. I guess I just
3 felt that I needed to tell you that I have shall children.
4 And I was like, oh, my gosh.

5 THE COURT: Sure.

6 JUROR #210, SARAH WELLS: I just wanted to let you
7 know that.

8 THE COURT: Well, do you think you could take the
9 oath and decide the case based on the evidence and the
10 law?

11 JUROR #210, SARAH WELLS: Oh, yes.

12 THE COURT: Okay. Thank you.

13 (WHEREUPON, Juror #210, Sarah Wells, was seated.)

14 MS. ROSS: Judge, I would move to strike her for
15 cause as well. Because she indicated she didn't know if
16 she could be fair and impartial.

17 THE COURT: I think she answered the questions
18 appropriately. And I don't have any evidence to find she
19 should be struck at this point.

20 (WHEREUPON, Juror #146, Teresa Murdock, came
21 forward.)

22 THE COURT: Yes, ma'am, Ms. Murdock.

23 JUROR #146, TERESA MURDOCK: My sister and I were
24 sexually victimized as children. And I fear I could not
25 be impartial.

1 THE COURT: All right. I'll excuse you.

2 (WHEREUPON, Juror #146, Teresa Murdock, was seated.)

3 (WHEREUPON, Juror #214, Jonathan Wilburn, came
4 forward.)

5 THE COURT: Yes, Mr. Wilburn.

6 JUROR #214, JONATHAN WILBURN: Yes. I was sexually
7 assaulted when I was 15, and my brothers were. Because of
8 our testimony, we sent the man to jail. It was in the
9 state of Michigan.

10 And, now, being a father of four, I don't know that
11 my emotions would be -- it would be very hard.

12 THE COURT: Okay. I'll excuse you.

13 How old are the children?

14 JUROR #214, JONATHAN WILBURN: Seven, four, 22
15 months, and three weeks.

16 THE COURT: So this jury service is like a vacation
17 for you.

18 JUROR #214, JONATHAN WILBURN: Possibly.

19 THE COURT: Okay. We'll excuse you.

20 (WHEREUPON, Juror #214, Jonathan Wilburn, was
21 seated.)

22 (WHEREUPON, Juror #99, Kelly Holden, came forward.)

23 THE COURT: Yes, Ms. Holden.

24 JUROR #99, KELLY HOLDEN: I'm an elementary school
25 teacher. And I've had to contact DSS on several

1 occasions. And I have had a harder time looking at the
2 parent when I know what the child has shared with me.
3 It's been hard to be objective with a parent when I feel
4 my heart set as far as the child is concerned.

5 I've, also, had to submit documentation when children
6 have been taken from their parents home. So, as a
7 teacher, that's kind of hard for me. Because I know I'm
8 legally bound to protect the child. And if I don't report
9 it, you know, I'm held accountable. And I question my
10 ability.

11 THE COURT: All right. So if you're selected as a
12 juror, you have to take an oath that says you can decide
13 the case according to the evidence and the law.

14 JUROR #99, KELLY HOLDEN: Right.

15 THE COURT: Do you think you can do that? Do you
16 think your experiences as a teacher would interfere with
17 your ability to be fair and impartial?

18 JUROR #99, KELLY HOLDEN: I have a feeling it would.

19 THE COURT: We'll excuse you.

20 Where do you teach?

21 JUROR #99, KELLY HOLDEN: District two in
22 Spartanburg.

23 THE COURT: Oh, Spartanburg. That's where they have
24 the big bucks.

25 JUROR #99, KELLY HOLDEN: Yes.

1 THE COURT: All right. Thank you.

2 (WHEREUPON, Juror #99, Kelly Holden, was seated.)

3 (WHEREUPON, the sidebar was concluded.)

4 THE COURT: Okay. Is there anyone aware of any bias
5 or prejudice they may have about anyone involved in this
6 case, or any issue involved in the case such that they
7 could not be fair and impartial? If so, please, stand.

8 (WHEREUPON, there was no response.)

9 THE COURT: Any further voir dire requested by the
10 State?

11 MR. MOYER: No, Your Honor.

12 THE COURT: By the Defense?

13 MS. ROSS: None, Your Honor.

14 THE COURT: Okay. We're going to select the jury.

15 And, yes, ma'am, Madam Clerk.

16 JURY SELECTION

17 THE CLERK: When I call your name, if you would, just
18 stand in place. And once the attorneys have a chance to
19 strike you or accept you into the panel, just take your
20 belongings and have a seat in the jury box, please.

21 Juror # --

22 I don't have the numbers. Can I just use the name?

23 THE COURT: Yes.

24 THE CLERK: I don't have juror numbers. Usually, I
25 do. I'll just call your name. And if you'll stand up in

1 place, that will be great.
2 Shelley Rubert.
3 (WHEREUPON, Shelley Rubert, a white female, stood.)
4 MR. MOYER: Please present Ms. Rubert.
5 THE CLERK: Thank you.
6 Hold on one moment.
7 MS. ROSS: Please seat the juror.
8 THE CLERK: Thank you.
9 You may be seated in the jury box.
10 Thank you.
11 Juror # -- I'm sorry. Justin Timms.
12 (WHEREUPON, Justin Timms, a white male, stood.)
13 MR. MOYER: Please excuse the juror from this case.
14 THE CLERK: Thank you.
15 You may be seated. You're excused from the trial of
16 this case.
17 Meta Miller.
18 (WHEREUPON, Meta Miller, a black female, stood.)
19 THE CLERK: What says the State?
20 MR. MOYER: Please present Ms. Miller.
21 THE CLERK: What says the Defendant?
22 MS. ROSS: Please seat the juror.
23 THE CLERK: Thank you.
24 You may be seated in the jury box.
25 Estella Rickenbacker.

1 (WHEREUPON, Estella Rickenbacker, a black female,
2 stood.)
3 THE CLERK: What says the State?
4 MR. MOYER: Please present Ms. Rickenbacker.
5 THE CLERK: Thank you.
6 What says the Defendant?
7 MS. ROSS: Please excuse Ms. Rickenbacker.
8 THE CLERK: Thank you.
9 You may be seated. You're excused from the trial of
10 this case.
11 Cassie Handford.
12 (WHEREUPON, Cassie Handford, a white female, stood.)
13 MS. ROSS: What's the last name?
14 THE CLERK: Handford, Cassie Handford.
15 MR. MOYER: Please present Ms. Handford.
16 THE CLERK: Thank you.
17 MS. ROSS: Please seat the juror.
18 THE CLERK: Thank you.
19 You may be seated in the jury box.
20 Ronald Littlejohn.
21 (WHEREUPON, Ronald Littlejohn, a black male, stood.)
22 THE CLERK: What says the State?
23 MR. MOYER: Please present Mr. Littlejohn.
24 THE CLERK: Thank you.
25 MS. ROSS: Please seat Mr. Littlejohn.

1 THE CLERK: Thank you.
2 You may be seated in the jury box.
3 Michael Clifford.
4 (WHEREUPON, Michael Clifford, a white male, stood.)
5 MR. MOYER: Please present Mr. Clifford.
6 THE CLERK: Thank you.
7 What says the Defendant?
8 MS. ROSS: Please seat Mr. Clifford.
9 THE CLERK: Thank you.
10 You may be seated in the jury box.
11 Howard Pate.
12 (WHEREUPON, Howard Pate, a white male, stood.)
13 MR. MOYER: What was the last name?
14 THE CLERK: Howard Pate, P-A-T-E.
15 MR. MOYER: Please present Mr. Pate.
16 THE CLERK: Thank you.
17 What says the Defendant?
18 MS. ROSS: Please seat Mr. Pate.
19 THE CLERK: Thank you.
20 You may be seated in the jury box.
21 Tommy Tomes.
22 (WHEREUPON, Tommy Tomes, a white male, stood.)
23 MR. MOYER: Please present Mr. Tomes.
24 THE CLERK: Thank you.
25 MS. ROSS: Please seat Mr. Tomes.

1 THE CLERK: Thank you.
2 You may be seated in the jury box.
3 Ronald Adams.
4 (WHEREUPON, Ronald Adams, a white male, stood.)
5 MR. MOYER: Please excuse the juror from this case.
6 THE CLERK: Thank you.
7 You may be seated. You're excused from the trial of
8 this case.
9 Lisa McKenzie.
10 (WHEREUPON, Lisa McKenzie, a white female, stood.)
11 MR. MOYER: Please present Ms. McKenzie.
12 THE CLERK: Thank you.
13 MS. ROSS: Please seat Ms. McKenzie.
14 THE CLERK: Thank you.
15 You may be seated in the jury box.
16 Siamak Saharkhiz.
17 (WHEREUPON, Siamak Saharkhiz, a white male, stood.)
18 MR. MOYER: Please excuse the juror.
19 THE CLERK: Thank you.
20 You may be seated. You're excused from the trial of
21 this case.
22 Sarah Law.
23 (WHEREUPON, Sara Law, a white female, stood.)
24 MR. MOYER: Please present Ms. Law.
25 MS. ROSS: Please excuse Ms. Law.

1 THE CLERK: Thank you.
2 You may be seated. You're excused from the trial of
3 this case.
4 Adam Hickman.
5 (WHEREUPON, Adam Hickman, a white male, stood.)
6 MR. MOYER: Please excuse the juror.
7 THE CLERK: Thank you.
8 You may be seated. You're excused from the trial of
9 this case.
10 Michael McClain.
11 (WHEREUPON, Michael McClain, a white male, stood.)
12 MR. MOYER: Please present Mr. McClain.
13 THE CLERK: Thank you.
14 What says the Defendant?
15 MS. ROSS: Please seat Mr. McClain.
16 THE CLERK: Thank you.
17 You may be seated in the jury box.
18 Ryan Green.
19 (WHEREUPON, Ryan Greene, a white male, stood.)
20 MR. MOYER: Please present Mr. Greene.
21 THE CLERK: Thank you.
22 MS. ROSS: Please seat Mr. Greene.
23 THE CLERK: Thank you.
24 You may be seated in the jury box.
25 Dilip Boal.

1 (WHEREUPON, Dilip Boal, a white male, stood.)
2 MS. ROSS: Bull?
3 THE CLERK: Boal, B-O-A-L.
4 MR. MOYER: I'm sorry. Is it Boyle?
5 THE CLERK: Boal, B-O-A-L.
6 MR. MOYER: Please present Mr. Boal.
7 THE CLERK: Thank you.
8 MS. ROSS: Please seat the juror.
9 THE CLERK: Thank you.
10 You may be seated in the jury box.
11 Katelyn Forry.
12 (WHEREUPON, Katelyn Forry, a white female, stood.)
13 MS. ROSS: I'm sorry. I can't --
14 THE CLERK: Katelyn Forry.
15 MR. MOYER: Please present Ms. Forry.
16 THE CLERK: Thank you.
17 MS. ROSS: Please excuse the juror.
18 THE CLERK: Thank you.
19 You may be seated. You're excused from the trial of
20 this case.
21 Anthony Roberts.
22 (WHEREUPON, Anthony Roberts, a white male, stood.)
23 MR. MOYER: Please present Mr. Roberts.
24 MS. ROSS: Please seat the juror.
25 THE CLERK: Thank you.

1 You may be seated in the jury box.

2 THE COURT: We'll have two alternates.

3 THE CLERK: Is it one and two?

4 THE COURT: Yes, ma'am.

5 THE CLERK: Laurie Taylor-Rice.

6 (WHEREUPON, Laurie Taylor-Rice, a white female,

7 stood.)

8 MR. MOYER: Please present Ms. Rice.

9 THE CLERK: Thank you.

10 MS. ROSS: Please excuse Ms. Rice.

11 THE CLERK: You may be seated. You're excused from

12 the trial of this case.

13 Janet Mullinax.

14 (WHEREUPON, Janet Mullinax, a white female, stood.)

15 MR. MOYER: Please present Ms. Mullinax.

16 THE CLERK: Thank you.

17 MS. ROSS: Please excuse Ms. Mullinax.

18 THE CLERK: You may be seated. You're excused from

19 the trial of this case.

20 Holly Stone.

21 (WHEREUPON, Holly Stone, a white female, stood.)

22 THE COURT: Let me see the lawyers up here one

23 second.

24 (WHEREUPON, a bench conference was held.)

25 THE COURT: Ms. Mullinax, can we ask you a question

1 up here real quick, ma'am.

2 (WHEREUPON, Juror #145, Janet Mullinax, came
3 forward.)

4 (WHEREUPON, a sidebar was held with the Court, the
5 attorneys, the Clerk, and Juror #145, Janet
6 Mullinax.)

7 THE COURT: Hey.

8 This is purely my fault, and I'm sorry.

9 JUROR #145, JANET MULLINAX: That's okay.

10 THE COURT: When you came forward, what did you --

11 JUROR #145, JANET MULLINAX: That I was a victim of
12 child abuse between the ages of five and eight.

13 THE COURT: Okay. We had to just make sure that we
14 had the information correct.

15 JUROR #145, JANET MULLINAX: Okay.

16 THE COURT: I'm excusing you from the case. And it's
17 my fault. You should have been taken off the list.

18 JUROR #145, JANET MULLINAX: Okay.

19 THE COURT: Thank you.

20 (WHEREUPON, Juror #145, Janet Mullinax, was seated.)

21 THE COURT: So that was my fault. She should have
22 been taken off.

23 THE CLERK: Okay.

24 THE COURT: So that means, Ms. Ross, you still have
25 another strike.

1 MS. ROSS: I had two, and I've used one?
2 THE COURT: Right.
3 (WHEREUPON, the sidebar was concluded.)
4 THE CLERK: Holly Stone.
5 (WHEREUPON, Holly Stone, a white female, stood.)
6 MR. MOYER: Please present Ms. Stone.
7 MS. ROSS: Please excuse Ms. Stone.
8 THE CLERK: Thank you.
9 You may be seated. You're excused from the trial of
10 this case.
11 Latasha Vernon.
12 (WHEREUPON, Latasha Vernon, a black female, stood.)
13 MR. MOYER: Please present Ms. Vernon.
14 THE CLERK: What says the Defendant?
15 MS. ROSS: Please seat Ms. Vernon.
16 THE CLERK: Thank you.
17 You may be seated in the jury box.
18 Raymond Crisp.
19 (WHEREUPON, Raymond Crisp, a white male, stood.)
20 MR. MOYER: Please present Mr. Crisp.
21 THE CLERK: Thank you.
22 MS. ROSS: Please seat Mr. Crisp.
23 THE CLERK: Thank you.
24 You may be seated in the jury box.
25 THE COURT: Any objections or motions related to the

1 selection process or the composition of the jury from the
2 State?

3 MR. MOYER: No, Your Honor.

4 THE COURT: From the Defense?

5 MS. ROSS: None, Your Honor.

6 THE COURT: All right. I find it complied with all
7 statutory and Constitutional requirements.

8 And let me just ask the lawyers something up here
9 real quick about scheduling.

10 (WHEREUPON, a bench conference was held.)

11 THE COURT: All right. Ladies and gentlemen, you've
12 been selected to be the jury in the case of the State v.
13 Frederick Robert Chappell. We have some pre-trial matters
14 we're going to have to take care of before we can,
15 actually, get the trial underway.

16 So I'm just going to ask that you come back at 3:00
17 to the jury room. And Mr. Doriety will show you where
18 that is. It's just right across the hall. And don't talk
19 about the case. Keep an open mind. And don't do any kind
20 of outside investigation. And we'll see you back at 3:00.

21 Thank you very much.

22 (WHEREUPON, the jury was excused from open court at
23 approximately 1:14 p.m.)

24 THE COURT: Okay. And, those of you remaining, I've
25 just been told by Ms. Olson to tell you that you just need

1 to be back in the jury assembly room at 2:30. So you can
2 go ahead and take a break until 2:30.

3 Thank you.

4 Thanks for your cooperation and your patience.

5 (WHEREUPON, the remaining jury panel members exited
6 the courtroom.)

7 THE COURT: Anything before we break for lunch?

8 MR. MOYER: No, Your Honor, not from the State.

9 MS. ROSS: No, Your Honor.

10 THE COURT: So we'll try to reconvene at, let's say,
11 2:45.

12 (WHEREUPON, a lunch break was taken.)

13 THE COURT: Good afternoon. I apologize for the
14 delay. It took me a little longer to review that than I
15 anticipated.

16 Anything further, at this point, on the admissibility
17 of the audio recording?

18 MR. MOYER: Judge, not at this time.

19 I would argue that the video -- that the recording
20 speaks for itself. If Your Honor is not -- if Your Honor
21 does not believe it is sufficient, I am prepared to call
22 the forensic interviewer who can lay some further
23 foundation or further information, also.

24 THE COURT: Well, I guess, for the record, I would
25 like to hear some testimony about the -- I guess her

1 qualifications. That's the only thing I really was
2 curious about.

3 MR. MOYER: Okay. Then the State would call
4 Christine Carlberg to the stand.

5 THE CLERK: Ms. Carlberg, if you'll come forward to
6 be sworn in, please.

7 Place your left hand on the Bible and raise your
8 right.

9 WHEREUPON,

10 CHRISTINE CARLBERG,
11 after first having been duly sworn, testified as follows:

12 THE CLERK: Thank you.

13 You may be seated.

14 Would you, please, state your name for the record?

15 THE WITNESS: Christine Carlberg.

16 THE CLERK: Thank you.

17 DIRECT EXAMINATION

18 BY MR. MOYER:

19 Q Where do you work?

20 A I'm employed by the Greenville Department of Mental
21 Health.

22 Q Okay. And do you have a contract with any particular
23 organization?

24 A I'm contracted with the Julie Valentine Center.

25 Q What is the Julie Valentine Center?

1 A It was formerly known as the Greenville Rape Crisis
2 and Child Abuse Center. They deal with sexual assault
3 victims of -- children and adults.

4 Q Okay. And you've worked there full-time?

5 A Yes, sir.

6 Q What does your job entail?

7 A I am a forensic interviewer.

8 Q And would you explain what -- or your work experience
9 and your training?

10 A I've been conducting forensic interviews for the last
11 12 years in Mississippi and in South Carolina. I've been
12 trained at Corner House in Minneapolis, which is a
13 nationally-recognized facility for conducting forensic
14 interviews. And I've, also, been to training in
15 Mississippi and in South Carolina at Finding Words, which
16 is now called Child First. And --

17 Q Okay. And what -- I'm sorry. Please finish.

18 A And just various other conferences.

19 Q Okay. What is your education?

20 A I have a Bachelor of Science in Rehabilitation
21 Services Education with a minor in Psychology from
22 Pennsylvania State University. And I have a Master of
23 Arts in Marriage and Family Therapy from the Reformed
24 Theological Center in Jackson, Mississippi.

25 Q Okay. And do you have any special -- well, you may

1 have already covered this -- but training in the area of
2 forensic interviewing?

3 A Yes, sir.

4 Q And --

5 A That's Corner House and Child Work First are the
6 major trainings.

7 Q Now, do you have occasion to consult with other
8 professionals in your field related to child sexual
9 assault and forensic interviewing?

10 A I do. Among other things, we do inner office
11 staffings of our cases. So I'm staffing cases with other
12 forensic interviewers and therapists. And then I'm, also,
13 involved in a national peer review where we staff cases on
14 a national level.

15 Q Okay. And what is a forensic interview?

16 A It's a semi-structured, non-leading, non-suggestive
17 method that's developmentally appropriate, just a way of
18 gathering information from a child.

19 Q And is there any particular protocol that you would
20 adhere to for doing the interviewing?

21 A We follow a protocol called RATAC.

22 Q Okay. And what is RATAC?

23 A It's a semi-structured protocol. And it's a five --
24 it stands for five words called rapport, anatomy ID, touch
25 inquiry, abuse scenario, and closure.

1 Q And is this method a method that is widely and
2 generally accepted in your field?

3 A Yes, sir.

4 Q It's based on scientific standards and peer review
5 standards?

6 A Yes, sir.

7 Q And what are the scientifically-based standards used
8 to conduct a forensic interview with a child who has been
9 sexually assaulted?

10 A We follow and continue with non-leading questions.
11 It's a child developmentally-friendly approach. We have a
12 child-friendly interview room.

13 Q Okay. And you've received special training on this
14 RATAC method, as you've just described?

15 A Yes, sir.

16 Q Have you testified in court?

17 A Yes, sir.

18 Q How many times?

19 A About 30 times.

20 Q Okay. And what different courts?

21 A In Pickens County and Greenville County in General
22 Sessions, and in Pickens County and Greenville County in
23 Family Court.

24 Q Okay. And have these -- any of these times you've
25 testified had to do with forensic interviewing?

1 A Yes, sir.

2 Q Do you know what -- how many, or roughly how many?

3 A About all of them.

4 Q All right. Can you answer me how many children you
5 have seen in your years of practice and how many forensic
6 interviews you have conducted?

7 A I've conducted over 2,000 forensic interviews.

8 MR. MOYER: At this time, please, answer any
9 questions that the Defense attorney may have.

10 CROSS-EXAMINATION

11 BY MS. ROSS:

12 Q Do you have an MD? Are you a psychiatrist, or a
13 psychologist?

14 A No, ma'am.

15 Q So you're trained as a therapist?

16 A Yes.

17 Q And as far as -- you're certified in RATAAC. Isn't
18 the job of that to prosecute cases of alleged child
19 battery, sexual battery?

20 A The job is to -- like I said, a fact-finding
21 interview to allow the child to disclose what may have
22 happened to her or him.

23 Q All right. Now, when you go in for that interview,
24 isn't it true that you already know what the allegations
25 are?

1 A I have a history, yeah. There are some allegations
2 that I know.

3 Q All right. When you initiate an interview with the
4 child -- or we'll be specific. In this case, when you
5 initiated that interview, did you know what the
6 allegations were, the charges that were being alleged in
7 this case?

8 A I knew what had been referred to us, and some
9 background information that I had gathered from the
10 mother.

11 Q All right. And so you had spoken to the mother about
12 what she had heard alleged -- or what she had heard?

13 A Yes, ma'am.

14 Q And that -- and you spoke to her and heard that
15 before you questioned the child?

16 A Yes, ma'am.

17 Q Now --

18 MS. ROSS: Actually, I've got no further questions.

19 THE COURT: Redirect?

20 MR. MOYER: Yes, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. MOYER:

23 Q Is that normal procedure for you to know the
24 allegations ahead of time?

25 A Yes, sir.

1 Q What is the reason for that?

2 A So -- sometimes, just really so we know what we're
3 looking for when we're going in to an interview. And if
4 there's different things or a history of sexual abuse,
5 then we like to know about that as well.

6 Q And all of these forensic interviews, they have to do
7 with sexual abuse; is that correct?

8 A No.

9 Q Okay. What other -- are there other kinds of abuse,
10 also?

11 A Also, we do forensic interviews for physical abuse,
12 and witnesses to such things as homicide or other children
13 being abused.

14 Q What percentage would you say of the cases you handle
15 have to do with sexual abuse of the forensic interviews
16 you do?

17 A Definitely the majority. I would say 85 to 90.

18 Q Okay. And you're not employed by law enforcement,
19 are you?

20 A No.

21 Q But you work with law enforcement in certain
22 capacities, or share information?

23 A I share information with them.

24 Q So you knew when you did this forensic interview on
25 **MINOR||** that it would be going to law enforcement as

1 part of their investigation?

2 A Yes, sir.

3 Q Okay. And that's true on most of these forensic
4 interviews having to do with sexual abuse?

5 A Yes, sir.

6 MR. MOYER: Okay. Nothing further.

7 MS. ROSS: One more question.

8 RECROSS-EXAMINATION

9 BY MS. ROSS:

10 Q As far as you said you did 2,000 interviews, of those
11 children who were interviewed regarding allegations of
12 sexual abuse, how many findings did you make that there
13 was no basis to the allegations? In other words, that
14 there was no basis for the allegations, and it wasn't a
15 compelling interview?

16 A I would say maybe -- I'm not sure exactly, maybe 15
17 percent, maybe.

18 MS. ROSS: I've got nothing further.

19 MR. MOYER: Nothing further.

20 THE COURT: Thank you, ma'am.

21 Okay. Anything further on the motion for admission
22 of the statement?

23 MR. MOYER: No further evidence, Your Honor, no.

24 MS. ROSS: Nothing from the Defense, no.

25 THE COURT: Okay. I find after review that the

1 statement is admissible. It was given in response to
2 questioning conducted during an investigative interview by
3 a trained and experienced interviewer. I find the
4 statements observed were on film and recorded both in an
5 audio and visual manner. I find that it is anticipated
6 that the victim will testify at the proceedings and be
7 subject to cross-examination on the elements of the
8 offense, and the making of the statement.

9 I find that all the circumstances surrounding the
10 making of the statement provide particularized guarantees
11 of trustworthiness after reviewing the tape. And in
12 making that finding, I, specifically, note that and find
13 that the statement was not elicited by leading questions.

14 The interviewer has been trained extensively in
15 conducting investigative interviews of children. The
16 statement was detailed and had an internal appearance.
17 And it was filmed in a non-invasive and non-threatening
18 manner. And, accordingly, I find all the elements of
19 Section 17-23-175 have been met. And it is admissible
20 under the statute.

21 Okay. What's the next motion?

22 MS. ROSS: Well, I'll just quickly do a -- I always
23 do a motion regarding discovery, and just make a motion
24 that any social worker's notes or expert notes be provided
25 to me, if they have not already been provided.

1 MR. MOYER: I've provided all of the reports and
2 documents that were done by the experts that I'm aware of,
3 that have been given to me. And I have no reason to
4 believe there are any others.

5 THE COURT: Okay.

6 MS. ROSS: I would like to move to -- for a
7 sequestration of the witnesses at this time.

8 MR. MOYER: Well, I don't plan on having the victim
9 herself in the courtroom. But her mother and father are,
10 certainly, allowed to stay in under the victim's rights
11 law.

12 In fact, I would argue that there's no basis for
13 sequestration in the case. I think the Defense has to
14 make a showing that there would be somehow undue
15 influence, one witness over the others. And I don't think
16 there's any reason to think that.

17 MS. ROSS: Well, I think, at this time, the mother
18 and daughter have probably talked to each other a good
19 amount of time about the case. As long as, I guess, the
20 child is out of the courtroom during the proceeding. I
21 would still maintain my motion, however.

22 THE COURT: Okay. Based on Rule 615, I find that any
23 witnesses who are not covered under the Victim's Rights
24 Act are sequestered.

25 MS. ROSS: Thank you, Judge.

1 Now --

2 MR. MOYER: Just so we can be clear on that. I know
3 victims and the chief leading officer are allowed to be
4 present in the courtroom.

5 THE COURT: Right.

6 MR. MOYER: And I believe victim includes parents of
7 the victim --

8 THE COURT: Yes.

9 MR. MOYER: -- under the definition. I don't have
10 the statute with me.

11 THE COURT: I think you're right. I'll have to
12 review the statute. It will take me a minute. We'll pull
13 it up and come back to that.

14 But go ahead. Yes, ma'am, Ms. Ross.

15 MS. ROSS: This is probably premature. But I would
16 have a motion to evaluate the child witnesses competency
17 to testify. I think that might be able to -- just some
18 quick questions outside the presence of the jury before
19 testimony. So I would put that on the record.

20 And then, finally, Judge, as far as -- I've got a
21 motion on -- or I would ask for a ruling on admissibility.
22 In this case, there is an issue with a prior conviction
23 from 1994, an allegation of and conviction of criminal
24 sexual conduct with a minor against Ms. Candace Beck. We
25 would argue that that should not come in under Lyle, or

1 Rule 404(b), or Rule 609 of the Rules of Evidence.

2 Here, we'd point out the recent case of State v.
3 Fonseca, 681 S.E.2d 1. And that's a 2009 case. And I'd,
4 also, point out Judge Pleicones dissent in State v.
5 Wallace, which is 683 S.E.2d 275. And that's a 2009 case.
6 While I recognize it's a dissent, it's going to a
7 legitimate issue that the rules of evidence are designed
8 to protect all equally. And under equal protection rights
9 and due process rights, everyone has a right to a fair
10 trial, whether they're being charged with a sex-related
11 crime or another type of crime.

12 Here, I believe there's been a slippery slope where
13 admissibility standards have been relaxed in sex cases.
14 And we would argue that should not be the case here, and
15 that Ms. Beck's testimony should be kept out at this
16 trial.

17 I'd add that this is a charge that occurred over 20
18 years ago. And there were different allegations of a type
19 of battery and a degree, certainly, of battery in that
20 case. So I would ask that that not be brought in in this
21 trial. And I'd ask for a ruling on that before my
22 opening.

23 THE COURT: Thank you, Ms. Ross.

24 Yes, sir, Mr. Moyer.

25 MR. MOYER: If it please the Court, Your Honor.

1 Regarding the motion for the 404(b) witness, I would
2 ask that we not take that matter up at this point and,
3 perhaps, wait until after the victim testifies, so we'll
4 know exactly what her allegations -- the allegations of
5 the conduct with her was. And then at some point, maybe
6 when we break today, hear from the witness from the prior
7 case, so Your Honor can make a decision as to whether or
8 not there are sufficient similarities to allow the
9 testimony.

10 I don't have any reason to talk about her in my
11 opening statement. So it will not prejudice the jury if
12 Your Honor decides to rule against the admission of that
13 testimony. But I would just ask that it be put off for
14 now.

15 MS. ROSS: And the problem for me, Your Honor, is
16 that, in opening, clearly, if that is going to be
17 admitted, I need to address that in my opening. And if it
18 will not be admitted, I will not. So that's how it
19 affects my opening statement.

20 MR. MOYER: Well, then I can call the witness now, if
21 Your Honor chooses.

22 THE COURT: Let's just go ahead and handle it now.

23 MR. MOYER: Okay. The State would call Candace
24 Beck-Anderson to the stand.

25 THE CLERK: Ms. Anderson, please, come forward to be

1 sworn in.

2 Please place your left hand on the Bible and raise
3 your right.

4 WHEREUPON,

5 CANDACE BECK-ANDERSON,

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

7 THE CLERK: Thank you.

8 You may be seated.

9 Will you, please, state your name for the record?

10 THE WITNESS: Candace Beck -- Candace Beck-Anderson.

11 THE CLERK: Thank you.

12 DIRECT EXAMINATION

13 BY MR. MOYER:

14 Q Ms. Anderson, how old are you?

15 A 27.

16 Q All right. And did you used to know this Defendant,
17 Frederick Chappell?

18 A Yes.

19 Q And by what name did you know him?

20 A Robbie Chappell.

21 Q Okay. How old were you when you knew him?

22 A Seven.

23 Q And that's the age you were when he came into -- he
24 was brought into your life?

25 A Yes.

1 Q Okay. And how -- what brought him into your life?

2 A He was in a relationship with my mother, and then
3 married her.

4 Q Okay. So did he move into the house --

5 A Yes.

6 Q -- where you lived?

7 A Yes.

8 Q And do you have any brothers or sisters?

9 A No, I do not.

10 Q So when he moved in, it was just you, your mother,
11 and the Defendant who lived there?

12 A Yes.

13 Q Okay. And you live now in Florida?

14 A Yes.

15 Q And you came back for purposes of this trial today?

16 A Yes, sir.

17 Q All right. Just a couple other questions about your
18 background. Are you married now?

19 A Yes.

20 Q How many children do you have?

21 A Three.

22 Q Are you employed?

23 A No.

24 Q What do you do?

25 A I'm a full-time student.

1 Q What are you studying?

2 A I'm working on a degree in social science and in
3 biology.

4 Q Okay. Where do you go to school?

5 A The University of South Florida.

6 Q And what did you do prior to going back to school?

7 A Well, while I was going to school, I was a CNA.

8 Q Now, you're going to school full-time?

9 A Yes.

10 Q And what does your husband do for a living?

11 A He is a security contractor. He works for a
12 consulate in Afghanistan.

13 Q Okay. Now, were you sexually abused as a child?

14 A Yes.

15 Q What ages were you when that took place?

16 A Seven to eight.

17 Q What is your date of birth?

18 A .

19 Q Okay. How long did this abuse go on?

20 A About a year, a year and a half, to the best of my
21 memory.

22 Q And who was the person who did this to you?

23 A Frederick Robert Chappell.

24 Q The Defendant in this case?

25 A Yes.

1 Q Okay. Without going into -- well, let me ask you
2 this. What different forms of sexual abuse did he do to
3 you?

4 A I don't know your technical terminology. But he
5 forced me to have oral sex with him. He touched me. He
6 put his --

7 Q He touched your privates?

8 A He touched my vagina, yeah. He put his penis up
9 against my vagina. He put his fingers into my vagina. He
10 raped me and he sodomized me repeatedly.

11 Q Okay. And you said rape. Are you talking about full
12 penetration?

13 A Yes. He penetrated my vagina completely.

14 Q And was that -- that was the last occurrence; is that
15 correct?

16 A Yes.

17 Q And so before the time that led to the full
18 penetration, did he ever attempt to penetrate you?

19 A Yes.

20 Q Okay. And he just was unsuccessful?

21 A I don't know what the technicalities would be. But,
22 yes, two other times he started to and chose not to.

23 Q And then did something else happen to you?

24 A Yes.

25 Q Okay. And so did these incidents happen during the

1 daytime or the nighttime?

2 A Both.

3 Q And when they would happen at night, where would it
4 take place?

5 A In our -- in my families living room, in my
6 bedroom -- just at night?

7 Q Yes.

8 A In my families living room, my bedroom, and, I
9 believe, my mother's room as well.

10 Q And how did he come get you -- or how did it come
11 about that you were alone with him?

12 A I think my mother was going to school at the time. I
13 believe she was going to nursing school. And so he would
14 watch me while she was at school. And, in addition to
15 that, I believe I -- I know, at least, sometimes, she
16 would go out like with family or something. And I would
17 be left at home. And he would watch me.

18 Q Okay. Now, what about at night? How would he get
19 alone with you at night?

20 A At night, after my mother went to sleep, he would
21 come into my room.

22 Q And when he would come into your room, he would do
23 some or all of these different acts that you've talked
24 about?

25 A When he would come into my room at night, he would

1 just get on top of me and put his penis up against me and
2 kind of -- I don't know -- fondling, push -- you know,
3 push his penis around, or whatever.

4 Q Okay. And so the other types of abuse that you
5 talked about mainly happened during the daytime?

6 A Either one.

7 Q And where would your mother be -- well, I think you
8 just mentioned that she would be at school --

9 A She would be at school or out.

10 Q She would be out of the house?

11 A Yes.

12 Q And where would these acts happen, at your home, or
13 other places?

14 A They would happen in my home, as I said, in the
15 living room or my bedroom. There were occasional times
16 where it would be outside of our home, either driving home
17 from somewhere. He had pulled over before I went to a
18 campground one time with my family and he took me to the
19 bathrooms there.

20 Q Okay. Now, over the -- did he ever show you
21 pornography?

22 A Yes, on video.

23 Q On video?

24 A Yes.

25 Q Do you remember how many times?

1 A I remember once for sure.

2 Q Okay. And did he sexually abuse you on the occasions
3 he showed you the pornography?

4 A Yes, after he watched it.

5 Q Now, over this year to year and a half period of time
6 that he did this to you, how frequently would it happen to
7 you?

8 A To the best of my memory, one to three times a week.
9 I was a child, so...

10 Q Okay. Now, other than the sexual abuse that the
11 Defendant did to you, if you are able to set that aside,
12 did he do nice things to you -- for you?

13 A Yes. He was very kind to me, actually.

14 Q Did he ever punish you?

15 A No. He -- to my memory, he never punished me. He
16 interceded on my behalf with my mother, actually. Because
17 my mother was a very strict disciplinarian. He would try
18 to get her to, you know, relax and be kinder to me. And
19 he was kind otherwise.

20 Q Okay. Was the sexual abuse done -- was it done in
21 the way of a form of punishment to you?

22 A No.

23 Q Now, over this period of a year and a half or so, you
24 kept this to yourself?

25 A Yes.

1 Q You didn't tell anyone?

2 A No.

3 Q What ended up leading to your, finally, telling -- to
4 it, finally, being disclosed?

5 A I was put into the hospital with injuries. And the
6 doctor could tell what the injuries had come from. So, at
7 that point, I told, I believe, my mother. And she told
8 them.

9 Q Okay. And that was on the final occasion you talked
10 about where there was full penetration?

11 A Yes.

12 MR. MOYER: I have no further questions at this time.
13 Please answer any questions from Defense counsel.

14 THE WITNESS: Yes, sir.

15 CROSS-EXAMINATION

16 BY MS. ROSS:

17 Q Were there --

18 MS. ROSS: Actually, no. I have no further
19 questions. I have no questions.

20 THE COURT: Thank you.

21 THE WITNESS: Yes, sir.

22 MR. MOYER: And, Your Honor, as far as -- you've seen
23 the video. The testimony from the victim, I think, we
24 will find will be along those same lines. So I think the
25 allegations for the most part Your Honor knows. And

1 you're able now to make a decision about the similarities
2 of the incidents.

3 I would add -- I think -- I don't think there's any
4 dispute about the fact -- just to make sure we're clear on
5 the family relationships. The victim in the case we're
6 about to try was six to seven years of age when the acts
7 took place. The Defendant was her -- was the boyfriend to
8 her grandmother.

9 She used to spend a lot of time over at her
10 grandmother's house. Multiple times a month, she would
11 spend the night at her grandmother's house. The incidents
12 there, as Your Honor heard on the videotape, happened both
13 in the daytime and at nighttime, and predominantly, except
14 for maybe one or two occasions, happened at her
15 grandmother's house. So I think we can agree on all those
16 facts.

17 Is that -- do you dispute that?

18 MS. ROSS: No, I don't.

19 MR. MOYER: Okay. At this time, I don't have any
20 further evidence to introduce on the subject. But I would
21 like to make an argument to the Court, if --

22 THE COURT: Sure. Go ahead.

23 MR. MOYER: Your Honor, as you have noted, I am
24 moving to have admitted into the case -- into my case in
25 chief pursuant to Rule 404(b) the evidence that was just

1 presented to the Court by Ms. Anderson. I think we -- the
2 first issue to address on this is the standard of proof.
3 The -- a conviction of the prior crime is not necessary.
4 The courts have held that the evidence must be clear and
5 convincing, and it is reviewed under an any evidence
6 standard on appeal.

7 However, in our situation, there was a conviction.
8 The Defendant was on the trial docket in Pickens County in
9 1994, on July the 12th of 1994. When the victim showed
10 up, again, from out of state at a young age, the Defendant
11 pled guilty and was sentenced to 20 years. So I would
12 argue that that standard of proof has been met.

13 The next step would be is the evidence relevant under
14 Rule 401. And then Rule 404(b) is what makes the evidence
15 relevant is that it is -- Rule 404(b) allows for the
16 admission of evidence that it is of a common scheme or
17 plan. So the evidence is relevant because proof of one is
18 strong proof of the other, according to the case law.

19 And so under Rule 404(b), we have to analyze whether
20 the evidence sought to be admitted fits the standard under
21 Rule 404(b). And the Courts have held -- and I'm mostly
22 relying on the most recent case, which is State -- well,
23 State v. Wallace is one of the more recent cases. And
24 there is State v. Taylor, State v. Clasby.

25 And these court -- these decisions have all told us

1 that when determining whether evidence is admissible as a
2 common scheme or plan, the trial court -- in situations
3 like this, criminal sexual conduct with a minor, the trial
4 court must analyze the similar areas and dissimilarities
5 between the crimes charged and the bad act evidence to
6 determine whether there's a close degree of similarity.
7 When the similarities outweigh the dissimilarities, then
8 the bad act evidence is admissible under this rule.

9 And in CSC cases with a minor, the Court should
10 consider all relevant factors, including the age of the
11 victim when the abuse occurred, the relationship between
12 the victim and perpetrator, the location where the abuse
13 occurred, the use of coercion or threats as to the manner
14 of the occurrence. And then the courts have made clear
15 that they're not the only factors you look at. The Court
16 is to look at all relevant factors.

17 In our situation, Your Honor, I would say that the
18 similarities greatly outweigh the dissimilarities. I'm
19 going to start off, first, with the ages of the victims.
20 The victim in the case that we are about to try was seven
21 years old when the disclosure was made. And the abuse had
22 been going on for, at least, a year, very likely longer.
23 The victim in the former case that you just heard testify
24 was the same age. It started when she was seven. And the
25 disclosure came when she was eight.

1 Secondly, I would argue to you that the relationship
2 the victims had to the Defendant had strong similarity.
3 For the former victim, the victim who just testified,
4 Ms. Anderson, the Defendant was her stepfather. He
5 married into the situation by marrying the -- her mother.
6 In the case that we're about to try, the Defendant was, in
7 essence, her step-grandfather. Even though he never
8 married the victim's grandmother, he was a live-in
9 boyfriend. They lived together. They were together as
10 far back as she could recall. So that the victim -- the
11 Defendant was, essentially, a fixture in this home. And
12 the victim would be in this home very frequently for
13 overnight visits.

14 So both in the present case and the former case, the
15 Defendant placed himself in a position of trust and
16 authority over the children by moving into the lives of
17 women who had responsibility over these young girls. This
18 position, also, provided the Defendant the opportunity to
19 commit the abuse. The Defendant in both situations was in
20 a position of trust where he was supposed to watch over
21 the girls. And that gave him the opportunity.

22 Thirdly, I would argue to you that the location has
23 strong similarity. The abuse occurred in the home in
24 which the Defendant was in a position of trust and
25 authority over the children. In one instance, he was a

1 stepfather. In the other instance, he was the
2 step-grandfather where he was to watch over the children.
3 And, in fact, when we -- if we go even more narrow, the
4 Defendant often -- or the Defendant would go into the
5 bedroom of each victim at night where he would commence
6 the abuse.

7 Thirdly -- I'm sorry. Fourth, I would argue to the
8 Court that the type of sexual abuse and strong similarity,
9 it, obviously, went farther in the case involving Candace
10 Anderson. Because in the case involving **MINOR** [REDACTED], the
11 Defendant was found out before it developed to that
12 degree. But in both -- until that point, there was much
13 overlap.

14 There was digital penetration. There was having the
15 Defendant -- the girls touch his private, the Defendant
16 rubbing his penis against both girls privates, and then,
17 particularly, attempted or partial penetration of the
18 Defendant's penis into their vaginas, also.

19 Another similarity includes the grooming behavior of
20 showing videotaped behavior. In the instance of Candace
21 Anderson, the Defendant showed pornography. In the
22 instance of **MINOR** as you saw during the forensic
23 interview, the Defendant showed the victim a video on his
24 phone of naked girls. So, in short, Your Honor, the
25 similarities, I think, are numerous and they far outweigh

1 any dissimilarities, and should be -- the evidence should
2 be brought in.

3 And I want to make one final point. And that is
4 about the span of time, the amount of time that has gone
5 by, which is 20 years. And I would argue to you that that
6 should not be a concern in this case. State v. Blanton is
7 a case where the abuse had a seven- or eight-year span.
8 The Court stated that the alleged acts perpetrated against
9 the two witnesses occurred some seven to eight years prior
10 to the alleged molestation is not alone dispositive of the
11 issue. And it cites State v. Hallman where the abuse
12 happened 31 years prior.

13 The time difference of 16 to 18 years difference in
14 this case needs to be looked at in light of the
15 Defendant's criminal history. He was incarcerated in
16 1994. He wasn't released until December 30th of 2005. He
17 moved in with the victim's grandmother just a few months
18 later.

19 **MINOR** disclosure reveals that the abuse happened,
20 at least, for two years. I think one can infer from her
21 testimony that it very well could have been going on
22 longer. But to give the benefit of the doubt that it was
23 just -- that it was two years, that would leave just a
24 two-year time frame between when the Defendant had the
25 opportunity after being released from prison, and was

1 first exposed to children again, and when the sexual abuse
2 began with **MINOR**. So I would argue to you that the time
3 lapse should not be an issue in this case.

4 Thank you, Your Honor.

5 THE COURT: Thank you, Mr. Moyer.

6 Ms. Ross.

7 MS. ROSS: Thank you, Judge.

8 May it please the Court.

9 I would just argue that remoteness does matter. In
10 my notes, I wrote down State v. Bright. But, clearly,
11 again, the dissent in State v. Wallace addresses that.

12 But the main problem here is the idea that a prior
13 sex act being used in a trial -- the fact that they are
14 similar only makes them more prejudicial. It makes the
15 prejudice against the client somewhat overwhelming. And
16 that creates the situation where often people are afraid
17 to go to trial in cases such as this because of evidence
18 that can come in. And I would state again -- the Rules of
19 Evidence as they apply to people who are not charged with
20 a sex-related crime.

21 I would point out that there was no testimony about
22 the use of coercion or threats in this case. There were
23 four other children in the trailer at all times, and a
24 grandmother, who knew about the fact that Mr. Chappell was
25 on the sexual registry and had this prior. She was

1 watching over the entire time. And we would maintain the
2 type of -- or, rather, the sexual battery was, certainly,
3 quite different if -- in the worst case scenario to the
4 State.

5 So we would argue that it does not meet the common
6 scheme or plan requirements under 404(b) to such a degree
7 as to outweigh the prejudice to my client of bringing in
8 this case from 20 years ago.

9 THE COURT: Mr. Moyer, anything in response?

10 MR. MOYER: No, nothing at this time, Your Honor.

11 THE COURT: All right. Well, there is similarity,
12 albeit not as close as in the Wallace case, which
13 involved, I believe, sisters that had been abused.

14 And while I, certainly, do admire the courage of
15 anyone to come and testify about past events that may
16 relate to this Defendant, I don't believe Rule 403 would
17 allow me to have it in front of the jury. I think that
18 the danger of unfair prejudice is just too immense and is,
19 certainly, tilting the scales against admissibility, based
20 on the explosive nature of such testimony, and the fact
21 that it is propensity evidence, as Justice Pleicones
22 pointed out in his dissent.

23 I simply find that Rule 403 would bar its admission
24 under the circumstances here. And if Rule 403 is to mean
25 anything, I think this is the type of evidence that is so

1 prejudicial and could easily cause the jury to reach a
2 decision based on things that are not in evidence as to
3 this indictment that I would -- to safeguard everyone's
4 rights, I would have to exclude it. So that's the ruling
5 on that.

6 All right. What's the next motion?

7 MR. MOYER: Thank you, Your Honor.

8 May I ask one follow-up question on this?

9 THE COURT: Sure.

10 MR. MOYER: Not to -- I'm not trying to talk you out
11 of your ruling. But if I can make one request for a
12 redaction of this witnesses testimony.

13 THE COURT: Okay.

14 MR. MOYER: State v. Wallace particularly talks about
15 how if there are dissimilarities that the Court can cure
16 that by redacting the testimony.

17 THE COURT: Right.

18 MR. MOYER: And I understand the severity of the
19 sexual abuse on Ms. Anderson was much greater. So I would
20 argue to you as a fall-back position that she be allowed
21 to testify about what particular acts the Defendant did to
22 her that were in common with what the Defendant did to
23 **MINOR** [REDACTED], and leave out the full penetration, that
24 particular instance.

25 THE COURT: Well, I understand the reasoning behind

1 that, but that would not change my ruling, so.

2 MR. MOYER: Okay.

3 THE COURT: What's the next motion?

4 MS. ROSS: That's the end of my motions, Judge.

5 I can bring this up later. But I would just present
6 to the Court that in these cases all corroboration
7 should -- is not allowable under the rules of hearsay as
8 far as from the doctor or the therapist. But I think the
9 State's well aware of that.

10 THE COURT: All right. And the victims statutes do
11 define a victim as including a parent. So that's Section
12 16-3-1510.

13 MR. MOYER: Thank you.

14 And the only other pre-trial matter I would have at
15 this point, Your Honor, is the Defendant did give a sworn
16 written statement to police. I don't intend to introduce
17 it at this time. It was self-serving. And it would not
18 help my case.

19 So unless the Defendant takes the stand and it
20 becomes something impeachable from that standpoint or if
21 something else arises, I don't see any need to bring it
22 up, or have a Jackson v. Denno hearing, or anything along
23 those lines.

24 And I would, also -- in that vein, since I'm not
25 planning to use it, I ask that the Defense, also, not be

1 allowed to go into the statement that he gave, as I said,
2 because it was self-serving. I mean, unless he takes the
3 stand, or something like that.

4 MS. ROSS: Judge, at times, I'll ask the officer did
5 he admit to this, or something to that effect. I,
6 certainly -- I think that's within -- something I could
7 say, a statement by a party, so. And he, in fact, did
8 not. So I would just ask that I be able to limit it to
9 that.

10 But I, certainly, don't have any problems with the
11 admissibility of the statement in that he gave it
12 willfully. And he had no problem giving up his right to
13 counsel.

14 MR. MOYER: The only thing I have a problem with it
15 coming out, that he didn't admit to it, but he tried to
16 give reasons and explanations for why, for example,
17 someone would make this up. That wouldn't be proper.
18 That would just be a way of trying to get in his own
19 testimony without subjecting himself to cross-examination.

20 THE COURT: Well, I'd have to hear the specific
21 context of the questions. But just in general and for
22 purposes of the in limine ruling, I would note that I'm
23 sure y'all are well familiar with the standards for
24 admitting prior consistent statements or statements
25 offered against a party under 801(d).

1 So anything further?

2 MR. MOYER: Nothing further from the State.

3 THE COURT: Are y'all ready for the jury?

4 MS. ROSS: Yes.

5 THE COURT: Okay. Bring the jury in.

6 I've heard your client's name pronounced several
7 different ways. And I apologize if I've mispronounced it.

8 MS. ROSS: I've asked him. He says it's Robbie
9 Chappell.

10 THE COURT: Okay. Thank you.

11 Yes, sir. Bring the jury in.

12 (WHEREUPON, the jury came into open court at
13 approximately 3:56 p.m.)

14 INTRODUCTORY REMARKS

15 THE COURT: Good afternoon, ladies and gentlemen.

16 I'm sorry for the delay in starting the case this
17 afternoon. We did have to take care of some pre-trial
18 matters. And it took a little bit longer than we thought.
19 So I appreciate your understanding in that regard.

20 Before we start the case, I just want to give you
21 some preliminary remarks. And I want to thank you for
22 your service this week, and your service to your
23 community, and to your fellow citizens in making the right
24 to a jury trial a reality for these parties.

25 And I know we're taking you away from your work, and

1 your home, and other important aspects of your life, and
2 asking you to come in here and do your jury service duty.
3 And I know it's inconvenient, and we understand that. And
4 we're going to try to make it as efficient as possible
5 this week, and respect your time the best we can, given
6 the nature of how the justice system -- your justice
7 system works.

8 And the justice system is not a business. We can't
9 run things as efficiently as a business. Because there
10 are certain built-in safeguards that protect everyone's
11 rights. It often takes time to ensure those safeguards
12 are protected. And we would like to get things right the
13 first time. So, sometimes, there is down time that can't
14 be avoided. So we appreciate your understanding about
15 that as well.

16 Now, you probably know that you got the summons in
17 the mail to report for jury service because you're either
18 registered to vote, or you have a driver's license, or you
19 have an identification card issued by the DMV. You may be
20 wondering why you were chosen to sit as a juror on this
21 particular case, the State v. Frederick Robert Chappell.
22 The reason is that because both the State and Mr. Chappell
23 believe you can be fair and impartial, and you can decide
24 this case without any kind of bias or prejudice
25 whatsoever, and you could come in without any kind of

1 preconceived ideas, or notions about the case, and you
2 could be fair and impartial, and reach a verdict fairly
3 and impartially. So that's why you were chosen on this
4 particular case.

5 Now, I know you were aware earlier when the lawyers
6 introduced themselves, and I introduced myself to you.
7 Again, I'm Gary Hill, one of the circuit judges here in
8 Greenville. And you probably have met some of the
9 bailiffs in this case. Mr. Doriety and Mr. Thompson are
10 your two main bailiffs. And they're here for your
11 assistance and for your comfort.

12 But there's some other people in the courtroom who
13 you haven't met that I want to introduce to you just to
14 demystify the surroundings a little bit for you, and let
15 you know what their roles are in this process. And then
16 I'm going to talk about your role in the process and your
17 job.

18 So the first person I want to introduce is the court
19 reporter, Ms. Hollie Jenkins. Circuit court is a court of
20 record. And she takes down every word that is said. And
21 she does a wonderful job. And I'm always glad to be
22 working with her. And then to her right is Ms. Joelle
23 Lanfear. She is the assistant clerk of court. And, as
24 you saw, she helps with the jury selection process and
25 helps things run efficiently.

1 Up here on the bench with me are, first of all, my
2 law clerk, Lindsey Overby, who is to my far right. And
3 she is a lawyer, a graduate of the USC School of Law. And
4 she helps me with legal research in matters that arise
5 during the trial of cases. And this week, we have an
6 intern, Sarah Strickland, who is getting ready to go to
7 the College of Charleston in a few weeks, but she's
8 observing as well.

9 Now, everybody that I introduced to you and,
10 certainly, the lawyers have done this, and I've done it as
11 well, we've all taken an oath to do our job. And you're
12 going to take an oath to do your job.

13 So I'm going to ask, at this time, Ms. Lanfear, to
14 administer that oath to you. And then I'll tell you about
15 your job. But listen to the oath very carefully. Because
16 it has a lot of insight as to what your job is, and what
17 you're promising to do during this trial.

18 So, yes, ma'am.

19 THE CLERK: Thank you.

20 Would you, please, stand and raise your right hand.
21 And the response to the oath is, "I will."

22 (WHEREUPON, the jury was sworn at approximately
23 4:01 p.m.)

24 THE CLERK: Thank you.

25 You may be seated.

1 THE COURT: All right. Ladies and gentlemen, any
2 time a case is tried in circuit court, there -- with a
3 jury, there are always two judges. There's the judge of
4 the facts and the judge of the law. The role that I
5 occupy is the judge of the law.

6 And, under our system of justice, as the judge of the
7 law, I have two main duties, the first is to rule on the
8 admissibility of evidence, according to the law. I
9 anticipate, although I don't know for sure, that there may
10 be objections to evidence during this trial. And if there
11 are objections, my job, as the judge of the law, is to
12 rule on the objections, and rule on whether the evidence
13 is admissible for you to consider in the case. So that's
14 my first job as the judge of the law. The second job I
15 have is, at the end of the case, I will instruct you on
16 what the law is that applies to the facts of this case.

17 Now, you are the judge of the facts. And, under our
18 system of justice, you are the sole and exclusive judge of
19 the facts. So when it comes to the facts of this case,
20 your badge may as well say Judge, instead of juror.
21 Because, under our system, you are designated as the
22 person and the people who determine what the facts are. I
23 can't have an opinion as to what the facts are that I
24 would share with you. It is entirely up to you to
25 determine what the facts are.

1 Now, how do you determine what the facts are? You do
2 that from the evidence you're going to hear during the
3 course of this trial. And evidence consists of two
4 sources. The first is the one you're probably most
5 familiar with, and that is sworn witness testimony. The
6 second source or form of evidence is by way of an exhibit.
7 An exhibit is simply a physical, tangible object. It
8 might be a photograph, or a map, or something of that
9 nature. But you'll know it's an exhibit and you'll know
10 it's something you can use to determine the facts of this
11 case from, because it will be back in the jury room with
12 you. And it will have a sticker on it that says exhibit
13 number so and so. Those are the only two things you can
14 use to determine what the facts are, sworn witness
15 testimony and exhibits. Nothing else is evidence. So you
16 must confine your decision as to what the facts are from
17 those two forms or sources.

18 Now, as the judge of the facts, you will have to, by
19 necessity, determine the believability of all the
20 evidence. So that means for every witness who testifies,
21 you'll have to determine whether they're credible or not.
22 And as to each exhibit that's introduced, you'll have to
23 determine whether it is credible and believable.

24 Now, in the case of a witness who testifies, I can
25 give you certain guidelines you can use to gauge

1 credibility. First of all, you can consider their
2 interest in the outcome of this case, whether they have
3 any bias or prejudice towards someone or some issue
4 involved in the case. You can consider what opportunity
5 they had to observe the things they're here to tell you
6 about. You can consider their demeanor on the stand. You
7 can consider how their evidence and their testimony stacks
8 up against the other evidence in the case.

9 Likewise, you may consider anything you use in your
10 day-to-day life to determine whether someone is telling
11 you the truth. Because your common sense, certainly,
12 didn't vanish when you reported for jury duty this morning
13 at the Greenville County Courthouse. So you will not make
14 your decision as to believability, though, arbitrarily or
15 lightly. Because you have an important role, and a very
16 essential role in this process. And I know you'll have
17 sound and logical reasons for determining the credibility
18 of the evidence.

19 Now, this is a criminal case. So there are certain
20 rules that do apply to criminal cases that are
21 fundamentally important. And I've already gone over some
22 of them with you earlier today. But just to recap those.
23 First of all, the fact that someone has been charged or
24 indicted doesn't mean anything in this case. Because the
25 indictment is not evidence. It's not a witness, and it's

1 not an exhibit.

2 So Mr. Chappell has pled not guilty to the
3 indictment. And that puts the burden of proof entirely on
4 the State. He, like anyone ever charged with a crime,
5 doesn't have to prove himself innocent or prove himself
6 not guilty. The burden of proof, instead, is entirely on
7 the State. And Mr. Chappell is presumed innocent. And
8 that presumption of innocence can only be removed, if and
9 only if, you determine the State has met and proven each
10 and every element of the crime beyond a reasonable doubt.

11 There are two indictments. And you'll have to weigh
12 and gauge the evidence as to each indictment separately,
13 and not let your decision on one influence your decision
14 on the other. And this case is an important case to both
15 sides, to both the State and Mr. Chappell.

16 And I want to ask now if anybody has ever served on a
17 criminal jury before? If you'll just raise your hand.
18 Because I want to tell you a little bit about --

19 (WHEREUPON, two jurors raised their hands.)

20 THE COURT: Thank you, gentlemen.

21 But those of you who haven't, you may know from your
22 own experience a little bit about how a criminal trial
23 unfolds and the structure of it. But just to further
24 demystify things, let me tell you a little bit about how
25 that works.

1 In just a minute, you're going to hear the opening
2 statement of the Solicitor, Mr. Moyer, that we call the
3 Prosecutor -- the Solicitor in our state, as many of you
4 know. But he will give you a brief outline, a road map of
5 what the evidence is going to be, and what he thinks the
6 issues are going to be in the case. And he goes first,
7 because the State bears the burden of proof. After he
8 finishes, Ms. Ross, on behalf of Mr. Chappell, has the
9 opportunity, but not the obligation, to give an opening
10 statement.

11 And then after you've heard the opening statement or
12 statements, you will have the evidence portion of the case
13 with, again, the State going first and presenting their
14 evidence. And the Defense can confront that evidence and
15 cross-examine the witnesses. And then after the State has
16 completed its presentation of evidence, the Defense will
17 have the opportunity, but not the obligation, to present
18 any evidence it wishes to, which the State may confront.

19 After you've heard all the evidence, the lawyers will
20 give you their closing arguments where they will tell you
21 what they think the evidence showed, and what your verdict
22 should be. And after you've heard that, I will give you
23 the instruction on the law you are to apply to the facts
24 of this case. And then the case will be in your hands for
25 a decision and a verdict where you determine what the

1 facts are, and then take the law and apply it to those
2 facts and reach a verdict.

3 Now, until we reach that point, don't discuss this
4 case with anyone, and keep an open mind. We spent a lot
5 of time this morning trying to find a jury that could be
6 fair and impartial. And you spent a lot of time, too, in
7 that process. And we want to keep you that way. So don't
8 do any kind of outside investigation. Don't get on the
9 Internet and try to research things you've heard about.
10 That would not be in keeping with your oath. Because you
11 have to confine your decision to the testimony from the
12 witness stand and the exhibits, and not from any other
13 source.

14 So we have fine lawyers in this case. But, ladies
15 and gentlemen, keep in mind that they are advocates for
16 their clients. And they're going to zealously represent
17 their clients to the best of their ability. You and I are
18 not advocates. We don't have any interest in the outcome
19 of this case. Our job is to be fair and impartial. And
20 your job is to determine the facts of the case, and
21 determine whether the State has met its burden of
22 proof.

23 So thank you for your attention to me.

24 At this time, we'll have the opening statements.

25 Mr. Moyer.

OPENING STATEMENTS

MR. MOYER: Thank you, Your Honor.

May it please the Court.

Good afternoon, ladies and gentlemen.

My name is Mark Moyer, I'll tell you one more time. And as His Honor has just told you, I am what we call, in South Carolina, the Solicitor. I'm an Assistant Solicitor. The Solicitor of the Thirteenth Circuit is Walt Wilkins. I am one of his assistants. I think it is what just about every other state calls DA's, or district attorney. In South Carolina, we call them solicitors. And it is my privilege to represent the State of South Carolina, the people of South Carolina in criminal cases that arise in Greenville County.

Now, as you've heard the allegations before you today, what this case is about is the sexual abuse of a child. Specifically, it is about the sexual abuse of a young girl named **MINOR**. She was seven years old when the disclosure became public of abuse that occurred to her over a several year period of time.

Now, one of the pieces of evidence that you're going to see in this case is a videotape. It's a videotape of an interview, something that's called a forensic interview. It's an interview that's done with small children in situations like this by a professional to talk

1 to them about what happened. And you're going to hear on
2 this -- during this interview that **MINOR**, when she was
3 seven years old at the time, described what happened to
4 her as private touching. She used the term "private
5 touching." And I think that term is a good touch stone to
6 give you an overview about what this case is about.

7 Because the case is about, first of all, the improper
8 touching of privates. You're going to hear allegations in
9 this case that the Defendant, over this period of years,
10 fondled **MINOR** privates, her genitals. You're going to
11 hear that he digitally penetrated her, that he penetrated
12 her with his fingers. You're going to hear that he
13 engaged in oral sex on young **MINOR**. You're going to
14 hear that he exposed his privates, his own penis to her.
15 You're going to hear that he had **MINOR**, actually,
16 masturbate him. And you're going to hear all of these
17 things and more.

18 So this case is about private touching in that sense.
19 But it's, also, about private touching in another way, in
20 that this touching took place in private. As you could
21 expect from a situation like this, this is the kind of
22 crime that goes on in private. And, along with that, it
23 gives you an idea of the kind of evidence that we are
24 going to have.

25 This is not going to be like, say, a shoplifting or

1 an assault where you might have witnesses come in who
2 observed this. It's not going to be like, perhaps, a
3 murder case with evidence of ballistic testing, or some
4 burglary with fingerprints. It won't be that. Because
5 cases of this nature are done in private. And they're
6 done in such a way that they won't leave behind physical
7 evidence.

8 Now, so along those lines, this case is going to be a
9 fairly short case. I anticipate that we will finish this
10 case tomorrow. You're going to hear from several
11 witnesses. You heard the witness list read to you earlier
12 this morning. We probably won't have to call all of those
13 witnesses. But you're going to hear, first and most
14 importantly, from **MINOR**. And you're going to hear
15 from her in two ways. She's going to testify to you, and
16 you're going to see the video that I talked to you about.

17 So, in just a few moments, she's going to sit on this
18 stand. And I want you to think about that for just a
19 minute. Because it's not going to be easy. She's nine
20 years old now. And I'd like you to think about how
21 intimidating and scary an experience this would be, say,
22 for a juror, who's just here watching and who's an adult.
23 Now, try to imagine a nine-year-old who is going to be on
24 the stage in the spotlight, and not talking about an auto
25 breaking or a burglary, but talking about sexual abuse

1 that happened to her.

2 Now, I say you're going to hear from her most
3 importantly, I use that word. Because, in South Carolina,
4 by statute, that is enough. In South Carolina, a jury can
5 convict somebody of criminal sexual conduct with no other
6 evidence -- no other corroborating evidence, other than
7 the victim's word.

8 But you will hear from some other people. You will
9 hear from Tasha Carter, who is **MINOR** mother. And
10 she's going to be able to provide some corroborating
11 details and some other incidents that will give you a
12 background, a backdrop of what took place. And you're
13 going to hear from some professionals. You're going to
14 hear from police officers. You're going to hear from a
15 doctor, who is going to explain to you that no force --
16 there was no physical trauma found during the examination,
17 but that that's consistent for allegations of this type.

18 You're going to hear, also, from several people who
19 specialize in the assessment and treatment of sexual abuse
20 victims. And they're going to help explain some of the
21 dynamics of sexual abuse for children. For example, how
22 being victimized by a person of trust and authority
23 affects a child.

24 You're going to hear that the perpetrator in this
25 case, the Defendant, was in a position of authority and

1 trust over **MINOR** in that he was the long-time live-in
2 boyfriend of **MINOR** grandmother. And she would spend
3 time and time again over at the house visiting, spending
4 the night on many occasions.

5 You're, also, going to hear from these professionals
6 about why a person, particularly a small child, would have
7 such difficulty talking about this, how they could allow
8 this to go on for years and years and not tell anyone.
9 Some wait years, some never tell. They're going to help
10 explain that.

11 And you're going to hear, also, from the
12 professionals about how once a child discloses about how
13 difficult it is to continue talking about it. You're
14 going to hear about how just simply a child at that age
15 just simply trying to come up with the words to express
16 and describe conduct that they have no concept of, that
17 they have no understanding of, trying to use words to
18 explain this, and trying to be able to talk in sequential
19 terms about things of this nature for a child of that age.

20 Now, in closing, ladies and gentlemen, I want to just
21 make a couple of comments about the law. His Honor is
22 going to instruct you fully on the law at the end of the
23 case. But I think it's instructive just to mention the
24 two charges to you, and a couple brief words about them.

25 One of the charges, as you heard, is called lewd act

1 on a minor. And there are, essentially, three elements.
2 In order to be guilty of lewd act on a minor, first -- the
3 first element has to do with age. The victim has to be
4 under the age of 16, and the abuser has to be over the age
5 of 14. The second is that the Defendant must commit or
6 attempt to commit some lewd and lascivious act, in other
7 words, some sexually indecent touching.

8 And, thirdly, this act must be done for the purpose
9 of appealing to either the perpetrator's lust or passions,
10 or to the child's lust or passions. And the reason for
11 that, of course, is to excuse inadvertent touching or,
12 perhaps, a medical examination, and things like that. So
13 that is what lewd act on a child is.

14 Criminal sexual conduct with a minor is the other
15 charge. With this charge, there are really just two
16 elements. One of them is age. The victim must be a
17 child. That's what separates this charge from regular
18 criminal sexual conduct regarding an adult.

19 In this particular instance, since it's criminal
20 sexual conduct with a minor first degree, the victim must
21 be under age 11. The second element is sexual battery.
22 His Honor is going to instruct you again on sexual
23 battery. But sexual battery covers a wide range of
24 conduct. It covers sexual intercourse, of course. But
25 it, also, covers oral sex, both fellatio and cunnilingus.

1 It, also, covers digital penetration. It covers, in fact,
2 any penetration of any part of a person's body into the
3 genital openings of another, even to the slightest
4 degree.

5 Now, ladies and gentlemen, in closing, this is the
6 last chance I'm going to have to address you as jurors
7 until the very end of this case. And at that time is when
8 I'm going to argue to you why the evidence that you have
9 heard leads conclusively without any reasonable doubt
10 whatsoever to the Defendant's guilt.

11 But, at this time, all I ask of you is to listen
12 closely to everything that you hear, and to use your
13 common sense and your good judgment to weigh that
14 evidence, and then at the end of this case, do
15 justice.

16 Thank you.

17 THE COURT: Thank you, Mr. Moyer.

18 Ms. Ross.

19 MS. ROSS: Thank you.

20 May it please the Court.

21 Ladies and gentlemen, I would simply ask the same as
22 the State, listen and do justice. That's all we want
23 here. Robert Chappell is charged with some very, very
24 serious crimes with very, very serious penalties. Now,
25 these charges are nothing more than that. You heard from

1 the Judge, the charges are nothing more than allegations.
2 And Mr. Chappell is innocent unless proven guilty beyond a
3 reasonable doubt.

4 Now, here, we have a child involved. And I'll tell
5 you, I'm sure I look nervous to you. It is difficult for
6 me to talk about children, allegations. It's difficult to
7 watch that video. And I'll admit to you, ladies and
8 gentlemen, it terrifies me looking at that video. Those
9 are horrible, horrible allegations. However, they are
10 just that. You must look for and find proof beyond a
11 reasonable doubt. And ladies and gentlemen, it's not
12 here.

13 Now, the question always comes up, how did these
14 allegations -- where could they possibly come from? How
15 could they possibly be made up? Well, ladies and
16 gentlemen, there are made up stories. DNA has exonerated
17 people. It happens.

18 And, ladies and gentlemen, in this case, I'll add
19 that Tasha Carter, who is the mother of **MINOR** also,
20 made an allegation of sexual abuse against her father.
21 And I'd ask you to consider that as you listen to the
22 evidence. And I'd ask you to render a verdict based on
23 the truth, which is not guilty without proof beyond a
24 reasonable doubt.

25 Thank you.

1 THE COURT: Thank you, Ms. Ross.

2 Yes, sir. You may call your first witness.

3 MR. MOYER: Actually, Your Honor, may we approach
4 real quickly?

5 THE COURT: Yes, sure.

6 (WHEREUPON, a bench conference was held.)

7 THE COURT: We're going to take just a short recess.
8 Don't talk about the case. And continue to keep an open
9 mind.

10 Thank you.

11 (WHEREUPON, the jury was excused from open court at
12 approximately 4:20 p.m.)

13 THE COURT: Okay. We're going to have an examination
14 regarding competency.

15 MR. MOYER: Yes, Your Honor.

16 The State would call **MINOR**.

17 THE CLERK: **MINOR**, would you come forward so I can
18 swear you in?

19 If you would, put your hand on that book, and then
20 raise -- there you go.

21 WHEREUPON,

22 **MINOR**,

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

24 THE CLERK: Thank you, hon.

25 You may have a seat.

DIRECT EXAMINATION

BY MR. MOYER:

Q Good morning, **MINOR**. How are you doing?

A Good.

Q I'm going to have to ask you to talk into this microphone so we all can hear you. Okay.

A (Witness nodded.)

Q Okay. We have a couple of questions for you that we want the Judge to hear about. Okay.

Can you, first, tell the Judge what your full name is?

A **MINOR** [REDACTED].

Q Can we scoot you up a little bit closer?

There we go.

Can you say it again?

A **MINOR**.

Q **MINOR** [REDACTED]. And how old are you now?

A Nine.

Q When is your birthday?

A .

Q Can you speak up a little bit louder?

How old are you?

A Nine.

Q Nine. And your birthday is ?

A (Witness nodded.)

1 Q Okay. Where do you go to school?

2 A Berea Elementary.

3 Q Where are you going to be in school this year?

4 A Berea Elementary.

5 Q And what grade are you going to be in?

6 A Fifth.

7 THE COURT: I can't hear. I'm sorry.

8 MR. MOYER: You can't hear.

9 THE COURT: Can you just scoot up a little bit?

10 BY MR. MOYER:

11 Q I'm going to scoot you up a little bit closer.

12 Tell us what school you go to again.

13 A Berea.

14 Q Okay. Good. What grade are you going to be in?

15 A Fifth.

16 Q A little bit closer.

17 A Fifth.

18 Q Good.

19 How do you like school?

20 A (There was no response.)

21 Q Is it okay? Do you like school okay?

22 A Yeah.

23 Q Do you do pretty well in school?

24 A Yeah.

25 Q How well do you do?

1 A (There was no response.)

2 Q Weren't you on the honor roll?

3 A (Witness nodded.)

4 Q Okay. Now, do you know what it means to be good and
5 bad?

6 A Yeah.

7 Q You do?

8 A (Witness nodded.)

9 Q Can you give me an example of something good you've
10 done?

11 A Clean my room.

12 Q Clean your room.

13 THE COURT: I'm sorry.

14 MR. MOYER: You're still having trouble?

15 THE COURT: Yes.

16 BY MR. MOYER:

17 Q I'm going to move you even closer.

18 When you talk, I need you to put your mouth right up
19 close to that microphone. Okay. Let's practice.

20 Can you say your -- get up close to the microphone
21 and say your name again.

22 A **MINOR**.

23 Q Let's move you this way. How about that?

24 Okay. Can you say your name?

25 A **MINOR**.

1 Q Okay. That works, just like that. Okay.

2 So, now, do you know what the difference between the
3 truth and a lie is?

4 A (Witness nodded.)

5 Q What -- tell me what a lie is.

6 A Something that didn't happen.

7 Q Something that didn't happen?

8 A (Witness nodded.)

9 Q Okay. And what would the truth be then?

10 A Something that did happen.

11 Q Something that did happen. And if I told you that it
12 was nighttime right now, would that be a lie or the truth?

13 A A lie.

14 Q If I told you that I have a blue suit jacket on, is
15 that a lie or the truth?

16 A The truth.

17 Q Okay. If I told you that it's raining inside this
18 courtroom, is that a lie or the truth?

19 A A lie.

20 Q If I told you that this book here is red, is that a
21 lie or the truth?

22 A The truth.

23 Q Now, do you know -- is a lie good, or is it bad?

24 A Bad.

25 Q Okay. And is the truth good or bad?

1 A Good.

2 Q Now, when you come to court, what are you supposed to
3 tell?

4 A The truth.

5 Q And do you know what can happen to you if you don't
6 tell the truth?

7 A I can be in trouble.

8 Q You can be in trouble if you don't tell the truth?

9 A (Witness nodded.)

10 MR. MOYER: All right. I don't think I have any
11 further questions for her at this time.

12 CROSS-EXAMINATION

13 BY MS. ROSS:

14 Q Can you just say again just your name and where you
15 go to school?

16 A **MINOR** [REDACTED], Berea Elementary.

17 MS. ROSS: Okay. My concern, Judge, is the ability
18 to be understood and heard by the Judge and the jury. I
19 have no question about her -- Part B of the competency of
20 a witness.

21 THE COURT: Right.

22 MS. ROSS: But there may be an issue as far as #1 of
23 601(b), not #2. I think I'm satisfied that she understands
24 the truth. So I'm concerned, Part A says, Expressing
25 herself as to be understood by the Judge and jury.

1 THE COURT: Well, that's a good point. I can
2 understand her, but I'm close by. And I think the rules
3 have been satisfied.

4 However, we're going to have to make every assurance
5 that the jury can hear her. And I don't know if she can
6 get any closer to the microphone or not. Because it comes
7 in and out. It may be just the fault of the microphone.

8 MR. MOYER: Yes. I've noticed the sound seems to be
9 pretty poor all day.

10 Can you move up just a bit?

11 We need you to be able to be --

12 THE COURT: There you go.

13 MR. MOYER: I think that will work.

14 Can you say your name again?

15 THE WITNESS: **MINOR**.

16 THE COURT: Okay. So if we have trouble hearing you,
17 just remember to try to get as close to that microphone as
18 you can. Okay.

19 THE WITNESS: (Witness nodded.)

20 THE COURT: And I can kind of control the sound up
21 here, too.

22 MS. ROSS: I've got nothing further as far as
23 competency.

24 MR. MOYER: I don't have anything further either,
25 Judge.

1 THE COURT: Okay. Well, do you want to -- can she
2 come down and then we'll -- well, she needs to come back
3 up in front of the jury.

4 MR. MOYER: Okay.

5 THE COURT: Yes. She can stay in here.

6 MR. MOYER: She can stay in the courtroom.

7 Just have a -- come have a seat right here.

8 THE COURT: They'll just come right in.

9 Okay. You can bring the jury on in.

10 And I do find that she's satisfied both parts of
11 601(b), and is qualified to testify and is competent to
12 testify.

13 (WHEREUPON, the jury came into open court at
14 approximately 4:30 p.m.)

15 THE COURT: Yes, sir, Mr. Moyer.

16 MR. MOYER: Thank you, Your Honor.

17 May it please the Court.

18 The State would call **MINOR** to the stand.

19 THE CLERK: **MINOR**, would you come forward to be
20 sworn in for me?

21 Just place your left hand on the Bible and raise your
22 right.

23 WHEREUPON,

24 **MINOR**,

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

1 THE CLERK: Okay. You may have a seat.

2 DIRECT EXAMINATION

3 BY MR. MOYER:

4 Q **MINOR**, we need to make sure you're close enough to
5 that microphone so that everybody back here in this jury
6 can hear what you have to say. Okay.

7 A (Witness nodded.)

8 Q Okay. And, remember, when we ask you a "yes" or "no"
9 question, try to remember to say "yes" or "no" out loud.

10 Can you say "yes"?

11 A Yeah.

12 Q Okay. Can you come a little bit closer?

13 A (Witness complied.)

14 Q Okay. Would you tell the jury over here what your
15 full name is?

16 A **MINOR** [REDACTED].

17 Q A little bit closer. Okay.

18 There we go. Try again. Say what your full name is.

19 A **MINOR** [REDACTED].

20 Q Okay. Very good. How old are you, **MINOR**?

21 A Nine.

22 Q You're nine years old. When is your birthday?

23 A .

24 Q Of what -- do you remember of what year?

25 A (Witness shook head.)

- 1 Q It will be 2002, if you're nine; right?
- 2 A (Witness nodded.)
- 3 Q Okay. So your birthday is just two days from now?
- 4 A (Witness nodded.)
- 5 Q And then you'll be how old?
- 6 A 10.
- 7 Q Are you doing anything special for your birthday?
- 8 A I might go to a water park.
- 9 Q Can you say that again?
- 10 A I might go to a water park.
- 11 Q Go to the water park. Okay.
- 12 Now, where do you go to school?
- 13 A Berea.
- 14 Q Berea Elementary?
- 15 A (Witness nodded.)
- 16 Q And when do you start back to school?
- 17 A August the 22nd.
- 18 Q August the 22nd. What grade are you going to be in?
- 19 A Fifth.
- 20 Q The fifth grade?
- 21 A (Witness nodded.)
- 22 Q Now, do you like school okay?
- 23 A (Witness nodded.)
- 24 Q What is your favorite thing to learn about in school?
- 25 A Math.

1 Q Math?

2 THE COURT: She's going to have to get closer. I
3 don't know why it's not picking up.

4 MR. MOYER: Yes. This microphone is not picking up
5 good.

6 BY MR. MOYER:

7 Q I'm going to pull you just a little bit closer.

8 I think that's as far as it will go. Make sure you
9 have your mouth right near that microphone.

10 Okay. Would you tell us once again what grade are
11 you going to be in school this year?

12 A Fifth.

13 Q Very good. Now, you do pretty well in school, don't
14 you?

15 A (Witness nodded.)

16 Q Is that a "yes"?

17 A Yes.

18 Q In fact, what -- are you on the honor roll? Isn't
19 that true?

20 A (Witness nodded.)

21 Q Yes.

22 A (Witness nodded.)

23 Q Okay. Remember, you have to say "yes" or "no,"
24 instead of nodding your head, because this lady has to
25 write down everything you say.

1 So are you on the honor roll?

2 A Yeah.

3 Q Okay. Thank you.

4 Now, is your mom in the courtroom?

5 A Yeah.

6 Q And what -- is this your mom seated right back here
7 on the first row?

8 A Uh-huh.

9 Q Is that your dad next to her?

10 A Yeah.

11 Q Okay. And do you have any brothers and sisters?

12 A Yeah.

13 Q How many brothers and sisters do you have?

14 A Four.

15 Q Okay. How many sisters?

16 THE COURT: I'm sorry. I can't make it out. I don't
17 know what...

18 BY MR. MOYER:

19 Q Can you try to move forward a little bit?

20 MR. MOYER: Or try a different microphone?

21 THE CLERK: I don't know if this one will reach or
22 not.

23 Do you want to try this one, Judge?

24 It's not going to reach.

25 THE COURT: Let's see. Just try to get that -- the

1 other one closer to her.

2 (Pause.)

3 BY MR. MOYER:

4 Q Okay. **MINOR**, let's try again.

5 Would you tell us how old you are?

6 A Nine.

7 Q Tell us again.

8 A Nine.

9 Q Can you lean forward a little bit, just a little bit.

10 Now, say how old you are again.

11 A Nine.

12 Q Okay. Let's try to stay that close as you are right
13 there. Can you do that for me?

14 A (Witness nodded.)

15 Q Okay. What is your oldest brother's name?

16 A Josh.

17 Q How old is Josh?

18 A 11.

19 Q Okay. And you have -- how old is your sister?

20 A Seven.

21 Q How old are your other two brothers?

22 A Seven.

23 Q So you have triplets? They were all born at the same
24 time?

25 A Yeah.

1 Q Okay. Now, where do you live?

2 A [REDACTED] Avenue.

3 Q And who do you live -- you live with your mother and
4 your brothers and sisters; right?

5 A Yeah.

6 Q Now, do you know -- you have -- your grandmother,
7 your mother's mother. What do you call her?

8 A Grandma.

9 Q And what do you call your other grandma --
10 grandmother?

11 A Nana.

12 Q Now, did you ever used to go over to grandma's house,
13 your mother's mother's house? Did you used to go over to
14 her house a lot?

15 A Yeah.

16 Q And she lives in a trailer?

17 A Yeah.

18 Q Okay. And did she live alone?

19 A No.

20 Q Okay. Can you say -- try again. Did she live alone?

21 A No.

22 Q Who lived with her?

23 A (There was no response.)

24 Q Did somebody live with her?

25 A (Witness nodded.)

1 Q Say "yes" or "no."

2 A Yes.

3 Q Was it a man or a woman who lived with her?

4 A A man.

5 Q And what was his name?

6 A (There was no response.)

7 Q Is he here in the courtroom?

8 A (Witness nodded.)

9 Q Okay. Can you -- is he the man who's seated over
10 here in the white shirt?

11 A (Witness nodded.)

12 Q You need to say "yes" or "no."

13 A Yes.

14 Q Is that the person who lived with your grandmother?

15 A Yes.

16 Q And it's been a long time since you've seen him; is
17 that true?

18 A Yeah.

19 Q Okay. Now, have you ever -- are you nervous to be
20 here in court today?

21 A (Witness nodded.)

22 Q Is that a "yes" or a "no"?

23 A Yes.

24 Q Yes. Okay. We want you to keep trying -- keep
25 staying close to that microphone, and talk into it.

1 So that man that we just pointed out in the white
2 shirt, is his name Robbie?

3 A (Witness nodded.)

4 Q "Yes" or "no."

5 A Yes.

6 Q Is that what you called him?

7 A Yes.

8 Q And did he -- was he your grandmother's boyfriend?

9 A Yes.

10 Q Now, would your brothers and sisters go with you
11 sometimes to your grandmother's house?

12 A Yes.

13 Q And would it be -- would you all go over there
14 together, or would sometimes just some of y'all would go
15 over there?

16 A Sometimes, some of us.

17 Q Okay. And would you and your sister go over there
18 sometimes by yourself?

19 A Uh-huh.

20 Q Yes?

21 A Yeah.

22 Q And, sometimes, all five of you would go over there;
23 is that right?

24 A Yeah.

25 Q Okay. And how would you get over there to their

1 house? Who would take you over?

2 A My mom or my dad.

3 Q Your mom or your dad. Now, would you spend the night
4 over there at your grandma's house sometimes?

5 A Yes.

6 Q And have you been going there -- do you know when you
7 first started going over to your grandma's house?

8 A No.

9 Q Were you very little?

10 A I guess.

11 Q You guess. Let's try again. Just get a little bit
12 closer.

13 Were you very little when you started going over
14 there?

15 A I guess.

16 Q Okay. And so it goes -- were you -- have you been
17 going back -- going to her house as long as you can
18 remember?

19 A Yeah.

20 Q Okay. Now, you know what we're here to tell the jury
21 about today; right?

22 A Yeah.

23 Q What are we here to talk about today?

24 A (There was no response.)

25 Q Are we here to talk about something that happened

1 over at your grandmother's house?

2 A Yeah.

3 Q And are we here to talk about some good things that
4 happened over there, or some bad things that happened at
5 your grandmother's house?

6 A Bad things.

7 Q Okay. Now, before I talk to you anymore, I want to
8 make sure we understand a few words that we're going to be
9 using. Okay. I'm going to show you a couple of pictures.
10 And I'm going to hold them up here.

11 And I want you to take a look at this picture. Is
12 that a picture of a boy or a girl?

13 A A girl.

14 Q Now, what would you call this part of this girl?

15 A Her face.

16 Q And what would you call this part of the girl?

17 A Her legs.

18 Q Now, does this girl have any clothes on?

19 A No.

20 Q Okay. And what would you call this part of the girl?

21 A Her private.

22 Q Okay. And, now, I want you to take a look at this
23 picture. And is this picture, also, a picture of a girl?

24 A Uh-huh.

25 Q Yes?

1 A Yeah.

2 Q Is that the front or the back of the girl?

3 A The back.

4 Q A little bit closer.

5 Take a look -- what am I pointing to right now?

6 A Her hair.

7 Q Okay. And what am I pointing to right now?

8 A Her feet.

9 Q And what is your word for this part of her?

10 A Her back.

11 Q And what is your word for this part of her?

12 A Her butt.

13 Q Okay. And I'm going to show you now another -- one
14 more picture. And I want you to take a look at -- is this
15 a picture of a man or a girl?

16 A A man.

17 Q Is it a grown man or a young man?

18 A A grown man.

19 Q Okay. And we'll just -- what do you call this part
20 of the man?

21 A His private.

22 Q His private?

23 A (Witness nodded.)

24 Q Now, the bad things that you said happened to you at
25 your grandmother's house, who did the bad things to you?

1 A (There was no response.)

2 Q Would you say his name?

3 A (There was no response.)

4 Q I need you to say -- do you know the name of the
5 person who did the bad things to you at your grandmother's
6 house?

7 A (Witness nodded.)

8 Q Say "yes" or "no."

9 A Yes.

10 Q And is that person here in the courtroom?

11 A Yes.

12 Q And what is his name? What's his first name?

13 A (There was no response.)

14 Q Is it the man that we pointed to earlier who's seated
15 over there in the white shirt?

16 A Yeah.

17 Q Is it Robbie?

18 A Yeah.

19 Q Okay. And what did he do to you?

20 A (There was no response.)

21 Q Did he touch you?

22 A Yeah.

23 Q Okay. And where did he touch you?

24 A (There was no response.)

25 Q Where on your body did Robbie touch you?

1 A Private.

2 Q Your private. Okay. And is that the only part of
3 your body that he touched you?

4 A No.

5 Q What other part of your body did he touch?

6 A Bottom.

7 Q Okay. Now, did this happen one time, or more than
8 one time?

9 A More than one time.

10 Q Okay. And did it happen a lot of times?

11 A Yeah.

12 Q Did it happen every time you used to go to your
13 grandmother's house?

14 A No.

15 Q Did it happen most of the times you went to your
16 grandmother's house?

17 A Yeah.

18 Q Okay. And do you remember how old you were when he
19 first touched you?

20 A No.

21 Q Were you -- do you remember how old you were when
22 he -- the last time he touched you?

23 A Seven.

24 Q Okay. And did -- was it, at least, a year longer
25 than that that he touched you?

1 A (Witness shrugged her shoulders.)

2 Q You don't remember?

3 A (Witness shook head.)

4 Q Okay. Now, did the touching happen only at your
5 grandma's house, or did it happen at any other places?

6 A One time at my house.

7 Q One time at your house?

8 A (Witness nodded.)

9 Q Okay. Now, let's talk about when it happened at your
10 grandma's house. Did it happen during the daytime or did
11 it happen at nighttime?

12 A Both.

13 Q Okay. I need you to say it into the microphone.

14 A Both.

15 Q Okay. And when he touched you in the daytime, what
16 room in your grandmother's house did this happen in?

17 A The bedroom.

18 Q Okay. And whose bedroom?

19 A Grandma's.

20 Q Okay. Would your grandmother be around?

21 A Yeah.

22 Q Where would your grandmother be when he touched you
23 during the daytime?

24 A Cooking.

25 Q I'm sorry?

1 A Cooking.

2 Q She would be cooking.

3 A (Witness nodded.)

4 Q Is that a "yes"?

5 A Yeah.

6 Q Or would she -- but she wouldn't be in the room; is

7 that right?

8 A Yeah.

9 Q Where would your brothers and sisters be?

10 A Playing.

11 Q Okay. And what kind of games would you play during

12 the day over at your grandma's house.

13 A Hide and seek.

14 Q And did you play hide and seek a lot?

15 A Yeah.

16 Q Okay. And what would happen when you played hide

17 and -- who would be -- who would hide?

18 A All of us.

19 Q All of you?

20 A (Witness nodded.)

21 Q Okay. A little closer to the microphone again.

22 And who would be looking for you?

23 A (There was no response.)

24 Q Is it the man that we pointed to with the white

25 shirt, Robbie?

1 A Yeah.

2 MS. ROSS: Your Honor, I object to leading.

3 MR. MOYER: Your Honor, we have a child here. The
4 case law is very clear that leading --

5 THE COURT: Overruled.

6 BY MR. MOYER:

7 Q So would Robbie be the one who was looking for you?

8 A Yeah.

9 Q And where would -- who would he find first?

10 A Me.

11 Q A little bit closer.

12 And where would he find you? Where would you be
13 hiding?

14 A In the closet.

15 Q In the closet. Is it a big closet?

16 A Yeah.

17 Q And when he came and found you in the closet, is that
18 when he would touch you?

19 A Yeah.

20 Q Okay. Now, when he touched you in the nighttime,
21 what rooms in your grandmother's house would he touch you
22 in -- would you be in?

23 A My grandma's.

24 Q And how would you get to your grandma's room?

25 A He would carry me.

1 Q What now?

2 A He would carry me.

3 Q He would carry you. Robbie would carry you?

4 A (Witness nodded.)

5 Q Where would he carry you from? Where would he come
6 get you?

7 A In the bedroom.

8 Q The bedroom or the living room?

9 A (Witness nodded.)

10 Q Okay. Had you been sleeping?

11 A Sometimes.

12 Q Sometimes you were sleeping. And then how did he
13 carry you back there?

14 A Like a baby.

15 Q Okay. And when -- and he took you to -- and where
16 would -- what would your grandmother be doing?

17 A Asleep.

18 Q She would be asleep. And when you were in your
19 grandmother's room and he touched you, would he be careful
20 to be real quiet?

21 A Yeah.

22 Q Okay. And when he took you back to your
23 grandmother's room, where did he put you in your
24 grandmother's room?

25 A On the floor.

1 Q What did you wear at night?

2 A A T-shirt.

3 Q And whose T-shirt?

4 A My grandma's.

5 Q Your grandma would let you wear her T-shirt. Was it
6 a real big T-shirt, because you were --

7 A Yeah.

8 Q And you were pretty small back then; right, even
9 smaller than you are now?

10 A Yeah.

11 Q Okay. And would you have panties on, too?

12 A Yeah.

13 Q Now, what did Robbie do with the clothes that you had
14 on?

15 A He would pull them down.

16 Q Okay. He pulled down your panties?

17 A Yeah.

18 Q And what about your T-shirt, your shirt that you had
19 on?

20 A He pushed it up.

21 Q Okay. And then that's when he would touch you?

22 A Yeah.

23 Q Okay. Now, you told us that he touched your bottom
24 sometimes, and your private sometimes? What did he touch
25 your bottom and your private with?

1 A His hand and his mouth.

2 Q His hand and his mouth?

3 A (Witness nodded.)

4 Q And what part of his mouth did he touch you with?

5 A His tongue.

6 Q And he touched your private with his tongue?

7 A Yeah.

8 Q Okay. Now, when he touched you on the bottom with
9 his hand, did he touch on your bottom or in your bottom?

10 A On.

11 Q Okay. And when he touched your private with his
12 hand, did he touch on your bottom or -- I'm sorry, on your
13 private or in your private?

14 A Both.

15 Q Okay. Both sometimes?

16 A (Witness nodded.)

17 Q When he took you to your grandmother's room and put
18 you on the floor, how did -- how were you lying on the
19 floor?

20 A On my back.

21 Q On your back?

22 A Yeah.

23 Q And were you ever on your stomach, too?

24 A Yeah.

25 Q Okay. But were you usually on your stomach, or

1 usually on your back?

2 A On my back.

3 Q And how -- where would he be when he was touching you
4 on the -- when you were on the floor?

5 A (There was no response.)

6 Q How would he be next to you? What would he be doing?

7 A On his knees.

8 Q On his knees.

9 A little bit closer. Tell me again.

10 A On his knees.

11 Q On his knees next to you?

12 A (Witness nodded.)

13 Q And when he was touching you with his mouth, where
14 would he be?

15 A Next to me.

16 Q He would be next to you?

17 A (Witness nodded.)

18 Q Okay. Now, did he ever have you touch his body? Did
19 he ever have you touch any part of his body?

20 A Yeah.

21 Q And what part of his body did he have you touch?

22 A His private.

23 Q And it was his private like in that picture I just
24 showed you?

25 A Yeah.

1 Q And what part of your body did he have you touch his
2 private with?

3 A My hands.

4 Q Okay. A little bit closer.

5 Say that word again.

6 A Hands.

7 Q Okay. Your hands?

8 A Yeah.

9 Q And did you touch his private on top of his clothes,
10 or under his clothes?

11 A Both.

12 Q Say it again.

13 A Both.

14 Q And tell me -- tell the jury, what did it feel like?

15 A Hard.

16 Q Say the word again.

17 A Hard.

18 Q And did this happen one time, or more than one time?

19 A More than one time.

20 Q Okay. And did this happen in the daytime, or in the
21 nighttime?

22 A Both.

23 Q Okay. And whose house did that happen in?

24 A My grandma's.

25 Q And what room in your grandma's house?

- 1 A Her bedroom.
- 2 Q Say that room one more time a little closer.
- 3 A Her bedroom.
- 4 Q Okay. Now, did anything happen to his private when
- 5 you touched -- when he had you touch his private?
- 6 A Yeah.
- 7 Q What would happen?
- 8 A Something came out.
- 9 Q Something came out. And can you tell us what that
- 10 looked like or felt like?
- 11 A Water.
- 12 Q Say -- move a little closer and say it.
- 13 A Water.
- 14 Q Water. Okay. And did this wet stuff come out one
- 15 time, or more than one time?
- 16 A More than one time.
- 17 Q A little closer.
- 18 A More than one time.
- 19 Q Now, where would the wet stuff go when it came out?
- 20 A All over me.
- 21 Q All over you. And what did you do when it came out?
- 22 A I went to the bathroom to wash it off.
- 23 Q Okay. And did it get on any -- did it get on him,
- 24 too?
- 25 A Yeah.

1 Q What part of him did it get on?

2 A His legs.

3 Q And what did he do?

4 A He went to the bathroom and washed it off.

5 Q Okay. And did his private ever touch your private or
6 your bottom?

7 A I don't remember.

8 Q You don't remember that part?

9 A (Witness shook head.)

10 Q Okay. Now, when he touched you in your house, you
11 told us that happened one time?

12 A Yeah.

13 Q Whose room were you in when it happened at your
14 house?

15 A My bedroom.

16 Q And how did -- and was anybody else in your bedroom?

17 A No.

18 Q And who -- so who all -- just him and you were in the
19 bedroom?

20 A Yeah.

21 Q And how did you get in the bedroom?

22 A I was hiding.

23 Q You were playing hide and seek?

24 A Yeah.

25 Q And he came in. And do you remember how -- where he

1 touched you that time?

2 A On my private.

3 Q On your private?

4 A (Witness nodded.)

5 Q Did he -- were your clothes on, or were your clothes
6 off?

7 A Both.

8 Q Okay. So he touched you, first, with your clothes on
9 and then he -- how did your clothes get off?

10 A He took them off.

11 Q Now, did he ever take any pictures or videos of you?

12 A Yeah.

13 Q Which ones?

14 A Both.

15 Q And what did he use to take these pictures or videos?

16 A His phone.

17 Q Do you remember what his phone looked like?

18 A It flipped up.

19 Q It flipped up?

20 A (Witness nodded.)

21 Q Did he do anything to his phone before he took the
22 pictures or videos of you?

23 A He put in a thingie.

24 Q I need you to speak up.

25 A He put in a little thingie.

1 Q He put in a little thingie into his phone?

2 A Yeah.

3 Q And what did he do with that thingie after he took
4 the pictures or videos of you?

5 A He put it in his car.

6 Q He put it in his car. So he took it out of the
7 phone?

8 A Yeah.

9 Q Now, what did the little thingie -- do you remember
10 what he called it, or it looked like before he put it in
11 the phone?

12 A No.

13 Q Okay. But did you see where it was in the car?

14 A Yeah.

15 Q How did you see that?

16 A He showed me.

17 Q He showed you. Now, what did he -- did he ever show
18 you any pictures or videos on his phone?

19 A Yeah.

20 Q Okay. And what were the pictures or videos of?

21 A An older lady.

22 Q Lean in a little bit closer.

23 A An older lady.

24 Q An older lady?

25 A (Witness nodded.)

1 Q And what was the older lady -- did the older lady
2 have clothes on or off?

3 A Off.

4 Q And what was the older lady doing?

5 A Getting in the bathtub.

6 Q And when he took these pictures or videos of you,
7 where were you in your grandmother's house when that
8 happened?

9 A In the bathtub, or in the bedroom.

10 Q Okay. And so when you were in the bathtub, what were
11 you doing? You were taking a bath?

12 A Yeah.

13 Q And did he ever take any pictures or videos of you
14 while he was touching you?

15 A Yeah.

16 Q Okay. Did he ever -- after he had finished touching
17 you, did he ever tell you anything, or say anything about
18 whether or not you should tell anybody this? What did he
19 say about that?

20 A Don't tell.

21 Q He said don't tell?

22 A (Witness nodded.)

23 Q Did he say who not to tell?

24 A (There was no response.)

25 Q He said don't tell anybody?

- 1 A Yeah.
- 2 Q Now, other than touching you, was Robbie nice to you?
- 3 A Uh-huh.
- 4 Q He was?
- 5 A Yeah.
- 6 Q And did he ever spank you?
- 7 A No.
- 8 Q Did he ever yell at you?
- 9 A No.
- 10 Q Did your grandmother ever yell at you?
- 11 A Yeah.
- 12 Q She did?
- 13 A Yeah.
- 14 Q And were you bad sometimes over there?
- 15 A Yeah.
- 16 Q Okay. What did you do?
- 17 A Acted crazy.
- 18 Q Acted crazy?
- 19 A Yeah.
- 20 Q So your grandmother yelled at you. But did Robbie
- 21 ever yell at you?
- 22 A No.
- 23 Q He never spanked you?
- 24 A No.
- 25 Q Now, did anybody -- has anybody else ever touched you

1 like Robbie did?

2 A No.

3 Q Touched you wrong?

4 A No.

5 Q Nobody else?

6 A No.

7 MR. MOYER: Okay. I want you to sit here for just
8 one minute. Okay. Just wait one minute. I'll be right
9 back.

10 (Pause.)

11 BY MR. MOYER:

12 Q I don't have any more questions for you right now.
13 But answer questions if anybody has some questions for
14 you. Okay.

15 A Okay.

16 MS. ROSS: Thank you, Your Honor.

17 May it please the Court.

18 I've got a few questions.

19 CROSS-EXAMINATION

20 BY MS. ROSS:

21 Q Now, when you would go and stay with your
22 grandmother, would she watch you?

23 A Yeah.

24 Q I'm sorry. I can't hear. "Yes" or "no"?

25 A Yeah.

1 Q Yeah.

2 A (Witness nodded.)

3 Q And when you would go over there, you had your sister
4 and three brothers; correct?

5 A Sometimes.

6 Q Sometimes?

7 A (Witness nodded.)

8 Q And you were never over there alone with her, were
9 you?

10 A I don't know.

11 Q And when you went over there, did your uncle, John
12 Cooper, or aunt, Kim Cooper, ever stay there when you were
13 over visiting?

14 A I don't know.

15 Q Do you know who they are?

16 A Yeah.

17 Q Do you know who I'm talking about?

18 A Yeah.

19 Q Okay. Were they over there when you were over there
20 with your brothers and sister?

21 A No.

22 Q No. Do you remember them living there during
23 different periods from 2006 to 2010?

24 A No.

25 Q No you don't remember them living there?

1 A (Witness shook head.)

2 Q All right. Now, this was a trailer house; is that
3 right?

4 A Yeah.

5 Q Do you remember if the kitchen was part of the living
6 room in that you could see one from the other with a
7 counter out in the middle, or were they separate rooms?

8 A I don't remember.

9 Q You don't remember?

10 A (Witness shook head.)

11 Q Do you remember how many bedrooms there were?

12 A I think two.

13 Q There were two bedrooms. And you said some of this
14 occurred in your grandmother's bedroom?

15 A Yeah.

16 Q And that was where your grandmother was sleeping?

17 A Yeah.

18 Q And did you ever wake her up in the night when that
19 was happening?

20 A No.

21 Q Did she ever wake up in the night and ask what was
22 going on?

23 A No.

24 Q Now, as far as other people being there, did your
25 brothers ever see anything happen or confront Robbie?

1 A No.

2 Q All right. And your grandmother didn't either, did
3 she?

4 A No.

5 MS. ROSS: I beg the Court's indulgence one moment.

6 (Pause.)

7 MS. ROSS: I've got no further questions.

8 MR. MOYER: I don't have any further questions.

9 THE COURT: All right. Thank you.

10 Let me see the lawyers up here just real quick for
11 scheduling.

12 (WHEREUPON, a bench conference was held.)

13 THE COURT: Ladies and gentlemen, we're going to go
14 ahead and recess for the evening. Just be back in the
15 jury room at 9:00. Don't do any kind of outside
16 investigation. And continue to keep an open mind. And
17 we'll see you back at 9:00.

18 Thank you very much.

19 (WHEREUPON, the jury was excused from open court at
20 approximately 4:59 p.m.)

21 MR. MOYER: Your Honor, can I just put one matter on
22 the record real quickly?

23 THE COURT: Yes, sir, Mr. Moyer.

24 MR. MOYER: I just wanted to state, for the record,
25 that I showed **MINOR** some photographs, and what --

1 and she pointed to a young girl's vagina referring to it
2 as a private, and on the girl's bottom as in the backside
3 of the girl. And when she was referring to the male
4 private, she pointed to a penis on the diagram of a grown
5 man. I just wanted to place that on the record.

6 Thank you.

7 THE COURT: Okay. We'll see you back at 9:00 in the
8 morning.

9 Thank you.

10 (WHEREUPON, the proceedings were concluded at
11 approximately 5:00 p.m., to be reconvened on
12 Tuesday, August 7, 2012.)
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TUESDAY, AUGUST 7, 2012

THE COURT: Anything before we bring the jury out?

MR. MOYER: No, Your Honor.

MS. ROSS: Your Honor, I just ask that you ask the jury about -- some assurance that they haven't been on the computer looking up my client, or any kind of electronic media research into my client. My main concern is being on the registry. I just want to make sure that none of the jurors have looked that up on the computer, without saying that to them in effect. So just some question to that effect.

THE COURT: I don't know if I've ever -- without any kind of indication that somebody has done something improper, I don't know if I'd have any basis to examine them on that. I mean, I understand your request. But I've told them not to do any kind of outside research.

MS. ROSS: Okay.

THE COURT: Thank you.

Certainly, if there's any kind of indication that that's happened, I'll take care of it. But I think what I've done so far is sufficient.

(WHEREUPON, the jury came into open court at approximately 9:11 a.m.)

THE COURT: All right. Good morning, ladies and gentlemen. We're going to resume the testimony at this

1 time.

2 Yes, sir, Mr. Moyer.

3 MR. MOYER: Thank you, Your Honor.

4 May it please the Court.

5 The State calls Tasha Carter to the stand.

6 THE CLERK: Ms. Carter, please, come forward to be
7 sworn in.

8 Please place your left hand on the Bible and raise
9 your right.

10 WHEREUPON,

11 TASHA CARTER,

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

13 THE CLERK: Thank you.

14 You may be seated.

15 Would you, please, state your name for the record?

16 THE WITNESS: Tasha Carter.

17 THE CLERK: Thank you.

18 DIRECT EXAMINATION

19 BY MR. MOYER:

20 Q Ms. Carter, how old are you?

21 A 30.

22 Q Are you married?

23 A Yes.

24 Q To whom?

25 A George Carter.

1 Q When did you get married?

2 A February 14th, 2004.

3 Q How many children do you have?

4 A Five.

5 Q Okay. And what are their names and ages?

6 A Josh is 11; **MINOR** is nine; George, seven; Chesnee,
7 seven; Jackson, seven.

8 Q Okay. When is **MINOR**'s birthday?

9 A

10 Q So **MINOR** will be 10 years old tomorrow?

11 A Yes.

12 Q Now, your current husband is the father of the
13 triplets; is that right?

14 A Yes.

15 Q And what about **MINOR** and Josh's father, how -- when
16 is the last time he was in the picture?

17 A He's never really been in the picture.

18 Q Okay. So how long has -- so has George been,
19 essentially, the father to **MINOR** and Josh?

20 A Yes.

21 Q And since -- how old was **MINOR** when he came into
22 their lives?

23 A Nine months old.

24 Q Okay. Now, let me start off, as I move forward, by
25 asking about something that was brought up in the opening

1 statement -- arguments yesterday. It was brought up that
2 you alleged that you had been sexually abused; is that
3 true?

4 A Yes.

5 Q How old were you when you did that?

6 A 10.

7 Q Had you been sexually abused?

8 A Yes.

9 Q By whom?

10 A My father.

11 Q How old were you when you were sexually abused?

12 A 10.

13 Q Okay. Did you disclose it right away?

14 A No.

15 Q Did you end up disclosing it to the police?

16 A Yes.

17 Q Was he charged?

18 A Yes.

19 Q Was he convicted?

20 A Yes.

21 Q Was he later convicted of anything else?

22 A Yes.

23 Q And when was that?

24 A Six years later.

25 Q And who was -- and what was he convicted of then?

- 1 A Criminal sexual conduct with a minor.
- 2 Q And who was the victim in that situation?
- 3 A My sister.
- 4 Q And did he go off to jail for a long time after that?
- 5 A Yes.
- 6 Q Okay. Did anybody see the sexual abuse that took
- 7 place as to you?
- 8 A No.
- 9 Q Was there any physical evidence of the sexual abuse
- 10 that happened to you?
- 11 A I'm not sure.
- 12 Q Not that -- what kind of sexual abuse was it?
- 13 A Touching.
- 14 Q Okay. Now, where do you live?
- 15 A [REDACTED] Avenue.
- 16 Q How long have you lived there?
- 17 A Four years.
- 18 Q Is that in Greenville County?
- 19 A Yes.
- 20 Q And what is your mother's name?
- 21 A Deborah Cooper.
- 22 Q What do your children call your mother?
- 23 A Grandma.
- 24 Q And where does your mother live now?
- 25 A [REDACTED].

1 Q Okay. And when did she move there?

2 A I'm not sure.

3 Q Okay. Where did she live before she moved there?

4 A I believe it was [REDACTED] Drive.

5 Q Okay. Is that in Greenville County?

6 A Yes.

7 Q And tell us about that residence, what kind of
8 residence it was.

9 A It was a trailer.

10 Q And is that the location where you used to take
11 **MINOR** and the children where **MINOR** talked about
12 yesterday that the abuse happened -- is alleged to have
13 taken place?

14 A Yes.

15 Q So at the old residence?

16 A Yes.

17 Q So did she move into the new residence in 2010?

18 A I believe so.

19 Q Okay. Now, when did she move into that residence at
20 [REDACTED] Drive?

21 A I believe February or March of 2006.

22 Q And who moved in there with her?

23 A My sister.

24 Q And who -- and who moved in after your sister moved
25 in?

1 A Robbie.

2 Q Okay. And who is Robbie?

3 A Her boyfriend.

4 Q Okay. Is Robbie in this courtroom today?

5 A Yes.

6 Q Would you point him out to the jury?

7 A (Witness complied.)

8 Q He's the man seated over at defense counsel table
9 with the white shirt?

10 A Yes.

11 Q Now, when did he move in with your mother at [REDACTED]

12 [REDACTED] Drive?

13 A Within a couple months of her being there.

14 Q When did you meet the Defendant?

15 A The end of 2005, beginning of 2006.

16 Q Okay. So just shortly before he moved in with your
17 mother?

18 A Yes.

19 Q Okay. And you said your sister moved in with your
20 mother at that residence for a time at first as well?

21 A Yes.

22 Q And did she have any children or --

23 A Yes.

24 Q Okay. And how many children did she have?

25 A She had one.

1 Q How old was the child?

2 A He was a baby. I'm not sure, maybe six months.

3 Q And do you know how long they lived with --

4 A Six months to a year.

5 Q Okay. Now, when did you start taking your children
6 to your mother's?

7 A They've always been over there.

8 Q As long as they've been old enough to be taken over
9 there?

10 A Yes.

11 Q So even before she moved into [REDACTED] Drive?

12 A Uh-huh.

13 Q And when did you stop taking your children over
14 there?

15 A As soon as **MINOR** told me what was going on.

16 Q And how old was **MINOR** when she started going to
17 that residence at [REDACTED] Drive?

18 A She may have been four.

19 Q All right. Now, who all -- how often would you take
20 the children over there?

21 A Maybe once a week, sometimes more.

22 Q What days of the week would you take them?

23 A Probably Tuesdays and Saturdays.

24 Q Why those days?

25 A Because my mom would be off the next day.

1 Q Okay. And would you take -- when you would take your
2 children over there, how would you take them -- how long
3 would they -- how long of a period of time would they
4 spend there when you would take them over there?

5 A Sometimes just a couple of hours, sometimes
6 overnight.

7 Q And did you take them all over there, or a
8 combination, or --

9 A A combination.

10 Q Okay. So sometimes all five?

11 A Yes.

12 Q And sometimes as few as how many?

13 A Two.

14 Q And who would that be?

15 A It could be **MINOR** and Chesnee, just the two girls,
16 and maybe Josh and **MINOR**.

17 Q Okay. And why would you take the children over to
18 your mother's?

19 A If I was running errands, you know, just to spend
20 time with my husband, just various things.

21 Q Okay. And did they like going over there?

22 A Yes.

23 Q Have they always gotten along well with your
24 grandmother -- I mean, with your mother?

25 A Yes.

1 Q Okay. And had you ever noticed any problems any of
2 them had either with their grandmother or with Robbie?

3 A No.

4 Q Now, would your mother and the Defendant come to your
5 house on any occasions?

6 A Yes.

7 Q And just to visit, or what were the reasons for that?

8 A Just to visit, to hang out, eat dinner, just
9 different things.

10 Q And is it where you live now, Lester?

11 A Yes.

12 Q Okay. And I think I may have already asked you, but
13 that's in Greenville County?

14 A Yes.

15 Q As well as the [REDACTED] Drive where --

16 A Yes.

17 Q Okay. How regularly would your mother and the
18 Defendant come over to visit y'all?

19 A Maybe once a week.

20 Q Okay. How did you get along with the Defendant?

21 A Fine.

22 Q How did your husband get along with him?

23 A Fine.

24 Q Up until what point?

25 A As far as me?

1 Q Yes.

2 A Until **MINOR** told me what was going on.

3 Q When did you find out what had happened -- what
4 happened to **MINOR**?

5 A It was around -- I'm not sure of the exact date. But
6 I'm going to say around March 10th of 2010.

7 Q And what prompted your conversation with her?

8 A I caught her in an act with Chesnee.

9 Q And tell me, first off, where did you catch them?

10 A In the bedroom.

11 Q And what was your reason for going to the bedroom?
12 About how late was it?

13 A It was around 10:00. And I always check on my kids
14 at night.

15 Q Okay. And what did you -- what were they doing when
16 you came into the room that night?

17 A **MINOR** panties were pulled to the side. And
18 Chesnee was down towards her private area.

19 Q What was her reaction when you walked in?

20 A They were scared. They were shocked.

21 Q And, at that time, is that when you had a
22 conversation with **MINOR** about improper touching?

23 A Yes.

24 Q At that time when you spoke to her, did she tell you
25 the place or places that the improper touching had

1 happened -- had taken place?

2 A What do you mean by that?

3 Q Did she tell you where this had happened to her,
4 where she was when the improper touching took place?

5 A Yes.

6 MS. ROSS: And, Judge, I'd object to leading at this
7 point.

8 THE COURT: All right. Sustained.

9 BY MR. MOYER:

10 Q Well, where did she tell you it had taken place?

11 A At grandma's house.

12 Q After this conversation with her, did you make any
13 phone calls?

14 A Yes.

15 Q And whom did you call?

16 A I called my mother.

17 Q And whom did you speak to on that occasion?

18 A Both my mother and Robbie.

19 Q Did you tell them about the allegations?

20 A Yes.

21 Q When did you report this to the authorities?

22 A March 24th, 2010.

23 Q And where did this take place?

24 A Greenville Memorial Hospital.

25 Q What prompted you to take her to Greenville Memorial

1 Hospital on March the 24th of 2010?

2 A **MINOR** had wrote me a note wanting to discuss
3 further what Robbie had done to her. And she said that he
4 had done it on multiple occasions.

5 Q Okay. Now, between that night when you got the note
6 and the two weeks prior when you caught them in the room,
7 had you spoken to **MINOR** anymore about what had happened?

8 A No.

9 Q So she wrote you a note. Did you then speak to
10 **MINOR**?

11 A Yes.

12 Q And then after that conversation is when you took her
13 to the hospital?

14 A Yes.

15 Q Now, why -- can you explain why you did not take
16 **MINOR** to the authorities when **MINOR** first told you
17 about what had happened?

18 A For two reasons. One, I was afraid of what my
19 husband may do. And, two, because of my past.

20 Q And what particular about your past made you hesitant
21 to say something?

22 A That I did not want them to have to be drug through
23 all this.

24 Q Okay. Now, when **MINOR** made the revelation to you
25 the first time on March 10th, did you stop taking the

TASHA CARTER-DIRECT BY MR. MOYER

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1 children over to your mother's house?

2 A Yes.

3 Q All right. When you went to the hospital, did you
4 talk to an officer at the hospital?

5 A Yes.

6 Q And was a report filed?

7 A Yes.

8 Q And then later, were you contacted by an investigator
9 with the Sheriff's Office?

10 A Yes.

11 Q And who was that?

12 A Cheryl Cromartie.

13 Q This investigator seated right here?

14 A Yes.

15 Q And did you meet with the Investigator?

16 A Yes.

17 Q Did **MINOR**, also?

18 A Yes.

19 Q And did you all give statements, and talk --

20 A Yes.

21 Q And were you present when **MINOR** spoke to
22 Investigator Cromartie?

23 A No.

24 Q Did you follow-up with STD testing on **MINOR**?

25 A Yes.

1 Q And it came back negative?

2 A Yes.

3 Q Did you follow-up with a medical exam for **MINOR**?

4 A Yes.

5 Q And do you remember when that was?

6 A April of 2010.

7 Q Did you, after that, follow-up with a forensic
8 interview for **MINOR**?

9 A Yes.

10 Q Did **MINOR** receive any therapy or counseling?

11 A Yes.

12 Q And tell us about that.

13 A She goes to Greenville Mental Health. She sees a
14 school-based counselor, Melissa Epting.

15 Q When did this start?

16 A August of 2010.

17 Q And has it been continuing?

18 A Yes.

19 MR. MOYER: One moment, please.

20 (Pause.)

21 MR. MOYER: Please answer any questions the Defense
22 may have.

23 THE WITNESS: Okay.

24 THE COURT: Cross-examination.

25 MS. ROSS: Thank you, Your Honor.

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Q Isn't it true that you did go back over to the house after March to pick up a dish washer -- I mean, a washing machine?

Q Okay. And there was no confrontation at that time, was there?

Q Now, going back to your experience with Kenneth Ray Cooper, your father?

Q When that occurred, you weren't -- he wasn't living with your mother, was he?

Q So she was not around to see anything, and wasn't involved in his life --

Q -- when those incidents occurred?

Q Now, just talking about that other conviction. Did you go through the experience of reporting and talking to police officers?

Q And a forensic report like a video was made?

1 A I'm not sure of a video, but, yes --

2 Q But there was a report to officers?

3 A Yes.

4 Q And so -- and you talked to solicitors, and victim
5 assistants, and all of those people through that process?

6 A Yes.

7 Q And when was that, again, how many years ago?

8 A 20 years ago.

9 Q 20 years ago. And, then again, the process occurred
10 with Mr. Cooper, I guess, 15 years ago with your sister?

11 A Yes.

12 Q Okay. Now, with -- this time around with **MINOR**,
13 she reported to you?

14 A Yes.

15 Q And she was in school at the time when that happened?

16 A Yes.

17 Q And there was no report to teachers, teachers didn't
18 tell you anything?

19 A No.

20 Q And were you taking her to the doctor regularly
21 through the time she was four to eight years old?

22 A Yes.

23 Q And did doctors report any kind of concern to you or
24 law enforcement?

25 A No.

1 Q And your mother -- I guess grandma, Debbie Cooper,
2 she never witnessed anything that she found out of order
3 or --

4 MR. MOYER: Objection. That's out of her realm.

5 THE COURT: Sustained.

6 BY MS. ROSS:

7 Q Did you have any cause to be suspicious before of any
8 kind of sexual abuse to **MINOR** before she talked to you
9 before that experience?

10 A No.

11 Q And this was -- when you took your kids to your
12 mother's house, there were five children; correct?

13 A Not always.

14 Q But, most of the time, there was more -- there was
15 always more than one child?

16 A Yes.

17 Q And isn't it true that Kim Cooper, your sister, was
18 living there during some -- a good portion of that period?

19 A The first six months to a year.

20 Q All right. And, also, didn't John or Jonathan
21 Cooper, your brother, live there for a good portion of
22 that time?

23 A At one point, I believe.

24 Q Okay. And nothing gave you any suspicion or concern
25 about having your children stay with Deborah until you

1 talked to **MINOR** that day after catching them in that
2 situation?

3 A Right.

4 Q Okay. Now, just -- you mentioned a note. Do you
5 have that note?

6 A No, I do not.

7 MS. ROSS: I beg the Court's indulgence.

8 THE COURT: Yes, ma'am.

9 (Pause.)

10 BY MS. ROSS:

11 Q Just, finally, when -- did your children know that
12 you had been abused at some point? Did you ever tell
13 them?

14 A No.

15 Q Didn't you instruct them, though, or talk to them
16 about private parts, and good touches and bad touches?

17 A Yes.

18 MS. ROSS: All right. I've got nothing further.

19 MR. MOYER: One quick follow-up question.

20 REDIRECT EXAMINATION

21 BY MR. MOYER:

22 Q The note that **MINOR** gave you, did the note contain
23 the allegations, or did it just say she wanted to talk to
24 you?

25 A She said in the note, I need to talk to you about

JAMES PHILLIP PERRY-DIRECT BY MR. MOYER

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1 what Robbie did to me.

2 Q Okay. And then all the details came out when you
3 spoke to her later?

4 A Yes.

5 MR. MOYER: Nothing further.

6 THE COURT: Recross?

7 MS. ROSS: Nothing.

8 THE COURT: Thank you, ma'am.

9 You may step down.

10 MR. MOYER: The State calls Jim Perry to the stand.

11 THE CLERK: Mr. Perry, please, come forward to be
12 sworn in.

13 Would you, please, place your left hand on the Bible
14 and raise your right?

15 WHEREUPON,

16 JAMES PHILLIP PERRY,

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

18 THE CLERK: Thank you.

19 You may be seated.

20 Would you, please, state your name for the record?

21 THE WITNESS: James Phillip Perry.

22 THE CLERK: Thank you.

23 DIRECT EXAMINATION

24 BY MR. MOYER:

25 Q Where do you work?

1 A I work for the Greenville County Sheriff's Office.

2 Q What is your position?

3 A I'm a criminal investigator in the computer crimes
4 investigation unit.

5 Q Okay. And what -- how long have you been in law
6 enforcement?

7 A I've been in law enforcement 30 years.

8 Q How long with the Greenville County Sheriff's Office?

9 A About 17, 18 years.

10 Q How long in this position that you currently hold?

11 A I've been with the computer crimes for right at 10
12 years.

13 Q Okay. And what are your duties in that particular
14 unit of the Sheriff's Office?

15 A What I -- I do computer forensics. I do cell phone
16 forensics, GPS forensics. We do the online predator-type
17 things. I'm a member of the ICAP, which is the Internet
18 Crimes Against Children task force out of the Attorney
19 General's Office in Columbia. And we do the online
20 predator-type things and child pornography-type cases.

21 Q Does that cover examination of cell phones as well?

22 A Correct.

23 Q Okay. And you've been trained in how to examine cell
24 phones to see what particularly may be stored on the
25 phone?

1 A Correct.

2 Q And you're, actually, about to get on an airplane for
3 vacation; right?

4 A That's correct. I'm fixing to head to Colorado to
5 visit my daughter.

6 Q All right. To explain why we're taking you just a
7 little bit out of order here this morning, so.

8 Now, let me take you back to June of 2010. Were you
9 given a cell phone to examine from the investigator in
10 this case, Cheryl Cromartie?

11 A I was.

12 Q And do you -- can you tell us what kind of phone it
13 was?

14 A It was a Samsung -- let's see here -- SCP-8400.

15 Q Sanyo?

16 A Sanyo.

17 Q Okay. Now, did you find anything during your
18 examination of that phone?

19 A No, I did not.

20 Q Anything of evidentiary value for this case?

21 A No.

22 Q Now, let me ask you just a few questions about this
23 phone. Is this the kind of cell phone that can take
24 videos?

25 A It has the capability of taking videos, correct.

1 Q Can it send videos to other phones --

2 A It can send videos.

3 Q Can it receive videos or pictures from other sources?

4 A It can.

5 Q Now, what is it -- what is an SD card, or a micro SD
6 card?

7 A A micro SD card is -- it's -- some people get it
8 confused with a SIM card on a phone. But the micro SD
9 card is a little small card kind of like the SD cards that
10 you have in your cameras. A lot of people have them in
11 their camera's and things.

12 But this is for the cell phone. It's a micro. It's
13 just -- it's about a quarter of the size of a normal SD
14 card. It can store information, I've seen up to 32
15 gigabytes, which is extremely huge as far as storage
16 space.

17 Q Okay.

18 A And they're, basically, used in the cell phones to up
19 the memory, allow you to save bigger files, and
20 transfer -- take them out and transfer to a computer, or
21 any other type of printer.

22 Q How big is one of those cards?

23 A It --

24 Q Use your hand as a -- sort of a --

25 A Probably about the size of my thumbnail. They're

1 about the size of my thumbnail.

2 Q So can videos be stored on these cards?

3 A Oh, absolutely.

4 Q And stored on those and then not the cell phone's
5 actual storage, internal storage?

6 A Correct.

7 Q And this phone you examined, this Sanyo SCP-8400, can
8 a micro SD card be used in that phone?

9 A It can be used in that phone.

10 Q And if videos are stored on this little card, would
11 it be registered or indicated in any way on the phone?

12 A No.

13 Q So examining a phone without the SD card, you would
14 not necessarily know what videos had been taken on that?

15 A That is correct.

16 Q Or received on the phone?

17 A Or received.

18 MR. MOYER: No further questions for this witness.

19 CROSS-EXAMINATION

20 BY MS. ROSS:

21 Q Now, so you're saying that on the phone you examined,
22 was there a micro SD card in the phone?

23 A No.

24 Q And is there any evidence as to what size -- did it
25 even hold a micro SD card?

1 A It comes with a 64-megabyte SD card when you purchase
2 the phone -- that phone.

3 Q And there was nothing in it at the time?

4 A No.

5 Q And --

6 A Now, the internal memory still -- once you remove
7 that, it automatically goes to the internal memory.

8 Q All right. And you're trained in getting everything
9 you can out of a computer --

10 A Computer, cell phones --

11 Q -- sort of getting any traces of all the information?

12 A Correct.

13 Q And you found nothing on this phone?

14 A No.

15 Q That would relate to this case?

16 A Correct.

17 Q And this phone -- was there any evidence that
18 anything had been on this phone?

19 A Without the SD card, I wouldn't know.

20 Q So you really have nothing to offer about the phone,
21 other than you looked at a phone, and there was nothing on
22 it relating to this case?

23 A Basically, the SD card was removed. It did come with
24 an SD card when the phone is purchased, but it was not in
25 the phone.

1 MS. ROSS: All right. No further questions.

2 MR. MOYER: Nothing further.

3 THE COURT: Thank you, Mr. Perry.

4 THE WITNESS: Thank you.

5 THE COURT: You may call your next witness.

6 MR. MOYER: The State calls Christine Carlberg.

7 THE CLERK: Ms. Carlberg, if you'd come forward,
8 please.

9 Place your left hand on the Bible and raise you
10 right.

11 WHEREUPON,

12 CHRISTINE CARLBERG,

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

14 THE CLERK: Thank you.

15 You may be seated.

16 Would you, please, state your name for the record?

17 THE WITNESS: Christine Carlberg.

18 THE CLERK: Thank you.

19 DIRECT EXAMINATION

20 BY MR. MOYER:

21 Q Now, Ms. Carlberg, where do you work?

22 A I am employed by the Greenville Department of Mental
23 Health. And I'm contracted to work at the Julie Valentine
24 Center.

25 Q Okay. So your salary comes from whom?

1 A The state for the Greenville Department of Mental
2 Health.

3 Q Okay. What is the Julie Valentine Center?

4 A It was formerly known as the Greenville Rape Crisis
5 and Child Abuse Center. And it's a place that offers
6 services for victims and alleged victims of sexual
7 assaults, children and adults.

8 Q And what are your -- what does your job entail?

9 A I am a forensic interviewer.

10 Q What is a forensic -- what does a forensic
11 interviewer do? And what is a forensic interview?

12 A My job is to talk with children and developmentally
13 delayed adults about something that may have happened to
14 them, an alleged abuse, an alleged incident that may have
15 happened.

16 And a forensic interview is a -- we follow a
17 semi-structured protocol. And it's a non-leading,
18 non-suggestive manner of gathering information.

19 Q Okay. Please explain your work experience, and your
20 training for this position.

21 A I have been conducting forensic interviews for over
22 12 years, both in Mississippi and in South Carolina. And
23 I have had training in a -- I'm sorry, a
24 nationally-recognized program called Corner House, which
25 is a facility for forensic interview training. Plus, I've

1 gone through Finding Words, which is, also,
2 nationally-recognized training for forensic interviews
3 both in South Carolina and in Mississippi, and several
4 other conferences across the nation.

5 Q Okay. What about your education level?

6 A I have a Bachelor's of Science in Rehabilitation
7 Services Education with a minor in psychology from
8 Pennsylvania State University. And I have a Master's of
9 Arts in Marriage and Family Therapy from the Reformed
10 Theological Center in Jackson, Mississippi.

11 Q Okay. Now, as part of your job, do you have occasion
12 to consult with other professionals in your field related
13 to child sexual assaults?

14 A I do. I am -- we staff our cases in our office with
15 other forensic interviewers and therapists. And I'm,
16 also, part of a national peer review where we present
17 cases on a national level.

18 Q And is that a normal part of what you and other
19 forensic interviewers at the Julie Valentine Center do?

20 A Yes, sir.

21 Q Do you -- when conducting forensic interviews, do you
22 adhere to any particular protocol for going through this
23 process?

24 A We follow a semi-structured protocol called RATAC.

25 Q RATAC is an acronym?

1 A An acronym, yes, sir.

2 Q R-A-T-A-C?

3 A Yes.

4 Q And what does that stand for, and what is it?

5 A The first R stands for Rapport, which is where we
6 assess -- like we get the child comfortable. We, also,
7 assess their communication and their competence.

8 The A is for Anatomy ID, where we would arrive at a
9 common language for the body parts that a child would use.

10 And the T is for Touch inquire, where we start
11 talking about different touches, and then abuse scenarios
12 where you're getting the details, the who, the what, the
13 where, the when of the alleged incident.

14 And then closure is just providing your respectful
15 end, and letting the interview wind down.

16 Q Okay. Now, is -- this method, is this a
17 nationally-used method?

18 A It is.

19 Q Is it standard protocol for forensic interviewers
20 throughout the country?

21 A Yeah. Almost -- over half of the children's advocacy
22 centers in the country use this protocol.

23 Q So is it a method that is widely and generally
24 accepted in the field?

25 A Yes. And most -- almost all of the CAC's in South

1 Carolina use this protocol.

2 Q And what are the scientifically-based standards used
3 to conduct a forensic interviewer -- or an interview of a
4 child using the RATAC method?

5 A We use the continuing non-leading questions. We,
6 also, have a child-friendly environment to talk to the
7 interviewer -- talk to the child in. And then we use
8 developmentally-appropriate questions and methods.

9 Q And the training that you talked about for forensic
10 interviewing, is that where you were trained for using
11 this RATAC method?

12 A Yes, sir.

13 Q Do you keep up with the literature in the field?

14 A Yes, sir.

15 Q Okay. Do you -- have you read articles concerning
16 the RATAC method that are peer review?

17 A Yes, sir.

18 Q And is this methodology peer review?

19 A Yes, sir.

20 Q Okay. Now, have you testified in court?

21 A Yes, sir.

22 Q Do you know how many times you've testified?

23 A About 30 times.

24 Q What different courts have you testified in?

25 A I've testified in criminal court in Pickens County

1 and Greenville County, and in Family Court in Pickens
2 County and Greenville County.

3 Q Now, did you have occasion to conduct a forensic
4 interview of **MINOR** [REDACTED]?

5 A I did.

6 Q How was she referred to you?

7 A She was referred to us, originally, by the Greenville
8 Hospital System. And then by the time I interviewed her,
9 law enforcement was involved, the Greenville County
10 Sheriff's Office.

11 Q And what was she referred to you concerning?

12 A There were allegations of sexual abuse.

13 Q When you finished the forensic interview with
14 **MINOR**, did you provide the recording to law enforcement?

15 A I did.

16 Q What is your -- well, what is your relationship to
17 law enforcement as a forensic interviewer?

18 A They refer cases to us. And then we do the
19 interview, and give that information back to them.

20 Q Okay. So they often -- do the referrals necessarily
21 have to come from law enforcement?

22 A No. They can come from anyone.

23 Q If a referral has not come from law enforcement and
24 your interview suggests sexual abuse, do you report?

25 A Yes.

1 Q To law enforcement?

2 A Yes.

3 Q Why is that?

4 A I'm a mandated reporter. And any allegations, I need
5 to report it to law enforcement or DSS.

6 Q Okay. So whether it comes from law enforcement or
7 not, allegations that come to you end up with law
8 enforcement?

9 A Usually, yes.

10 Q Okay. So in this particular case with **MINOR**, you
11 knew that this was for -- or, at least, related to
12 investigative -- law enforcement investigative purposes?

13 A Yes, sir.

14 Q When and where did your interview of **MINOR**
15 take place?

16 A It took place at the Julie Valentine Center, which
17 was then called the Greenville Rape Crisis and Child Abuse
18 Center, on April 20th, 2010.

19 Q And how old was she at the time of the interview?

20 A She was seven.

21 Q Did you make an audio and/or video recording of this
22 interview?

23 A It was a video with audio recording.

24 Q Okay. And are you familiar that several copies have
25 been made of the original?

1 A Yes, sir.

2 MR. MOYER: I'd like to have this marked.

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

5 BY MR. MOYER:

6 Q I'm going to hand you State's Exhibit -- what's been
7 marked as State's Exhibit No. 1. If you'll take a look at
8 that. And tell us if you recognize what I just handed
9 you.

10 A I do.

11 Q And what is it?

12 A It is a copy of the forensic interview of **MINOR**

13 **██████**.

14 Q Okay. And how are you able to recognize it?

15 A It says, Copy of **MINOR** **██████**. And then I had
16 initialled it.

17 Q Okay. So you've watched this actual copy?

18 A Yes, sir.

19 Q And is it an exact copy of the forensic interview
20 that you conducted back in April of 2010?

21 A Yes, sir.

22 Q Okay. No changes, deletions, additions --

23 A No, sir.

24 Q -- of any sort?

25 A No.

1 MR. MOYER: Thank you.

2 Your Honor, I'd move to have State's Exhibit No. 1
3 entered into evidence.

4 MS. ROSS: I would renew my prior objections.

5 THE COURT: Okay. It's in evidence. And previous
6 objections are incorporated.

7 (WHEREUPON, State's Exhibit No. 1 was admitted into
8 evidence.)

9 BY MR. MOYER:

10 Q Now, during this interview, did you utilize that
11 RATAAC method -- or protocol for conducting the interview
12 with **MINOR**?

13 A Yes, sir.

14 Q Now, when you conducted the interview with **MINOR**,
15 did you use any drawings, or any diagrams, or physical
16 materials as part of the interview?

17 A I had an easel paper that I used to draw on. And
18 then I had anatomical drawings that we used in the
19 interview, as well as anatomical dolls.

20 Q What is the purpose of the anatomical drawings?

21 A The -- in this case, I used them to make sure I
22 understood what she was talking about when she -- because
23 she called parts like private parts. So I had to point on
24 the drawing to make sure I knew which body part she was
25 referring to.

1 MR. MOYER: I'd like to have these marked.

2 (WHEREUPON, State's Exhibit Nos. 2 and 3 were marked
3 for identification only.)

4 BY MR. MOYER:

5 Q And so you used them, essentially, so that when she
6 used particular words for particular body parts, you knew
7 what she was talking about?

8 A Yes, sir.

9 Q Let me hand you State's Exhibit Nos. 2 and 3. Can
10 you identify what I've just handed you?

11 A These are copies of the anatomical drawings I used in
12 my interview.

13 Q Okay. How many copies are there?

14 A There's one copy, one of a male and one of a female.

15 Q Okay. And are they in, essentially, the same
16 condition now as they were when -- back when these were
17 done back in April of 2010?

18 A Yes.

19 Q Okay. And there haven't been any changes or -- made
20 to those?

21 A No.

22 MR. MOYER: Your Honor, I move, at this time, to have
23 State's Exhibit Nos. 2 and 3 entered into evidence.

24 MS. ROSS: No objection.

25 THE COURT: They're in evidence.

1 (WHEREUPON, State's Exhibit Nos. 2 and 3 were admitted
2 into evidence.)

3 BY MR. MOYER:

4 Q Now, you mentioned some anatomical dolls. And will
5 we see those on the video when we watch the video?

6 A Yes, sir.

7 Q And what is the purpose of using anatomical dolls?

8 A We use anatomical dolls mostly as a demonstration aid
9 to allow the child to demonstrate what they had verbally
10 disclosed previously in the interview.

11 Q Do you use them in all of your interviews?

12 A No.

13 Q How do you determine whether or not to use them?

14 A A lot is based on how old the child is, and what kind
15 of disclosure that they've given.

16 Q Okay. Was **MINOR** able to use the dolls in a manner
17 that was helpful to you?

18 A Yes, sir.

19 Q Now, when you began the --

20 MR. MOYER: Your Honor, at this time, the State would
21 publish State's Exhibit No. 1 to the jury.

22 BY MR. MOYER:

23 Q And it's going to show right behind you, so I'm going
24 to ask you, if you would, to just step down.

25 A (Witness complied.)

1 (WHEREUPON, State's Exhibit No. 1 was played in open
2 court.)

3 MR. MOYER: Ms. Carlberg, will you, please, retake
4 the stand?

5 (WHEREUPON, Ms. Christine Carlberg retook the stand.)

6 MR. MOYER: I have no further questions for this
7 witness.

8 Please answer any questions the Defense may have.

9 CROSS-EXAMINATION

10 BY MS. ROSS:

11 Q All right. Now, just going back to your training
12 with the RATAC. Is that designed -- the procedure for
13 doing videos in -- under South Carolina law in child abuse
14 cases? Is that the procedure you go through? You said
15 something about RATAC earlier.

16 A Yeah. That's the training I received, yes.

17 Q Okay. And where you work, at the Julie Valentine
18 Center, would you consider yourself part of the
19 multi-disciplinary team?

20 A Yes.

21 Q And what that is is the police, the Solicitors, the
22 doctor, forensic interviewers, they are all part of a team
23 to support children when they give statements of sexual
24 abuse and sexual allegations?

25 A It's supportive in investigating.

1 Q All right. Now, you said the doctor -- the hospital
2 referred you?

3 A Yes.

4 Q But it wasn't a doctor who, initially, made the
5 referral, was it?

6 A I'm not sure. I just have that the Greenville
7 Hospital System is who made the initial referral.

8 Q All right. Did you speak to Tasha Carter?

9 A I did.

10 Q Okay. And did you talk to her about **MINOR**
11 initial disclosure?

12 A Yeah. What -- how she had found out about the
13 alleged abuse.

14 Q Okay. And you had that discussion with her before
15 the interview you gave?

16 A Yes, ma'am.

17 Q And so during that interview, you knew the
18 allegations that you were, essentially, looking for
19 throughout the interview?

20 A I knew what the allegations were from the mother,
21 yes.

22 Q All right. Now, when you talked to **MINOR**, had she,
23 in fact, talked to other people before you?

24 A She had a medical exam. And I knew that she had,
25 also, talked with the responding officer, and Detective

1 Cromartie, according to the mother.

2 Q Okay. So she had talked to her mother, and then two
3 police officers, and then the doctor before she spoke to
4 you before that video was taken?

5 A That's what the mother had told me.

6 Q All right. Now, are you familiar with the term
7 "looping" as in a lot of times in the video -- watching
8 the video, when **MINOR** would say something, you would
9 pick up on it and repeat it, and then ask her a question
10 from there?

11 A Yes.

12 Q Now, isn't it true that that is sort of a means of
13 reenforcement of what the person, actually, said?

14 A I'm not sure if it's a form of reenforcement. I
15 would repeat a lot some because she was soft spoken.

16 And then I would, also, allow her the opportunity to
17 correct me if I said something wrong that she had said.
18 And then I was, also, not offering new information to her
19 when I was asking my next question.

20 Q All right. Now, however, you know, at times, I
21 noticed she'd say something happened or she didn't
22 remember, and then you would repeat that and say, Did that
23 happen one time or more than one time --

24 A Well, she had already acknowledged that something
25 happened. So it would have happened one time or more than

1 that.

2 Q All right. But wouldn't you agree, at some point,
3 she'd say, I don't remember, and then you would go back to
4 something disclosed earlier in the video and say, Did that
5 happen one time or more than one time? And then she would
6 respond then?

7 A I think that you could see throughout the interview
8 that she was hesitant a lot or reticent to talk about some
9 things. And so, sometimes, when you have children who are
10 like that, it helps to ask a little bit more of a focused
11 question.

12 Q Wouldn't you agree that you could say, did this
13 happen none times, or one time? You didn't offer that
14 opportunity of did that ever happen again, did you?

15 A Well, she had, also, already said something happened.
16 So it would have happened once or more than once.

17 Q Okay. And wouldn't you agree that children just,
18 generally, aim to please, or aim to give answers that the
19 teacher or the adult will accept?

20 A I think that they do answer questions. And I think
21 that's where as long as you're asking open-ended questions
22 like what happened next, or tell me about that --

23 Q Okay. But I guess my question is --

24 MR. MOYER: I object. She's not allowing her to
25 finish her answer --

1 THE COURT: Hold on just a second.

2 You need to let her finish answering the question.

3 THE WITNESS: I think that is an opportunity to
4 answer in any way, anything could have happened. She
5 could just be describing anything.

6 BY MS. ROSS:

7 Q Okay. But my question is, wouldn't you agree that
8 children, generally, aim to please in a setting with a
9 stranger like the setting of those interviews?

10 A No. Because I've interviewed many children who have
11 not disclosed abuse, or have denied something has
12 happened, or -- so it's -- no.

13 Q Okay. Now, as far as this interview went, just,
14 again, did you talk to anyone beyond Tasha Carter about
15 the allegations before you began the interview?

16 A I did not talk with anyone else.

17 Q All right. So you hadn't gotten any information from
18 the police, or the emergency room, or anything like that?

19 A I had notes provided from Dr. Henderson, who she had
20 a medical exam from. And I had reviewed the incident
21 report. But I did not talk with those people.

22 Q Okay. So you had the information from two other
23 parts of the multidisciplinary team?

24 A Yes, ma'am.

25 Q All right. And then you talked to Tasha Carter, the

1 mother, as well?

2 A Yes, ma'am.

3 MS. ROSS: All right. I've got no further questions.

4 MR. MOYER: Nothing further.

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

6 We're going to go ahead and take a break. And don't
7 talk about the case, ladies and gentlemen. Continue to
8 keep an open mind.

9 And just select someone to be the Foreperson of the
10 jury. And write their name down and give it to one of the
11 bailiffs during your break.

12 Thank you very much.

13 (WHEREUPON, the jury was excused from open court at
14 approximately 10:56 a.m.)

15 THE COURT: We'll take about a 15-minute break.

16 (WHEREUPON, a break was taken.)

17 THE COURT: You can bring the jury on in.

18 Thank you.

19 (WHEREUPON, the jury came into open court at
20 approximately 11:17 a.m.)

21 THE COURT: Okay. Ms. McKenzie, you've been selected
22 to be the Foreperson. That just means you'll be the
23 liaison between the Court and the jury. If anyone on the
24 jury needs to communicate with me, I can only communicate
25 with you on the record or by way of a note that's made

1 part of the record. And the note is the preferred way.

2 So you'll be presiding over the deliberations.

3 And thank you for your service.

4 Mr. Moyer, you may call the next witness.

5 MR. MOYER: Thank you, Your Honor.

6 May it please the Court.

7 The State calls Shauna Galloway-Williams.

8 THE CLERK: Ms. Williams, if you'll come forward.

9 Please place your left hand on the Bible and raise
10 your right.

11 WHEREUPON,

12 SHAUNA GALLOWAY-WILLIAMS,
13 after first having been duly sworn, testified as follows:

14 THE CLERK: Thank you.

15 You may be seated.

16 Would you, please, state your name for the record?

17 THE WITNESS: Shauna Galloway-Williams.

18 THE CLERK: Thank you.

19 DIRECT EXAMINATION

20 BY MR. MOYER:

21 Q What is your occupation?

22 A I'm the executive director for the Julie Valentine
23 Center.

24 Q Okay. And we've heard a little bit about the Julie
25 Valentine Center already. But would you just tell us,

1 again, what the Julie Valentine Center is, and what it
2 does?

3 A Okay. The Julie Valentine Center is a child abuse
4 and sexual assault recovery center. We provide
5 services -- a full range of services, education
6 prevention, investigation, and treatment services related
7 to child abuse and sexual assaults.

8 Q How long have you been the executive director?

9 A I've been the executive director for three years.

10 Q And what are your duties as executive director?

11 A Well, as executive director, I have oversight over
12 the entire agency, programmatic oversight, physical
13 oversight. I, also, provide clinical supervision to the
14 therapists, as well as the forensic interviewers there.

15 Q Okay. How long have you been with the Julie
16 Valentine Center?

17 A I have been associated and worked with the Julie
18 Valentine Center for about seven years -- eight years,
19 going on eight years.

20 Q And do you do forensic interviews yourself?

21 A I do. I conduct forensic interviews.

22 Q Did you do a forensic interview, in this case, with

23 **MINOR** [REDACTED]?

24 A No, I did not.

25 Q Now, what other positions did you hold before

1 becoming executive director at the Julie Valentine Center?

2 A Prior to becoming the executive director at the
3 center, I served as the clinical director, which meant
4 that I provided clinical services, forensic interviews,
5 and counseling, as well as clinical supervision of the
6 adult and child therapists, as well as the forensic
7 interviewers.

8 Q Would you tell the jury a little bit about your
9 education and training for the position that you hold now?

10 A Yes. I have a Bachelor's Degree in Psychology, a
11 Master's Degree in Counseling. And I'm licensed in the
12 State of South Carolina as a licensed professional
13 counselor.

14 Q Okay. Are you a member of any professional
15 organizations or affiliations?

16 A Yes. I serve on the board of directors for the South
17 Carolina Network of Children's Advocacy Centers. I'm the
18 vice president of that board. I, also, serve on the board
19 of the -- of APSAC, which is the American Professional
20 Society on the Abuse of Children. They have a South
21 Carolina chapter. And I'm affiliated with that group.

22 Q What did you do prior to working for the Julie
23 Valentine Center?

24 A Prior to working for the Julie Valentine Center, I
25 worked for the South Carolina Department of Mental Health

1 at the Greenville Mental Health Center. I worked in their
2 child and adolescent unit providing individual family
3 therapy to children, adolescents, as well as conducting
4 forensic interviews.

5 Q Now, are you required to, and do you, attend
6 continuing education and other courses and seminars?

7 A Yes. That's a requirement for licensure.

8 Q How frequently do you do those things?

9 A We are required to complete somewhere around 22 hours
10 every two years.

11 Q Do you keep up with the literature in the field?

12 A I do.

13 Q Have you done any training yourself, or have you
14 personally taught any seminars or courses in these areas?

15 A I have. Most recently, I presented at the Children's
16 Law Conference here in South Carolina on testifying as an
17 expert witness. I, also, presented at the National
18 Children's Symposium in Huntsville, Alabama, on working
19 with non-offending caregivers and children who have been
20 abused.

21 Q Now, how many years of experience do you have
22 counseling child victims of sexual assault or abuse?

23 A Around -- more than 11 years of experience working
24 with children.

25 Q Can you say how many children who have alleged sexual

1 abuse you have counseled or given therapy to, or given
2 interviews to over these years?

3 A On average, somewhere around 600 or 650 children and
4 families that I've worked with either conducting therapy
5 or assessments, and, additionally, somewhere around 750
6 forensic interviews that I've conducted.

7 Q Have you been qualified as an expert in child sexual
8 abuse and treatment in the courts?

9 A I have.

10 Q And how many times, and in what different courts?

11 A 15 times in General Sessions in Greenville and
12 Pickens County, and more than 25 times in Family Court
13 both in Greenville and in Pickens County.

14 Q Okay. Now, you've already mentioned that you did not
15 personally interview the child in the case that is before
16 the Court today?

17 A That's correct.

18 Q Have you ever seen her or her parents in any capacity
19 at the Julie Valentine Center, or in any other way?

20 A Not that I know of.

21 Q So can you tell the jury what you understand your
22 purpose is in testifying in this case?

23 A My purpose in testifying today is to share
24 information related to child abuse dynamics -- or dynamics
25 related to child sexual abuse.

1 Q Now, these matters of child sexual trauma and abuse
2 that you have testified about in the past and are prepared
3 to testify about today, including how children react,
4 delayed disclosure, how family relationships come into
5 play, and other dynamics, have they been published in
6 professional journals, and trade publications, and the
7 like?

8 A Yes, they have.

9 Q Have these principles been subject to peer review?

10 A Yes.

11 Q And are these principles uniformly accepted and
12 recognized within the field of sexual abuse counselors and
13 professionals like yourself?

14 A Yes.

15 Q Are they reasonably relied upon by professionals in
16 the field of child sexual abuse and treatment?

17 A Yes, they are.

18 Q And have counselors and child abuse professionals
19 relied on these principles when treating children who have
20 been sexually abused?

21 A Yes.

22 Q And so do you apply these principles in your
23 treatment and assessment of children -- of child victims
24 of sexual abuse?

25 A Yes, I do.

1 MR. MOYER: Your Honor, at this time, I would move to
2 have Shauna Galloway-Williams qualified as an expert in
3 child sexual abuse and treatment, and, further, to make a
4 finding as to the reliability of the testimony pursuant to
5 State v. Tapp and State v. White.

6 VOIR DIRE EXAMINATION

7 BY MS. ROSS:

8 Q So you have not seen the video of **MINOR**
9 Cooper [sic], you've not met with her, talked to her, or
10 any of her family members related, specifically, to this
11 case?

12 A No, I have not.

13 MS. ROSS: I'd simply object on grounds of relevancy
14 since she hasn't, actually, had any experience with the --
15 with this case.

16 THE COURT: Thank you, Ms. Ross.

17 Okay. I find that she is qualified under the Watson
18 case. And Rule 40 -- excuse me, Rule 702, and Rule 401,
19 and 403 have all been satisfied.

20 Ladies and gentlemen, when a witness testifies,
21 typically, they're limited to testifying about things
22 they've observed personally. There is an exception for
23 expert witnesses, who are allowed to testify, not only
24 about their observations, but about their opinions about
25 things they observed or reviewed. And the credibility of

1 all the witnesses, including expert witnesses, is to be
2 determined by you, the jury.

3 Yes, sir, Mr. Moyer.

4 MR. MOYER: Thank you, Your Honor.

5 CONTINUED DIRECT EXAMINATION

6 BY MR. MOYER:

7 Q Now, Ms. Galloway-Williams, among child abuse
8 professionals, what is meant by the terms delayed
9 disclosure or delayed reporting?

10 A Delayed disclosure refers to a delay in time between
11 the time that a child is abused and the time that they
12 disclose, or share that information with someone else.

13 Q Okay. And, in your experience, how common is delayed
14 reporting among victims of child sexual abuse?

15 A In my experience and in the literature, it's very
16 common for children to delay disclosure.

17 Q And what time spans of delayed disclosure have you
18 seen in your experience over the years?

19 A You know, a child may delay disclosure for a few
20 days, a few weeks, a few years. And often, children never
21 tell. There are many adults who in their adult lives have
22 never disclosed as children.

23 Q In your training and experience, if a child has
24 experienced sexual abuse, what are some reasons why that
25 child may not tell or disclose immediately, or ever, like

1 you mentioned?

2 A One of the number one reasons why children don't
3 disclose or delay disclosure is fear, fear that something
4 is going to happen to themselves, fear that something is
5 going to happen to the perpetrator or the person that's
6 done this to them, fear that something is going to happen
7 to their family, their friends, their pets.

8 Children may fear that they're going to face some
9 sort of consequence. They may have been threatened by the
10 person that committed this act. Those threats can be
11 direct or indirect.

12 They may -- many times, children are abused by
13 someone that they know, they love, and they trust, which
14 makes it even harder for them to disclose many times.
15 Because there may be things about that person or that
16 relationship that are appealing, or that they do like.
17 And, usually, the closer that relationship to that person,
18 the harder it is for them to tell.

19 Q Now, does -- language and knowledge of sexual
20 matters, does that come into play at all in delayed
21 disclosure?

22 A Sure. You know, with younger children, they often
23 don't even understand or have the language to say what's
24 happened to them. Many times, children realize that
25 what's happening is not okay. Because it feels

1 uncomfortable, it feels bad, it gives them that -- what we
2 call an up-ow [phonetic] feeling. But they may not have
3 the words to describe what exactly has happened.

4 You know, often times, children don't have sexual
5 knowledge. And so they don't have those words to say
6 what's happened. And what you will see sometimes is, as
7 children do gain a better understanding of sexuality and
8 what that means, they may be better able to articulate
9 what's happened to them.

10 Q Now, do children experience feelings of guilt or
11 shame when being sexually abused?

12 A Yes. Most times, children do feel guilt and shame
13 about what's happened. You know, sexual matters are
14 something that, in general, in public -- are not public.
15 Those are secret and private things. And so, many times,
16 children feel embarrassed about what's happened or
17 ashamed. Because it involves a part of their body that
18 they know is a private part or a secret part, you know.

19 Many times, children, also, feel responsible for
20 what's happened. Children often feel like they're sort of
21 the center of the universe anyway. And so when things
22 happen, they often feel responsible and blame themselves,
23 and feel that they've had some role or some part in what
24 happened to them.

25 Q Okay. Is it common or uncommon for them to have fear

1 of not being believed?

2 A Yeah. Children are used to not being believed, you
3 know. A lot of times children fear that if they say that
4 something is going to happen -- or that something happened
5 that someone will doubt that, you know. A lot of times,
6 we question children when they tell us things, even things
7 that are unrelated to abuse scenarios.

8 Children may, also, have been told that they're not
9 going to be believed. When a child has been abused, they
10 may have been told that no one is going to believe you if
11 you tell, so don't tell. That may have been a threat that
12 was made to a child.

13 Q Now, is it common or uncommon for the perpetrator of
14 a child sexual abuse scenario to be a family member?

15 A It is more common for the child to know the person
16 that has abused them. Most times, it is someone that they
17 know, they love, and they trust, either a family member, a
18 family friend, someone that they have -- that has access
19 to the child.

20 Q And does that affect their disclosure, that fact?

21 A It can, certainly, affect their disclosure. Like I
22 stated before, the child may have a relationship with this
23 person. There may be many positive things about this
24 relationship. Oftentimes, this abuse is one thing that
25 they don't like that's happening. But there may be many

1 other things about this person that they do enjoy.

2 This person may show them a lot of love, and
3 affection, and attention. They may have fun with this
4 person, and enjoy spending time with them. The child may,
5 also, see the kind of relationship that this person has to
6 other members of their family, you know. They may be
7 someone that's very close to mom, or dad, or one of the
8 siblings. And that can impact whether or not they feel
9 comfortable to disclose.

10 Q Okay. Do children lie?

11 A Yes.

12 Q Okay. Do children lie about things like -- of a
13 sexual nature or abuse? And can you tell us the dynamics
14 of lying and sexual abuse?

15 A Children lie. Adults lie. But children are not
16 sophisticated liars. And what I mean by that is they
17 really -- you know, children, generally, lie to keep
18 themselves out of trouble, you know. If you ask them if
19 they ate the cookie and they have crumbs on their face,
20 and they say, no, I didn't eat the cookie, that kind of
21 lie.

22 Children don't often lie about sexual abuse
23 incidents. They don't often lie about things that are
24 beyond their real scope of knowledge. And children often
25 are unable to anticipate what the next question is that

1 someone is going to ask them.

2 So if a child is -- you know, has been interviewed by
3 law enforcement, and they've been -- talked to DSS, and
4 they've talked to a forensic interviewer, you know,
5 generally, if the child is lying, there are going to be
6 some -- someone is going to -- at some point, the child is
7 going to -- it's going to become apparent among those
8 interviewers. They're just not sophisticated enough to
9 carry a story out over multiple interviews like that.

10 Q And what about their ability to recall events,
11 particularly events like this? How does the age of a
12 child affect that?

13 A Their ability to recall details?

14 Q To recall details, and events, and sequential events.
15 Is the child's age -- does that have any bearing on that?

16 A Well, I mean, over time, there may be certain things
17 that a child does not remember about an event, you know.
18 Just like any of us, there may be some details that do not
19 stick out or don't remain important to us as we tell a
20 story. But you would expect that the core details of that
21 event would remain consistent.

22 Q Now, the younger a child is, is it more difficult to
23 remember things in sequential fashion, or to remember
24 dates and times, and things like that?

25 A Right. I mean, for younger children, they often

1 don't have a true concept of time. It's a real abstract
2 concept. And so younger children just don't understand,
3 you know, dates. But they may connect an incident to a
4 specific event, their birthday, school being in or out, a
5 particular holiday, the house that they lived in.

6 So often when we are talking to children about time
7 frames and sequence, we will look for those kind of pieces
8 of information, rather than expecting them to remember
9 what day of the week, what year, those kind of details.

10 Q What do we mean by like accidental or purposeful
11 disclosure of sexual abuse?

12 A In the same way that many children delay disclosure
13 or don't disclose at all, many children accidentally
14 disclose. And what that means is they don't, actually,
15 make a conscious effort to tell someone what's happened.

16 Particularly with younger children, a lot of times
17 that -- the disclosure comes about because an adult has
18 noticed a behavior that was concerning, or the child has
19 made a statement that was concerning. And then that
20 causes an adult to ask the child questions.

21 And that would be an accidental disclosure if the
22 child accidentally did something that, you know, then led
23 to someone else to question them, rather than a purposeful
24 disclosure where a child would consciously make an effort
25 to go to someone and tell them what's happened.

1 Q Okay. Now, would you consider disclosure that comes
2 as a result of an adult catching a child acting out in a
3 sexually inappropriate manner? Would that be accidental
4 or purposeful?

5 A That would be an example of an accidental disclosure.
6 If the child were engaging in behavior that seemed outside
7 of the normal range of behavior for a child, and then an
8 adult to question them about it, that would be accidental.

9 Q Now, based on your experience and training, will
10 children who have been a victim of sexual abuse ever act
11 out in a sexually inappropriate way?

12 A Yes. There are times when a child will engage in
13 behavior that they've been exposed to. Younger children,
14 in particular, may sexually act out with a peer or with
15 another child. And so that is often how disclosures come
16 about with younger children.

17 Q Would -- a child who has not been exposed to sexual
18 events, sexual touching, and so on, would you expect a
19 child of age seven to begin acting in a sexual manner by
20 herself, or is that too young?

21 A For a seven-year-old child to engage in sexualized
22 behavior --

23 Q Right.

24 A -- with another child?

25 Q Yes.

1 A If there is an instance of that, we would suspect
2 that something -- that child has been exposed in some way
3 to either sexual material or sexualized behavior. And you
4 would have to look at that more closely, and see what
5 other experiences she's had -- he or she has had that
6 would have lead to that. But it, certainly, would be a
7 behavior of concern.

8 Q Now, can -- the disclosure of sexual abuse, can that
9 in and of itself be a traumatic experience for a child?

10 A Yes. The response that a child -- the response to a
11 child's disclosure can be either very positive, or it can
12 be traumatic.

13 When a child is believed and supported and, you know,
14 the person that they've disclosed to seeks help and does
15 something about the disclosure, that tends to have a
16 much more positive effect than if a child is not believed.
17 If -- even if a child is believed and all of the supports
18 are put in place, there can be other things that are
19 traumatic, such as having to move.

20 If the person that abused them is someone that they
21 are close with that is a family member, if they have to
22 move out of the house, or the child and the other care
23 givers have to move out of the home, that can be very
24 traumatic for a child. Even having to change schools,
25 things that, you know, we may not think would be that big

1 a deal, those are really big deals for children, and can
2 have a traumatic effect for them.

3 Q And to have to talk about it after the initial
4 disclosure, having to relive it, have interviews, talk
5 about it, and other occasions, is that, also, traumatic
6 for a child?

7 A Well, we -- and the way that we conduct interviews
8 and the way that investigations are conducted is done in
9 such a way as to minimize any additional trauma to the
10 child. So if all of those protections are put in place,
11 then, generally, the hope is that it does not cause any
12 additional trauma to the child.

13 Q Okay. But it can be difficult?

14 A Oh, it, certainly, can be very difficult for a child
15 to have to talk about what's happened to them. It's
16 difficult, in general, for people to talk about sexual
17 behavior, whether it's good or bad. And for a child who
18 really has no understanding of that to have to talk about
19 it can be very challenging.

20 Q And the shame that you talked about, that would play
21 a role as well, having to bring it up in front of people?

22 A The shame, and the guilt, and the responsibility for
23 either the acts themselves, or the consequences that are
24 going on around them.

25 Q Now, in your opinion, can you tell us why some

1 children may, actually, cooperate or not -- at least, not
2 resist with somebody who is perpetrating sexual abuse?

3 A Well, again, I think that goes back to the concept of
4 fear, you know. A lot of times when children are being
5 abused, they're being abused by an adult. And we teach
6 our children to respect adults and that -- you know,
7 adults -- in general, children believe that adults have
8 their best interest in mind, and so they trust them.

9 And often they don't even know that they can fight
10 back, or that they can call out, or do something to
11 protect themselves. It's really sort of a foreign concept
12 for children to think that they can fight back against an
13 adult.

14 Q Okay. Is it common or uncommon for a child victim of
15 sexual abuse, say, where the perpetrator is a family
16 member or somebody close to maintain a good relationship
17 with that person?

18 A Right. I mean, many children -- the abuse that's
19 happening is often happening in secrecy. And the other
20 parts of the relationship that they maintain with that
21 person, generally, tend to be the same.

22 They may still be very close to this person that is
23 committing this act. It's not to minimize the experience
24 of sexual abuse. But we all have friends or family
25 members that we love and that we spend time with. But

1 they may have this one thing that they do that really,
2 really annoys us, or that we really, really don't like
3 about them. But we still maintain that friendship and
4 that relationship with them. It's the same kind of thing
5 with a child who's being abused.

6 MR. MOYER: One moment, please.

7 (Pause.)

8 MR. MOYER: Please answer any questions the Defense
9 may have.

10 CROSS-EXAMINATION

11 BY MS. ROSS:

12 Q Would you agree with this statement, Child psychology
13 text indicates that children are susceptible to
14 suggestion, and, therefore, are likely to be misled by
15 leading questions?

16 A Can you restate that, or may I read it?

17 Q No. I just have a question. Would you agree that
18 children are susceptible to suggestion, and can be misled
19 by leading questions?

20 A Oh, children can be misled by leading questions,
21 yes.

22 Q Okay. And they are susceptible to suggestion?

23 A They can be susceptible to suggestion.

24 Q Especially suggestion by adults or people in their
25 lives who they love and respect?

1 A They can be susceptible to suggestion through leading
2 questions and -- yes.

3 Q Okay. Now, you're the director of the Julie
4 Valentine Center. Does Christine Carlberg work for you?

5 A She works at the center. I -- yes.

6 Q Okay. And are you part of the multidisciplinary
7 team? Are you sort of a step in the process of trials for
8 allegations of criminal abuse?

9 A I am a member of the MDT, yes.

10 Q Okay. Now -- and just one last question. Your
11 testimony earlier, is it your statement that sexualized
12 behavior in a seven-year-old, touching themselves or
13 others in a private part -- way is unnatural when there
14 hasn't been abuse?

15 A It can be concerning, you know, depending on the type
16 of sexualized behavior that we're looking at. So if the
17 behavior has been brought to the attention of an adult, so
18 if it comes to our attention, or a school administrator,
19 or something like that, then it's, generally, of concern.
20 And we would look into that to see if there has been some
21 exposure to sexualized material or behavior.

22 Q All right. Would -- siblings laying on top of each
23 other, would that indicate sexual abuse?

24 A If children --

25 Q Two siblings --

1 A -- if two siblings lying on top of each other --

2 Q -- lying on top of each --

3 A If that was the only --

4 Q -- without clothes, yeah.

5 A With or without clothes?

6 Q Without clothes.

7 A Without clothes, you know, just that in and of
8 itself, maybe not. Would that be normal behavior and if
9 it happened more than once and continued, then, yeah, that
10 would be concerning.

11 MS. ROSS: All right. I've got no further questions.

12 MR. MOYER: Just some follow-up.

13 REDIRECT EXAMINATION

14 BY MR. MOYER:

15 Q To take that a step farther. Children laying next to
16 one another, one between the other ones legs with their
17 panties pulled to the side, would you consider that
18 sexual -- unnatural sexual acting out?

19 A Can you describe that again for me?

20 Q With one child lying on her back with her legs
21 spread, and the other between her legs with her panties
22 pulled to the side.

23 A That description would be a little more concerning to
24 me than children lying next to each other, or on top of
25 each other.

CHERYL CROMARTIE-DIRECT BY MR. MOYER

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1 Q Okay. And --

2 MR. MOYER: Okay. That's all I have.

3 Thank you.

4 THE COURT: Any redirect -- recross?

5 MS. ROSS: No.

6 THE COURT: Thank you, ma'am.

7 MR. MOYER: The State would call Cheryl Cromartie to
8 the stand.

9 THE CLERK: Would you raise your right hand and place
10 your left hand on the Bible?

11 WHEREUPON,

12 CHERYL CROMARTIE,

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

14 THE CLERK: Thank you.

15 You may be seated.

16 DIRECT EXAMINATION

17 BY MR. MOYER:

18 Q Would you, please, state your name?

19 A Cheryl Cromartie.

20 Q And where are you employed?

21 A The Greenville County Sheriff's Office.

22 Q How long have you been in law enforcement?

23 A 19 years.

24 Q Has it all been with the Sheriff's Office?

25 A Yes.

1 Q What is your position right now?

2 A My position right now is a sergeant in uniform
3 patrol.

4 Q And how long have you been in that position?

5 A Two years.

6 Q What did you do prior to your promotion to sergeant?

7 A I worked in the criminal investigation division as a
8 sex crimes investigator.

9 Q Okay. And what training did you have for that
10 position?

11 A I've had various training in child abuse, child
12 sexual abuse, child interviewing, child interrogation,
13 along with Finding Words, which is nationally accredited
14 for forensic interviewers.

15 Q Now, how long were you a sex crimes investigator?

16 A Six and a half to seven years.

17 Q Did that deal with children only, or adults and
18 children?

19 A Adults and children.

20 Q Do you know how many cases you worked over the years
21 of sexual abuse?

22 A (There was no response.)

23 Q And know, I'm not looking for an exact number, but...

24 A It could be 600 plus.

25 Q Okay. Now, were you assigned this case involving

1 **MINOR** to investigate?

2 A Yes.

3 Q And when were you assigned the case?

4 A March the 24th, 2010.

5 Q Okay. When the -- when **MINOR** was taken to the
6 Greenville Memorial Hospital?

7 A Yes.

8 Q And are you aware that an officer was approached at
9 the hospital on that date?

10 A Yes.

11 Q And did you respond to the hospital?

12 A No.

13 Q How did the case come to you?

14 A The case came to my unit from uniform patrol.

15 Q Would uniform patrol have investigated the case, or
16 what would uniform patrol --

17 A No. Actually, they are just the responding officers
18 to an initial complaint.

19 Q Okay. So they're not trained in doing interviews
20 with sexual abuse victims, and so forth?

21 A No. They have no extensive training.

22 Q So after they make that initial report, what happens
23 to the case?

24 A Once they make the initial report, the report usually
25 comes to our division, or another division. And it is

1 assigned to an investigator to further investigate that
2 allegation.

3 Q Now, did you schedule an interview with the victim?

4 A Yes.

5 Q And what date was the interview?

6 A The interview, to my recollection, was March the
7 30th, 2010.

8 Q Did the victim's mother attend the interview as well?

9 A She came to the interview, yes.

10 Q Where did you meet with them?

11 A At the time, my office was at county square,
12 University Ridge 309.

13 Q Okay. And that's where y'all met?

14 A Yes.

15 Q Did you -- when you met with them, did you meet with
16 **MINOR**'s mother?

17 A I did.

18 Q And what's her -- and who is she?

19 A Tasha Carter.

20 Q Okay. And you spoke to her first?

21 A Yes.

22 Q And after speaking to her, did you speak to **MINOR**?

23 A Yes.

24 Q Where did you interview her?

25 A I interviewed her in my office. I have an

1 individual -- well, I used to have an individual office.

2 Q And was her mother present for that interview,
3 Ms. Carter?

4 A No.

5 Q So it was just you and **MINOR**?

6 A Yes.

7 Q Now, do you have a protocol that you follow for
8 interviewing?

9 A I do have a basic protocol for interviewing an
10 alleged victim. And it's the RATAC protocol.

11 Q That was described and talked about earlier?

12 A Yes.

13 Q Now, was your interview as in depth as the one we saw
14 on the forensic interview?

15 A It's not that -- it's not in depth or extensive. It
16 just follows that same protocol.

17 Q Okay. And then after your initial interview, that's
18 when the case gets referred to the Julie Valentine Center
19 for the forensic interview?

20 A Yes.

21 Q Okay. Now, during your interview with **MINOR**, I
22 just have two questions. First off, did she provide a
23 time frame for when the abuse took place?

24 A She did. She provided a round-about time frame.

25 Q And what was that time frame?

1 A She said between the ages of six and seven -- six or
2 seven.

3 Q Okay. And did she tell you a place for the abuse?

4 A Yes.

5 Q And what was the place?

6 A It was the old address of her grandmother's, which is
7 [REDACTED] Drive, Lot [REDACTED]. And that's located in
8 Greenville County.

9 Q Now, after the meeting with **MINOR**, did you arrange
10 for the medical examination and then the forensic
11 interview?

12 A Yes.

13 Q Now, did you meet with the Defendant, Robert
14 Frederick Chappell?

15 A Yes.

16 Q And what date was that?

17 A I am not certain of the time. I know it was in a
18 close time frame. Because at that -- during that time, I
19 had just got promoted to my position that I hold now.

20 Q And during that meeting with the Defendant, did you
21 ask to search his phone?

22 A Yes.

23 Q Or how -- and did you search it yourself?

24 A No, sir, I didn't.

25 Q What did you do with his phone?

1 A I, actually -- I asked could I have someone to search
2 his phone. And I turned that phone over to Investigator
3 Jim Perry.

4 Q Okay. And so that was the date that you met with
5 him, the date you turned the phone over to Investigator
6 Jim Perry?

7 A Yes.

8 Q Did you get a -- did you have the Defendant sign a
9 consent to turn that phone over?

10 A Yes.

11 Q Okay. And so if you had a chance to take a look at
12 that consent, would that refresh your memory as to the
13 date?

14 A Yes.

15 Q Is that the consent form that was used?

16 A Yes, it is.

17 Q And what was the date that you met with him?

18 A The date is June the 30th, 2010.

19 Q Okay. Thank you.

20 And how did you set up that meeting with him?

21 A Well, after I spoke with -- I spoke with Tasha
22 Carter's mother, Deborah. And I -- he called after I,
23 initially, talked with her.

24 Q Okay. And --

25 A Actually, he contacted me.

1 Q Okay. And you had asked somebody to have him call
2 you; is that right?

3 A Yes.

4 Q And then so you set up the meeting on the phone?

5 A Yes.

6 Q And then he met with you on June the 30th of 2010?

7 A Yes.

8 Q Okay. And what kind of phone was it that was taken
9 from the Defendant and turned over to Jim Perry to
10 examine?

11 A I can't remember the exact name of it. However, I do
12 remember that it was a small flip-style type phone.

13 Q And, once again, if you had a chance to take a look
14 at that consent to search form, would that refresh your
15 memory?

16 A Yes.

17 Q And what was the phone?

18 A A Sanyo SCP-8400.

19 Q Okay. And then after Investigator Perry looked at
20 the phone, did you give it back to the Defendant?

21 A Yes.

22 Q And so it was during this time then that you got
23 promoted to sergeant?

24 A Yes.

25 Q And then the case was -- what happened to this case?

1 A The case was turned over to Investigator Mike
2 Fortner, the investigator that, actually, took my place.

3 Q Wasn't it Robertson?

4 A I'm sorry. Investigator Mike Robertson, yes.

5 Q Okay. And so he carried on the case from there and
6 got the warrants?

7 A Yes.

8 MR. MOYER: I have no further questions. Please
9 answer any questions the Defense has.

10 CROSS-EXAMINATION

11 BY MS. ROSS:

12 Q Now, you interviewed my client, Robbie Chappell, as
13 well, didn't you?

14 A Yes, ma'am, I did.

15 Q And that was in June?

16 A June the 30th.

17 Q And the warrant was taken out August 2nd?

18 A To my recollection. I'm not sure. Because I didn't
19 pursue the warrant myself.

20 Q All right. Now, on June 17th, you interviewed
21 Deborah Cooper, the grandmother in this case; correct?

22 A Around that time, June, yes.

23 Q And then, in March, you interviewed Tasha Carter and

24 **MINOR** Cooper [sic]?

25 A Yes.

1 Q And you're part of the multidisciplinary team;
2 correct?

3 A I was a part of the multidisciplinary team.

4 Q At that time?

5 A At that time, yes.

6 Q Now, didn't you, also, talk to the boy children,
7 the -- who were in the house as well?

8 A No, ma'am, I didn't.

9 Q You never interviewed them? Were they ever brought
10 in at all?

11 A I'm not sure if they were brought in at all. I never
12 spoke with them at all.

13 Q Okay. But you were aware they were -- there was an
14 older boy child and two younger boy children?

15 A I was aware.

16 Q And this was in -- the allegations were made to have
17 happened in Deborah Cooper, the grandmother's trailer?

18 A Yes.

19 Q All right. Now, isn't it true you, also -- and just
20 going back to -- Mr. Chappell turned over his flip phone
21 to you?

22 A Yes.

23 Q And didn't you, also, get a flip phone from Shaun
24 Houston?

25 A No, ma'am. I never spoke with a Shaun Houston, nor

1 did I ever receive a flip phone from Shaun Houston. I'm
2 not even certain who Shaun Houston is.

3 MS. ROSS: One second.

4 (Pause.)

5 BY MS. ROSS:

6 Q And you say you were the head of the investigation
7 for only some time?

8 A Yes, ma'am.

9 Q Okay. As the head of the investigation, did you
10 oversee it all the way through, or not?

11 A No, ma'am, I didn't. I was transferred. I was
12 promoted. And I was transferred over to uniform patrol.
13 I turned the case over to Investigator Mike Robertson.

14 MS. ROSS: All right. I've got no further questions.

15 MR. MOYER: Nothing further for this witness.

16 THE COURT: Thank you, Ms. Cromartie.

17 You may call your next witness.

18 MR. MOYER: Your Honor, at this time, could we --
19 what we discussed earlier about taking the lunch break
20 now.

21 THE COURT: Oh, yes, sure.

22 We're going to go ahead and recess for lunch. And
23 just be back at 1:30.

24 Is that --

25 MR. MOYER: Yes, sir.

1 THE COURT: Okay. We've got a witness that can't be
2 here until 1:30, evidently. So we'll resume at 1:30.

3 Don't do any kind of outside investigation. Don't
4 get on the Internet, or on Facebook, or anything other --
5 any other outlet that might be social media, or whatever
6 it is.

7 Don't talk about the case, or do any kind of outside
8 investigation. You have to confine your decision to the
9 evidence that you hear while in the courtroom. So bear
10 that in mind. And continue to keep an open mind.

11 And we'll see you back at 1:30.

12 Thank you.

13 (WHEREUPON, the jury was excused from open court at
14 approximately 11:57 a.m.)

15 THE COURT: Let me just go ahead and ask Mr. Chappell
16 a few questions about your right to testify, sir, just to
17 make sure you understand that.

18 You can just raise your right hand.

19 WHEREUPON,

20 FREDERICK ROBERT CHAPPELL,
21 after first having been duly sworn, testified as follows:

22 THE COURT: All right, sir. It appears later today,
23 we'll reach the end of the State's case, and they will
24 rest. And, at that time, you'll have the opportunity to
25 present any evidence you wish to, sir. And that would

1 include the right you have to take the stand and testify
2 on your own behalf. You, certainly, have the right to do
3 that.

4 I just need to make sure you understand the rights
5 you do have, and the consequences of your choice. And
6 then I'll let you talk to Ms. Ross further about what you
7 wish to do, and what your strategy may be. But I just
8 want to make sure you understand these rights.

9 You have the right to testify and take the stand.
10 But, if you do, you'll be subject to being cross-examined
11 just like your lawyer has cross-examined the witnesses in
12 the case for the State. And that means that the Solicitor
13 can ask you anything that might bear on your credibility,
14 or anything that might be relevant to the case, or show
15 any kind of bias or prejudice whatsoever.

16 And is there any kind of prior record the State would
17 use to impeach, if Mr. Chappell did take the stand?

18 MR. MOYER: Yes, Your Honor.

19 The convictions he has that are eligible under Rule
20 609 are convictions for criminal sexual conduct with a
21 minor in 1994. It was in 1994, but he was released within
22 the 10-year time frame, as well as escape. And then he
23 has five counts of sexual exploitation of a minor. And
24 that conviction was earlier this year.

25 THE COURT: All right. So if you took the stand, the

1 State may be able to use those convictions under Rule 609,
2 if the Court deems them admissible to impeach your
3 credibility. As I said, you would be asked about them,
4 and the jury would hear about them.

5 If you didn't take the stand, they wouldn't hear
6 about them. So if you chose not to take the stand, I
7 would tell the jury that you have the absolute right
8 guaranteed by the Constitution to remain silent. They
9 could not hold it against you, or take it into account in
10 any way the fact that you did not take the stand. And
11 they couldn't draw any kind of conclusion from that
12 whatsoever, or even discuss it in the jury room. So those
13 are the rights you have to testify and not testify.

14 And did you understand all of my statements, sir?

15 DEFENDANT CHAPPELL: Yes, sir.

16 THE COURT: Do you have any questions of me about
17 your right to testify?

18 DEFENDANT CHAPPELL: No, sir.

19 THE COURT: And I'm going to just -- you don't have
20 to tell me your choice now. You can continue to confer
21 with Ms. Ross. But I just wanted to make sure we had an
22 understanding about those things at this stage of the
23 case.

24 Thank you very much.

25 See you back at 1:30.

1 (WHEREUPON, a lunch break was taken.)
2 THE COURT: Okay. Anything before the jury returns?
3 MR. MOYER: We're ready to go.
4 MS. ROSS: No.
5 THE COURT: Thank you.
6 You can bring the jury in.
7 (WHEREUPON, the jury came into open court at
8 approximately 1:37 p.m.)
9 THE COURT: Good afternoon.
10 We'll continue with the testimony.
11 Mr. Moyer, you may call your next witness, sir.
12 MR. MOYER: Thank you, Your Honor.
13 May it please the Court.
14 The State calls Dr. Nancy Henderson to the stand.
15 THE CLERK: Dr. Henderson, if you'd come forward to
16 be sworn in, please.
17 Place your left hand on the Bible and raise your
18 right.
19 WHEREUPON,
20 NANCY ANN HENDERSON, M.D.,
21 after first having been duly sworn, testified as follows:
22 THE CLERK: Thank you.
23 You may be seated.
24 Would you, please, state your name for the record?
25 THE WITNESS: Nancy Ann Henderson.

1 THE CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MR. MOYER:

4 Q Dr. Henderson, what is your occupation?

5 A I'm a child abuse pediatrician.

6 Q And how long has this been your occupation?

7 A I've been a pediatrician since I finished my
8 residency in 1987.

9 Q Okay. You're licensed?

10 A Yes, I am.

11 Q And where?

12 A In the State of South Carolina.

13 Q And where were you educated?

14 A I went to -- my undergraduate was at Rutgers College
15 of Pharmacy. And then I did my medical school training at
16 Bowman Gray School of Medicine in Winston-Salem, North
17 Carolina. And I did my residency at T.C. Thompson
18 Children's Hospital in Chattanooga, Tennessee.

19 MS. ROSS: I'll stipulate to her expertise.

20 MR. MOYER: Okay. Thank you.

21 THE COURT: All right.

22 BY MR. MOYER:

23 Q So you've been qualified now as an expert in the
24 field of child abuse pediatrics --

25 MR. MOYER: Just to make clear for the record, Your

1 Honor. We'd move to have her qualified as an expert in
2 the field of child abuse pediatrics.

3 MS. ROSS: No objection.

4 THE COURT: Okay. She's qualified.

5 BY MR. MOYER:

6 Q So we're going to shorten this a good bit. But just
7 tell the jury a little bit about what child abuse
8 pediatrics is, what you do in your job.

9 A Yes. Child pediatrics is a new -- actually, a new
10 subspecialty in the area of general pediatrics. So it
11 just became official in 2009.

12 And so that if you were practicing in this field, you
13 had to have 50 percent of your practice be a part of child
14 abuse investigation. And then you had to sit for a board
15 -- a test, about a four-hour test. And then in passing
16 that, you became a child abuse pediatrician, which covers
17 all the areas of child abuse, child sexual abuse, physical
18 abuse, and neglect issues, which has to be -- you have to
19 take a test every 10 years to re-qualify for that
20 sub-board.

21 Q And what training have you received before this
22 position?

23 A Well, as I mentioned, you have to have 50 percent of
24 your practice cover that area of child abuse and seeing
25 children related to that. So to do this, I've been

1 preparing and taking numerous courses all over the country
2 for that. I am involved, as part of my practice, with the
3 Greenville Hospital System and am head of the division of
4 child abuse. So that we are involved in teaching the
5 medical students that rotate through there in this area.

6 I, also, teach the pediatric and family practice
7 residents in that regard. Som as part of my job, besides
8 the teaching piece of it, I see children at both the
9 advocacy center here in Greenville, as well as the one up
10 in Spartanburg.

11 I, also, do in-hospital consult. A lot are physical
12 abuse consult in where children are admitted for concerns
13 of some type of injury, perhaps, and worry that this may
14 have been an inflicted type injury. So I get involved in
15 those type of investigations in the hospital to try to
16 help understand that.

17 I, also, am involved over at Pendleton Place, which
18 is the children's shelter. And we are in charge -- my
19 partner and I are in charge of doing the medical exams
20 when they first come to the shelter, and then see them in
21 follow-up just as their general medical care while they're
22 there as well.

23 And then my last part is I do general pediatrics
24 one-half afternoon a week with the residents and with
25 their training.

1 Q Okay. Now, the child abuse pediatrics, does that
2 cover more than just sexual abuse?

3 A Yes, it does. It covers sexual abuse, which is a big
4 part of the outpatient practice for me. But the field
5 itself covers, as I mentioned before, physical abuse,
6 neglect issues, which is, actually, the biggest part of
7 child abuse in children, and, also, can cover emotional
8 abuse, psychological abuse, and things like that.

9 Q Of the abuse that -- of the patients you treat, are
10 you able to break down into percentages as to how much of
11 it deals with -- how many of the children you're dealing
12 with sexual abuse?

13 A Yes. About -- probably about 80 to 85 percent of my
14 outpatient practice at the two advocacy centers is
15 involving concerns about child sexual abuse. And I would
16 say about 90 percent of the children where we do
17 in-hospital consults are involved with physical abuse
18 concerns.

19 Q Okay. And how often do you treat -- well, can we get
20 an idea of how many children you treat for sexual abuse?

21 A Well, we have 15 appointments set up between the two
22 advocacy centers a week to evaluate children for concerns
23 of abuse. And, as I mentioned before, the majority of
24 these are concerns about sexual abuse.

25 Q Okay. Have you testified in court before?

1 A Yes, I have.

2 Q And do you know how many times you've testified?

3 A I usually have to come to court usually about maybe
4 two to three times a month for various cases.

5 Q Which different courts do you testify in?

6 A I've been both in Family Court and criminal court.

7 Q Okay. Let me ask you this. Did you perform an
8 examination -- a physical examination on **MINOR** **████**?

9 A Yes, I did.

10 Q And when did this take place?

11 A It was April 5th of 2010.

12 Q And how was **MINOR** **████** referred to you?

13 A She was referred, I believe, by -- she had been,
14 initially, seen in the emergency room. So they had sent
15 her to the center in Greenville for a follow-up exam.

16 Q Okay. And where did this take place, the exam of
17 **MINOR** **████**?

18 A It took place at the Children's Advocacy Center here
19 in Greenville, which is now known as the Julie Valentine
20 Center.

21 Q Is that where you perform all of your examinations?

22 A No. I, also, see children up in Spartanburg --

23 Q Okay. Well, I'm sorry. Let me back up. In
24 Greenville, is that where you --

25 A As an outpatient setting?

1 Q Yes.

2 A Yes.

3 Q Okay. Now, are there different kinds of exams in
4 sexual assault cases?

5 A Yes, there are. There are what we -- are termed
6 either acute exams or chronic. And the acute exams are
7 one where the abuse happens within the first 72 hours.
8 And the majority of those children will be seen through
9 the emergency room.

10 And the rest are considered chronic after that time
11 period. And most of those are referred through the
12 different advocacy centers for evaluation.

13 Q And which is more common, the acute or the chronic?

14 A The chronic.

15 Q And do you have percentages? I mean, is it an
16 overwhelming majority are chronic or --

17 A In children, it is an overwhelming majority are
18 chronic. It's quite often that children don't disclose
19 right away that, you know, abuse happened one day, they
20 tell about it that night, and they're brought in the next
21 day. A lot of times, they will wait days, weeks, months,
22 years before they disclose about abuse in my practice.
23 And then after that, then that is when they come for a
24 medical exam.

25 So the majority of times, there is a big delay from

1 the time of the incident to the time that I get to see
2 them.

3 Q Okay. And so that would be the chronic one, it's
4 somewhere from 72 hours after the act until just whenever?

5 A Yes, sir.

6 Q Okay. Now, what type of examination did you perform
7 on **MINOR**?

8 A It would be considered that chronic type.

9 Q Okay. Now, how do you go about doing a child sexual
10 examination?

11 A Well, the exam is -- what it involves -- I work with
12 a child life specialist, who will go out and bring the
13 child and whoever comes with them to the exam -- back to
14 the exam room. And she will go over the exam. So they
15 get comfortable to understand exactly the equipment that
16 we use, how it's going to be a head to toe physical exam,
17 and then starts allowing them to have a couple of choices
18 of who they would like to have in there for the exam.

19 I then will talk to whoever comes with the child to
20 get a medical history, as far as past medical concerns,
21 medications, things like that, any problems that the child
22 may be having. I then will try to talk to the child by
23 themselves, if they're able to separate from their
24 guardian. And then I do the head to toe physical exam
25 with whoever they'd like to have in there during that

1 time.

2 And that exam, also, involves looking at the genitals
3 with an instrument called a colposcope that is not at all
4 invasive to the child, but allows for magnification and a
5 good light source to look at that. And then depending on
6 the situation, I decide what type of tests need to be
7 done, and then have the child get dressed. And I conclude
8 with making sure they get the appropriate follow-ups that
9 are needed.

10 Q Okay. And why do you get the medical history -- and
11 let me back up. Does the medical history include what the
12 allegations are when you speak to the mother and the
13 child?

14 A It -- the medical history does not -- when I talk to
15 the mother, it does not -- the allegations are not
16 involved there.

17 Q Okay.

18 A When I talk to the child, I do try to get an
19 understanding about what happened, if they can share that,
20 what their concerns are about their body, any kind of
21 discomfort or worries they have. And that really is an
22 important one to help me decide how I can kind of conclude
23 and make sure that they are pointed in the right
24 direction, and, most importantly, to decide what tests, if
25 any, need to be done looking for sexually-transmitted

1 infections. And that is based on that information that
2 was shared with me.

3 Q Okay. And so did you speak to **MINOR** by
4 herself?

5 A Yes, I did.

6 Q Okay. So she was able to separate from her mother?

7 A Yes, sir.

8 Q Now, when you spoke to **MINOR**, did you talk to
9 her about the time frame of the sexual assault?

10 A She did share that with me.

11 Q And what did she tell you?

12 A She had said it happened when she was six and seven.

13 Q And did she relate to you the place or places where
14 the sexual assault occurred?

15 A She did. She had said it was at her house and at her
16 grandmother's house.

17 Q All right. Now, after talking to **MINOR** about the
18 allegations, did you then move on to doing the actual
19 physical examination on **MINOR**?

20 A Yes, sir.

21 Q And, in this case, what were the results of **MINOR**'s
22 medical exam?

23 A She had a normal exam.

24 Q And what does that mean?

25 A That means, you know, again, going from head to toe,

1 I did not see anything that was concerning, except where
2 she did have some warts on her hands and face.

3 Q Okay. And did that have anything to do with the
4 allegation of sexual abuse?

5 A I did not feel it did.

6 Q Now, considering the allegations, is your finding --
7 the results of **MINOR**'s exam, are they consistent?

8 A I felt that in the information that she had shared,
9 having a normal exam could be consistent with those
10 allegations.

11 Q Okay. And can you just explain why?

12 A Well, in my practice, it's very common when children
13 disclose different types of abuse for them to not have any
14 findings on their genital exam. For one, a lot of
15 different types of abuse doesn't cause full penetration to
16 the area. So there may never be tears or scars.

17 Sometimes, there is just localized trauma. That area
18 has an extremely good blood supply that even small areas
19 can heal very, very quickly. And, again, since we're not
20 seeing a child right away, it is quite possible that by
21 the time that I see them, things -- if there was any
22 trauma, there, again, it could heal.

23 But a lot of times in my practice, again, when
24 children are touched or the different types of abuse, it
25 may be things that never ever leave any findings on the

1 exam, even if we did see them immediately.

2 Q Okay. So can digital penetration leave behind no
3 physical evidence or any trauma?

4 A It's quite common that you'll see a normal exam when
5 there is a history of digital penetration.

6 Q Oral --

7 A Yes. The same is true with oral penetration. It is
8 very uncommon to see any findings on a physical exam
9 related to that.

10 Q And what about partial penetration of the penis, can
11 that leave behind no evidence -- no trauma?

12 A Well, I think a lot of times, especially when you're
13 talking with young children when there is a history of,
14 you know, partial penetration, or penetration, or putting
15 their -- a private part into their private part, a lot of
16 times, it goes into the outer genital area. And so that
17 is not the same kind of anatomy that we think of as
18 adults, and doesn't cause, you know, full trauma that you
19 may see with an adult history.

20 Q And have you found, in your experience, that that
21 concept of penetration is a difficult one for a child,
22 say, of **MINOR**'s age to grasp?

23 A Right. I think, you know, a lot of times when we ask
24 like what do you call that area, they give one name for
25 their entire genital area. And so when they -- often when

1 children describe those incidents, again, they describe,
2 you know, someone putting their -- a private part into
3 that genital area. But, again, they're talking about that
4 entire genital area. And so they don't know the different
5 parts of their anatomy.

6 Q So penetration to a child could mean just going into
7 the vulva?

8 A Right, going into that outer -- the vulva is the
9 medical term for kind of that outer part, inside the
10 labia, but outer to the vaginal area.

11 Q And then not be necessarily complete penetration?

12 A Right, not through the hymen into the vaginal
13 opening.

14 MR. MOYER: Please answer any questions the Defense
15 has.

16 CROSS-EXAMINATION

17 BY MS. ROSS:

18 Q Just to clarify on that. Can it, also, mean just any
19 kind of going in the private area, just in the buttocks
20 area, or the private part area without going inside the
21 vulva, or anything like that?

22 A Well, we -- when we talk -- or when I talk to a
23 child, we do get the names. And so we try to understand
24 what the names of the buttocks area, what they call that,
25 what's the name of the -- kind of the front genital area,

1 what they call that. So that we try not to confuse those
2 two issues that -- you know, every now and again, I do
3 have a child who calls the bottom and it's their front
4 part. And we don't want to mix that up and make sure
5 we're not talking about two different things.

6 Q Okay. Now, just handing you -- is this your report?
7 Do you recognize that?

8 A Yes.

9 Q Okay. And just looking on the second page of that
10 report, you talk about what the reason for referral is.
11 And there are two boxes to check -- it says to check all
12 that apply. There are four or five boxes to check,
13 penetration, digital, or penile penetration. Neither of
14 those are checked, are they?

15 A No. They're not.

16 Q Okay. So there was no allegation in the report to
17 you of digital or penile penetration, was there?

18 A Not initially. At least, based from this report,
19 that's not the information that I had.

20 Q Okay. So that's not in your report at all, anything
21 about penetration?

22 A It's in the history that I received.

23 Q Okay. And wasn't that form based on the history that
24 you received?

25 A This -- I'm talking about the history I received from

1 the child.

2 Q Okay. And didn't you receive that before the
3 referral --

4 A And this is the history that is received when the
5 intake of the report comes in.

6 Q Okay.

7 A So this page is kind of from the initial information
8 that comes to me. And then this information on Page 4 is
9 what I receive directly during my time at the exam.

10 Q Okay. And so in the box where it checks, Reason for
11 referral, you've got nothing about penetration in that
12 box, do you?

13 A That's correct.

14 Q And isn't it true that chronic sexual penetration
15 does cause injury to children?

16 A The majority of the time, even with chronic
17 penetration, they have normal exams.

18 Q All right. When they -- and these are allegations.
19 When you do these exams, these are not -- you weren't
20 there during any kind of abuse when you do an exam?

21 A No. I'm not there at the time the child was
22 abused --

23 Q So when you have allegations and you do an exam,
24 you're finding mostly normal exams?

25 A Yes.

1 MS. ROSS: All right.

2 (Pause.)

3 MR. MOYER: Are you done?

4 MS. ROSS: No more questions.

5 REDIRECT EXAMINATION

6 BY MR. MOYER:

7 Q Well, as a follow-up to that question that you
8 received about the allegations that were made about sexual
9 abuse. What did **MINOR** tell you about what kinds of
10 sexual abuse occurred?

11 A She disclosed to me that there was partial --

12 MS. ROSS: And I'd object to hearsay.

13 MR. MOYER: Your Honor, this is just in response
14 to -- she opened the door by her questions. It's just
15 follow-up for questions that she brought up about what the
16 allegations were.

17 THE COURT: I sustain the objection.

18 MR. MOYER: No further questions.

19 THE COURT: Okay. Thank you, ma'am.

20 Yes, sir, Mr. Moyer.

21 MR. MOYER: Your Honor, at this time, the State
22 rests.

23 THE COURT: Ladies and gentlemen, the State has
24 completed their presentation of evidence. And, at this
25 time, I have to take up a matter with the lawyers. So

1 just return to the jury room. Don't discuss the case.
2 And keep an open mind.

3 Thank you very much.

4 (WHEREUPON, the jury was excused from open court at
5 approximately 1:55 p.m.)

6 MOTIONS

7 THE COURT: Okay. Any motions at this time?

8 MS. ROSS: We would have a motion for directed
9 verdict at this time. Mere suspicion is not enough. One
10 state case, State v. Johnson, 334 -- I'm sorry, 512 S.E.2d
11 795, a 1999 case, states there must be some statement of
12 penetration in order to go forward on a CSC with a minor
13 charge at this time. We would argue that there's no proof
14 or, certainly, not sufficient proof of that presented in
15 this case to go forward. And, therefore, we would move
16 for a directed verdict.

17 THE COURT: Okay. I find there is evidence in the
18 record that, of course, I can't weigh at this stage, but I
19 can determine it exists. And it does, if believed, would
20 be sufficient to sustain a guilty verdict. But, of
21 course, credibility is up to the jury. I can only gauge
22 whether there's evidence in the record.

23 So viewing it in the light most favorable to the
24 State, as I'm required to do, I do find there is
25 sufficient evidence to overcome the motion for directed

1 verdict under the standard of Rule 19.

2 Do you know how many witnesses you may be having?

3 MS. ROSS: I don't. I wanted to confer with my
4 client.

5 THE COURT: Okay.

6 MS. ROSS: And confer with a -- briefly with a
7 witness. So if I could just do that. And, in the
8 meantime, I'll pass up my requests for instructions.

9 THE COURT: Yes, ma'am.

10 MS. ROSS: And if I could just have five minutes.

11 THE COURT: Sure. We'll be in recess for about 10
12 minutes. We'll take 10 minutes.

13 Thank you.

14 MR. MOYER: Also, I have one request for instruction.

15 THE COURT: Sure.

16 Thank you.

17 (WHEREUPON, a break was taken.)

18 THE COURT: Yes, ma'am.

19 MS. ROSS: The Defense rests.

20 THE COURT: Do you want to rest in front of the jury
21 or --

22 MS. ROSS: No. I don't have to.

23 THE COURT: All right. As far as the charge --
24 Yes, sir.

25 MR. MOYER: I'm sorry. I was just getting ready to

1 move the --

2 THE COURT: That's okay. Go ahead.

3 As far as the charges, I understand the State v.
4 Rayfield decision. However, I don't think it's mandatory
5 that the Court charge it. And I decline to charge it for
6 the reasons that were stated in the dissent in that case.

7 As far as the Defense's request --

8 MS. ROSS: And I apologize. I'm moving, so I
9 intended to edit this on my iPhone. Seven and three are
10 the same requests. So I apologize for that.

11 THE COURT: Oh, is that an issue? I don't recall
12 hearing anything about destroyed evidence.

13 MS. ROSS: Well, it didn't really become one. I
14 think there was evidence that really wasn't presented.

15 THE COURT: Oh, okay. Well, I don't see anything
16 that would warrant that charge from the record.

17 MS. ROSS: Okay.

18 THE COURT: As far as -- I definitely am going to
19 charge #2. I may not talk about the cloak. But I'll talk
20 about the presumption of innocence. And I'll do #4,
21 hesitate to act.

22 MS. ROSS: Okay.

23 THE COURT: #5, again, we've been instructed about
24 the circumstantial evidence charge that we can use, and we
25 can't deviate from it, so.

1 MS. ROSS: I understand. I always put that on the
2 record.

3 THE COURT: I understand. You never know what
4 tomorrow might bring.

5 And I'll definitely charge #6.

6 I'll make this part of the record.

7 MS. ROSS: Thank you, Judge.

8 THE COURT: Thank you.

9 Anything further?

10 MR. MOYER: I would like to flip the courtroom real
11 quick, if you don't mind.

12 THE COURT: Oh, yes, sure.

13 Let me let y'all look at the charge I have, and the
14 verdict form.

15 (Pause.)

16 THE COURT: Okay. Is everybody ready for the jury?

17 MR. MOYER: I'm ready, Your Honor.

18 MS. ROSS: I'm ready, Your Honor.

19 (WHEREUPON, Court's Exhibit Nos. 2 and 3 were marked
20 for identification and admitted into evidence.)

21 (WHEREUPON, the jury came into open court at
22 approximately 2:22 p.m.)

23 THE COURT: Ladies and gentlemen, the State has
24 rested, and the Defense has rested as well. So you've
25 heard all the evidence you're going to hear in the case.

1 And, now, it's time for the closing arguments of the
2 lawyers.

3 So, Mr. Moyer, yes, sir.

4 CLOSING ARGUMENTS

5 MR. MOYER: Thank you, Your Honor.

6 May it please the Court.

7 Good afternoon, ladies and gentlemen.

8 It has been, as I predicted yesterday, a fairly short
9 trial. We got through the evidence in just about a day.
10 I just now have some closing remarks I want to make to you
11 to summarize what you have heard, and make arguments as to
12 what I would argue to you should be the verdict in this
13 case. My remarks will be short since the trial was short.
14 It should not take that long to go over these matters.

15 First, I want to mention that I appreciate the close
16 attention that you've given this case. I noticed that you
17 all were paying very close attention to all of the
18 witnesses as this trial went on. It's an important day,
19 as it has been pointed out, for the Defendant. But it is
20 an equally important day for the State, for the
21 Prosecution. And I appreciate you giving both sides your
22 full attention, and your fair hearing on this matter.

23 As His Honor has instructed you and told you, the
24 evidence phase of this case is closed. You cannot receive
25 anything else. Sometimes, jurors come back with questions

1 saying they want to see a police report, or they want to
2 see a witness statement. That can't happen now. The
3 evidence phase is closed. Except in very rare
4 circumstances, things like witness statements and police
5 reports are not admissible into evidence. So that is not
6 going to be before you.

7 What you have is a videotape, which you have seen.
8 And you have the evidence -- you have the testimony of
9 multiple witnesses. The first thing I want to point out
10 to you, ladies and gentlemen, is just a couple matters of
11 law.

12 As you have heard, and as you will hear again, this
13 is a criminal case. So in order for you to find evidence
14 that warrants a guilty verdict, you must be convinced
15 beyond a reasonable doubt. And that is fair. We, the
16 State, acknowledge that, and we accept that burden gladly.

17 I want you to keep in mind that the burden, however,
18 is beyond a reasonable doubt. It is not beyond all doubt.
19 It is not beyond every doubt. It is not beyond, what I
20 heard someone once say, a shadow of a doubt, whatever that
21 is. It is beyond a reasonable doubt. This is the same
22 burden that is in every criminal case in every
23 jurisdiction throughout this country, from the most
24 seemingly serious case like a capital murder down to the
25 most seemingly insignificant case. For example, in South

1 Carolina, you can get a jury trial for speeding. And you
2 would have the same burden of proof.

3 So in order for a person to be found guilty in
4 criminal sexual conduct cases like this, in murder cases,
5 in a shoplifting case, a jury would have had to find
6 evidence beyond a reasonable doubt for that person to be
7 found guilty.

8 The second matter I want to bring up to you is
9 corroboration. And by that, what I mean is you, as
10 jurors, can find a person guilty of criminal sexual
11 conduct based on the testimony of a victim alone. This
12 could have been -- as short a case as this was, it could
13 have been much shorter. It could have come down to the
14 very first witness yesterday, **MINOR**. And the case
15 could have ended. There could have been no more
16 testimony. And that would have been sufficient evidence.

17 The victim -- the word of the victim alone is
18 sufficient to convict without corroborating testimony,
19 without corroborating physical evidence. That can be
20 enough. And the reason for that is because, in cases like
21 this, you're not going to have those other things. You're
22 not going to have physical evidence.

23 Now, I'm sure -- if this were one of those crime
24 shows on TV like CSI or whatever they're called, I'm sure
25 somehow, someday, they would have found a way to solve

1 this under a microscope. But that's Hollywood evidence,
2 that's TV evidence. That's not real life. And, in a case
3 like this, you're just not going to have that.

4 You heard Dr. Henderson testify. She was the very
5 last witness. She's a doctor who has handled cases like
6 this for 12 years, who testifies over and over again. And
7 in a case like this where the abuse happened remotely,
8 where it happened a while ago, you're simply not going to
9 have DNA. You're not going to have physical trauma. You
10 can't find full DNA and fingerprints out of midair, as
11 much as we would like. So, in a case like this, it comes
12 down to testimony.

13 Now, the only piece of evidence I think that
14 theoretically could have been in this case, as you
15 probably picked up on and as was woven in and out of this
16 trial, were the videos. You heard testimony that the
17 Defendant took videos of **MINOR**. And, of course, we
18 would have liked to have had that. That, obviously, would
19 have been the proverbial smoking gun in this case. But,
20 ladies and gentlemen, as I'm sure is obvious to you, that
21 is just not something that would have been possible.

22 I want you to think back to when the Defendant was
23 made aware that the allegations were being made. In early
24 March of 2010, when **MINOR**'s mother caught **MINOR** acting
25 out in this sexual way, she went and called him. And she

1 told him what the allegations were. From that point on,
2 he knew somebody else knew, and the authorities were most
3 likely going to be called. You can't expect him to have
4 kept that evidence, that damning evidence. It would be
5 like -- well, if you think of when he was spoken to by
6 Investigator Cromartie was June the 30th. So we're
7 talking a period of a couple of months.

8 And how did that interview come about? He was spoken
9 to on the telephone. And he came in and talked with the
10 police. I mean, of course, there was nothing on his phone
11 we know for several reasons. He had the chip, as was
12 described, that he was putting into his phone and taking
13 out. He was very careful about that. And the idea that
14 he would take that along with him to speak to Investigator
15 Cromartie, well, I mean, it would be like someone under a
16 drug investigation going to the officers with a pocket
17 full of crack. I mean, it's just not going to happen.

18 And I would argue to you that, certainly, anybody
19 that he ever sent those pictures to were warned as well.
20 Somebody knew what was going on. So we're not going to
21 have physical evidence in a case like this. And we're not
22 going to have eyewitnesses. Someone who commits a crime
23 like this is going to do it in private. They're going to
24 be careful.

25 And, of course, as has been pointed out, and as I'm

1 sure will be pointed out by the Defense in their closing
2 argument, of course, there were other people in this house
3 at times. There was -- the victim's grandmother lived
4 there. And, apparently, another one of the daughter's
5 lived there for a short period of time.

6 But if you think that this is the first time somebody
7 has been sexually molested in a home where other people
8 live -- well, surely you don't. Because it can happen.
9 And it does happen. And it happened with **MINOR**.
10 Because the opportunity was there.

11 **MINOR** was at that house all the time. She was
12 there overnight. She was there often for periods of time
13 during the day. She was there once a week for year, after
14 year, after year. And people leave. People go on
15 errands. People cook. People watch TV. They go to
16 sleep. These things happened. And there are occasions.

17 And, on some of these occasions, I'm sure they were
18 sure the hide and seek where there was just time for a
19 short fondle. And then there were other opportunities
20 where he had more time, and where more serious abuse took
21 place. This happened over a period of years. He learned
22 tricks. He learned routines. He took whatever
23 opportunities became available. And he was careful not to
24 get caught. It shouldn't surprise us that there are no
25 witnesses.

1 Now, I want to take you back to yesterday when His
2 Honor gave you some opening instructions on the law. And
3 he told you about what to expect as the trial goes
4 forward, and gave you some instructions on how to evaluate
5 the witnesses. And, if you remember, His Honor said to
6 you that you can consider certain factors when assessing
7 the credibility or believability of a witness. And the
8 Judge mentioned, does that person have an interest in the
9 outcome of the case? What was that person's ability and
10 opportunity to observe what took place? You can consider
11 the demeanor of the witness as the witness testifies. The
12 Judge finished up by saying you could use your common
13 sense, as jurors.

14 And so we need to now talk about **MINOR** for just a
15 little bit. And I think those factors would be,
16 certainly, a good way to do so. Let's consider, first,
17 **MINOR**'s opportunity to observe what happened.
18 Obviously, she's the victim. She is the person who
19 experienced the crime. She is the one -- the only one who
20 would know what took place. And what did she experience?
21 What did she tell you took place?

22 Well, in the holting [phonetic], and nervous, and
23 difficult way of a child of ages seven and nine, she told
24 you and described to you fondling of her private part.
25 She talked about oral sex that took place on her. She

1 talked about digital penetration when she talked about his
2 hand being -- going inside her private. She talked in
3 detail about having to masturbate him. And I fear, it
4 appears, that it was worse. If you remember from the
5 video towards the end of the video, when she started
6 describing with the dolls what happened and what came out,
7 it seems very clear to me that, at least, partial
8 penetration, if not more, of his penis into her vagina.
9 She is the person who experienced it and can describe it.
10 And she told you as best as she could. It was difficult.

11 I hope -- after hearing Ms. Galloway-Williams testify
12 a little bit -- right before lunch, I hope you can
13 understand how difficult it is for her to talk. Children
14 just don't have the language to be able to explain
15 something -- a seven-year-old child does not have an
16 understanding of sexual things. That child could not make
17 this stuff up.

18 I was trying to think of an analogy to people our
19 age. And I don't think I came up with a very good one.
20 The best I could come up with is what if all the sudden
21 you -- a person was transported to the moon without having
22 any education, any experience, any training about what is
23 going to take place. And all the sudden, you're taken up
24 in a rocket ship. And then you're in an astronaut suit.
25 And you're experiencing weightlessness. And you're seeing

1 all these things that no one has ever seen.

2 And then all the sudden, you're taken back into a
3 room full of people, astronauts, who have, actually,
4 experienced that. And you were told to describe what just
5 happened, what you just saw. And without that
6 understanding, and education, and experience, you would
7 have a difficult time doing so. And I think that's a
8 little bit like what it's like for a child. They just
9 don't have the words.

10 And what makes it even harder is we're talking about
11 a child who is seven years old, who is trying to forget
12 this stuff, who doesn't, obviously, want to talk about it.
13 And they compress details. They compress time frames.
14 And they have such a difficult time talking about it.

15 Could she possibly have been mistaken? Could she
16 possibly have made this stuff up? And, once again, I
17 would argue to you, it is impossible. Because a child
18 cannot conjure up things like she described.

19 And while we were watching that video here this
20 morning, I started taking note of what her description
21 was. And as difficult as this is to hear, I can assure
22 you it's even more so for me to start saying some of this
23 stuff. But I want you to think about how detailed her
24 explanation was for some of this stuff.

25 She didn't just say that he touched her private part,

1 but she specified what with, she said her hand and his
2 mouth -- you know, his hand and his mouth. She described
3 where on her body, on her private and her bottom. She
4 described how she was lying down, how he laid her down on
5 the floor. And she described on her stomach and on her
6 back. She described how he was positioned on his knees.
7 And then she then demonstrated that with those dolls. She
8 showed in detail just what he did.

9 And I want you to think, also, she didn't just say
10 that he did oral sex on her. But when given the dolls, do
11 you remember the first thing she asked with that male doll
12 when she was asked to describe what he did? She asked,
13 Does his tongue come out? And she handed it back to the
14 doctor to do so. She told and talked about how he pulled
15 her vagina apart and then licked. She said that he used
16 his tongue on her private and bottom part. And she
17 described that it was in a circle.

18 She described how his private felt when she touched
19 it, and it touched her. She described it as being hard.
20 She then described ejaculation. If you recall, she talked
21 about wet stuff coming out. And she used details, ladies
22 and gentlemen. If you recall, she said she had to go to
23 wipe it -- she said that after it happened, he had to go
24 to the bathroom to wipe it off. She said that she had to
25 go to the bathroom to get it off. She didn't say dry

1 herself. Note the distinction. She said, get it off.

2 How could anyone know details like those, unless they
3 experienced it? You couldn't conjure that up out of thin
4 air. You couldn't make it up. It couldn't be implanted
5 in you. Only someone who has gone through that, I argue
6 to you, ladies and gentlemen, as a seven-year-old could
7 come up with details like that.

8 Another factor His Honor said to consider about a
9 witness is that witnesses demeanor while testifying. And
10 I know this is difficult. Because we're all adults. And
11 it's been a long time since we've been seven years old,
12 and trying to put ourself in the place of a child, and how
13 that child acted, I think, would be very difficult.

14 But I want you to think about **MINOR** and as she
15 testified yesterday in court, and as she talked to the
16 forensic interviewer on the videotape. And you could
17 notice a very distinct change in her demeanor from when it
18 went from normal conversation about where do you go to
19 school, how old are you, to talking about what happened.
20 You could note a physical change in her. She almost
21 became withdrawn in that chair. And, on the video, she
22 curled up in a ball. I think that demeanor, I would argue
23 to you, ladies and gentlemen, is indicative of somebody
24 who is experiencing -- re-experiencing and thinking about
25 things that she doesn't want to have to think about.

1 His Honor, also, told you another factor to consider
2 when looking at the believability of witnesses is if they
3 have an interest in the outcome of the case. And I want
4 you to think about that for just a minute. It almost
5 seems too obvious to mention. But **MINOR** gets nothing
6 out of this. **MINOR** would get no -- she gets no reward
7 if the Defendant is convicted.

8 In fact, I would argue to you that the opposite is
9 true. She told you, other than this part of him, other
10 than what he did to her in a sexual way, he was nice. He
11 never yelled at her. He treated her well. At the house,
12 he even treated her better than her grandmother in a way.
13 When her grandmother would yell, he'd stand up for her.
14 She had no reason to make something up. Even if she
15 could, she would have no reason to.

16 Well, let me mention another possibility I would
17 think may come up during the Defense's closing is the
18 possibility that someone planted this on her -- in her.
19 Is it possible someone got to her and said, listen, I want
20 you to make up this lie about granddad, and I want you to
21 say all this? My first remark to that is that there has
22 been no reason -- we've seen no reason why anyone would do
23 that.

24 Tasha talked about how they, actually, got along with
25 him. They were taking their kids to his house for years

1 and years. They would come to her house for years and
2 years. They got along. There was no reason, even if she
3 wanted to, to want to do that.

4 And I want you to think about this. I mean, how much
5 would you have to hate somebody to frame that person with
6 a crime like this, with conduct like this? How much would
7 you have to hate that person? And not only that, but, I
8 mean, consider how terrible a person you would have to be
9 to do something like that. But even if you were that kind
10 of person, and even if you hated that person so much that
11 you wanted to frame that person, is this how you would do
12 it? Would you try to conspire with a seven-year-old to
13 come up with a convoluted and difficult and two-year story
14 of sexual abuse? You wouldn't do that. I don't know what
15 you would do. But you wouldn't do that.

16 I mean, how much would you have to hate your own
17 child to say, I'm going to put you through this ordeal, so
18 we can frame so and so. You just wouldn't do it. And you
19 couldn't do it because the child could never get through
20 that.

21 The final factor that was given in assessing the
22 credibility of witnesses is just to use your common sense.
23 After considering all these factors, what's the only
24 conclusion? **MINOR** could not have made this up. She
25 could not have been mistaken. The child was not coerced

1 by anybody to try to come up with this story. The only
2 inescapable conclusion is that this Defendant sexually
3 abused her, as she said he did. And that he's guilty of
4 these two crimes, lewd act on a minor, that he touched her
5 in a sexually inappropriate way, and she was under age.

6 Criminal sexual conduct requires several -- can be
7 met with several different instances of conduct. It can
8 be oral sex, which she described very clearly. It can be
9 digital penetration, which she described very clearly. It
10 could be penile penetration, which if she didn't come
11 right out and explain clearly, she came pretty close. But
12 we know, at least, the oral sex and, at least, the digital
13 penetration, which means criminal sexual conduct.

14 Ladies and gentlemen, in closing, at the outset of
15 this case, I told you that at the end, I would talk to you
16 and I would ask you to do justice in this case. And,
17 ladies and gentlemen, holding people responsible for their
18 actions when they commit crimes like this is doing
19 justice. And I ask you, ladies and gentlemen, to find
20 this Defendant guilty of both of these crimes of lewd act
21 on a minor and criminal sexual conduct with a minor.

22 Thank you.

23 THE COURT: Thank you, Mr. Moyer.

24 Ms. Ross.

25 MS. ROSS: Thank you, Your Honor.

1 May it please the Court.

2 Ladies and gentlemen of the jury, there is no
3 question how difficult this case is. I've watched this
4 video. You've watched the video. It's incredibly
5 difficult to see. However, Robbie Chappell, my client,
6 has pled not guilty. And the State has not proven him
7 guilty, as they must.

8 Now, the State is required to prove guilt beyond a
9 reasonable doubt. And while there is no requirement of
10 corroboration, the fact that there is no corroboration of
11 any of **MINOR** Cooper's [sic] testimony is a problem.

12 Now, I understand that sex often happens between --
13 behind closed doors in hidden places. However, what she
14 alleged was years and years of chronic abuse, ejaculation,
15 everywhere abuse. She described it going on in her
16 grandmother's room where her grandmother was sleeping.
17 This is a small trailer. She described being in a room
18 with a dog crate on the floor in a small trailer with
19 possibly an aunt, an uncle living there at the time, a
20 grandmother, her grandmother who loves her, who was part
21 of this case, who talked to the investigator on this case
22 and who was not called to testify by the State. Now, just
23 ask yourselves, why do you think the State did not call
24 her to testify? And it's because what she said doesn't
25 help their case. She saw nothing. She did not

1 corroborate what **MINOR** said.

2 Now, I will state that Robbie Chappell did not get on
3 the stand today. He did not testify. And that is his
4 right under the U.S. Constitution. And that was with my
5 advice, as his lawyer, not to testify. Because it's the
6 State's full burden of proof beyond a reasonable doubt.
7 And they did not meet that burden in their case in chief.

8 Now, I, also, want to talk about the indictments.
9 There are two indictments, lewd act and criminal sexual
10 conduct with a minor first degree. Now, they are two
11 distinct charges. But I would say criminal domestic
12 violence [sic] with a minor first degree encompasses
13 sexual battery, what she said happened.

14 Now, if they were confident in that indictment, we
15 wouldn't have both. They have their fall back option just
16 in case you don't believe that part, if that's just too
17 unbelievable that this seven-year-old was sexually
18 penetrated chronically over years and years. And there's
19 absolutely no physical evidence. No one woke up in the
20 house. No older brother saw a thing, no family members.
21 They have that as a fall back, ladies and gentlemen, if
22 you might question, say, how is that possible? How could
23 a seven-year-old be chronically abused in a trailer while
24 there are seven and eight other people around all the
25 time?

1 She stayed with her grandmother and a new man who
2 moved in. Do you really think that grandmother left him
3 alone with her? Do you think if her testimony was that
4 she left her alone that the State wouldn't have -- would
5 have called her to the stand? In other words, if she was
6 going to say I left my daughter [sic] alone with this
7 child molester, the State would have put her up to say
8 that. She didn't, ladies and gentlemen. That child was
9 never alone in that trailer. She was with siblings,
10 family all the time. And no one saw anything, no DNA, no
11 physical evidence, no note.

12 You had an officer come in and talk about a phone,
13 and how a little disk went in. Well, I've had flip
14 phones. I didn't know of any disk, any picture disk.
15 Where is the phone? And why isn't the phone here for you
16 to look at? I'd submit to you because the phone is not
17 what it was said to be. There's no other person that got
18 all these videos. There's no videos of **MINOR** out there.

19 Now, this is the hard part for me. How could that
20 cute, little beautiful child make something like this up?
21 And that's a difficult question. Now, your oath is to put
22 emotions aside, and try this case on the bare evidence
23 that was put before you by the State. That's their
24 burden. And that's your oath to just try this case just
25 on the evidence.

1 And the State talked about looking at someone's
2 testimony to see whether it was believable. One thing to
3 look at is consistency. That was not here.

4 Another thing to look at -- and the State said I'd
5 talk about it and I'm going to. In this case, **MINOR**
6 came out with a story to her mother, Tasha... Her mother,
7 Tasha, whose father was incarcerated for this very same
8 thing.

9 Now, Tasha sees **MINOR** in a position. And I'll
10 state I didn't hear Tasha say anything about **MINOR**
11 legs being spread. She just saw **MINOR** with her little
12 sister down with her head near her privates. That's what
13 Tasha saw. And she starts asking, What are you doing?
14 What happened? **MINOR** says some things, and may not get
15 the result she wants out of her mother. She says other
16 things and might get some understanding from her mother.

17 When you act like that, does that -- have you been
18 abused? A doctor will tell you you've been abused. If
19 you're acting like that, that means sexual abuse. And,
20 ladies and gentlemen, that is leading. And children are
21 very susceptible to that. And that is often how innocent
22 people can be convicted of crimes they did not commit.
23 Because children can be manipulated into saying things
24 that they don't mean.

25 Now, I'm not saying that nothing was weird here. But

1 children can get those things misinterpreted. And when
2 they talk to somebody who wants to interpret it in a way
3 that means sexual abuse or sexual battery, someone who's
4 gone through this very court process, who has dealt with
5 the same team of people, the Valentine Center, each person
6 working towards getting the right words in, getting the
7 right things to the jury to convict people of sexual
8 crimes.

9 None of those people in the investigation of this
10 case are concerned about exonerating anybody. None of
11 them are concerned about finding inconsistencies in a
12 child's story. The whole concern is getting to a
13 conviction.

14 And Tasha Carter had been through that process with
15 her father. She knew the words that needed to be said on
16 the video. She knew what needed to be put forward. And
17 I'm not saying that this was a malicious thing on anyones
18 part. I'm saying that things that **MINOR** said were
19 misinterpreted and reinvented through her mother. And her
20 mother and her were together talking for over a month
21 before that interview that you saw.

22 Now, again, this has to be looked at purely without
23 emotion with looking towards the facts and the evidence in
24 this case. Like a speeding charge, as the Solicitor said,
25 that's a great example. Something that -- it's like who

1 cares about speeding? That's the opposite on this kind of
2 charge we have here. But with speeding, if you had a
3 charge where a child, a seven-year-old said, my dad was
4 speeding, and that was the entire evidence that you heard
5 in the case, that is not proof beyond a reasonable doubt.

6 Now, there were little things in **MINOR** testimony.
7 She didn't realize that Kim and Jonathan had both been
8 living -- her uncle and aunt had both lived with her
9 grandmother during that period. She didn't remember that.
10 She didn't remember how the trailer was laid out. And
11 many trailers have pretty much one common room, and two or
12 three bedrooms, and bathrooms off of that, very open
13 areas. She didn't describe that place.

14 She couldn't describe the phone, and how in the world
15 he was able to record and send videos. None of that was
16 described. In her testimony -- I will say I had a
17 difficult time hearing her testimony. But in her
18 testimony, at one point, I heard in response to the
19 Solicitor's question, did his private touch your private?
20 And I will add that the Solicitor was leading all the way
21 through that testimony putting -- helping her along.

22 In response to that question, I heard her say, No.
23 And the Solicitor's response to that was, okay, I
24 understand you don't remember. And then he went on to
25 another question. And that is kind of what I'm talking

1 about when I'm talking about how this came along when the
2 child did not give the answer that was wanted by her
3 interviewer. For instance, it wouldn't be repeated. But
4 if it was an answer -- if it was approved, it would be
5 repeated back to her, and when this was happening, and
6 when this was happening. When she said nothing, we move
7 on. And that's a problem.

8 When she says, no, this doesn't happen, the
9 interviewer waits and then goes back to it and says, Did
10 that happen one time or more than one time, after the
11 child has just said, no, that didn't happen. They're not
12 accepting answers that they don't want. And that's
13 because it's part of the team that's job is to convict
14 people, not to look for evidence that goes against that.

15 Now, Tasha Carter testified that she did talk to
16 **MINOR** about private touching. That's a big deal for
17 someone who has been abused themselves to teach their
18 children what private touching is. And she, also, stated
19 that her grandmother was not in the household when she was
20 abused. She was the one who reported the abuse. It came
21 through her, not through the ER, not through doctors, not
22 through teachers, not through other people, not through
23 the school, not through grandma. This accusation came
24 purely through Tasha. She talked about a note, no note
25 here. Just no corroborating evidence.

1 I'll point out Investigator Cromartie on the case did
2 not get a warrant after speaking to all the family
3 members. She took the phone. She didn't get DNA. She
4 didn't get a warrant at that time.

5 The new lead investigator, she tells you about, was
6 Michael Robertson. The State didn't even call the lead
7 investigator on the case to talk to you about it. Again,
8 I'd submit, it doesn't support their case. They didn't
9 call -- they've got to prove beyond a reasonable doubt.
10 They did not meet that burden.

11 And, ladies and gentlemen, I'd like you to think
12 about what was presented, but, also, what was not
13 presented. And I'd ask you to think about your oath. And
14 I'd ask you to listen to the Judge's instructions on what
15 your duty is. And look at the evidence. And understand
16 that a man's life is on the line here. And this trial is
17 about him as well. And he's innocent until proven guilty.
18 And, ladies and gentlemen, he's innocent.

19 Thank you.

20 CHARGE ON THE LAW

21 THE COURT: Thank you, Ms. Ross.

22 Ladies and gentlemen, you've now heard all the
23 evidence you're going to hear in the trial. And you've
24 heard the arguments of the lawyers. And it's now my duty
25 to instruct you on the law that applies to the facts of

1 this case.

2 It is your duty to find the facts from the evidence.
3 And to those facts, you must apply the law as I give it to
4 you. And you should not be concerned with what the law
5 should be, but what it is. And that means you must not be
6 influenced by any personal likes, or dislikes, or
7 opinions, or prejudices, or undue sympathy. And that
8 means you must decide this case solely on the evidence and
9 according to the law. And you'll recall you took an oath
10 to do just that when we started this case yesterday
11 afternoon.

12 Now, in following my instructions, you must follow
13 all of them and not single out some and ignore others,
14 because they're all equally important. And you must not
15 read into these instructions or into anything I may have
16 said or done during this trial as any indication as to
17 what I think the facts are, or what I think your verdict
18 should be. Because you are the exclusive judges of the
19 facts under our Constitution and system of justice.

20 You decide what the facts are by evaluating and
21 weighing the evidence you've heard during this trial.
22 There's no way to weigh evidence in a literal sense. I'm,
23 certainly, not going to give you a set of scales to take
24 back into the jury room to conduct an experiment. It is,
25 instead, a mental process. And you weigh and evaluate

1 evidence simply by using your good common sense, your life
2 experiences, and your sense of logic and reason. And you
3 bring those things to bear on the evidence you've heard
4 during this trial.

5 Now, I told you that evidence consists of two
6 sources, or forms. The first is sworn witness testimony,
7 and the second is exhibits. Everything else, ladies and
8 gentlemen, is not evidence. What the lawyers say, while
9 important because they're trying to help you understand
10 what the evidence is, what they say is not in itself
11 evidence, because they are not witnesses. Likewise,
12 anything that may have been referred to outside of court,
13 or that you may have seen outside of court is, obviously,
14 not evidence. You must, again, confine your decision to
15 the evidence, and that is sworn witness testimony and
16 exhibits.

17 Now, in addition to the different forms or sources of
18 evidence, there are, also, different types of evidence.
19 What I'm talking about now is direct and circumstantial
20 evidence. Those are the two types of evidence that are,
21 generally, presented during a trial.

22 Direct evidence is the testimony of someone who
23 claims to have actual and direct knowledge of a fact, such
24 as an eyewitness. It is evidence that, if believed,
25 immediately establishes a fact.

1 Circumstantial evidence is indirect evidence. Or put
2 another way, circumstantial evidence is proof of a chain
3 of facts and circumstances from which you could find that
4 another fact exists, even though it has not been proven to
5 you directly.

6 You're entitled to consider both types of evidence,
7 both direct and circumstantial evidence. And you're
8 entitled to give them equal weight. And there's not a
9 greater degree of certainty required of circumstantial
10 evidence over direct evidence, or the other way around.
11 You must consider all the evidence in light of reasoned
12 common sense and experience. And after weighing all the
13 evidence, if you're not convinced of the guilt of the
14 Defendant beyond a reasonable doubt, you would be required
15 to find him not guilty.

16 Now, I told you, as the judge of the facts, you would
17 have to, by necessity, gauge the credibility of all the
18 evidence. And I'm not going to go over that again,
19 because I know you heard me the first time. But I will
20 tell you this. You may believe everything a witness says,
21 or you may believe nothing a witness says. You may
22 believe parts of a witnesses testimony, and disregard
23 other parts. You may believe one witness over several, or
24 several over one.

25 But it's your role, and your function, and your job

1 to determine the facts of the case from the evidence. And
2 I know you won't do that arbitrarily or lightly, but
3 you'll base it on sound, logic common sense and reason.

4 You've, also, heard testimony from people who are
5 qualified as experts. And I told you that people who by
6 reason of their education, training, or experience have
7 become an expert in their field are entitled to give
8 opinions in their given field. You should judge expert
9 testimony just as any other testimony in this important
10 respect. And that is you, the jury, can accept it, or
11 reject it, and give it whatever weight you think it
12 deserves.

13 Now, ladies and gentlemen, this is a criminal case.
14 And I've already instructed you about these principles of
15 criminal law. But I want to elaborate on them a little
16 bit.

17 First of all, the fact that someone is charged and
18 indicted is not evidence. The fact that Mr. Chappell was
19 indicted doesn't create any presumption, or inference, or
20 even a suspicion of guilt. The indictment is simply the
21 formal written way that a case begins, and by which a case
22 is brought into this Court.

23 The Defendant, Mr. Frederick Robert Chappell, has
24 pled not guilty to the indictment. And that puts the
25 burden of proof on the State to prove him guilty. A

1 person charged with committing a crime is never required
2 to prove themselves innocent, or prove themselves not
3 guilty. It is a fundamental and important rule of the law
4 that a Defendant in a criminal case, no matter what the
5 charge may be, is always presumed innocent of the charge,
6 unless and until guilt has been proven by evidence
7 satisfying you of guilt beyond a reasonable doubt.

8 This presumption of innocence does not end when you
9 begin your deliberations. It accompanies the Defendant
10 throughout the trial. And it can only be removed unless
11 and until you reach a verdict of guilt, based on evidence
12 satisfying you of guilt beyond a reasonable doubt. The
13 presumption of innocence is not some legal technicality.
14 It is a fundamental and important right to which every
15 citizen is entitled, and it is not simply a legal phrase.

16 Now, what is a reasonable doubt? The law defines a
17 reasonable doubt as the kind of doubt that would cause a
18 reasonable, sincere, honest, and conscientious person to
19 hesitate to act in an important matter in their own
20 affairs.

21 Proof beyond a reasonable doubt is proof that leaves
22 you firmly convinced of the Defendant's guilt. There are
23 very few things, of course, that we can know with absolute
24 certainty. And the law does not require proof that
25 overcomes every possible doubt.

1 If, based on your view of the evidence, you're firmly
2 convinced that the Defendant is guilty of the crime
3 charged, you must find him guilty. On the other hand, if
4 you think there is a real possibility that he is not
5 guilty, you must give him the benefit of that doubt and
6 find him not guilty.

7 A reasonable doubt may arise from the evidence in the
8 case or from a lack of evidence. And a Defendant is
9 entitled to every reasonable doubt that may arise in a
10 case. And that just means that as to any issue of fact
11 that is essential to a conviction, if you have some
12 reasonable doubt as to how the issue should be resolved,
13 you must resolve it in favor of Mr. Chappell.

14 Now, in order to convict anyone of a crime, the State
15 must always prove criminal intent beyond a reasonable
16 doubt. There is no way to prove intent to a mathematical
17 certainty. It must be determined by the circumstances
18 surrounding the alleged incident. There's no way we can
19 dissect someone's brain and determine what they had in
20 mind at a certain point in time. So the law says that
21 criminal intent may be proven by inference from the
22 circumstances.

23 It is not necessary to establish intent by direct and
24 positive evidence. But it may be proven by inference in
25 the same way as any other fact, by considering all the

1 acts and circumstances. Criminal intent is a mental
2 state, a conscious wrongdoing. And it is up to you to
3 determine what someone intended to do based on the
4 circumstances.

5 The fact that a Defendant does not testify in a
6 criminal case is not something you can consider in any
7 way, ladies and gentlemen. The Constitution of this state
8 and the United States guarantees every citizen the right
9 to remain silent. And a jury may not draw any conclusion
10 from the fact that a Defendant did not take the stand
11 or -- and claim this right.

12 The burden of proof is entirely on the State. And,
13 under your oath, you are to draw no conclusion whatsoever
14 from the fact that Mr. Chappell did not testify. That
15 fact should not even be discussed during your
16 deliberations, or mentioned whatsoever in the jury room.
17 The burden of proof is entirely on the State. And the
18 Defendant is not required to prove himself innocent, or
19 prove himself not guilty, or offer any evidence or
20 explanation whatsoever. The burden remains on the State
21 to prove guilt beyond a reasonable doubt.

22 Now, ladies and gentlemen, there are two indictments.
23 And you must deliberate as to each indictment separately.
24 And that means that you will have to gauge and weigh the
25 evidence as to each charge separately, and not let your

1 decision on one influence your decision on the other.

2 The first indictment is 2010-GS-23-7901, which
3 alleges a lewd act upon a child. And I want to define for
4 you the offense of lewd act on a minor child, and tell you
5 what the State must prove beyond a reasonable doubt to
6 convict Mr. Chappell of this charge.

7 A minor is defined as a person under the age of 16.
8 And the State, in order to convict someone of a --
9 committing a lewd act on a minor must, first, prove beyond
10 a reasonable doubt that the Defendant was over the age of
11 14. Next, the State must prove that the Defendant
12 willfully and lewdly committed or attempted a lewd or
13 lascivious act on or with the body or its parts of a child
14 under the age of 16 years with the intent to arouse,
15 appeal to, or gratify the lusts, passions, or sexual
16 desires of the Defendant or the child.

17 Willfully means voluntarily and intentionally with a
18 specific intent to do something the law forbids. Lewd
19 means obscene, lustful, indecent, or lecherous.
20 Lascivious means tending to incite lust, lewd, indecent,
21 obscene, or tending to deprave the morals in respect to
22 sexual relations.

23 Now, Mr. Chappell is, also, charged with indictment
24 number 2010-GS-23-7902, which alleges first degree
25 criminal sexual conduct with a minor. In order to convict

1 him of this charge, the State must prove beyond a
2 reasonable doubt that the Defendant engaged in a sexual
3 battery with the victim. A sexual battery is sexual
4 intercourse, cunnilingus, fellatio, anal intercourse, or
5 any intrusion, however slight, of any part of a person's
6 body, or of any object into the genital or anal openings
7 of another person's body, except when the intrusion is
8 accomplished for medically-recognized treatment or
9 diagnostic purposes.

10 The State must then prove beyond a reasonable doubt
11 that the victim was less than 11 years old at the time of
12 the sexual battery. Consent, willingness, indifference,
13 or ignorance on the part of the minor, if any, as to what
14 was taking place does not in any way effect the charge of
15 criminal sexual conduct with a minor. Because an
16 unmarried woman under the age of 14 cannot legally consent
17 to sexual intercourse.

18 Now, that covers the substantive law that applies to
19 this case. And I'm going to give you just some final
20 instructions on your deliberations.

21 You were chosen as jurors in this case because both
22 sides, the State and Mr. Chappell, believe you could be
23 fair and impartial, and you could decide this case without
24 any kind of bias or prejudice. So remember that you're
25 not partisans or advocates for either side. You are

1 judges, judges of the facts. And your sole interest is to
2 determine the facts of the case from the evidence, take
3 the law I just gave you, and apply it to those facts, and
4 you will, ultimately, reach a verdict.

5 If you looked up the word "jury" in the dictionary,
6 you'd see it came from an old word that means a company of
7 people sworn to render an answer. So you each have a vote
8 in this matter. And your vote is exactly that, it's your
9 vote, and no else's.

10 So the genius of our jury system is it allows 12
11 people from different backgrounds, and life experiences,
12 and perspectives to come together, discuss the evidence
13 they've heard during a trial, and, ultimately, reach a
14 verdict. So don't be afraid to have discussions that are
15 courteous and thoughtful, of course, but, also, that may
16 be persuasive to you. And if you decide to change your
17 mind about something, don't be afraid to do so. But don't
18 surrender your honest and conscientious belief simply to
19 get the case over with or to reach a unanimous verdict.
20 Because this case is important to both sides.

21 Now, the verdict form is fairly straightforward. And
22 I'm going to just hand it to the Forelady, and let you
23 look at it.

24 It just asks you to determine whether the Defendant
25 is guilty or not guilty as to each indictment. Don't

1 attach any significance as to which option I put first. I
2 have to put one of them first. It, certainly, doesn't
3 mean anything.

4 And you're only authorized to sign that when the
5 verdict is unanimous.

6 So the record is closed. You're not going to have
7 any more witnesses. There are not going to be any more
8 exhibits. So you'll have to make your decision from your
9 memory of the testimony and exhibits you have.

10 And the system, your system, thanks you for your
11 attention throughout this trial.

12 And I'm going to ask you to go back to the jury room
13 now. But don't start talking about the case. Because I
14 have to take up one more matter with the lawyers. And
15 when you get the exhibits, that will be your signal that
16 you can start deliberating, and discussing the case.

17 And if the alternates can just stay back. I'll talk
18 to y'all separately.

19 Thank you very much.

20 (WHEREUPON, the jury was excused from open court at
21 approximately 3:10 p.m.)

22 THE COURT: Okay. Ladies -- lady and gentleman, the
23 law doesn't allow you to go back in the jury room at this
24 stage. So I just wanted to go ahead and dismiss y'all.

25 Thank you for your service.

1 I guess they need to call back tonight after 6:00; is
2 that right?

3 THE CLERK: Yes, sir.

4 THE COURT: And you'll find out what the rest of the
5 week holds in store for.

6 Thank you very much for your service.

7 (WHEREUPON, the alternate jurors exited the
8 courtroom.)

9 THE COURT: Okay. Any objection or exception to the
10 charge from the State?

11 MR. MOYER: Not from the State.

12 THE COURT: From the Defense?

13 MS. ROSS: None from the Defense.

14 THE COURT: If y'all just want to check the exhibits.
15 Are there just three of them?

16 THE COURT REPORTER: Yes, sir.

17 THE COURT: So they're ready to go back.

18 And we'll be at ease until we hear something.

19 Thank you very much.

20 (WHEREUPON, the proceedings were recessed at
21 approximately 3:12 p.m.)

22 THE COURT: Anything before we bring the jury in?
23 I understand we have a verdict.

24 MR. MOYER: Nothing from the State.

25 MS. ROSS: Nothing from the Defense.

1 THE COURT: Okay. Thank you.

2 Bring the jury in, please.

3 (WHEREUPON, the jury came into open court at
4 approximately 3:42 p.m.)

5 THE COURT: Madam Forelady, has the jury reached a
6 unanimous verdict?

7 JUROR #133, LISA MCKENZIE: Yes, we have.

8 THE COURT: If you would, hand it to the bailiff.

9 And we'll receive it and publish it.

10 Okay. Madam Clerk.

11 VERDICT

12 THE CLERK: Thank you.

13 Your Honor, this is indictment 2010-GS-23-7901 and
14 2010-GS-23-7902, the State v. Frederick Robert Chappell.

15 As to the charge of lewd act upon a child, we, the
16 jury, unanimously find the Defendant, Frederick Robert
17 Chappell, guilty.

18 As to the charge of criminal sexual conduct with a
19 minor in the first degree, we, the jury, unanimously find
20 the Defendant, Frederick Robert Chappell, guilty, signed
21 by the Foreperson, Lisa McKenzie.

22 If this is your verdict -- if this is each of your
23 verdict, please, raise your right hand.

24 (WHEREUPON, all jurors raised their right hand.)

25 THE CLERK: Thank you.

1 THE COURT: Do you wish to have the jury polled?

2 MS. ROSS: No, Your Honor.

3 THE COURT: All right. Any motions before the jury
4 is discharged?

5 MS. ROSS: No, Your Honor.

6 THE COURT: Ladies and gentlemen, thank you for your
7 service.

8 There are cases still on the docket. And, therefore,
9 I just ask you to call back tonight after 6:00 p.m. to
10 give you further instructions.

11 We will proceed with the sentencing phase of this
12 case. If you wish to observe that -- you're not required
13 to. But if you wish to observe it, you can come around to
14 the courtroom in the back. The bailiffs will escort you
15 around there, if you want to observe it.

16 Thank you very much.

17 (WHEREUPON, the jury exited the courtroom at
18 approximately 3:44 p.m.)

19 MOTIONS

20 THE COURT: Any motions?

21 MS. ROSS: Judge, we renew our prior motions, and
22 move for a judgment notwithstanding the verdict at this
23 time.

24 THE COURT: Okay. I respectfully deny the motion for
25 JNV, or a new trial. I think it was the issue the jury

1 could determine -- there was enough evidence for them to
2 reach their verdict without weighing the credibility of
3 it, which is, of course, their function. I don't see any
4 reason to disturb their verdict.

5 MS. ROSS: Thank you, Judge.

6 THE COURT: Thank you.

7 Could I just talk with the lawyers up here real quick
8 about scheduling?

9 (WHEREUPON, a bench conference was held.)

10 (Pause.)

11 THE COURT: All right. Yes, sir, Mr. Moyer.

12 MR. MOYER: Is the Court ready for sentencing?

13 THE COURT: Yes, sir.

14 MR. MOYER: May it please the Court.

15 At this time, I would like to give Your Honor the
16 Defendant's criminal history, if you're ready.

17 THE COURT: Yes, sir.

18 MR. MOYER: In 1986, the Defendant was convicted of
19 petit larceny, larceny, burglary second degree, burglary
20 third degree -- actually, 15 counts of burglary second
21 degree or third degree, and larceny. And that was all in
22 1987 [sic]. 1991, criminal domestic violence and
23 disorderly conduct; 1992, criminal domestic violence;
24 1993, disorderly conduct.

25 In 1994, he was convicted of criminal sexual conduct

1 with a minor first degree. He was sentenced at that time
2 to 20 years incarceration. Your Honor has heard from the
3 victim from that case, who came from Florida to be present
4 for this proceeding.

5 The Defendant was released on that -- for that
6 conviction on December the 30th of 2005. And he was
7 arrested on this charge, as Your Honor heard, in March --
8 I'm sorry, August of 2010. He was released on bond in
9 November of 2010, and then arrested in January for
10 criminal exploitation of minors. He was convicted at
11 trial on that charge in March of this year, five counts of
12 criminal -- exploitation of -- sexual exploitation of a
13 minor, and sentenced to 20 years, two 10-year sentences
14 consecutive, which he currently is serving.

15 Your Honor, at this time, the Defendant is, actually,
16 facing a sentence of life without parole due to that
17 conviction for criminal sexual conduct with a minor first
18 degree. We served both the Defendant and his attorney
19 with notice of our intent to seek life without parole.

20 And if it please the Court, I would like to pass up
21 our notice of intent to seek life without parole, and two
22 affidavits of service, and enter them into the record.

23 THE COURT: Yes, sir.

24 MR. MOYER: Thank you.

25 THE COURT: Okay. Anything further from the State?

1 MR. MOYER: No, Your Honor.

2 THE COURT: Do the victims wish to speak?

3 MR. MOYER: Let me just check.

4 THE COURT: All right.

5 (Pause.)

6 THE COURT: All right. Ms. -- is it Anderson?

7 MS. CANDACE BECK-ANDERSON: Yes, sir.

8 THE COURT: Yes, ma'am.

9 MS. CANDACE BECK-ANDERSON: The only thing I've got
10 to say is the fact that these girls weren't abused more
11 harshly is only due to the fact that they -- that he was
12 caught in time.

13 My history shows to me, at least, that this is going
14 to be an ongoing problem probably for the rest of his
15 capable life. And that pretty much no children, at least,
16 that age, that gender are safe around him probably until
17 he dies.

18 So I would like for you to keep that in mind, please.

19 THE COURT: Thank you, ma'am. Thank you for being
20 here.

21 Yes, ma'am.

22 MS. TASHA CARTER: I'm Tasha Carter. I'm **MINOR** s
23 mother.

24 And I would like -- my children are going to be --
25 well, my child is going to be -- she's going to have a

1 lifetime of pain. And I ask that he seek the same. I
2 don't feel that he would be safe around any child.

3 THE COURT: Thank you, ma'am.

4 Ms. Ross.

5 MS. ROSS: In light of the statute requiring you
6 sentence life without parole, I don't have anything
7 further to say.

8 THE COURT: Mr. Chappell.

9 DEFENDANT CHAPPELL: Yeah.

10 I'd like to say something. I've always pled guilty
11 to everything that I've ever done.

12 And I would like to tell Candace that I'm sorry. I
13 know it don't mean anything to you. But I'm sorry for all
14 them years ago.

15 And I maintain my innocence on these charges here on
16 this, Your Honor. And I ask you for leniency in whatever
17 you decide.

18 SENTENCE

19 THE COURT: Okay, sir. Based on the statute, Section
20 17-25-45, and the timely and proper service by the State
21 of the notice of intent to seek life without parole, the
22 sentence of the Court on indictment 2010-GS-23-7902 is
23 that you be committed to the Department of Corrections for
24 life. Credit for any time served, and be placed on the
25 Central Registry of Child Abuse and Neglect.

1 As to the lewd act, the sentence is 15 years.

2 And good luck to you, sir.

3 *****END OF TRANSCRIPT OF RECORD*****

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CERTIFICATE OF REPORTER

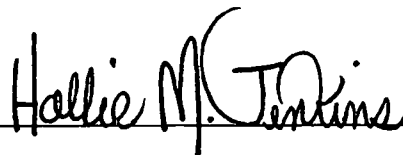
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 6th and 7th days of August, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 3, 2013

A handwritten signature in cursive script that reads "Hollie M. Jenkins". The signature is written over a horizontal line.

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Greenville)Fredrick Robert Chappell)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2014-CP-23- 06036

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Inst. 430 Oak Lawn Rd. Pelzer S.C. 29669
2. Name and location of Court which imposed sentence Greenville County General Sessions Court
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010 - GS - 23 - 07901 Lewd Act
 - (b) 2010 - GS - 23 - 07902 CSC 1st
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 6th + 7th ~~Feb~~ 2012, Life
 - (b) August 6th + 7th 15yrs. Lewd Act

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty YES _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Greenville County General Sessions _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Sept. 16, 2014 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- The applicant received Ineffective Asst. of Counsel prior and during his trial in violation of his rights pursuant the 6th and 14th Amendments to the United States Constitution, as well as Article I, Section 14 of the S.C. Constitution.
- (a) _____
- (b) _____
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out

in (10):

- (a) During trial Counsel allowed the expert's testimony was improper because it constituted improper vouching for the victim is not preserved for our review SEE *State v. Dunbar* 356 S.C. 138, 142, 587 S.E. 2d 691, 693-94 (2003)
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. N/A

- iv. N/A
- (d) the date of each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

- (b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Post-Conviction Relief action presents first appropriate
opportunity for review of these collateral issues,
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Susannah C. Ross public Defender Greenville County
 - ii. Kathrine H. Hudgins "Direct Appeal"
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. During General Sessions
 - ii. Direct Appeal
 - iii. _____

19. State clearly the relief you seek in filing this application:

Vacation of judgement and sentence. Applicant seeks a New Trial.

20. Are you now under sentence from any other court that you have not challenged?

N/A

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Greenville)Fredrick Robert Chappell

I, Fredrick Robert Chappell, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Fredrick R. Chappell

SWORN to and subscribed before me this 13th
day of October, 2014.

Nancy C. Murchant (L.S.)
Notary Public

My Commission Expires: 1-23-2027

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

Fredrick Robert Chappell
I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Fredrick R Chappell
Applicant

SWORN or affirmed to and subscribed before me this
13th day of October, 2014.

Nancy C. Mudgett
Notary Public

My Commission Expires: 1-23-2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2014-CP:-23-6036
COUNTY OF GREENVILLE	)	
	)	
Frederick Robert Chappell,	)	
S.C.D.C. No. 214069,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed November 5, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the December 2010 term of General Sessions for lewd act upon a child (2010-GS-23-7901) and first-degree criminal sexual conduct (CSC) with a minor (2010-GS-23-7902). Susannah C. Ross, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On August 7, 2012, the Honorable D. Garrison Hill sentenced the Applicant to concurrent terms of 15 years for lewd act upon a child and life imprisonment for first-degree CSC with a minor.

A notice of appeal was filed at the South Carolina Court of Appeals. Kathrine H. Hudgins, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and

sentences. State v. Chappell, Op. No. 2014—UP-272 (S.C. Ct. App. filed June 30, 2014). The Remittitur was sent on July 16, 2014.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
 - a. Allowed the expert's testimony, which "constituted improper vouching."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held

and counsel appointed to represent the Applicant.

Respectfully submitted,

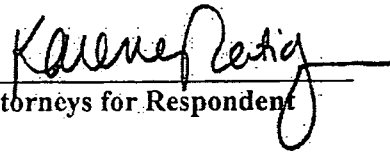
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

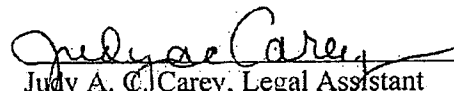
March 31, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2014-CP-23-6036
	)	
FREDERICK ROBERT CHAPPELL, 214069	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Frederick Robert Chappell, 214069
Perry Correctional Institution
430 Oaklawn Road
Pelzer SC 29669**

DATED this 31st day of March, 2015.


Judy A. Carey, Legal Assistant
For Respondent

Frederick Robert Chappell,)
)
 Applicant,)
 v.) Case No. 14-CP-23-6036
)
 State of South Carolina,)
)
 Defendant.)

The within Post-Conviction Relief Hearing in the above-captioned matter was held on December 17, 2015, before The Honorable Perry H. Gravely in Courtroom 6 of the Greenville County Courthouse, Greenville, South Carolina; attended by counsel as follows:

Brian Johnson, Esq.
... appearing for Applicant

Karen Ratigan, Esq.
Assistant Attorney General
... appearing for State of South Carolina

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
P O Box 27145
Greenville, South Carolina 29616-7145
dgarrison@sccourts.org

Frederick R. Chappell v. State of South Carolina
Case No. 14-CP-23-6036
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Before The Honorable Perry H. Gravely

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*No Exhibits Entered of Record

Frederick R. Chappell v. State of South Carolina

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Before The Honorable Perry H. Gravelly

3

1 THE COURT: This is Frederick
2 Robert Chappell.

3 KAREN RATIGAN: Yes, Your Honor.
4 This is the case of Chappell versus the State
5 of South Carolina, the docket number is 2014-
6 CP-23-6036. Mr. Chappell was indicted for
7 lewd act upon a child and first degree
8 criminal sexual conduct with a minor. He was
9 represented on these charge by Ms. Ross.

10 The case was brought to trial. He
11 was found guilty on August 7th, 2012. Judge
12 Hill sentenced him to concurrent terms of
13 fifteen years for lewd act and life
14 imprisonment for the first degree CSC with a
15 minor charge.

16 The case was appealed. The Court of
17 Appeals affirmed his sentences in June 2014.

18 This application was filed in
19 November of that year and the State is ready
20 to proceed.

21 THE COURT: All right. Mr.
22 Johnson?

23 BRIAN JOHNSON: Thank you, Your
24 Honor. Briefly, my client has specifically
25 made one allegation, primarily that there was

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4

1 an expert introduced at trial and that expert
2 was Shauna Galloway-Williams. She is on Page
3 178, Your Honor, of the transcript; which is
4 where I believe that her testimony starts,
5 and I believe that her testimony ends on Page
6 198. But, anyhow, Your Honor, she was
7 qualified as an expert. There was an
8 objection made but there was not an objection
9 made for improper vouching; an expert being
10 introduced for -- an expert's testimony being
11 improper vouching.

12 Your Honor, when the appeal was
13 submitted, when the brief was submitted to
14 the Court of Appeals they refused to hear the
15 issue because an objection was not made
16 contemporaneously -- a contemporaneous
17 objection was not made and that's my client's
18 primary complaint here, that a
19 contemporaneous objection was not made. So
20 his case was not preserved on appeal, Your
21 Honor.

22 THE COURT: All right. And is
23 your client -- have you discussed with your
24 client that the Court of Appeals has
25 discussed this issue at length and whether he

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1 had made an objection or not that it probably
2 wouldn't have mattered?

3 BRIAN JOHNSON: I ---

4 THE COURT: In light of the way
5 -- in fact, they actually addressed it on Ms.
6 Williams. They've said that she can be an
7 expert on another case and they actually
8 heard that argument -- I am just letting you
9 know that the Court of Appeals, the Supreme
10 Court, one of them has actually addressed
11 Shauna Galloway-Williams as an expert in this
12 type of case and has said that it is not
13 considered vouching.

14 BRIAN JOHNSON: I'm ---

15 THE COURT: I mean, they have
16 determined that it is proper expert
17 testimony. I'm just letting y'all know that
18 upfront.

19 BRIAN JOHNSON: Thank you.

20 THE COURT: I made your same
21 argument as an attorney, so I understand --
22 but just letting you know.

23 BRIAN JOHNSON: Thank you, sir.
24 That is a case that I unaware of.

25 THE COURT: It was interesting.

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1 It was actually a case before Judge Welmaker
2 where Ms. Galloway-Williams was the expert
3 at-issue in that case. They said that Ms.
4 Galloway-Williams had not talked with the
5 victim, just came in as an expert and gave
6 information about what normal victims would
7 do. Is that kind of what we have here?

8 BRIAN JOHNSON: Yes, sir.
9 Essentially, yeah. I don't ---

10 THE COURT: I will pull that case
11 for you. Anyway, I -- I'm not trying to
12 shorten you and I'll listen to everything but
13 I'm just kind of letting you know that this
14 issue comes up quite a bit here lately and
15 that's why the Court of Appeals addressed it.
16 I am not making a decision without hearing
17 your case fully, I am just kind of letting
18 you know where I think we are headed. I'll
19 be glad to hear from you, Mr. Johnson, and
20 I'll also be glad to pull that case up for
21 you.

22 BRIAN JOHNSON: Thank you, Your
23 Honor. I am going to call Frederick
24 Chappell to the stand.

25 (APPLICANT TAKES STAND)

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Testimony of Frederick Chappell - Direct Examination

7

1 FREDERICK ROBERT CHAPPELL, having
2 been sworn to tell the truth, and nothing but
3 the truth, testified as follows:

4 DIRECT EXAMINATION

5 BY BRIAN JOHNSON:

6 Q. Mr. Chappell, did you file an
7 application for post-conviction relief?

8 A. Yes, I did.

9 Q. I know we've discussed it already
10 but, for the record, what was your allegation
11 for the ineffective assistance of counsel?

12 A. I felt like there just wasn't any
13 objection to the improper vouching, and
14 because of that I felt like the Court of
15 Appeals didn't get to hear it.

16 Q. When you reference the Court of
17 Appeals, did the Court of Appeals hear that
18 issue on your behalf or did they refuse to
19 hear it?

20 A. They refused to hear it.

21 Q. Do you know why?

22 A. Not exactly.

23 Q. Could it have been that the
24 objection was not made?

25 A. Yes, sir.

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8

1 Q. All right. When we are talking
2 about the expert, are we talking about Shauna
3 Galloway-Williams?

4 A. Yes, we are.

5 Q. And you've seen the transcript?

6 A. Yes, I have.

7 Q. Okay. Now, Mr. Chappell, did you
8 highlight some portions of how you think that
9 the witness was allowed to improperly vouch?

10 A. Sir, I didn't. We ---

11 Q. Did you go over the transcript in
12 this matter?

13 A. Yes, we did.

14 Q. Did you go over it with me and did
15 you highlight portions where you felt that
16 she may have improperly vouched?

17 A. Yes, sir.

18 Q. Okay. Can you go over the court
19 those instances? Just give the court the
20 page number and the excerpt to the court's
21 attention?

22 A. All right. Right here on (Page)
23 184, right here it says by Ms. Ross,
24 (reading): "I simply object on grounds of
25 relevancy since she hasn't actually had any

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9

1 experience with this case."

2 Q. That's an objection that she made as
3 to relevancy.

4 A. Yes.

5 Q. But did she make an objection for
6 improper vouching?

7 A. No, sir.

8 Q. Okay. Continue.

9 A. Here on (Page) 185 there was delayed
10 disclosure or delayed reporting.

11 Q. So she was allowed to discuss
12 delayed disclosure and delayed reporting?

13 A. Yes, sir.

14 Q. Continue.

15 A. Page 186, "language and knowledge of
16 sexual matters."

17 Q. That is in reference to the child?

18 A. Yes.

19 Q. Please continue.

20 A. And on Page 187, "feelings of guilt
21 or shame."

22 Q. And she was allowed to discuss
23 those?

24 A. Yes.

25 Q. Okay.

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1 A. And on Page 188, "Is it common or
2 uncommon for the perpetrator of a child
3 sexual abuse scenario to be family member?"

4 On Page 189, "Do children lie about
5 things like of a sexual nature of abuse?"

6 On Page 190, "Is it more difficult to
7 remember things..." -- basically just, you
8 know.

9 I think that might be it. I think that
10 it all -- no, right here on Page 193, "Can
11 that in and of itself be a traumatic
12 experience for a child?"

13 Q. Referring to the interview itself?

14 A. Yes. And, uh, I think that's all
15 that we've got. I just feel like if -- that
16 it would make difference since the trial that
17 came after mine, I felt like that kind of
18 objection would have made a difference in my
19 case.

20 Q. You are speaking in reference to --
21 your trial was when?

22 A. It was in 2012.

23 Q. And you're talking about in
24 reference to some case that ----

25 A. (Affirmative nod), the ones in 2013

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1 and 2015, I believe.

2 Q. And because the record wasn't
3 preserved, you believe that you were
4 prejudiced because the Appeals Court refused
5 to hear your case?

6 A. Yes, sir, I do.

7 Q. Okay.

8 BRIAN JOHNSON: Your Honor, I have
9 no further questions.

10 THE COURT: Let me ask you a
11 question, are you aware of any place in the
12 transcript where they discuss the credibility
13 of the particular victim? Did she ever make
14 any discussions about this victim or was it
15 just all general type comments about how
16 victims in general react?

17 APPLICANT: I do know that she
18 said that she'd never spoke to her.

19 THE COURT: Did she ever give an
20 opinion as to whether this girl was telling
21 the truth or not, in the transcript? Are you
22 aware of anything?

23 APPLICANT: I'm not aware of that,
24 to be honest with you.

25 BRIAN JOHNSON: I don't believe

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12

1 so, Your Honor.

2 THE COURT: Thank you. Ms.
3 Ratigan?

4 KAREN RATIGAN: I have no cross,
5 Your Honor.

6 THE COURT: All right, thank you.

7 BRIAN JOHNSON: That is the
8 Applicant's case.

9 (APPLICANT STEPS DOWN)

10 THE COURT: Ms. Ratigan?

11 KAREN RATIGAN: Thank you, Your
12 Honor, we call Ms. Ross.

13 (WITNESS TAKES STAND)

14 SUSANNAH ROSS, having been sworn to tell
15 the truth, and nothing but the truth,
16 testified as follows:

17 DIRECT EXAMINATION

18 BY KAREN RATIGAN:

19 Q. Ms. Ross, do you recall representing
20 Mr. Chappell on these charges?

21 A. I do.

22 Q. And were you appointed or were you
23 retained?

24 A. I was appointed.

25 Q. Did you file the usual *Brady* and

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Testimony of Susannah Ross - Direct Examination

1 Rule 5 discovery Motions?

2 A. Yes.

3 Q. In your opinion, did you receive
4 full discovery from the State?

5 A. Yes.

6 Q. Did you review it with your client?

7 A. Yes.

8 Q. Did you talk about what the State
9 would have to prove at trial to find him
10 guilty?

11 A. Yeah, I am sure that I would have.
12 I don't have my notes right by me, but --
13 (pause).

14 Q. Would he also have told you his
15 version of what happened with the victim?

16 A. Yes.

17 Q. And did you review the video of the
18 forensic interview with Mr. Chappell prior to
19 trial, do you remember?

20 A. I know that I reviewed it. I don't
21 know if I showed it to him specifically. I
22 can't recall.

23 Q. And would you also have reviewed
24 with him his rap sheet, his prior
25 convictions?

1 A. Yes.

2 Q. Did you also represent him on other
3 charges?

4 A. Yes.

5 Q. And what were those other charges?

6 A. I believe that it was some computer
7 -- pictures on a computer.

8 Q. Was it related to the victim in this
9 case or was it totally separate?

10 A. It was totally separate.

11 Q. And had those charges been disposed
12 of prior to this trial?

13 A. Yes. We had that trial and he got
14 twenty years and, uh, -- and I was working
15 very hard with Mark Moyer, the Solicitor, to
16 be satisfied with that twenty-year sentence,
17 given Chappell's age and the fact that he
18 would have to be found to be not a threat to
19 get out, a sexual threat. I didn't think
20 that would ever happen, so my hope was that
21 Mark would let that go and not try it again
22 on this charge; but I was wrong.

23 Q. Would it be fair to say that this
24 case would boil down to the 'ole he said/she
25 said type of scenario?

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Testimony of Susannah Ross - Direct Examination

1 A. Yes.

2 Q. What was your trial strategy, given
3 that?

4 A. Really given the history with Mr.
5 Chappell, a big thing was to keep out a prior
6 Lyle situation that I was worried would come
7 in. I was able to keep that testimony out.
8 Hoped that the child didn't appear convincing
9 on the stand. I think she was seven or eight
10 and, uh, I hoped that she slipped up. I
11 haven't found it a great strategy to try to
12 attack a child.

13 Q. Okay. Do you recall at trial, was
14 the victim's testimony fairly consistent?

15 A. Yes.

16 Q. Let me rephrase that. Was that
17 consistent with here forensic interview?

18 A. Yes.

19 Q. Okay. In your opinion, was she a
20 good witness for the State? A bad witness
21 for you?

22 A. She was.

23 Q. Did you know prior to trial that Ms.
24 Galloway-Williams would be called to testify
25 about delayed disclosure?

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Testimony of Susannah Ross - Direct Examination

16

1 A. I can't remember specifically. I
2 don't have any -- I probably would have but I
3 can't remember specifically.

4 Q. Have you had her testify in these
5 types of cases before?

6 A. I am not sure if that was her first
7 time, but I've had that type of testimony.
8 It might have been another witness. At that
9 point I had done quite a few CSC cases, was
10 very familiar with vouching and those
11 objections.

12 Q. Obviously you don't have your file
13 and the transcript is pretty lengthy, but if
14 you had -- if you believed that she was
15 making -- if you believed that Ms. Galloway-
16 Williams was making a vouching statement,
17 would you have objected?

18 A. After getting the materials from
19 your office with the transcript, I did look
20 at her testimony and kind of thought about
21 what I had done. I still have a bunch --
22 well, I don't have the case file but I have a
23 bunch of the case law and am, again, very
24 familiar with vouching. I was watching for
25 that the entire time and -- the objection

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Testimony of Susannah Ross - Cross Examination

1 that I did make at that time, at the very
2 beginning, I didn't have a ground for
3 objecting to vouching because she hadn't
4 really said anything. Then I was pretty
5 careful watching what she said and I didn't
6 hear any vouching. If I missed something,
7 then I was in error.

8 Q. Thank you.

9 KAREN RATIGAN: That's all that I
10 have, Your Honor.

11 THE COURT: Mr. Johnson?

12 BRIAN JOHNSON: Yes, sir.

13 *CROSS EXAMINATION

14 BY BRIAN JOHNSON:

15 Q. Ms. Ross, if I understand your
16 testimony correctly, basically you didn't
17 objection -- you didn't object based on
18 vouching because you as you recall you don't
19 remember seeing (sic) any improper vouching;
20 is that correct?

21 A. Right. I don't remember hearing any
22 improper vouching. On my review of the
23 transcript, I am not really seeing any. If I
24 am wrong, the Judge can make a determination
25 on that.

Frederick R. Chappell v. State of South Carolina
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Testimony of Susannah Ross - Cross Examination

18

1

2

BRIAN JOHNSON: Your Honor, I have no
further questions.

3

4

THE COURT: All right. She can
be released.

5

6

(WITNESS STEPS DOWN)

7

KAREN RATIGAN: Thank you, I was going
to ask -- and the State would rest.

8

9

THE COURT: Any further?

10

11

BRIAN JOHNSON: Yes, Judge, one case
-- and actually this is a case that my client
sent to me on Friday. This was a case from
August 2015. If I may provide a cite to Your
Honor and a brief argument of the case.

12

13

14

15

THE COURT: Yes. What is the cite?

16

17

BRIAN JOHNSON: The cite is the *State*
v. Anderson, 413 S.C. 212, decided on August
20, 2015.

18

19

20

21

22

23

24

25

Your Honor, I think it is pertinent as to
under Part B, Expertise and Bolstering. I
think what may be relevant to Your Honor is
that in this instance an objection was made
when the witness was asked what she meant by
the term "delayed reporting" or "delayed
disclosure." In this instance, the witness

Frederick R. Chappell v. State of South Carolina

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CLOSING ARGUMENT AND RULING OF THE COURT.

1 wasn't allowed to continue to explain those
2 terms.

3 The Court went on to say later on in the
4 case that "there's to be no testimony to such
5 things as techniques of the instruction to
6 the interview subject of the importance of
7 telling the truth", etcetera. But I think
8 the biggest thing is such things as
9 techniques. I think that may specifically
10 apply to Mr. Chappell's case. We actually
11 considered that case in making our decision.

12 THE COURT: All right. Let me
13 point out that the Court has made a
14 distinction between a forensic interviewer
15 and the expert. In the *Anderson* case, if I
16 am not mistaken, it was actually the forensic
17 interviewer, the person that interviewed the
18 child and then gave testimony as an expert
19 and the court didn't determine that was
20 bolstering.

21 If you look at the case of *State v.*
22 *Brown*, which was earlier in 2015, they -- and
23 I can give you the cite on that -- they said
24 at that point that if the person was not the
25 forensic interviewer and was just called as

Frederick R. Chappell v. State of South Carolina

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CLOSING ARGUMENT AND RULING OF THE COURT

1 have no choice but to your Petition. Thank
2 you. I wish you the best.

3 BRIAN JOHNSON: Thank you.

4 KAREN RATIGAN: I will prepare the
5 Order.

6 (HEARING CONCLUDED)
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Frederick R. Chappell v. State of South Carolina

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Certificate of Court Reporter

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 13th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the post-conviction relief hearing held in the within action heard on December 17, 2015, before The Honorable Perry H. Gravely;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.



Deborah Garrison

Greenville, South Carolina

April 20, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Frederick Robert Chappell,
S.C.D.C. No. 214069,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2014-CP-23-6036**ORDER OF DISMISSAL**

ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2016 JAN 21 PM 4 09

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 5, 2014. The Respondent made its return on March 31, 2015. An evidentiary hearing was held on December 17, 2015 at the Greenville County Courthouse. The Applicant was present and represented by Brian P. Johnson, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Susannah C. Ross, Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the December 2010 term of the Greenville County Grand Jury for lewd act upon a child (2010-GS-23-7901) and first-degree criminal sexual conduct (CSC) with a minor (2010-GS-23-7902). He was represented by Susannah C. Ross, Esquire.

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After the State called the case to trial, the Applicant was found guilty. On August 7, 2012, the Honorable D. Garrison Hill sentenced the Applicant to concurrent terms of 15 years for lewd act upon a child and life imprisonment for first-degree CSC with a minor.

A notice of appeal was filed at the South Carolina Court of Appeals. Kathrine H. Hudgins, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Chappell, Op. No. 2014-UP-272 (S.C. Ct. App. filed June 30, 2014). The remittitur was sent on July 16, 2014.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Allowed the expert's testimony, which "constituted improper vouching."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the

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evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant argued trial counsel should have objected to improper vouching during testimony from Shauna Galloway-Williams. The Applicant argued Galloway-Williams never spoke to the victim in this case.

Trial counsel testified her trial strategy was to limit the admission of Lyle¹ evidence (with which she was successful) and hope the victim was not a convincing witness. Trial counsel testified, however, that the victim was a good witness and her testimony was consistent with her statements in the forensic interview. Trial counsel testified she was mindful of potential vouching and did not believe there was any in this case.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to Shauna Galloway-Williams’ testimony. This Court notes trial counsel is an experienced criminal defense attorney and finds she would be aware of the risks of potential

¹ State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923).

vouching by expert witnesses in cases involving the sexual abuse of a child. This Court finds there was no error in trial counsel's lack of objection during Galloway-Williams' testimony because her testimony did not contain vouching statements. The recent appellate decision in State v. Brown, 411 S.C. 332, 768 S.E.2d 246 (Ct. App. 2015) is instructive in this case (and, in fact, deals with the same expert witness testifying about the same topic of delayed disclosure of abuse by minors). This Court finds Galloway-Williams' testimony in the Applicant's case was permitted under the holding in Brown. This Court finds there was no basis for trial counsel to have made an objection to vouching.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not

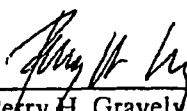
established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

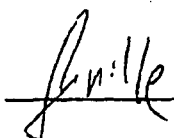
IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 14th day of January, 2016.



Perry H. Gravely
Presiding Judge
Thirteenth Judicial Circuit


_____, South Carolina.

WITNESSES

Michael Robertson *TWJ* *CC*

Greenville County Sheriffs Office

8/4/2010

ARREST WARRANT NUMBER

1481858

ACTION OF GRAND JURY

TRUE BILL*Ann Stoverette*
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

*Guilty**Joe E. King*
Foreperson of Petit JuryDate: *8-7-12*DOCKET NO. 2010-GS-23-
LMM

007901

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December TERM 2010

THE STATE

VS.

ROBERT FREDERICK CHAPPELL

J
Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-0140

RECEIVED

OCT - 8 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
LEWD ACT UPON A CHILD

DEC 14 2010

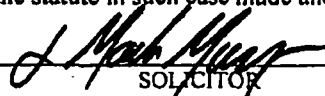
At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That FREDERICK ROBERT CHAPPELL did in Greenville County, between the dates of January 1, 2006, and March 10, 2010, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of K.C.K., a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

cc

Michael Robertson

[Signature]

Greenville County Sheriffs Office

8/4/2010

ARREST WARRANT NUMBER

1481856

ACTION OF GRAND JURY

TRUE BILL

[Signature]

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury

Date:

8-7-12

DOCKET NO. 2010-GS-23-

LMM

007902

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December

TERM 2010

THE STATE

vs.

FREDERICK ROBERT CHAPPELL

Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

VIOLATION § 16-03-0655(1)

RECEIVED

OCT - 8 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on
County present upon their oath:

DEC 14 2010

the Grand Jurors of Greenville

That FREDERICK ROBERT CHAPPELL did in Greenville County, between the dates of January 1, 2006, and March 10, 2010, commit a sexual battery on K.C.K., who was less than eleven years of age. This is in violation of §16-3-655(1) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR